

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

914 WRIT PETITION NO. 3456 OF 2016

SAMADKHAN ISMAILKHAN KURESHI (KASAI)
VERSUS
ADDITIONAL COLLECTOR JALGAON AND ANOTHER

Shri. Mahesh S. Deshmukh, Advocate, for petitioner.

Shri. S.K. Yadav, Assistant Government Pleader, for
respondent No.1.

Shri. Paresh B. Patil, Advocate, for respondent No.2.

CORAM: T.V. NALAWADE, J.

DATE : 27 SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the order made by the learned Additional Collector, Jalgaon in Gram Panchayat Dispute No.64/2015. Both sides are heard.

2) The dispute application was filed by a person from the village of the present petitioner and he had contended that the present petitioner was not eligible to contest the election as he was having three issues and the third issue was born after 12-9-2001 and so he needs to be

declared as disqualified to continue as member of the Village Panchayat Kasoda. It was also informed that in the past, when in previous election he was elected as a member, on that occasion also the authority had declared that he was disqualified and Writ Petition No.1632/2012 which was filed to challenge the said decision was dismissed.

3) Notice of the dispute application was given to the present petitioner. He filed say. He admitted that in the past decision was given against him by the competent authority. He contended that the writ petition filed by him was still pending and he produced copy of stay order given by this Court in Writ Petition No.1632/2012. In the reply he contended that as stay was given to the previous disqualification order, it was not open to the authority to consider the case of disqualification in the present proceeding though it was in respect of subsequent election. He did not file say in respect of contention that he was having three issues and the third child was born after the aforesaid relevant date. Hearing was given to him by the learned Additional Collector.

4) The learned Additional Collector considered the record available against the petitioner and also the circumstance that this Court has given stay to the previous decision of disqualification. The circumstance that present petitioner has admitted that he was having three issues and the third issue was born after 12-9-2001 is considered by the learned Additional Collector. In the previous proceeding also the petitioner had contended that he was having three issues after 12-9-2001 and the third issue was born after the relevant date but he had contended that the third issue died on 12-11-2009. He had produced record like entry made in the death register on 6-6-2011 of the third issue. In the past, in the previous proceeding the authority had considered the circumstance that only after starting of the dispute the entry was made in the death register and it was held to be suspicious in nature. As there was admission that the third issue was born after the relevant date the disqualification order was passed against him.

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".

7) In view the aforesaid circumstances and the admission of petitioner in proceeding, there is no

possibility of interference in the present matter. The petitioner has admitted that the third issue was born after the relevant date and so he was having the third issue after the relevant date.

8) Learned counsel for the petitioner argued much on the circumstance that this Court had granted stay to the operation of the order of disqualification made in the previous proceeding. Though there is such stay order and the said petition is still pending, it can be said that the said stay order could not have come in the way of the authority to take decision in the present proceeding. That was different election. Only that order of disqualification was stayed. In the present matter it is necessary to mention as to how the process of law is misused by the present petitioner and it can be misused. In the previous proceeding, disqualification order was made on 30-7-2011. The order was challenged first before the Additional Commissioner and then in this Court. This Court gave interim relief in Writ Petition No.1632/2012. Steps were not taken by the petitioner for making progress in the matter and so the petition was dismissed on 13-4-2015.

Thus after getting stay, office objection was not removed which was petty and matter was kept pending by the present petitioner. For setting aside the order of dismissal, the petitioner filed Civil Application No.6981/2015 and on 3-7-2015 this Court again made interim order before allowing the civil application. The civil application was then allowed by order dated 8-1-2016 and the matter was restored. Thus for the entire tenure only due to the order of stay made by this Court, present petitioner worked as member of the village panchayat though he was not eligible to contest the election and by order he was disqualified also. It can be said that the said proceeding had practically become infructuous when the petitioner commenced the new term due to subsequent election. It can be said that in the present proceeding also the petitioner wanted to play the same tactics but this Court took up the matter in view of the aforesaid circumstances for deciding the matter expeditiously. Thus, there are no merits in the present proceeding and it stands dismissed.

Sd/-

(T.V. NALAWADE, J.)

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