

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

WRIT PETITION NO.3511 OF 2015

(Subhash s/o Uttamrao Devde ..vs.. State of Maharashtra, through its Secretary, Rural Development
 Department, Mantralaya, Mumbai and other)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

CORAM : Z.A. HAQ, J.

DATED : 07-07-2015

Heard Shri S.S. Dhengale, learned Advocate
 for the petitioner and Shri N.S. Khubalkar, learned
 Assistant Government Pleader for the respondent Nos.1
 and 2.

2. The petitioner has challenged the order
 passed by the Divisional Commissioner, rejecting the
 application filed by the petitioner seeking disqualification
 of the respondent No.4 from continuing as the Chairman
 of Panchayat Samiti, on the ground that the respondent
 No.4 is having three children.

3. The petitioner has relied on the certificate
 issued by the owner of fair-price shop, certificate issued
 by the Sarpanch, certificate issued by the Police Patil and
 the certificate issued by the Talathi, in support of the
 contention that the respondent No.4 is having three
 children.

4. Respondent No.4 has pointed out before the Divisional Commissioner that the respondent No.4 is having only two children namely, Yash and Poonam and she is not the biological mother of third child. According to the respondent No.4, third child Raj was born to Jyoti Mahadeo Labde, the earlier wife of Mahadeo Labde. The learned Divisional Commissioner has considered the documentary evidence on the record and has concluded that the petitioner has failed to prove that the respondent No.4 is having three children.

5. Shri N.S. Khubalkar, learned Assistant Government Pleader has supported the impugned order and has rightly relied on the judgment given by this Court in the case of *Sow. Girika w/o Badamrao Pandit vs. The State of Maharashtra & others* reported in **2012(4) All.MR 389**, in which it is held that the provisions relating to disqualification are required to be interpreted strictly. It is further held that the term “children” occurring in Section 16(1)(k) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 would not include “step children”. The provisions of Section 16(1)(n) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 are analogous and it has to be held that the term “children” would not cover “step children” within the ambit, for the purpose of Section 16(1)(n) of the Maharashtra Zilla Parishads and Panchayat Samitis Act,

1961. The petitioner has failed to discharge the burden of proving that the respondent No.4 has three children. In spite of the finding recorded by the Divisional Commissioner that Raj is not son of the respondent No.4, the petitioner has not placed any material on the record to show that the finding recorded by the Divisional Commissioner is not proper.

6. The writ petition is dismissed with costs quantified at Rs.5,000/- to be paid by the petitioner to the office of the Government Pleader. The amount of costs shall be paid within one month.

JUDGE

pma