

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

WRIT PETITION NO. 7503 OF 2015

Arun Chataru Khandagale,
Age 36 years, occup. Agril.
R/o At Post Kolgaon,
Tal. Shevgaon, Dist. Ahmednagar Petitioner

versus

1. The State Election Commissioner
of Maharashtra, 1st Floor,
New Administrative Building,
Hutatma Rajguru Chauk,
Madam Kama Road, Mumbai-32
2. The Election Returning Officer,
Gram Panchayat Election,
Village Kolgaon, Tal. Shevgaon,
Dist. Ahmednagar.
3. Sangita Ambadas Khandagale,
Age 32 years, occup. Household,
R/o At post Kolgaon,
Tal. Shevgaon, Dist. Ahmednagar,
4. The State of Maharashtra,
through its Secretary,
Rural Development Department,
Mantralaya, Mumbai - 32. Respondents

Mr. Prashant R. Nangare, Advocate for petitioner
Mr. S.T. Shelke, Advocate for respondents no. 1 and 2
Mr. N.B. Narwade, Advocate for respondent no. 3
Mr. Asstt. Govt. Pleader for respondent no. 4

CORAM : SUNIL P. DESHMUKH, J.
30TH JULY, 2015

Oral judgment :

1. Rule. Rule made returnable forthwith and heard learned counsel for parties finally by consent.
2. The petition questions propriety and legality of acceptance of nomination of respondent no. 3 in the elections to gram panchayat, Kolgaon, Taluka Shevgaon, Dist. Ahmednagar.

3. According to petitioner, as a matter of fact, the date of birth of third child of respondent no. 3 is 07-12-2001 which is clearly beyond cut off date i.e. 13-09-2001. He submits that admittedly, the child born in 2001 is the third child of respondent. He submits, an objection had been raised by petitioner before the returning officer by producing relevant school leaving certificate showing third child of respondent no. 3 being born on 07-12-2001, however, the objection has been over-ruled. He further submits that he has secured a birth certificate issued under the Registration of Births and Deaths Act, 1969 which refers to the date of birth of third child of respondent no. 3 to be 07-12-2001. He further refers to section 17 of said Act, contending that certificate so issued is admissible in evidence.

4. Learned counsel for State Election Commission and learned Assistant Government Pleader for State contend that on the date of scrutiny of nominations, respondent no. 3 had produced a copy of extract of government gazette showing alteration in the date of birth of third child of respondent no. 3 to be 02-09-2001 replacing earlier date i.e. 07-12-2001. They further contend that the birth certificate issued under the Registration of Births and Deaths Act had not been produced when the nomination of respondent no. 3 was scrutinized. Incidentally, learned counsel also refer to that the certificate under the Registration of Births and Deaths Act does not mention name of the child. They contend that in such a duality of birth dates, the one in favour of respondent no. 3 had been considered and his nomination has been accepted. As such no fault can be found with the order passed by the returning officer.

5. Learned counsel for respondent no. 3 submits that the alteration in the date of birth of third child had taken place way-

back in 2010 and had not been objected to hitherto. He submits that with such date of birth, in the last election nomination of respondent no. 3 had been cleared and he was allowed to contest. In such a case, he submits, no fault is committed by the returning officer in accepting nomination of respondent no.3.

6. Having regard to aforesaid and in the present case, certificate issued under the Registration of Births and Deaths Act had not been produced before the returning officer at the time of scrutiny and the one produced does not bear name of child, it appears that date of birth of third child of respondent no. 3 is a disputed question and it will have to be resolved in proper proceedings. At the summary stage of enquiry by the returning officer, a deeper probe is not expected and further. Under the circumstances, it cannot be said that the returning officer has committed any error in accepting respondent no. 3's nomination. Further, it appears that all other stages in the election have over save and except polling and declaration of result.

7. In such circumstances, I am not inclined to interfere in the order impugned. Writ petition as such stands dismissed. Rule stands discharged.

SUNIL P. DESHMUKH, J.

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