

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 287 OF 2016

Shri. Ramnath S/o Namdeo Rajpure,
Age: 53 years, Occu. : Agri.,
R/o. Balamtakli. Tal- Shevgaon,
Dist- Ahmednagar.

... **PETITIONER**

VERSUS

01. The Additional Divisional Commissioner,
Nashik Division, Nashik.
02. The Additional District Collector,
Dist- Ahmednagar.
03. Ashok S/o Janardhan Kale,
R/o- Balamtakli, Tq- Shevgaon,
Dist- Ahmednagar.
04. The Returning Officer,
Balamtakli Grampanchayat, Tq- Shevgaon,
Dist- Ahmednagar.
05. The Gramsevak,
Balamtakli Grampanchayat, Tq- Shevgaon,
Dist- Ahmednagar.
06. Shaikh S/o Isak Badshah,
R/o- Balamtakli, Tal- Shevgaon,
Dist- Ahmednagar.

... **RESPONDENTS**

...

Mr. Satish B. Parnere, Advocate for Petitioner.
Mr. S. N. Kendre, AGP for Respondent Nos.1 & 2.
Mr. S. B. Gastgar, h/f Mr. S. N. Patne, Advocate for Respondent No.3.
Mr. S. T. Shelke, Advocate for Respondent No.4.

...

CORAM : **T. V. NALAWADE, J.**

DATE : 26th October, 2016.

JUDGMENT:

. Rule. Rule made returnable forthwith. Heard both the sides by consent for final disposal.

2 The present petition is filed to challenge the order made by the learned Additional Commissioner in Appeal No.27 of 2013. The learned Commissioner has allowed the appeal and the order made by the learned Additional Collector, Ahmednagar in disqualification proceeding No.4 of 2013 is set aside. The learned Collector had held that after relevant date, after 12th September, 2001, more than two issues were born to present Respondent No.3 Ashok Kale and order was made accordingly. It was contended before the learned Commissioner by Kale that there was no record except birth certificates and so it is not possible to disqualify him. Review application was also filed by the present Petitioner before the learned Additional Commissioner, but the said review application is dismissed as not maintainable.

3 In the application filed against Ashok Kale before the Collector by the present Petitioner, it was contended that in the nomination form filled for the election of Village Panchayat Balamtakli false declaration was made that Ashok was having only two issues. It is contended that Ashok has more than two issues and all of them were born after relevant date 12th September, 2001 and so he needs to be declared as disqualified. It appears that when the proceeding was filed there was a record like birth certificates in respect of Akanksha dated 29th December, 2003, birth certificate in respect of Pinti dated 17th September, 2005 and birth certificate in respect of Jivan showing that Jivan was born on 26th December, 2008. There is now the record to show that one issue was born on 6th September, 2002 also and one issue was born on 22nd December, 2007 and thus, the Petitioner was having five children.

4 It is the case of Ashok that prior to 16th December, 2008 his two children had died. He had contended that one issue was born on 22nd December, 2007 had died few days immediately after the birth. It appears that the death of the said child is not disputed. However, in respect of other case that one daughter who was born on

17th September, 2005 had died on 14th January, 2011, there was dispute and record was produced to show that inquiry was held and it was found that said daughter was not dead. Ashok had even collected death certificate in respect of that daughter, but that certificate was cancelled after making inquiry. It appears that it revealed during inquiry that said daughter was given in adoption to a brother of Ashok. Some attempt was made to show that one issue was born to his brother by creating false record in the school and producing a false copy of a birth certificate there. That certificate was also found to be false.

5 The aforesaid circumstances show that the person like Ashok Kale are ready to go to any extent to remain in politics. He created even false record of death in respect of his own issue.

6 Even if the aforesaid conduct of Ashok is ignored, it can be said that after relevant date, five issues were born to him and even if it is presumed that two issues died, he cannot escape from disqualification. On the birth of third issue, the first two issues were alive and so he incurred disqualification on the birth of third issue. It is immaterial that after that said third issue or other issue of Ashok died.

7 On the aforesaid point, the learned counsel for the Petitioner placed reliance on the case reported as **2015(4) Mh.L.J. 448** (Premdas Gulab Chavan Vs. Additional Commissioner, Amravati and others). In para 5 of the said judgment, this Court has made following observations:

“5. In view of the aforesaid law laid down by this Court, the fact as to whether one child out of three children expired on 1-12-2007 i.e. before the date of contesting the elections would be of no relevance. The fact that there was increase in the number of children after the cutoff date i.e. 12-9-2001 is the relevant factor. Undisputedly, the respondent No.3 was not a sitting member of Panchayat on 12-9-2001 and there was increase in the number of children after the cutoff date. In view of this, respondent No.3 cannot be saved from the disqualification.”

8 In view of the purpose behind the provisions of Section 14(1)(J) of the Maharashtra Village Panchayats Act, 1959 and the aforesaid interpretation made by this Court, this Court holds that the learned Additional Commissioner has committed error in interfering the order made by the Collector. Such order cannot sustain in law.

9 In the result, the petition is allowed. The order made by

the learned Commissioner is hereby set aside. The order of disqualification made by the learned Additional Collector is hereby restored. Rule is made absolute in above terms.

[T. V. NALAWADE, J.]

ndm