

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

WRIT PETITION NO. 4443 OF 2016

Aruna Skehuerao Markad ... Petitioner

Versus

Chief Election Officer and others ... Respondents

.....
Mr. P. S. Agrawal, Advocate for petitioner

.....

CORAM : SUNIL P. DESHMUKH, J.

DATE : 16th APRIL, 2016

ORDER :

1. Heard learned counsel for the petitioner.
2. Petitioner purports to have been aggrieved by dismissal of his appeal under order dated 18th March, 2016 passed by the Additional Divisional Commissioner, Aurangabad confirming the decision of Additional Collector, Hingoli, disqualifying the petitioner from the membership of group grampachayat, Sawargaon, Tikhadi, taluka and district Hingoli, pursuant to Section 14 (1) (j-1) of Maharashtra Village Panchayats Act, 1958 for having more than two children at the time of nomination.

3. Learned counsel for the petitioner contends that as a matter of fact, it may be that the third child had been born after the cut off date, however, even before the cut off date, her daughter namely Ashwini who is born on 30th November, 2002 had been given in adoption outside her family and a deed to that effect had also been registered in 2015.

4. In the circumstances, learned counsel tries to contend that it can safely be said that on the date of election, petitioner had only two children, the second child being no longer a member of the family.

5. Aforesaid contention, however, has been dispelled by both the authorities finding that having regard to the guidelines as appearing in the judgment in the case of *Suleman Abbas vs. Pramod Nandlal Yadav* reported in 2008(1) B.C.R. 887, it cannot be considered that the petitioner had not more than two children at the relevant time. The Additional Collector as well as the Additional Commissioner have accordingly considered the matter and rejected the defence taken by the petitioner. The phraseology of Section 14 (1) (j-1) is as under;

“14. (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 Bombay 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”;

6. Petitioner's case cannot be said to be covered by aforesaid provisos to Section 14 (1) (j-1) and also it cannot be said that present case is such wherein the petitioner can be said to be not having more than two children on the date of filing nomination.

7. In the circumstances, petition is not being entertained and stands rejected.

(SUNIL P. DESHMUKH, J.)