

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

904 WRIT PETITION NO. 9171 OF 2016

KALINDA DAGADU KHARJULE
VERSUS
MUKTARAM SITARAM KAWLE AND OTHERS

Shri. S.L. Bhapkar, Advocate, holding for Shri. Girish B. Kulkarni, Advocate, for petitioner.

Shri. Amol S. Gandhi, Advocate, for respondent No.1.

Shri. S.K. Tambe, Assistant Government Pleader, for respondent Nos.2 and 3.

CORAM: T.V. NALAWADE, J.

DATE : 22 SEPTEMBER 2016

ORDER:

1) The petition is filed to challenge the decision of the Additional Divisional Commissioner, Aurangabad given in Appeal No. DB/Desk-2/ZPVP/Appeal/CR/222/2016 dated 8-8-2016. This appeal was filed against the decision of learned Additional Collector, Jalna in Case No.2016/VPE/CR-70. Both the sides are heard.

2) The proceeding for disqualification of petitioner Kalinda, who is Upa-Sarpanch of village Tad-hadgaon, Tahsil Ambad was started by present respondent No.1- Muktaram under sections 14 and 16 of the Maharashtra Village Panchayats Act, 1958. It is the case of present respondent No.1 that on the date of filing of nomination the petitioner had three issues and the third issue viz. Yashoda was born on 13-5-2002, after the date fixed in the Act and so she was not eligible to contest the election to the post of Upa Sarpanch. Prayer was also made to see that she is disqualified as member of the village panchayat also. The learned Additional Collector after inquiry passed order and declared that present petitioner was disqualified to work as Upa-Sarpanch and she is also disqualified as member. In the appeal learned Additional Commissioner has confirmed the decision of the learned Additional Collector.

3) Learned counsel for the petitioner submitted that the authorities below have not considered the record which was produced by the petitioner which was to the effect that Yashoda was born on 5-9-1999 and not on the

aforesaid date. It is not disputed that present petitioner had four issues. It is also not disputed that one daughter, Suvarna, died in the year 2007. The petitioner had two sons and two daughters. One son Raju was born in the year 1998 and in view of these circumstances the contentions of present petitioner need to be considered and the record produced by her needs to be appreciated.

4) It is not disputed that Yashoda was admitted in Zilla Parishad School in 1st Standard on 19-6-2008 and the date of birth was reported to the school by the parents, present petitioner as 13-5-2002. She left the school in the year 2012 and then she was admitted in other school in 5th Standard. In the said school also the date of birth was recorded as 13-5-2002. It appears that after starting of the present dispute the petitioner approached the authority and took steps for correction of the date of birth and accordingly the date of birth in the school record of the present school was changed to make it 5-9-1999. Learned counsel for the petitioner submitted that when the authority had corrected the date then there was no room to hold that this issue was born after the

relevant date. The learned counsel placed reliance on some record like certificate issued by the Health Worker of village Tad-hadgaon, Tahsil Ambad. This certificate was issued on the basis of date of birth of the child informed to the Health Department during immunisation programme. Thus it has no basis of the record like birth certificate or school record. Learned counsel then submitted that there is one certificate issued by the Medical Officer, Sub District Hospital, Ambad showing that on 5-9-1999 one female child was born to the present petitioner. It appears that attempt was made in the month of January 2016 to make entry in the birth register of Nagar Parishad Ambad and the application was made to make correction of one entry. It was contended by the present petitioner that she had given birth to a daughter on 5-9-1999 and the entry was made but her name was recorded wrongly as Smt. Kalinda Dagadu Karanjale when the name ought to have been recorded as Kalinda Dagadu Kharjule. On the basis of this application some correction is made.

5) Learned Additional Collector has considered the aforesaid circumstances. His order shows that the

original record was perused by him. He noticed that not only the change was made by doing over writing in the surname but also in the name of the father of the child and the place of residence. On the basis of the original record which was perused by the Collector he formed opinion that after starting of the dispute the petitioner did some manipulation in the record and tried to show that the daughter was born in the year 1999.

6) The authority is expected to give decision on the basis of material and the subjective satisfaction of the authority, which is on the basis of original record, forms the basis of the decision. This Court in the proceedings like present one is not expected to interfere in such finding. There is no explanation with the petitioner as to why specific date was given of the year 2002 to the school to inform the date of birth and after 5 years of the date of birth the daughter was admitted in the first standard. When she hails from the village no entry was made in the births and deaths register of the village. As all the material on the basis of which the contention was made by the petitioner is considered by the authority, this Court

holds that it is not possible to interfere in the decision given by the learned Additional Collector which is confirmed by the Commissioner. In the result, the petition stands dismissed.

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

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