

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 9989 OF 2013

Shri Kalidas Birmal Solankar .. Petitioner
vs.
The State of Maharashtra & ors. .. Respondents

Mr. S.S. Kanetkar for the Petitioner.
Mr. S.D. Rayrikar, AGP for Respondent Nos.1 to 3.

CORAM : M. S. SONAK, J.
DATE : 10 MARCH, 2015

P.C. :-

1] This petition is directed against the orders dated 4 March 2013 made by the Additional Collector and 12 September 2013 made by Divisional Commissioner, disqualifying the petitioner as a member of the Panchayat under Section 14(j-1) of the Maharashtra Village Panchyats Act, 1958 (said Act). There are concurrent findings of fact that the petitioner has more than two children and consequently has incurred disqualification provided under Section 14(j-1) of the said Act. The findings of fact are based upon the material on record and there is no perversity in the record thereof. Accordingly, no case is made out to warrant interference under Articles 226 and 227 of the Constitution of India.

2] Both the Authorities have relied upon the Register maintained for the purposes of Midday Meal Scheme as well as records of vaccination. Smt. Madhuri Mahaveer Mhetre, an Anganwadi Sevika, who had maintained the records of the Midday Meal Scheme, has

filed an affidavit. The said Mhetre was cross-examined by and on behalf of the petitioner. On basis of such evidence, the Authorities have recorded a finding of fact that the petitioner had more than two children and consequently has incurred disqualification as provided under Section 14(j-1) of the said Act.

3] Mr. Kanetkar, learned counsel for the petitioner, submitted that the entries in Registers maintained for the purposes of Midday Meal Scheme or records in relation to vaccination have no presumptive value. Mr. Kanetkar submits that in the present case, no records with regard to registration of birth were produced. Reliance was placed upon the decisions of this Court in case of *Bharat V. Shete vs. Rohidas Manaji Wahleker & ors.*¹, and the Hon'ble Apex Court in case of *Jabar Singh vs Dinesh & anr.*².

4] It is not a case where the decision is solely based upon the documentary evidence in form of the entries in the Registers. The concerned Anganwadi Sevika had filed an affidavit and the petitioner has cross-examined the said Anganwadi Sevika. The Registers maintained for the purposes of Midday Meal Scheme as also vaccination records, when cumulatively considered alongwith the deposition of said Anganwadi Sevika, indeed indicate that the petitioner was having three children. The findings of fact recorded by the two Authorities concurrently, therefore, cannot be said to be perverse.

1 2012 (6) Bom.C.R.83

2 2010(3) SCC 757

5] The decision of this Court in case of *Bharat Shete (supra)*, basically concerns the evidentiary value to be accorded to the entries made in Birth Register. The same is not really relevant to the facts and circumstances of the present case. It cannot be the case of the petitioner that in a situation where the birth has not been registered, it is impermissible to rely upon any other evidence to establish the circumstance that the petitioner has more than two children.

6] In case of *Jabar Singh (supra)*, the Hon'ble Apex Court was concerned with the provisions of Juvenile Justice (Care and Protection of Children) Act-2000, in the context of allegation of an offence under Section 302 of Indian Penal Code. Again even, this decision makes reference to certain entries of date of birth in the admission form, school record and transfer certificates. Again such issue is not directly relevant to the facts and circumstances of the present case.

7] Suffice to note that the two fact finding Authorities have concurrently recorded that the ground for disqualification under Section 14(j-1) of the said Act was made out. The findings of fact are neither perverse nor contrary to the weight of evidence on record. Ordinarily sufficiency of evidence is not a matter that is gone into the exercise of powers of judicial review.

8] Accordingly, there is no merit in the present petition. The same is dismissed. The interim order stands vacated.

9] After this order was pronounced, learned counsel for the petitioner seeks extension of the interim relief for a period of six weeks, as the petitioner desirous to take recourse against this judgment and order before the Hon'ble Apex Court. As the interim relief was operating, even during pendency of the appeal before the Additional Commissioner, such interim relief is extended for a period of six weeks from today. However, it is clarified that the petitioner shall not be entitled to vote in the proceedings of the Village Panchayat during this period, unless ofcourse the petitioner obtains any further interim reliefs from the Hon'ble Apex Court, in the meanwhile.

(M. S. SONAK, J.)

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