

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

**WRIT PETITION NO. 8073 OF 2014
WITH
CIVIL APPLICATION NO. 648 OF 2015**

Pushpa w/o Chandrakant Kshirsagar,
Age: Major, Occu: Household,
R/o Killari, Tal Ausa,
District Latur.

...Petitioner

versus

1. The State of Maharashtra,
Through the Secretary of the
Social Welfare Department,
Mantralaya, Mumbai-32.
2. The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad.
3. The Additional Collector,
Latur, Dist. Latur.
4. The Tahsildar, Ausa,
Dist. Latur.
5. The Block Development Officer,
Panchayat Samiti, Ausa,
Tq. Ausa, Dist. Latur.
6. The Gramsevak,
Grampanchayat, Killari,
Tq. Ausa, Dist. Latur.
7. Rekha w/o Sudhakar Kshirsagar,
Age: 44 years, Occ: Sarpanch of
Grampanchayat, Killari,
Tq. Ausa, Dist. Latur.

...Respondents

Mr. S. S. Choudhary, Advocate h/f Mr. S. N. Lale Yelwatkar, Advocate for petitioner.

Mr. S. P. Daund, A.G.P. for respondent/State.

Mr. S. S. Manale, Advocate for respondent No.5

Mr. P. A. Mane, Advocate for respondent No.6.

Mr. N. P. Pawade, Advocate for respondent No.7.

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CORAM : N.W. SAMBRE, J.**DATE : 2ND MARCH, 2015****ORAL ORDER :**

. Respondent No. 7 to the petition was disqualified by an order dated 14/03/2014 of the Additional Collector, Latur, in exercise of Section 14(t) and 15(k) and (j-1) of the Bombay Village Panchayat Act, 1958 (hereinafter shall be referred as 'The Act' for the sake of brevity) on the ground that after the cut-off date, third child was born to respondent No.7.

2. In an appeal before the Additional Commissioner, Aurangabad Division, Aurangabad under Section 16(2) of the Act, the said disqualification was reversed by an order dated 02/08/2014. As such, writ petition.

3. Mr. Choudhary, learned Counsel for the petitioner/complainant would urge that the order passed by the Additional Collector is based on sound reasonings i.e. law laid down by this Court in the matter of **Bharat vs Rohidas** reported in **2012(6) Mh.L.J. 282** and in the matter of **Gangadhar Tadme V/s Govindram Tadme** reported in **2005(1) Mh.L.J. 94** which provides for the degree

with which the inference can be drawn in the matter of the entries under Section 22 of the Births, Deaths and Marriages Registration Act, 1886 (hereinafter shall be referred as 'The Act of 1886' for the sake of brevity), however, he would urge that there is sufficient evidence available so as to overcome of the said issue. In support of his contention, he submits that certain documents were not available at the relevant time, one of which is birth certificate dated 31/07/2014, the issue needs to be reconsidered by the authority.

4. Learned Counsel for respondent No. 7, while countering the above referred submissions would submit that the order passed by the Additional Commissioner is based on the legal provisions and upon taking into account evidentiary value of the document demonstrating birth of child born to respondent No.7. He would urge that once the authority in the light of law laid down by this Court in the matter of **Bharat** and **Gangadhar** (supra) has held that respondent No. 7 would not incur disqualification, as birth of child was not established having regard to section 22 of the Act of 1886. According to him, the evidence that is sought to be placed on record at this stage, does not call for fresh inquiry. He would further urge that, if desire, the petitioner may prefer fresh proceedings if so available in law but not in the present proceedings.

5. Having considered the rival contentions of the parties, it is required to be noted that learned Additional Collector, having appreciated the evidence on record, has ordered disqualification of respondent No. 7 because of birth of third child after cut off date. The appellate authority, having regard to the provisions of Section 22 of the Act 1886 and law laid down by this Court, has rightly drawn inference of non-presumptive value in absence of appropriate entries in birth record, as regards name of child born, parents, person applying for such registration etc.

6. However, what is observed by this Court in the light of birth certificate placed on record in relation to the birth of child on 25/10/2001, which is certified by the Medical Officer, Sub District Hospital, Omerga, that child is shown to be born to Rekha Sudhakar Kshirsagar i.e. respondent No. 7.

7. Admittedly, the above referred piece of evidence was not looked into, as the first authority has already passed an order of disqualification.

8. The above referred date of birth certificate in relation to the child born to respondent No. 7, though was available, however was not pressed into service, as already there was an order in favour

of present petitioner.

9. In my view, it is always open for the party to bring on record additional evidence in support of which pleadings are already made, so as to draw a presumption, as is contemplated under the two judgments cited supra against the person who has incurred disqualification by virtue of the statutory implication.

10. In view of above, it will be in the fitness of things that both the orders i.e. order passed by the Additional Collector on 14/03/2014 ordering disqualification of respondent No. 7 and order dated 02/08/2014 passed by the Additional Commissioner, Aurangabad Division, Aurangabad, in exercise of the powers under Section 16(2) of the Act, setting aside the order of the Additional Collector ordering disqualification, are quashed and set aside. The matter is remanded back to the Collector, Latur, with direction to conduct fresh inquiry and grant hearing to the parties to the proceedings in the wake of birth certificate dated 31/07/2014 issued by the Medical Officer, Sub District Hospital, Omerga, certifying the delivery of child of respondent No. 7. The analysis of said document will be required to be done by the Collector, Latur, in the light of law laid down by this Court in the matter of **Bharat** and **Gangadhar** (supra).

11. The writ petition stands allowed in above terms with no order as to costs. In view of the disposal of the writ petition, civil application does not survive, same stands disposed of.

[N.W. SAMBRE, J.]