

**IN THE HIGH COURT AT BOMBAY
APPELLATE SIDE, BENCH AT AURANGABAD**

WRIT PETITION NO. 11926 OF 2016

Hanumant Sahebrao Patil,
Age 37 years, Occu. Agri.,
R/o. Sakat, Tq. Jamkhed,
Dist. Ahmednagar.

....Petitioner.

Versus

1. The Additional Commissioner,
Nashik, Division Nashik.
2. The Additional Collector,
Ahmednagar.
3. Gramsevak, Gram Panchayat,
Sakat, Tq. Jamkhed,
Dist. Ahmednagar.
4. Alka Pandharinath Kolhe,
R/o. Kolhewadi, Post Sakat,
Tq. Jamkhed, Dist. Ahmednagar. **....Respondents.**

...
Advocate for Petitioner : More Abhijit S.
AGP for Respondent Nos. 1 and 2 : S.K. Tambe
Advocate for Respondent 4 : V.S. Undre
...

CORAM : T.V. NALAWADE, J.
DATED : 7th December, 2016.

JUDGMENT :

- 1) Rule. Rule made returnable forthwith. By consent,
heard both the sides for final disposal.
- 2) The proceeding is filed to challenge the decision
given by the learned Additional Commissioner, Nashik in Gram
Panchayat Appeal No. 80/2016. The appeal was filed by present

respondent - Smt. Alka Pandharinath Kolhe to challenge the decision given by the learned Collector in Dispute Application No. 6/2016. The Collector had disqualified the respondent member of Village Panchayat as third child was born to her after her election to Village Panchayat.

3) Before the Collector, the complainant placed reliance on the record like declaration made by respondent member when the nomination form was filed for election to Village Panchayat. This declaration dated 17.7.2015 shows that she had declared that she had two issues. However, she had disclosed the name of only one issue as Pallavi Pandharinath Kolhe and she had not filled the place which was meant for giving name of second issue. Thus, on 17.7.2015, admittedly she was having two issues. Before Additional Collector three birth certificates were produced by the petitioner's side. The first birth certificate shows that one female child was born to Alka Pandharinath Kolhe and Pandharinath Waman Kolhe. This record is not disputed by respondent member. The second birth certificate issued by Nagar Panchayat Karyalaya Shirur, District Beed shows that one daughter by name Sonali was born to couple Sou. Swati Pandhari Kolhe and Pandhari Waman Kolhe, resident of Kolhewadi. This certificate is disputed by the respondent member. Even if this

certificate is ignored from consideration, that will not make any difference as in declaration dated 17.7.2015 respondent member had declared that on that day she was having two issues. The third birth certificate shows that one male child was born on 7.10.2015 to Alka Pandharinath Kolhe and Pandharinath Waman Kolhe. This entry was made on the basis of information given by the hospital of Dr. Chandrakant More from Jamkhed. This certificate is also disputed by the present respondent member.

4) The Collector had believed the aforesaid record and had made the order against the respondent member. The Commissioner has placed reliance on some observations made by the Division Bench of this Court in the case reported as **2005 (1) ALL MR 749 [Gangadhar s/o. Gonduram Tadme Vs. Trimbak s/o. Govindrao Akingire & Ors.]**. This Court has carefully gone through the facts of this reported case. Some observations are made by this Court in relation to provisions of Births, Deaths and Marriages Registration Act 1886 and particularly, with regard to the procedure given in section 22 of the Act. In that case, it was held that it was necessary to sign the information, application by the informer giving information to the authority and the signature was to be put in the presence of

the authority itself. There was no such record and so, the Court held that such record was not made under the provisions of the Act and such record cannot have presumptive value. The learned counsel for the petitioner drew the attention of this Court to the provisions of new Act like Registration of Births and Deaths Act, 1969 which has taken the place of aforesaid old Act and present provisions are of different nature. He took this Court to provision of section 8 of the new Act showing that when there is birth in hospital, it is the duty of the hospital to give intimation to the registering authority of the birth. The learned counsel submitted that in accordance with this provision, the intimation was given by the hospital and entry was made in the birth register. He submitted that as the certificate produced before the Collector was certified copy of the original register and it was certified copy of public record, it has presumptive value and inference was available to the Collector under section 114 of the Evidence Act. He placed reliance on the observations made in some cases reported as **2010 ALL SCR 421 [CIDCO Vs. Vasudha Gorakhnath Mandevlekar]** and **2008 (5) Mh.L.J. 147 of Division Bench of this Court [Vasudha Gorakhnath Mandevlekar Vs. City and Industrial Development Corporation of Maharashtra Ltd.]**. In the first case, the Apex Court has discussed the evidentiary value of certified copy of

public record and the provision of section 35 of the Evidence Act were referred. It is laid down that such record has presumptive value and it raises presumption of correctness and they are admissible in evidence under section 35 of the Evidence Act. In other case, the Division Bench of this Court has also held that when there is discrepancy in other record and date of birth record prepared by the registering authority under the Registration of Births and Deaths Act, 1969, the record prepared by registering authority shall prevail. There cannot be dispute over this proposition.

5) In view of the aforesaid position of law, it was necessary for respondent member to lead evidence in rebuttal to rebut the presumptions available in view of the aforesaid circumstances and particularly the birth certificate dated 7.10.2015. This circumstance was sufficient to presume that on 7.10.2015 one male child was born to respondent member. This circumstance was not rebutted at all. It was only contended that no such child was born. Only denial cannot rebut the presumption, when there is certified copy of public record.

6) The aforesaid circumstances are not at all considered by the learned Additional Commissioner and only due to some observations made by the Division Bench of this Court in the

case of **Gangadhar** cited supra, Additional Commissioner has set aside the order of learned Additional Collector and the matter is remanded back.

7) The learned counsel for respondent member submitted that on 13.12.2016 there will be election to the post of Sarpanch and the decision of this Court or any order made by this Court may prevent the respondent member from voting in election to the post of Sarpanch. He submitted that if the matter is remanded, both sides will have opportunity to produce the material and the learned Additional Collector can again decide the matter afresh. He submitted that it is not desirable to interfere in the order of remand made by the learned Additional Commissioner. He placed reliance on the cases reported as **2015 (5) ALL MR 500 [Ankitabai Sahebrao Nikalje Vs. Additional Collector, Ambajogai]**, **2009 (2) ALL MR 880 [Kumudini Balasaheb Salkar Vs. Additional Commissioner, Amravati & Ors.]** and **2011 (6) Bom.C.R. 427 [Gajanan Hariba Susar Vs. Additional Commissioner & Ors.]**. The facts of each and every case are always different. In the present matter, there is the record of certified copies of birth and death register. This record has presumptive value. The circumstance that present petitioner avoided to mention the name of second

child in the declaration itself shows that there was different intentions. She had two daughters on the date of filing declaration and now son is born. It is unfortunate that these days politicians are ready to do anything. The Courts are expected to be very strict. When it is the policy of the State that the person, who wants to enter in the politics, should not cross the limits of having particular number of children, they should abide by that rule. They cannot have both the things at the same time. This Court holds that the learned Additional Commissioner has committed error in setting aside the order of learned Additional Collector, who was the proper authority and who had sufficient opportunity also to make the assessment of the things. The subjective satisfaction of Collector is involved in such matter.

8) In the result, the petition is allowed. The order made by the learned Additional Commissioner is hereby set aside. The order made by the learned Additional Collector is restored.

Authenticated copy is allowed to both the sides.

[T.V. NALAWADE, J.]

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