

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

WRIT PETITION NO. 1835 OF 2016

Macchindra Balilram Chaudhari

..PETITIONER

VERSUS

State of Maharashtra and Others

..RESPONDENTS

....

Mr. H.D. Deshmukh, Advocate for petitioner.

Mr. S.R. Yadav, A.G.P. for Respondent Nos. 1 to 3.

Mr. P.B. Patil, Advocate for Respondent No.5.

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CORAM : T.V. NALAWADE, J.

DATED : 13th OCTOBER, 2016

ORDER :

1. The petition is filed to challenge the decision given by Additional Collector, Jalgaon in Dispute No. 21 of 2013 and also the decision given in Appeal No. 113 of 2014 by Additional Commissioner, Nashik Division. Both sides are heard.

2. The proceeding was filed for disqualification of the present petitioner on the ground that after relevant date i.e. 12th September, 2001, one issue was borne to the present petitioner and he was having four issues after the relevant date. The disqualification was sought under

the provisions of Section 14(1)(J-1) read with Section 16 of the Bombay Village Panchayats Act, 1958. The present petitioner filed appearance and contested the matter by filing say. After hearing to both the sides, the Additional Collector held that after the relevant date, the petitioner was having four issues and fourth issue was borne after 12th September, 2001 and so he is disqualified due to aforesaid provision.

3. It is not disputed that the petitioner was having four issues and fourth issue was borne after 12th September, 2001. The petitioner has contended that first three issues were borne on the dates 02nd August, 1997, 04th October, 2000 and 29th June, 2001. The petitioner also admit that the fourth issue was borne on 30th November, 2003 but he wants to save himself by contending that the fourth issue died on 23rd December, 2003.

4. Even if the aforesaid contention of petitioner was accepted as it is, he could not have saved himself from disqualification. This Court had occasion to consider the aforesaid defence in Writ Petition No. 3456 of 2016 (Ssamadkhan Ismailkhan Kureshi (Kasai) Vs. Additional Collector, Jalgaon and Another) of this Bench. The relevant observations are at paragraph nos. 5 and 6 as follows:

5) *Provision of Section 14(j-1) of the Maharashtra Village Panchayats Act, 1958 runs as under:-*

"14. Disqualification.- (1) No person shall be a member of a Panchayat continue as such, who –

(j-1) has more than two children

Provided that, a person having more than two children on the date of commencement of the Maharashtra Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 1995 (hereinafter in this clause referred to as "the date of such commencement"), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase;

Provided further that, a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause; or .."

6) The provision shows that if after the relevant date third issue is born, the person cannot contest election. That is the eligibility condition for contesting election. This Court, other Hon'ble Judge, had an opportunity to interpret the provision in two reported cases like 2012 (3) Mh.L.J. 253 (Dnyaneshwar v. Divisional Commissioner Nagpur); and, 2015 (4) Mh.L.J. 448 (Premdas v. Additional Commissioner Amaravati). The relevant observations in the case of Premdas (supra) are at paragraphs 4 and 5 and they are as

under :-

"4. The controversy is covered by the decision of this Court in the case of Dnyaneshwar Patiram @ Ratiraj Shirbhiye vs. Divisional Commissioner, Nagpur and others, reported in 2012(3) Mh.L.J. 253. Para 22 of the said decision being relevant is reproduced below.

"22. Now coming to the contention of Shri. Rohit Deo for the petitioner, that the first proviso covers the cases of child born and died, perusal of the said proviso nowhere makes out any such distinction between a child born and living on one hand a child born and died on the other hand. If the construction that the first proviso covers the cases of child born and died is accepted, then it would amount to creating another additional proviso to main provision or a proviso to the first proviso. Not only that, but such construction would also defeat the very object and purpose of main provision i.e. creating a disincentive, for the reason that the petitioner had more than two children on the date of commencement of the said Act and the fourth child was an increase. It will have, therefore, to be held that the first proviso does not protect the cases where there is increase in the number of children specified in the main provision, after the cutoff date 12-9-2001. Hence, no fault can be found with the view taken by the Commissioner".

5. In view of the aforesaid law laid down by this Court, the fact as to whether one child out of three children expired on 1-12-2007 i.e. before the date of contesting the

elections would be of no relevance. The fact that there was increase in the number of children after the cutoff date i.e. 12-9-2001 is the relevant factor. Undisputedly, the respondent No.3 was not a sitting member of panchayat on 12-9-2001 and there was increase in the number of children after the cutoff date. In view of this, respondent No.3 cannot be saved from the disqualification".

5. In view of the observations made by this Court which are quoted and the provisions which are also quoted, this Court holds that it is not possible to interfere in the order made by the Additional Collector and also the decision of the Additional Commissioner. In the result, petition stands dismissed.

(T.V. NALAWADE, J.)

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