IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

918 WRIT PETITION NO. 8800 OF 2016

ANITA EKNATH HATKAR
VERSUS
THE ADDITIONAL COMMISSIONER NASHIK AND OTHERS

Shri. Nitin V. Gaware, Advocate, for petitioner.

Shri. A.P. Basarkar, Assistant Government Pleader, for respondent Nos.1 and 2.

Shri. Sandip R. Andhale, Advocate, for respondent No.4.

CORAM: T.V. NALAWADE, J.

DATE : 15 OCTOBER 2016

ORDER:

1) The petition is filed to challenge the decision of the learned Additional Commissioner, Nasik Division given in Village Panchayat Appeal No.85/2013 which was filed by respondent No.4 - Pralhad Avhad. Both the sides are heard.

2) Present petitioner was a member of Village Panchayat Chinchodi, Tahsil Pathardi, District Ahmednagar. Dispute bearing No.48/2013 was filed by

Pralhad Avhad against present petitioner under section 14(1)(j-1) of the Maharashtra Village Panchayats Act, 1958. It is the allegation of Pralhad Avhad that present petitioner gave birth to three issues after the relevant date viz. 13-9-2000. According to Pralhad Avhad , the first issue Shrikant was born on 9-1-2002, the second issue Rupali was born on 12-2-2005 and the third issue Shreyas was born on 2-11-2006 and so the present petitioner was not eligible to contest election to the village panchayat in view of provision of section 14(1)(j-1) of the Act. Notice of the dispute proceeding was given to the present petitioner and reasonable opportunity was given to the petitioner by learned Additional Collector, Ahmednagar. Before the learned Additional Collector Pralhad Avhad produced the record like survey record created by the Health Department of the State Government showing that the third issue was born to the present petitioner on 2-11-2006 and such information was given by the husband of the present petitioner to the officers who had come for survey. Certificate issued by the Medical Officer Class II of the Primary Health Centre, Miri, Tahsil Pathardi,

District Ahmednagar was produced before the learned Additional Collector. Similarly, the other record of survey mentioning all the particulars of the family of the petitioner was produced and it is mainly in respect of the petitioner. That record is called as R15. There was other record like certificate issued by the employee of the Anganwadi showing that the third issue had attended the Anganwadi.

3) The learned Collector held that the aforesaid record cannot be used as it was not in accordance with the Births and Deaths Registration Act and the dispute application was decided in favour of the present petitioner. Some record was produced from the school in which there was date of birth and the inconsistency in the date of birth was considered in favour of the present petitioner.

4) The learned Additional Commissioner has considered the aforesaid record and he has held that the aforesaid record is sufficient to hold that after the

relevant date the third issue was born to the petitioner and so she was not eligible to contest the election and she stood disqualified to hold the post of member of the village panchayat.

5) Learned counsel for the petitioner argued one circumstance that in the past against the husband of the present petitioner on the same ground proceeding was filed like Dispute No.29/2009 by other person like Bhagwan Phulmali when the husband of the present petitioner was elected to the post of the village panchayat and the said proceeding was disposed of without taking any action. Copy of the said order of the learned Additional Collector is on the record and it shows that only due to the circumstance that the applicant Bhagwan informed to the authority that he was satisfied that there was no record in the village panchayat of his village about birth of the third child and so he was not interested in prosecuting the matter. Admittedly there is no record of birth of the third child in the village of the present petitioner. In any case, the previous proceeding was not

decided on merits when the Collector ought to have decided the proceeding on the basis of the record and merits. Only because the person who had filed the previous dispute had made application that he was not interested in prosecuting the matter, the Collector was not expected to dispose of the matter on the basis of such submission. In view of these circumstances, the previous order made by the Collector in favour of the husband of the present petitioner can be of no use to the present petitioner.

6) Learned counsel or the petitioner took this Court through the provisions of the Births and Deaths Registration Act and he placed reliance on following two reported cases and one unreported case.

(1) **2013(4) Mh.L.J. 446 (Meerbai vs. State of Maharashtra)**;

(2) **2005(1) Mh.L.J. 94 (Gangadhar vs. Trimbak)**; and,

(3) **Letters Patent Appeal No.13/2012 (Pushpa v. The Divisional Commissioner, Nashik)**.

7) In the first and third cases by making some observations this Court had remanded the matters for fresh inquiry. In the second matter, some observations are made with regard to necessity to comply the mandatory requirements of section 22(2) of the Births and Death and Marriage Registration Act, 1886 and use of Section 114 of the Evidence Act. In view of the provision of the Act it was held that presumptive value is lost if mandatory procedure is not followed. In other two proceedings this Court, in view of the facts of those cases, observed that the record was not sufficient to hold that third child was born after the relevant date and those matters were remanded back.

8) The provision of section 16(2) of the Maharashtra Village Panchayats Act, 1958 runs as under :-

> "**16. Disability from continuing as member.** (1) . . . . .
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> (2) If any question whether a vacancy has occurred under this section is raised by the Collector *suo motu* or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the

> member shall not be disabled under sub-section (1) from continuing to be a member. Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final :
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> *Provided* that no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard."

9) The aforesaid provision shows that reasonable opportunity needs to be given to the person like present petitioner against whom the order is sought. In the present matter it can be said that reasonable opportunity was given. Surprisingly the Collector did not believe the record created by Government machinery during general survey and particularly when the information was supplied to the officers by the family of the present petitioner. Further, there is record of Anganwadi showing that the third child was admitted in Anganwadi. Whether this record is sufficient or not needs to be considered by the authority while deciding such proceeding. Only because there is no entry of birth of the third child in the record of the village panchayat, the petitioner cannot succeed. This Court holds that the aforesaid record is

more than sufficient to draw inference against the petitioner and it was sufficient for the Collector to decide the matter against the present petitioner.

10) It appears that at the time of filing nomination, present petitioner had produced certificate allegedly issued by the Village Development Officer on 4-6-2013 on the letter head of the village panchayat to the effect that present petitioner had no third child born after the year 2001. Photo copy of the said certificate is produced for perusal of this Court and it was submitted that this certificate ought to have been believed by the authority. It is already observed that only because the birth was not registered in the record of the village panchayat, the benefit of that circumstance cannot be given to the petitioner. The photo copy of the so called certificate is highly suspicious in nature. Bare perusal of this certificate shows that name of present petitioner was subsequently added in the space which was left for mentioning the name. At that time husband of the present petitioner was Upa Sarpanch of the village. Though he has not signed on

this document and only signature of the Village Development Officer is appearing on the document, considering the aforesaid circumstance and as there is no mention that the certificate is issued on the basis of the births and deaths register, inquiry is required into this matter. The Collector is expected to give order to the subordinates to make inquiry into the matter and if it is found that false record was created, take action like giving report to the police station against the petitioner and the Village Development Officer. In the result, following order :

11) The petition is dismissed. Collector is expected to take appropriate criminal action if it is found that the Village Development Officer has issued false certificate which was produced with nomination and copy of which is produced in the present matter and which is marked by this Court. Registrar (Judicial) to send copy of this order and a copy of certificate to the Collector.

Sd/-
(T.V. NALAWADE, J.)

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