

**Veeresh and Others Vs. The State of Karnataka, Represented by its Principal Secretary Rural Development and Others**

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**SooperKanoon Citation :** [sooperkanoon.com/1192624](http://sooperkanoon.com/1192624)

**Court :** Karnataka Dharwad

**Decided On :** Apr-04-2017

**Judge :** The Honourable Dr. Justice Vineet Kothari & The Honourable Dr. Justice H.B. Prabhakara Sastry

**Appeal No. :** Writ Appeal Nos. 101465, 101469-470 of 2016 (GM-CC)

**Appellant :** Veeresh and Others

**Respondent :** The State of Karnataka, Represented by its Principal Secretary Rural Development and Others

**Advocate for Def. :** Sri. V. M. Sheelvant

**Advocate for Pet/Ap. :** Smt. Pramila Nesargi, Sri. M. T. Nanaiah

**Judgement :**

(Prayer: These Appeals are filed under Section 4 of the Karnataka High Court Act, 1961 praying to set aside the Order Dated 21.10.2016 passed by the Learned Single Judge in W.P.NO.103198-103199/2016 by allowing the prayers made by the Appellants in W.P.Nos.103198-103199/2016.

This Appeal is filed under Section 4 of the Karnataka High Court Act, 1961 praying to set aside the Order Dated 21.10.2016 passed by the Learned Single Judge in

W.P.No.29822/2016 by allowing the prayers made by the Appellant in W.P.No.29822/2016.)

**DR. H.B. Prabhakara Sastry, J.**

Common Judgment:

1. The appellants have filed these appeals under Section 4 of the Karnataka High Court Act, 1961, being aggrieved by the order dated 21.10.2016 passed by this Court in W.P.Nos.103198-103199/2016 C/w. W.P.No.29822/2016.

2. In their memorandum of appeal, the appellants have raised common grounds and have stated that the learned Single Judge in the impugned order has failed to notice that the writ petitioners had not sought for setting aside of the election to the post of Zilla Panchayat. However, the challenge was only with respect to the Caste Certificate issued by the Tahasildar, in favour of the respondent No.5. As such, the said matter is in no way related to the election petition. The appellant has further stated that the finding of the learned Single Judge that the writ petitions are not maintainable, was also without any basis. The learned Single Judge failed to notice that the appellant - Smt. Shaila has preferred a separate election petition in the competent Court. As such, the relief sought for in the writ petitions is a different relief confining to the obtaining of the Caste Certificate by the respondent No.5 - Smt.Veena, fraudulently and in collusion with the respondent No.4 - Tahasildar. Thus, without appreciating the scope and ambit of the writ petitions and the relief claimed therein, the learned Single Judge held that the writ petitions are not maintainable, which finding was thus erroneous. With this the appellants have prayed for setting aside the impugned order and allowing the writ petitions filed by them.

3. Respondents No.1 to 4 in all these appeals are being represented by the learned Government Advocate and respondent No.5 is being represented by her Counsel.

4. Heard the arguments from both sides.

5. Learned Senior Counsel Smt. Pramila Nesargi, appearing for the appellants in W.A.Nos.101469-470/2016, filed by the two citizens of that area, Veeresh and Another, in her arguments vehemently submitted that the learned Single Judge failed to make a distinction between an Election petition and a Petition challenging the fraudulent functioning of a public servant holding a public office. The documents on record clearly demonstrates, that issuing of the Caste Certificate by the 4th respondent - Tahasildar was only to favour respondent No.5 for political and various other reasons, which is a gross misuse of his public office. As such, the writ jurisdiction is the only efficacious remedy available to challenge such an act of a public servant.

6. Sri. M. T. Nanaiah, learned Senior Counsel appearing for the appellant in W.A.No.101465/2016, supported the arguments addressed on behalf of the other appellants and further submitted that the appellant being a member of Zilla Panchayat and also a voter of the constituency under dispute, have got locus standi to challenge the Act of a public servant, who by his misdeeds has enabled an undeserving candidate to make use of a Caste and Income Certificate issued by him in contesting the election. Thus, the very issuance of the certificate by a public servant being under question, the present appeal cannot be considered as an Election petition.

7. Sri. C. S. Patil, learned Government Advocate, representing respondents No.1 to 4, in his arguments vehemently submitted that the very Act of the appellants challenging the issuance of the Caste-cum-Income Certificate in favour of the respondent No.5, is nothing but challenging the entire election process. In view of Article 243-O of the Constitution of India, no election to any panchayat can be called in question, except by an Election petition presented to a competent Authority, in a manner provided under the law. As such, the learned Single Judge has rightly held that the writ petitions are not maintainable.

8. Learned Counsel Sri. V. M. Sheelvant, appearing for respondent No.5, while strongly advocating for the order under challenge, submitted that it is a settled principle of law that an election to any Panchayat, including Zilla Panchayat, cannot be challenged in any Court, including High Court, except under an Election

petition. The Hon'ble Supreme Court also has, in several cases, held that election cannot be challenged in any forum, except under an Election petition. The very act of the writ petitioners, who are the present appellants, is nothing but challenging the candidature of the elected member to Zilla Panchayat, who is respondent No.5 herein. Thus, it is nothing but an Election petition under Articles 226 and 227 of the Constitution of India. With this he submitted to dismiss the writ appeals.

9. The summary of the case under consideration is that the 4th respondent - Tahasildar, on an application of the 5th respondent, issued an Income-cum-Caste Certificate to her, certifying that she belongs to Backward Class B Group with an annual income of Rs.50,000/-. It appears that the said respondent No.5, by producing the said Income-cum-Caste Certificate, contested Zilla Panchayat election under Backward Class B Women Category, from Bagalkot District constituency. The appellant in Writ Appeal No.101465/2016, who also claims to be belonging to Backward Class B Category and the first and second appellants in the other writ appeals claiming to be a sitting member of Zilla Panchayat, Bagalkot and an voter of Dhannur-18, a constituency under Bagalkot Zilla Panchayat, respectively, alleging that the Income-cum-Caste Certificate issued by respondent No.4 - Tahasildar in favour of the respondent No.5, was a fraudulent and collusive act of 4th and 5th respondent, at the instance of a sitting MLA, who is said to be the husband of the 5th respondent, challenged the said Caste Certificate in the Writ Petition Nos.103198- 103199/2016 and Writ Petition No.29822/2016, before the learned Single Judge, with a prayer to issue a writ of certiorari quashing the Caste Certificate dated 20.01.2016, vide No.MSC/CR/145/2015-16, issued by the 4th respondent in favour of the 5th respondent. The learned Single Judge, after hearing both sides, by his order dated 21.10.2016, was pleased to dismiss all the three writ petitions holding that the writ petitions are not maintainable. It is the said order, the appellants have challenged in these appeals.

Regarding Maintainability:

10. Before proceeding further to analyse the merits of the petition, at the threshold, the preliminary objection raised by the respondents regarding the maintainability of the writ petitions and as a consequence of the present appeals, is to be discussed

and analysed.

11. The writ petitioners, who are the appellants herein, in their writ petitions have made a prayer for issuance of a writ order or a direction in the nature of certiorari, quashing the Caste Certificate dated 20.01.2016 vide No.MSC/CR/145/2015-16, issued by the 4th respondent - Tahasildar, Hungund Taluk, Bagalkot District, in favour of the 5th respondent - Smt. Veena, W/o. Vijayanand Kashappanavar, Hungund Taluk, Bagalkot District. After obtaining the said Income-cum-Caste Certificate, which was produced at Annexures-H and L in the writ petitions before the learned Single Judge, the beneficiary of the said Certificate, who is respondent No.5, is said to have made use of the said document in filing her nomination to the candidature at Zilla Panchayat membership election in 2016. It is also stated that she became a winning candidate in the election.

12. In this background, the respondents vehemently submitted that in view of the Article 243-O of the Constitution of India, challenging of an election can be made only through an Election petition, before the appropriate Court/Forum. As such, this Court under writ jurisdiction cannot entertain the election matters.

13. Per contra, learned Senior Counsel Smt. Pramila Nesaragi and learned Senior Counsel Sri. M. T. Nanaiah, appearing for the appellants in these writ appeals, tried to distinguish an election petition from the writ petition and submitted that the prayer made in the writ petitions is only to quash the Income-cum-Caste Certificate granted by the 4th respondent - Tahasildar, in favour of the 5th respondent, by throwing to air all the procedure laid down by law, only with an intention to help the 5th respondent, either for political purpose or for other reasons, best known to him. By the said act, the writ petitioners, who are member of the Electorate i.e., an voter and another elected member to the Zilla Panchayat, are aggrieved, since the elected representative, i.e., 5th respondent, by misusing the public office and in connivance with a public servant i.e., 4th respondent was successful in obtaining a false and forged Income-cum-Caste Certificate fraudulently, which has sent a very wrong message to the society at large. Therefore, the writ petition has nothing to do with the election process or result thereof or with the election petition. Therefore there is no bar for entertaining the writ petitions, for the limited purpose

of examining the validity of the said impugned Income-cum-Caste Certificate.

14. Article 243-O of the Constitution of India reads as below:

"243-O. Bar to interference by courts in electoral matters - Notwithstanding anything in this Constitution -

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under article 243K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any Law made by the legislature of a State."

15. Zilla Panchayat and its constitution is governed by provisions contained in Chapter X of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 ('Act' for short). Section 171 of the Act prescribes that the provisions of Sections 15 and 24 shall apply mutatis mutandis in respect of election to Zilla Panchayat. Section 15 contains an express bar against questioning an election except by way of an election petition. The said provision reads thus:

Election petition.- (1) No election to fill a seat or seats in a Grama Panchayat shall be called in question except by an election petition presented on one or more of the grounds specified in sub-section (1) of section 19 and section 20 to the [Civil Judge (Junior Division)] within whose territorial jurisdiction the panchayat area concerned or the major portion of the panchayat area concerned is situate by any candidate at such election or by any voter qualified to vote at such election together with a deposit of five hundred rupees as security for costs, within thirty days from , but not earlier than, the date of declaration of the result of the election of the returned candidate at the election, and if the dates of declaration of the results of the their election are different, the last of those dates."

Section 171 reads as follows:

"171. Application of certain sections relating to elections - (1) The provisions of sections 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 shall apply mutatis mutandis in respect of election to Zilla Panchayat, the application being to the 1 [Civil Judge (Senior Division)]<sup>1</sup> having jurisdiction and the deposit as security for costs being two thousand rupees.

(2) Any person aggrieved by any decision or order of the [Civil Judge (Senior Division)] under this section may, within thirty days from the date of such decision or order appeal to the District Judge and the decision of the District Judge on such appeal shall be final."

16. A combined reading of Article 243-O of the Constitution of India and Sections 15 and 171 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993, makes it clear that the election to panchayat can be called in question only through an election petition, before the competent Authority. Thus, there is no ambiguity with respect to the position of law. However, what is required to be seen in the case on hand is whether the relief sought for in the writ petitions before the learned Single Judge was setting aside of the election results or challenging any election process, thus making it an election petition.

17. The prayer made in W.P.Nos. 103198- 103199/2016 (GM-CC) is as below:

"i. Issue a writ, order or direction in the nature of certiorari, quashing the caste certificate dated 20.01.2016 vide No.MSC/CR/145/2015-16, issued by the respondent No.4 in favour of the respondent No.5, produced at Annexure-H."

The prayer made in W.P.No.29822/2016 is as below:

"i. Call for the records which ultimately resulted in issuing Endorsement Annexure A dated 01.03.2016 bearing No.MSC/CR/2015-16 issued by the 4th respondent.

ii. Issue an order, direction, writ in the nature of certiorari quashing the Endorsement Annexure A dated 01.03.2016 bearing No.MSC/CR/2015-16 issued by the 4th respondent.

iii. Issue an order, direction, writ in the nature of quashing the caste certificate dated 20.1.2016 vide Annexure-L issued by the respondent, as the same is illegal and without the authority of law.

iv. Direct the respondent to initiate criminal prosecution against the 5th respondent for making false declaration in obtaining the Caste Certificate for contesting election No.18 Dhannur Zilla Panchayat Constituency."

Neither of the above two sets of writ petitions have anyway prayed for setting aside the election or to declare the candidature of respondent No.5 as invalid. There is no element of prayer, which touches the procedural aspect of the elections held to the Zilla Panchayat. What is prayed is only the document which is called an Income-cum-Caste Certificate issued by the respondent No.4 - Tahasildar, which document, the respondent No.5 is said to have obtained fraudulently. It is very important to note at this juncture that the document challenged, which is the Income-cum-Caste Certificate dated 20.01.2016 and bearing No.MSC/CR/145/2015-16, is not a document confining only for the use of election. It can be observed that such a certificate of income and caste was otherwise also being issued by a competent Authority, who is respondent No.4 - Tahasildar herein, under the Karnataka Scheduled Caste and Scheduled Tribes and Other Backward Classes (reservation in appointments etc.,) Rules, 1992. The said certificate can be used for different purposes. Incidentally, the same certificate could also be used as a proof of caste and income for contesting the elections to Zilla Panchayats also. Thus, it cannot be taken that the impugned Income-cum-Caste Certificate is exclusively a document for the electoral process only. Therefore, challenging the said document, though it may as one of its consequence, have impact in the process of adjudication of the election petition, by that itself it cannot be called that should be through an election petition only and not otherwise. In our view, the learned Single Judge did not make this thin distinction between an election petition as such and challenging a document or issuance of a document, which has no direct bearing on the election process or its results.

18. Therefore, we are unable to agree to the main contention taken up by the respondents that the writ petitions as well the present writ appeals are not maintainable and that the appropriate course for the appellants was to challenge the impugned certificate and the process of its issuance only through an election petition.

19. The second main contention of the learned counsel for the respondents is that, the impugned certificate, which is the Income-cum-Caste Certificate, issued by the Tahasildar, can only be challenged before the jurisdictional Assistant Commissioner, as such, having an alternate remedy, the appellants should not have preferred writ petitions before the High Court. For this argument of the respondents' side, the response of the appellants' side was initially that, no provision has been made for any appeal against the order of the Tahasildar, as such, writ is the only jurisdiction for them to challenge the impugned order. However, after the respondents bringing to the notice of the Court that the Government has issued a notification No.RD/AJSR/ADMN/15/15-16 dated 07.10.2015, prescribing the jurisdictional Assistant Commissioner as the proper Authority to set aside the Income-cum-Caste Certificate issued by the Tahasildar, the appellants tried to corroborate their arguments submitting that, availability of alternative remedy cannot oust the jurisdiction of the High Court, particularly when the remedy available under writ jurisdiction is efficacious, speedy and serving urgent need of the Society.

20. Learned counsel for the appellants also relied upon a decision of a coordinate Bench of this Court in Smt. Raniyamma Vs. M. Hemala Nayaka and Others reported in ILR 1997 Karnataka 2518. In the said decision, a Division Bench of this Court, with respect to an election to Zilla Panchayat, Adyakshya and Upadyaksha posts, was pleased to observe that Article 243-O of the Constitution of India is not a bar to challenge the election of Adyakshya by way of writ petition.

Alternative remedy is a rule of discretion and not one of compulsion. In appropriate cases, in spite of availability of an alternative remedy, the High Court may still exercise its writ jurisdiction. In Smt.Lalithamma and Another Vs. Corporation of the City of Bangalore, reported in ILR 1999 Karnataka 3710 (DB), the coordinate

Bench of this Court, comprising Hon'ble Justice Y. Bhaskar Rao, C.J. and Hon'ble Justice V. Gopala Gowda (as his Lordship then was), was pleased to observe that an alternative remedy is generally to be exhausted. However, exception to this is in the cases, where the orders passed is without jurisdiction or matter involves public interest and also the cases involving any urgency and available alternative remedy is not efficacious.

The Hon'ble Apex Court in the case of State of Kerala and Others Vs. M. K. Jose, reported in (2015) 9 SCC 433, was pleased to observe that availability of an alternative remedy does not affect jurisdiction to exercise extraordinary powers. However, it is a ground to refuse to exercise discretion.

In the instant case, though an alternative remedy is available to the petitioners before the jurisdictional Assistant Commissioner, facts and circumstance of the present case as demonstrated is that the matter is of urgency involving public interest and availing of an alternative remedy is not efficacious.

21. From the above, it is clear that mere availability of an alternative remedy cannot take away the writ jurisdiction, that too in the cases like instant case, wherein the act of a public servant in issuing a Caste Certificate, which is said to be not proper, affects the health of the Society.

22. For the above reasons, we are also not agreeable to the arguments of the learned counsel for the respondents that the writ appeals are not maintainable in the present case. However, we make it once again clear that in these appeals, we are confined only to examine the manner of issuance of the impugned certificate by the respondent No.4 - Tahasildar and whether he has used his office diligently in the process and nothing more than this, including his finding as to the income and caste of respondent No.5 - Smt. Veena.

On Merits:

23. Now coming to the main aspect of the case, which is the issuance of an Income-cum-Caste Certificate by the respondent No.4 - Tahasildar, in favour of the respondent No.5 - Smt. Veena, which was challenged by producing it as a

document at Annexure-H, before the learned Single Judge in W.P.Nos.103198-103199/2016 (GM-CC). The other writ petitioner in W.P.No.29822/2016 (GM-CC), also has challenged the same document, but with different annexure number as Annexure-L.

24. The contention of the appellants is that respondent No.5 applied for issuance of the said certificate on 20.01.2016 and the respondent No.4 - Tahasildar issued the said certificate on the very same day based upon the alleged reports of the Revenue Inspector and the Village Accountant said to have been received by him in that regard. However, the reports of the Village Accountant are of dated 30.01.2016 and further, the said Village Accountant was not holding the jurisdiction of Havaragi village, wherein the respondent No.5 - Smt. Veena is said to be a permanent resident as on the date of issuance of the certificate, which is on 20.01.2016. Therefore, referring to various documents including the reports and affidavits said to have been filed by the Village Accountant Sri. Vijay B. Ronada, the learned Senior Counsels, appearing for the appellants, tried to demonstrate that only with an intention to help respondent No.5, the Tahasildar has issued the certificate ten days prior to he receiving the necessary reports and thus, has misused his office. As such, the said document deserves to be quashed.

25. Sri. C. S. Patil, learned Government Advocate, appearing for the respondents No.1 to 4 and Sri. V. M. Sheelvant, learned counsel appearing for respondent No.5, in their arguments vehemently submitted that the application requesting for Income-cum-Caste Certificate was received by the Tahasildar on 16.01.2016 and he called for the relevant reports by making an endorsement on it dated 18.01.2016 and that he received the necessary reports on 19.01.2016. As such, he has issued the Income-cum-Caste Certificate on 20.01.2016. The date shown as 30.01.2016 by the Village Accountant in the relevant reports is only by his oversight. As such, there is no misuse of public office as alleged. They also relied upon an application said to have been submitted by the respondent No.5 on 16.01.2016 and also an affidavit said to have been filed by respondent No.4 - Tahasildar by name Sri. Subhash Sampagavi.

26. The English translation of the application dated 16.01.2016 said to have been filed by the respondent No.5, copies of which are produced by both sides before this Court reads as below:

TRANSLATED COPY OF ANNEXURE-H

To:

The Tahasildar

Hungund

Sir,

Sub: Issuance of Caste/Income Certificate for the purpose of Zilla Panchayat Elections 2015-16

I, Sri/Smt Veena, wife of Vijayanand Kashappanavar, Havaragi, filed the following application.

I intended to contest the Dhannur Zilla Panchayat election 2016 as one of the candidate and I am belonging to Hindu Lingayat caste and I required the Caste Certificate to contest the election. I request you to issue me the Case Certificate.

Date: 16.1.2016 sd/- V.V.K.

Yours faithfully,

Encl:

1) Court Affidavit

2) School Certificate

3) Village Accountant and Revenue Inspector Report.

On the backside of the said document, an endorsement is shown to have been made in favour of the Revenue Inspector, Karadi, which reads as below:

To: Revenue Inspector Karadi

No. 1 Dt.18.01.2016

To:

Revenue Inspector Karadi

It is hereby informed you that to examine the application filed by the applicant in detail and submit detailed report along with your clear recommendation.

Sd/- 18.1

27. The Income-cum-Caste Certificate which is challenged in these writ appeals and dated 20.01.2016, within itself contains an application by the applicant for the said certificate. The translated version of the said application dated 20.01.2016, said to have been filed by the respondent No.5 is reproduced herein below:

#### TRANSLATED COPY

(In respect of Government Notification No. RDP 5 JIPASA 95 DT. 13.11.1995)

FORMAT OF THE APPLICATION TO BE FILED BY THE CITIZENS WHO BELONGS TO THE SUB CASE WHICH COMES UNDER BACKWARD CLASS CATEGORY A and B.

Tahasildar: Application Sl.No.3

Taluk:

Dist:

Sir,

I Smt. Veena wife of Vijayananda Kashappanavar, self, intended to contest the ..... and I required my Caste Certificate to contest the said election. I am enclosing the following information for issuance of the Caste Certificate to me:

1)	Name of the Applicant and occupation	Veena w/o Vijayananda Kashappanavar Housewife
2)	Permanent place of applicant: VillageTalukDist	Havaragi Hungunda Bagalkote
A)	Applicant name shown In the Voter List	Veena Vijayananda Kashappanavar
3)	Applicant Date of Birth Age and Place.	21.8.1981 Davanagere
4)	Name of the Father/Mother/Guardian and Occupation, Govt./Semi Govt., public sector/private	Agricultural
5)	Present address of the Applicant	Havaragi Tq. Hungund
6)	Permanent address of the Applicant	Joshi Galli, Ilakalla
7)	Applicant Caste, sub caste and category	Hindu Lingayat (3B)
8)	Whether the parents are working in the Public or Private Sectors, his pay scale.	--
9)	Whether the applicant or his father/ mother/parents are agriculturist, furnish the details of the lands.	

10)	Whether the Applicant or his father/mother/parents are the income tax assessee	
11)	Whether the Applicant or his father/mother/parents are the sales tax assessee.	

### DECLARATION

I hereby declare that the above information furnished by me are true and correct.

Place: Hungund

Date: 20-1-16 Yours faithfully

Sd/- V.V.K

(Signature of the Applicant)

That the above information are true and correct to the best of my knowledge, if the same is not correct I am ready to face enquiry.

Self

Signature of father/mother/Guardian

(If father/mother is not alive)

signature of wife/husband

Two local witness signature:

We identify the Applicant and father/mother/husband/wife and his signature

Witnesses: 1) sd/- Prabhu B. Katagi

2) sd/- Sangappa M Gali

For election purposes

### Verifying Certificate

Sri/Smt. Veena Vijayananda Kashappanavar wife of ..... Self is a resident of Chittavadagi Village, Bagalkot Dist of Karnataka State and she belonging to Hindu Lingayat community and in terms of the Government order No.RDP 5 GPS 95 (1) Bangalore dated 13.01.1995 she belongs to B Category.

This Certificate is issued on the basis of the application of the applicant bearing No. MSC/CR/145/2015-16 dated 25.1.16. This certificate is issued on the basis of the report of Revenue Inspector and Village Accountant and on the basis of the documents.

Place: Hungund

Date: 20.1.2016 Sd/-20.01.2016

Tahasildar, Hungund

Office Seal

When the Court put a specific question to the respondents side as to what was the necessity for respondent No.5/applicant, to file an application dated 16.01.2016, which according to the respondents was not a prescribed format for the said purpose, the learned Government Advocate submitted that he would not insist his point that the application for the Caste Certificate was filed on 16.01.2016. However, he would submit that the certificate was issued to the applicant on 20.01.2016. It can also be noticed that the documents produced by the appellants along with their memorandum of writ appeal shows that many of similarly placed contestants of the election had applied to the Tahasildar in the prescribed form only, which is exactly similar to the one applied by the present respondent No.5 - Smt. Veena and dated 20.01.2016 and none of them are in unprescribed format with filling up of blanks and in letter format as the one said to have been filed by the respondent No.5 on 16.01.2016.

From this, though it is very clear that respondent No.5 should have necessarily made an application for Income- cum-Caste Certificate on 16.01.2016, still the said two dates i.e., 16.01.2016 and 20.01.2016 would be of not much importance since the other aspects regarding processing of the said application by the office of the Tahasildar is the material aspect under challenge.

28. Assuming that respondent No.4 - Tahasildar received the application from the respondent No.5 on 16.01.2016 and endorsed the same to the Revenue Inspector for necessary reports on 18.01.2016, then the Tahasildar would have issued the certificate only after he receiving the report. The impugned certificate within itself shows that the said certificate has been issued based upon the reports of the Revenue Inspector and the Village Accountant. The appellants have produced the copies of the reports of the Village Accountant and the Government Advocate for the respondents has produced the originals of the same. A perusal of those reports reveals certain astonishing or shocking facts which are as follows:

i. It is not in dispute that one Sri. Vijaya B. Ronada, the Village Accountant, has submitted the reports through the jurisdictional Revenue Inspector for processing the application of respondent No.5 further. Those reports mainly includes a statement of respondent No.5, Yield (Production) Certificate, Panchanama (Mahazer), Verification Certificate and Report of the Village Accountant. English translation copies of those documents produced by the appellants, correctness of which translations are not disputed by the respondents, are reproduced here below:

#### TRANSLATED COPY OF ANNEXURE K

#### STATEMENT

I Smt., Veena wife of Vijayananda Kashappanavar, aged about 34 years, Occupation Housewife residing at Havaragi do hereby solemnly affirm as follows:

I am the permanent resident of Havaragi. It is true that I have filed an application for issuance of certificate for the purpose of Zilla Panchayat. In my house 02 adult and 02 children and totally 04 members residing in my house. I am having own

house. My family having 20 Acres 19 Gunta of land in Havaragi. I am having the land 20.19 Acres of land and I have not accepted the release of land measuring 5.10 acres in my name. My husband is having 43.32 Acres at Belagalla and Hungunda and the same has been given to SRK Sugudda Pvt Ltd and the same is declared under Declaration and filed and in the revenue records there is no changes are made in respect of the name the same is submitted for your further course of action.

In my family members of family are working/not working in government/semi government. My family total annual income is Rs. 150,000/- (altered) and my case is Hindu Lingayat. Therefore I request you to issue Caste Certificate to contest the Zilla Panchayat election and the same is written.

Before me

Sd/- 30.01.2016 Before me

Vijay B. Ronada Sd/- Sd/-

Village Accountant Revenue Inspector Applicant

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## PRODUCTION CERTIFICATE

VILLAGE: HAVARAGI TALUK: HUNGUND

1	Name and full address of the Applicant	Veena W/o Vijayanand Kashappanavar
2	For whom (name of the person)	Self
3	For what purpose this certificate required.	For Election purposes
4	Relationship with the Applicant/s	Self
5	Details of land	20 Acre 19 gunta

Village	Block/ Sy.No.	Extent	Food	Bhagayat	Self Cultivation
Havaragi	16/P57/178/P	5.109.275.22	10.0020.0008.50	BhagayatDryDry	Self
	Total	20.19	38.50		
6	Details of Family(a) Husband:1(b) Wife: 1 (c) Children: 2		That the land measuring 20.19 Acres of standing in the name of Smt. Veena Vijayanand Kashappanavar and she has not accepted the release of land measuring 5.10 acres in her favour and her husband and legislature Sri. Vijayanand Kashappanavar is having 43.32 Acres and the same has been given to SRK Sugudda Pvt Ltd and the same is declared under Declaration and filed and in the revenue records there is no changes are made in respect of the name the same is submitted for your further course of action.		
7	Working member				
8	Pay scale And Salary				
9	Details of the employment and place				
10	Other details				
11	Whether income tax assesse				
12	Whether sales tax assessee				
13	Annual Income		From Agriculture Rs. 750,000/- (altered)		

Signature of Applicant

Verified by:

Sd/-30.01.2016

Sd/- Vijaya B. Ronada

PANCHANAMA (MAHAZER)

Under the instructions of the undersigned Havaragi Village Panchayat Panchas this Mahazar is written.

That the Applicant Smt. Veena wife of Vijayananda Kashappanavar filed an application for grant of Caste Certificate for the purpose of Zilla Panchayat Election and the same as discussed and the applicant is the residents of our village and as shown in the Family Hiduvali his family having 04 members and the applicant is belonging to Hindu Lingayat. In the family .... Members are/not employees. His family is having 20 acres 19 guntas land and she is housewife and no members are working as Class 1 and Class 2 employees. Members are paying/not paying tax. Therefore there is no objection issue Certificate to the Applicant and the same is written. That the land measuring 20.19 Acres is standing in the name of Smt. Veena Vijayanand Kashappanavar and she has not accepted the release of land measuring 5.10 acres in here favour and her husband and legislature Sri Vijayanand Kashappanavar is having 43.32 Acres and the same has been given to SRK Sugudda Pvt Ltd and the same is declared under Declaration and filed and in the revenue records there is no changes are made in respect of the name the same is submitted for your further course of action.

PANCHAS

Sl. No.	Names	Occupation	Age	Signature
1.	Amarappa T. Vasanageri	Agriculturist	65	Sd/-
2.	Devappa C. Kattimani	Agriculturist	41	Sd/-
3.	Shivalingaiah G. Hiremat	Agriculturist	37	Sd/-

4.	Mahantappa M. Gashi	Agriculturist	40	Sd/-
	Shivamurthaiah B. Shivamurthy Mat	Agriculturist	44	Sd/-

Sd/- Verified by

Signature of Applicant Sd/-

Vijaya B. Ronada

Sd/- Village Accountant

Revenue Inspector

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TRANSLATED COPY

### VERIFYING LETTER

INFORAMTIONS ARE TO BE SUBMITTED BY THE VILLAGE ACCOUNTANT

As per the Karnataka Government order No.RD 251 BCA 940 dated 31.1.1995 and in terms of Article 15(4) and 16(4) of the Constitutions of India, in order to get the reservations in Education and appointment, in case if the land/immovable properties or employment owned by the father/mother/parents or husband/wife of the Applicant

1	Name of the Applicant	Smt. Veena W/o.Vijayanand Kashappanavar Caste: Hindu Sub Caste: Lingayat
2	Name and address of the Father/mother/guardian of the applicant:	

3	Category belonging to 2A + 2B and 3A+3B	
(a)	If they are 2nd Grade Government officer (Pay Scale Rs. 2050-3950) or they are in equivalent scale	20 Acres 19 Guntas
(b)	If they are in Government Service or Private, Industries or any other post	
(c)	If they are Doctors, Advocate, Chartered Accountant, Income tax consultant, Dental doctors, Engineers or Architect in occupation.	
(d)	If they are income tax assessee.	
(e)	If they are Sale tax assessee.	
(a)	If they have 8 Hectares of dry land or equivalent wet land, water source land (on Land Reforms Act).	20 Acres 19 Guntas
(b)	Whether the father or mother or guardian are in government service and their pay scales	From Agriculture Rs. 150,000/- (altered)

Sd/- Verified by

Signature of Applicant Sd/- 30.01.2016

Vijaya B. Ronada

Village Accountant

TRANSLATED COPY OF ANNEXURE J

VILLAGE ACCOUNTANT REPORT

Sub: Issuance of Caste Certificate to Smt. Veena wife of Vijayanand Kashappanavar, Havaragi, for election

That the Applicant Smt. Veena wife of Vijayananda Kashappanavar filed an application for grant of Caste Certificate for the purpose of Zilla Panchayat Election and the same as discussed and issued endorsement.

In the family of the Applicant, 02 are elder and 02 are children and total the total members in the family is 04. To the applicant family, there is a land measuring 20.19 Acres at Havaragi. That the applicant has own house. That the Annual income of the Applicant family is Rs. 150,000/- (altered). In the family of the Applicant, the members are working in the Government or not. That the caste of the applicant is Hindu Lingayat. Therefore the report for issuance of the Caste Certificate to the Applicant for the purpose of Zilla Panchayat Election.

That the land measuring 20-19 gunta is standing in the name of Smt.Veena Vijayananda Kashappanavar and out of that 5-10 acres released in her favour is not accepted and that the land measuring 43-32 acres in Belagilla and Hungund are standing in the name of her husband Sri Vijayananda Kashappanavar Legislator the same are released to SRK Sugudda Pvt. Ltd for that a declaration is enclosed and there is no changes are made in the revenue records standing in his name Submitted for your furthers action.

30.01.2016

(It appears that date 30 Sd/-- Sd/- 30.01.2016

is overwritten as 19) Revenue Inspector Village Accountant

(Vijay B. Ronada)

Even according to the respondents, the certificate was issued by the Tahasildar based upon the reports submitted by the Village Accountant. According to the respondents, all the reports submitted by the Village Accountant were on 19.01.2016, however, by oversight, Village Accountant has put the date as 30.01.2016. Respondent No.4 - Sri. Subhash S. Sampagavi, Tahasildar of Havargerri Taluk, has also filed his affidavit in the writ petition stating that he did not notice that the Village Accountant Sri. Vijay B. Ronada had put the date as 30.01.2016 instead of 19.01.2016. On the contrary, the said Village Accountant Sri. Vijay B. Ronada too has filed his affidavit. In the said affidavit, he has clearly and categorically stated that he was placed in-charge of Havaragi Saja by order dated 23.01.2016. As such, he took charge of Havaragi Saja village on 25.01.2016. He has clearly stated that he verified the application with annexures filed by Smt. Veena - respondent No.5 and conducted local enquiry and submitted his reports to the Tahasildar on 30.01.2016. He has also stated that he had made two corrections in the report submitted by him and has put initials, in respect of other corrections in the certificates, he has no knowledge and has not put any signatures.

When we analyse the affidavits of these two officials and perused the documents, it is clear that the author of the documents himself has stated in his affidavit that the documents reproduced above, which are the reports prepared by him as a Village Accountant, have all been submitted by him to the Tahasildar only on 30.01.2016. The said Village Accountant in all those documents, below his signature has candidly put the dates as 30.01.2016. Even though the Revenue Inspector too put his signatures, he has not mentioned the date of his signature. Interestingly, the report by the Village Accountant, reproduced above as the last document, though shows the date as 30.01.2016 beneath the signature of the Village Accountant, but on the left side of it, in the place meant to mention the date, it is clear that the original date, which was 30.01.2016, has been altered and made to show as 19.01.2016. Added to this, the income of the respondent No.5, though originally appears to have been shown as either `7,50,000/- or `1,50,000/-, is subsequently changed to `50,000/- only in figures, which is also not

authenticated by the author of the document i.e., Village Accountant. On a perusal of this document in the original record produced before us, we see an overwriting by rewriting sign ` over first figure of the amount of `7,50,000/- or `1,50,000/- to make it appear as `50,000/- only.

ii. According to the appellants, on 19.01.2016, Village Accountant Sri.Vijay B. Ronada was not at all in-charge of Havaragi Saja village. It was only by virtue of the order dated 23.01.2016, he took the charge of said village on 25.01.2016. As such, there is no possibility of him submitting the report on 19.01.2016, when he was not in-charge of the said village. The respondents, more particularly, respondents No.1 to 4, to overcome this allegation, have got respondent No.4 - Tahasildar to file his affidavit. In the said affidavit, he has stated that on 19.01.2016, since the regular Village Accountant of Havaragi Saja village was on half day leave, his office had made arrangement to give charge of said village to Ronada and as such, the said Ronada has submitted his report to the office on 19.01.2016. The said statement, on its plain reading itself makes it not trustworthy is for the reasons that;

a) Generally when an official like Village Accountant goes on leave for half a day, an in-charge arrangement will not be made unless there would be some urgency. No reasons for making in-charge arrangement for such a short duration is shown by the Tahasildar.

b) No in-charge arrangement will be made without a written order/notification to that effect. In the instant case, had there been any such written document placing Sri. Vijay B. Ronada, as in-charge for half a day on 19.01.2016, nothing had prevented the office of the Tahasildar to produce those documents, which he has not done.

iii. The process of preparation of reports submitted by the Village Accountant involves a lot of exercise behind it including visiting the spot, recording the statement of the applicant, drawing mahazer/ panchanama, preparing Yield/Production Certificate etc., All those exercises would be very difficult to be completed within half a day by an in- charge official in a different village, which is not his regular jurisdictional area. As such, it cannot be believed that all those

reports were prepared and submitted within half a day working hours by a Village Accountant on 19.01.2016.

iv. The appellants in W.A.Nos.101469-470/2016 have produced at Annexure-L, a copy of the official memorandum of the office of the Tahasildar, Hungund dated 23.01.2016 and its English translation. The said English translation is produced hereinbelow:

TRANSLATED COPY OF ANNEXURE L

GOVERNMENT OF KARNATAKA

(REVENUE DEPARTMENT)

OFFICE OF TAHASILDAR, HUNGUND

Tel.No.08351-26108 email:thhungund@gmail.com

No.Staff/CR-75/15-16 Hungund Dated 23.01.2016

OFFICIAL MEMORANDUM:

Sub: Regarding promotion given to Second Division Clerk/Village Accountant of the Revenue Department to First Division Clerk and equivalent posts - Reg.

Ref: Order of Deputy Commissioner, Bagalkot bearing No.RD:Staff:CR-235/14-15 Dt.16.01.2016.

With reference to the above subject, as per the order referred to above, the Second Division Clerk/Village Accountant of this office is promoted to the post of First Division Clerk and transferred to the placed mentioned herein below and therefore passed an order to relief the said staff from the duty from this office today at PM/AM on 23.01.2016 and directed the said staff to take charges immediately to the posts where they have posted immediately.

Sl. No.	Name of Staff	Post	Promoted post and place
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1	2	3	4
1	Smt. G. M. Muchhandi	SDC	FDC Post fell vacant in this office
2	Sri. L. N. Mirejkar	VA	To the office of Chief Manager, LA and PuPuKMYo Bagalkot
3	Sri. H. M. Shivanagi	VA	FDC fell vacant in the office of Asst. Commissioner Bagalkot
4	Smt. A. R. Kulkarni	SDC	To the office of Chief Manager LA and PuPuKMYo Bagalkot
5	Sri. J. S. Chinivalar	VA	FDC fell vacant in the office of Tahasildar Badami
6	Sri. S. S. Mundevadi	VA	FDC fell vacant in the office of Tahasildar Badami

This order will come with immediate effect.

Sd-23/1

Tahasildar, Hungund

Copy:

To:

1) Sri. L. N. Mirejkara VA

2- To handover the charge of Hireothageri Saja to Sri. V. N. Meti and submit report to this office.

2) Sri. H. M. Shivanagi V.A.

2/- To handover gthe charge of Karagi Revenue Inspector post to Sri. I. B. Balagavi Revenue Inspector and handover the charges of Havaragi Saza Register to Sri. V. B. Ronada and submit a report to this office.

3) Sri. J. S.Chinivalara V.A.

2/- To hand over the charge of Bilapura Saja Register to Sri. M. M. Tuppada V. A. and submit a report to this office.

4) Sri. S. A. Mundejadi V.A.

2/- To hand over the Register of Kadivala Inam Saja to Sri. M. M. Hosamani V. A. and Register of nagura to Sri. Deepak Mushtigeri V.A. and submit report to this office.

Sd/- 23/1/16

Sd/- 25/1/2016

Sd/-25.01.16

Sd/-25.1.16

Sd/- sd/- sd/-

Sd/- 23/1/16

Sd/-

Tahasildar, Hungund

The said document clearly shows that one Shri. H. M. Shivanagi, who was the Village Accountant, was promoted as First Division Clerk(FDC) and he was directed to handover the charge of Karadi Revenue Inspector post to one Sri. I. B. Balagavi, Revenue Inspector and the charge of Havaragi Saza Register to Sri. V. B. Ronada. This document corroborates the statement made by said Ronada in his affidavit to the effect that in-charge arrangement was ordered on 23.01.2016. According to it, he took the charge of the said village only on 25.01.2016. As such,

it was only on 30.01.2016, he could prepare the reports and submit them to the Tahasildar. This also clearly establish that the statement of the Tahasildar in particular, and defense of the respondents in general, that the supporting documents to issue the Income-cum-Caste Certificate were all submitted to the Tahasildar on 19.01.2016, is totally false.

v. In addition to the above, the order of the learned Single Judge dated 22.08.2016, in the writ petitions under the present appeals, go to show that the said Village Accountant Sri. Vijay B. Ronada, appeared in person before the Court and made a statement to the effect that he took charge of Havaragi village as Village Accountant on 25.01.2016, who after receiving the papers with respect to the caste certificate of respondent No.5 on 29.01.2016 for enquiry submitted his report on 30.01.2016. He also requested the Court for his protection expressing that he got life threat. Accordingly, the learned Single Judge ordered for police protection for the safe passage of that Village Accountant to his place. At that time, though Government Advocate representing the respondents was present, has neither raised any objection, nor made any statement to the effect that all the statements that were made by Sri.Vijay B. Ronada, in the open Court, were not true.

29. The above aspects clearly establish that the Income-cum-Caste Certificate, which is the subject matter in this appeal, could not have been issued prior to the date 30.01.2016, whereas, without waiting for necessary and essential reports from the concerned officials, including the Village Accountant and the Revenue Inspector, the respondent No.4 - Tahasildar, for the reasons best known to him, proceeded to issue the Income-cum-Caste Certificate to the respondent No.5, on the very same date of the application i.e., on 20.01.2016. However, showing in the said certificate that the same is issued based on the reports of the Revenue Inspector and the Village Accountant. It is also not a negligible fact that the husband of respondent No.5 is stated to be a sitting Member of the Legislative Assembly (MLA) in the State of Karnataka.

30. The above facts clearly demonstrate, how a public servant adoring a responsible post like Tahasildar of a Taluka, can misuse his office and make the

public to lose their confidence and trust in a government machinery. In the instant case, the petitioners being an elected member of the same constituency and a voter, in order to ensure that the person, holding a position to serve public, should be of clean hand and image, and a government machinery should function with transparency and clean hands, have invoked writ jurisdiction, and have been able to establish the wrong and mal-functioning by the respondent No.4 - Tahasildar. As such, in the present circumstance of the case, justice demands us to hold that the Income-cum- Caste Certificate issued by the respondent No.4, vide No. MSC/CR/145/2015-16 dated 20.01.2016 cannot be sustained. As such, it deserves to be quashed. Accordingly, we proceed to pass the following order:

## **ORDER**

- i. Writ Appeal No.101465/2016 and Writ Appeal Nos.101469-470/2016 are allowed.
- ii. The order of the learned Single Judge of this Court in W.P.Nos.103198-199/2016 and W.P.No.29822/2016 dated 21.10.2016 is set aside.
- iii. Consequently, W.P.Nos.103198-199/2016 is allowed and W.P.No.29822/2016 is allowed in part.
- iv. The Income-cum-Caste Certificate issued by the respondent No.4 - Tahasildar vide No.MSC/CR/145/ 2015-16 dated 20.01.2016 is quashed.

It is made clear that the above findings on quashing of the Income-cum-Caste Certificate has got nothing to do in deciding the Election petition said to have been pending before the competent Authority. As such, the said Authority is expected to decide the pending Election Petition before it, without being influenced by the findings given above and in accordance with law. No costs.