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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.8986 OF 2015

Jahangir Khan s/o Ashraf Khan Kasai (Qureshi) PETITIONER
Age - 52 years, Occ - Business,
R/o Sakali, Taluka - Yawal,
District - Jalgaon

VERSUS

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| 1. The State of Maharashtra
Through its Secretary,
Revenue Department,
Mantralaya, Mumbai | RESPONDENTS |
| 2. District Collector, Jalgaon | |
| 3. Additional Collector, Jalgaon | |
| 4. Sayyad Tayab Sayyad Taher
Age - 44 years, Occ - Agriculture
R/o Sakali, Taluka - Yawal,
District - Jalgaon | |

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Mr. Satyajeet S. Dixit, Advocate for the petitioner
Mr. A. P. Basarkar, AGP for respondent-State
Mr. A. N. Kakade, Advocate for respondent No.4.

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[CORAM : SUNIL P. DESHMUKH, J.]

DATE : 4th AUGUST, 2016

ORAL JUDGMENT :

1. Rule. Rule made returnable forthwith and heard learned advocates for the parties finally with consent.

2. The petitioner is aggrieved by concurring order passed by appellate authority - Commissioner dated 17th August, 2015 whereunder Gram Panchayat Appeal No. 29 of 2014 filed by the petitioner challenging order passed by the Collector, Jalgaon dated 26th September, 2014 disqualifying him in Gram Panchayat Dispute No. 36 of 2014, stands dismissed.

3. The petitioner is an elected member of gram panchayat, Sakali, for the period 2013-2018. A complaint came to be lodged by respondent No. 4 claiming disqualification of the petitioner on the ground of having more than two children under section 14 (1) (j-1) of the Maharashtra Village Panchayats Act, 1958, the last one having born after the cut off date i.e. 29th September, 2001. The complaint had been lodged based upon birth certificate dated 26th December, 2012 issued under the signature of Block Development Officer, which bears name of the child as Mohammad Faizan Khan and father's name is Jahangir Khan Ashraf Khan.

4. The matter was contested. The petitioner had been earlier on disqualified under orders of the Collector. In appeal therefrom, the matter stood remanded to the Collector. In this subsequent round, the Collector ruled against the petitioner and

as such, an appeal was filed, in which order referred to above, disqualifying the petitioner as member of Gram Panchayat had been passed.

5. The appellate authority, Commissioner appears to have considered that certificate issued in the year 2004 showing the child – Mohd. Faizan Khan having born on 22nd November, 2003 was shown to have begotten to one Daulat Khan, however, the Commissioner refused the same to be taken into account, the same having not been pressed into service in the earlier round of litigation. Whereas in the next breath, the commissioner has refused to consider entry in regard to the child's name showing his father's name as Daulat Khan Ashraf Khan, in ration card considering that creation of the same has been brought about during litigation and as such, not be reliable.

6. During the course of hearing it appears that there are about four certificates issued in respect of said child, under signature of Block Development Officer on different dates viz., 26th December, 2012, 10th September, 2012, 18th March, 2013, 27th January, 2014 showing different names of fathers, in one as Daulat Khan, in two as Ashraf Khan and in one relied upon on behalf of the complainant as Jahangir Khan. The Commissioner

although has recorded discrepancies appearing in the certificates issued from time to time, has further considered that the claims made by the petitioner in respect of birth of the child and his father, appears to be ambiguous and vague.

7. It further transpires during the course of hearing that authenticity of the certificates is also put in suspicion for which it has been stated that an inquiry had been conducted in respect of the person who had been in charge of maintaining of record of births and deaths. It further transpires that there is some school record which is contended to be dithering. Additionally, learned advocate for the petitioner contends that the Block Development Officer would not be a proper authority to issue certificates under the provisions of the Registration of Births and Deaths Act, 1969.

8. In the face of such situation, it appears that the authorities will have to probe the matter little further and deeper in order to arrive at correct factual position, for, there are no reasons coming forth in the impugned orders as to why one certificate gets precedence over the other and about legality of certificates. Over and above this, the collector's order deals with the aspects of births and deaths record cursorily without referring to factual

position.

9. In view of aforesaid, the situation emerges that it would be appropriate that proper fact finding in respect of child's birth as well as his parentage takes place. For said purpose, the matter stands relegated once again to the collector for appropriate enquiry, giving opportunity to the parties and to take each piece of evidence as may be adduced / pressed into service and decide on the matter as early as possible, preferably within a period of three months from the date of receipt of writ of this order.

10. This, however, would not detain the authorities from taking into account, if they require further and / or additional evidence and / or if so desired to be submitted by the parties.

11. In the result, writ petition succeeds. Impugned orders dated 26th September, 2014 passed by Collector, Jalgaon and dated 17th August, 2015 passed by Commissioner, Nashik stand set aside. Matter stands relegated to Collector for decision afresh. Rule is made absolute in aforesaid terms.

[SUNIL P. DESHMUKH, J.]