

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

**WRIT PETITION NO. 2937 OF 2015
WITH
CA/900/2016 IN WP/2937/2015**

Qureshi Latif Hamid s/o
Qureshi Hamid Hasan,
Age 45 years, Occ. Business
& Agri., R/o Bidkin,
Taluka Paithan,
District Aurangabad

... Petitioner

Versus

1. The Additional Divisional Commissioner,
Aurangabad Division, Aurangabad.
 2. The Additional Collector,
Aurangabad.
 3. Babasaheb s/o Bhausahab Teke,
Age Major, Occ. Agri.,
R/o Bidkin, Taluka Paithan,
District Aurangabad.
 4. The Grampanchayat, Bidkin,
Taluka Paithan,
District Aurangabad.
 5. The State Election Commission,
Madam Kama Road, Fort,
Mumbai.
- ... Respondents

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Advocate for Petitioner : Mr S S Thombre
AGP for Respondent Nos. 1 and 2 : Mr S. N. Kendre
Advocate for Respondent No. 3 : Mr. S. B. Solunke
Advocate fore Respondent No. 4 : Mr. S. R. Dheple
Advocate for Respondent No. 5 : Mr. S. T. Shelke
Advocate for applicant in CA 900/2016 : Mr. S. S. Shete

CORAM : V.K. JADHAV, J.

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DATE OF RESERVING THE JUDGMENT : 26.02.2016
DATE OF PRONOUNCING THE JUDGMENT: 02.03.2016.

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JUDGMENT :-

1. Rule. Rule returnable forthwith. Heard finally with consent of the parties, at admission stage.

2. Brief facts giving rise to the present petition are as follows :-

a) General elections of the Grampanchayat, Bidkin were held in the year 2012. Petitioner has contested in the said elections and he came to be elected as a Member of Grampanchayat, Bidkin. Respondent no.3 filed an application before respondent no.2-Additional Collector, Aurangabad stating therein that the petitioner is having a third child after the cut off date i.e. 12.09.2001. In support of his contention, respondent no.3 has submitted a certificate issued by Grampanchayat Bidkin. Pursuant to the notice issued, petitioner appeared in the matter and submitted documents in support of his claim. According to the petitioner, the third child of the petitioner is born on

23.5.2000 as per certificate issued by the Municipal Council, Manmad. However, respondent no.2-Additional Collector, by order dated 31.8.2013, allowed the application filed by respondent no.3 herein, and held that the petitioner incurred disqualification u/s 14 of the Maharashtra Village Panchayats Act, 1958 (for short "the Act of 1958") and thus, he shall be disabled from continuing to be a Member and his office shall become vacant.

b. Being aggrieved and dissatisfied with the order dated 31.8.2013, petitioner preferred an appeal before respondent no.1-Additional Divisional Commissioner, Aurangabad. After hearing both the parties, as well as considering the evidence available on record, learned Additional Divisional Commissioner, by order dated 17.10.2013, quashed and set aside the order passed by respondent no.2-Additional Collector dated 31.8.2013 and remanded the matter to respondent no.2 for consideration afresh, with certain directions especially on two points i.e. respondent no.2-Additional Collector

shall verify the original birth record of the year 2001 maintained by Grampanchayat, Bidkin, Taluka Paithan, District Aurangabad, with regard to the fact that the Village Development Officer of the said Grampanchayat has not signed any birth entries of the year 2001 except the birth entry of the child of petitioner Qureshi Latif Hamid, and secondly, the entry no. 292 was taken on 18.12.2001 on the information given by one Nahnekhan Gulabkhan Pathan and in view of the provisions of section 8 (a) to (f) of The Registration of Births and Deaths Act, 1969, whether entry can be recorded on the information being submitted by a third person. The learned Additional Commissioner further directed that the respondent no.2-Additional Collector to examine and verify the original birth register of the year 2001.

c. Accordingly, the Additional Collector, Aurangabad, has directed the Tahsildar to submit a report. The Tahsildar has submitted a report stating therein that the information of date of birth is required to be given by the head of the Family, close relative or senior most male or female relative of the family of the concerned

person. The Tahsildar has also further stated in the report that on verification of birth and death register, there are only four signatures of the Gramsevak on four certificates and at the entry serial no.292, there is overwriting with sketch pen. The Tahsildar has specifically submitted in the report that information of the petitioner's child was given by one Nanhekhan Pathan, who is not relative or having concern with the family of petitioner. However, without considering the above mentioned facts and circumstances of the case, respondent no.2, by order dated 16.1.2014, again held that the third child of the petitioner is born after the cut off date and accordingly, disqualified the petitioner from continuing to be a Member of the Village Panchayat.

3. Being aggrieved and dissatisfied with the said order, the petitioner preferred an appeal before respondent no.1-Additional Commissioner. Learned Additional Commissioner, Aurangabad by order dated 3.2.2015, dismissed the appeal and accordingly, confirmed the order passed by Additional Collector

dated 16.1.2014. Hence, this writ petition.

4. Learned counsel for the petitioner submits that the learned Additional Collector, Aurangabad in the impugned order dated 16.1.2014, has accepted that so far as birth entries recorded in the register of Grampanchayat Bidkin, Taluka Paithan, there is signature below four entries only, which includes the birth entry of the child of petitioner. Learned Additional Collector has further observed that, on making inquiry, it was revealed that said entry bears the signature of one B. T. Salve, the then Village Development Officer. Said B.T. Salve, in his statement, has explained that the register does not bear his signature and he has not signed the birth entry. Learned counsel has pointed out that the Additional Collector has not accepted said birth extract showing the date of birth of the petitioner's child as 17.12.2001. Learned counsel submits that, learned Additional Collector has further discarded the said entry for the reason that the person namely Nanhekhan Pathan, who is not a member of the family of the

petitioner, informed about the said date of birth of the child of petitioner and in view of the provisions of Section 8 of the Registration of Births and Deaths Act, 1969 the entry about birth date cannot be accepted. Learned counsel further submits that, so far as birth certificate produced by the petitioner, issued by Shri Mangal Clinic, Manmad and the entry taken on its basis in the Nagar Parishad, Manmad, are not considered by the learned Additional Collector, erroneously. Learned counsel submits that, Additional Collector has not accepted said entries as recorded belatedly. Learned counsel submits that said certificate issued by the Hospital at Manmad and further, the entry taken in the record of Nagar Parishad, Manmad on its basis, got a presumptive value and the same cannot be discarded. Learned counsel submits that, for the first time, learned Additional Collector has introduced and accepted the *bonafide* certificate issued by the St. John High School, Paithan Road, Aurangabad, wherein, date of birth of petitioner's child was mentioned as 18.12.2002. Learned counsel submits that after remand, this certificate was

introduced for the first time without giving an opportunity to the petitioner to tender his explanation about the same. Learned counsel submits that Additional Collector has unnecessarily given importance to the fact that, said child is the sixth child of the petitioner. Learned counsel submits that, the order passed by the Additional Collector and confirmed by the Additional Commissioner is thus, liable to be quashed and set aside.

5. Learned AGP appearing for respondents no. 1 and 2 submits that the learned Additional Collector has rightly held that the petitioner incurred disqualification in terms of the provisions of Section 14 of the Act of 1958 and thus, is disabled from continuing to be a Member. Learned AGP thus submits that, the third child of the petitioner, which is in fact a sixth child born after the cut off date and therefore, the authorities have rightly decided the dispute against the petitioner. Learned AGP submits that the impugned order calls for no interference. There is no substance in the writ petition and the writ petition is liable to be dismissed.

6. Learned counsel appearing for respondent no.3 submits that, the learned Additional Collector has rightly held that the petitioner has incurred disqualification as provided u/s 14 of the Act of 1958. Learned counsel submits that there is clear evidence on record that the last child of petitioner is born after the cut off date. Learned counsel submits that, the writ petition is devoid of any merits and thus liable to be dismissed.

7. I have also heard Mr. Shelke, learned counsel for respondent No.5.

8. It appears that, the learned Additional Commissioner, by order dated 17.10.2013, quashed and set aside the order passed by Additional Collector dated 31.8.2013 and remanded the matter with certain directions. In view of those directions, the learned Additional Collector has caused inquiry into the matter and in terms of the said inquiry and the record available, discarded the entry taken in the record of Grampanchayat, Bidkin, Taluka Paithan, District

Aurangabad. However, it appears from the impugned judgment and order passed by the Additional Collector dated 16.1.2014 that, for the first time after remand, a new evidence in the form of *bonafide* certificate issued by the St. John High School, Paithan Road, Aurangabad in respect of date of birth of the son of petitioner by name 'Sarafraj' was introduced. It appears as has been rightly pointed out by the learned counsel for petitioner that opportunity was not given to the petitioner to tender his explanation about said *bonafide* certificate allegedly issued by the St. John High School, Paithan Road, Aurangabad. Learned Additional Commissioner has also not considered the same while confirming the order passed by learned Additional Collector dated 16.1.2014. It is thus clear that, there is gross violation of principles of natural justice. The petitioner was not given opportunity to explain the said certificate and relying on the same, the authorities held that the petitioner incurred disqualification in view of the provisions of Section 14 of the Act of 1958, as the third child of the petitioner is born after the cut of date.

9. In view of this, the matter is required to be remanded to that extent. The petitioner shall be given an opportunity to explain the said *bonafide* certificate allegedly issued by the St. John High School, Paithan Road, Aurangabad wherein, the date of birth of petitioner's son by name 'Sarfaraj Latif Qureshi' is recorded as 18.12.2002. Hence, following order.

ORDER

- I. Writ Petition is hereby allowed.
- II. The order dated 16.1.2014 passed by the Additional Collector, Aurangabad and confirmed by the Additional Commissioner, Aurangabad Division Aurangabad by order dated 3.2.2015, is hereby quashed and set aside.
- III. The matter is remanded to the learned Additional Collector, Aurangabad with the following directions.
 - i] The case No.2013/Sapra/GrapA/Sec 14(1) (J-1) village Bidkin Tq. Paithan/PrKra-49 be restored to its original number.
 - ii] The Additional Collector shall give an

opportunity to the petitioner to tender his explanation to the documents i.e. bonafide certificate issued by the Head Master, St. John High School, Paithan Road, Aurangabad wherein, the place and date of birth of the petitioner's child by name Sarfaraj Latif Qureshi is mentioned as Bidkin, date 18.12.2002, (Born at Bidkin) and after extending an opportunity of being heard to the petitioner and the concerned persons, shall decide the dispute afresh within one month from the date of appearance of the parties before the Additional Collector, Aurangabad.

- IV. The parties shall appear before the Additional Collector on 14.3.2016 and no separate notices are required to be issued to the parties.
- V. Rule is made absolute in the above terms. Writ Petition is disposed of. In the circumstances there shall be no order as to costs.
- VI. In view of disposal of writ petition, nothing survives in Civil Application No. 900 of 2016 and the same is also disposed of.

(V.K. JADHAV, J.)