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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.4996 OF 2015

Shaikh Zafar s/o Shaikh Farid
Age-39 years, Occ-Agriculture
R/o Azizpura, Kaij, Taluka-Kaij
District - Beed

PETITIONER

VERSUS

1. The State of Maharashtra
Through the Joint Secretary,
Department of Urban Development
M. S. Mantralaya, Mumbai-32
2. The Hon'ble Minister of State
Department of Urban Development
M. S. Mantralaya, Mumbai-32
3. The Collector, Beed
4. Muzakkir s/o Abdul Gafar Tamboli,
(alias Tamboli Muzakkir Abdul Gafar)
Age-36 years, Occ-Business
R/o Shukrawar Peth, Kaij
Taluka - Kaij, District - Beed
5. The Municipal Council, Kaij
District - Beed
Through its Chief Officer

RESPONDENTS

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Mr. R. S. Deshmukh, Advocate for the petitioner
Mr. S. P. Daund, AGP for respondent State
Mr. S. S. Thombre, Advocate for respondent No.4
Mr. A. G. Choudhary, Advocate for respondent No.5

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 30th APRIL, 2015

ORAL JUDGMENT :

1. Leave to add party. Amendment be carried out forthwith.
2. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.
3. The petition has been moved against an order granting interim relief in the shape of stay to the operation of the order of disqualification passed by Collector against respondent No.4, on the ground that respondent No.4 has three children and the alleged third child namely Tanushka Muzakkir Tamboli having born after the cut off date i.e. 12th September, 2001.
4. After hearing learned advocates, it emerges that the petition has been moved by a person, who had been defeated in the election to the Municipal Council, Kaij, held in 2015. Allegation in respect of third child having born after cut off date had been based on certain factual aspects, like, the person Tabassum still continues to be wife of Muzakkir, having regard to documents like ration card and certain other papers and certain extracts from the record of concerned hospitals.
5. Whereas, it is the contention of learned advocate for respondent No.4 that said Tabassum happens to be divorced wife

of respondent No.4 and that there are no subsisting marital ties with said Tabassum, much less alleged third child having born to them, for, the divorce having taken place in 2010. For said purpose he relies on *Khulanama*.

6. The Collector, before whom the disqualification proceedings were heard, with reference to the record before him, inferred that respondent No.4 appears to have third child and as such, purported to disqualify respondent No.4 under section 44 (1) (a) read with section 16 (1) (k) of Maharashtra Nagar Parishads, Nagar Panchayats and Industrial Townships Act, 1965, under his order dated 1st April, 2015.

7. Admittedly, no elections to the presidential post had then been scheduled. The election programme for said post had been declared on 20th April, 2015. According to learned advocate appearing for the petitioner, it was thereafter some activity was taking place challenging order of disqualification. Therefore, the petitioner had, by way of abundant precaution, lodged a caveat before respondent No.2 on 20th April, 2015 itself. However, without taking into account that the caveat had been lodged, order came to be passed by respondent No.2, staying the operation of disqualification of respondent No.4 and order dated

1st April, 2015. According to learned advocate for the petitioner, though the petitioner had made an attempt to have said order reconsidered and stay vacated, his attempts did not bare fruits and as such, he is before this Court.

8. Learned advocate for the petitioner relies on various orders viz., 2008 (1) Bom. C. R. 887 "*Suleman Abbas Chiragali Hydary V. Pramod Nandlal Yadav*" and 2007 B.C.I. 42 "*Naresh Baliram Sonwane V. Kishor Kashinath Patil*", which according to him show that even if in the matters of granting stay to the disqualification order, it was necessary to impose certain conditions viz., that he may be allowed to participate in the proceedings, however, he would have no right to vote etc.

9. Mr. Thombre, learned advocate appearing for respondent No.4, however contends that the whole disqualification proceedings are not tenable, taking into account ratio and purport underlying decision of the division bench of this court reported in 2010 (3) Bom. C. R. 635 "*Shrikrishna Wasudeo Dhage V. Shivcharan Trimbakrao Kalne & Others*" and he refers to 2005 BCI (0) 93 "*Gangadhar Gonduram Tadme V. Trimbak Govindrao Akingire*", wherein according to him it has been considered that authenticate record with regard to birth would be a certificate pursuant to births and

deaths register and no other record would be worth consideration.

10. Looking into aforesaid emerging situation, in my estimate, without getting involved into merits of the case, since the appeal is pending before the Minister, the situation can be taken care of by passing following order :

ORDER

1. Respondent No.4 be allowed to vote pursuant to the stay order, in the voting scheduled for the presidential elections of respondent No.5
2. The vote cast by the petitioner shall be kept in a separate ballot box and shall not be computed till orders by respondent No.2
3. In case of stalemate and if it would be necessary to compute vote of respondent No.4, the same can be done only when an order is passed by the appellate authority i.e. respondent No.2. Till the final order is passed by respondent No.2, all other rights of respondent No.4 shall remain untouched.
4. Fate of the vote cast by respondent No.4 shall

depend upon decision finally rendered on the disqualification of respondent No.4

5. It is further made clear that respondent No.2 shall decide on the appeal filed by respondent No.4 on its own merits, without being influenced by order of this Court.
6. All the contentions of the parties are kept open to be agitated before respondent No.2.
7. Writ petition as such, stands disposed of.
8. Rule is made absolute in aforesaid terms.
9. Parties to act upon authenticated copy of this order.

[SUNIL P. DESHMUKH, J.]