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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

BENCH AT AURANGABAD

WRIT PETITION NO.1284/2017

Ishwar Kuwarsingh Chavan.

...Petitioner..

Versus

The State of Maharashtra & others.

...Respondents...

.....

Shri A.N. Nagargoje, Advocate h/f Shri V.P. Raje,
Advocate for petitioner.

Smt.A.V. Gondhalekar, AGP for respondent no.1.

Shri S.T. Shelke, Advocate for respondent no.2.

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**CORAM: V.M. KANADE &
SANGITRAO S.PATIL, JJ.**

DATE: 31.01.2017

ORDER :

- 1] Heard learned counsel appearing for the parties.
- 2] The petitioner is aggrieved by the order passed by the Returning Officer refusing to accept the nomination form of the petitioner for contesting the elections of Zilla Parishad, Nanded. The said nomination form was not accepted since the petitioner had two children from the first marriage and one child from the second marriage. Learned counsel appearing on behalf of the petitioner

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submitted that careful perusal of the said provisions would indicate that the embargo was only in respect of children from one marriage. Though the word "he" has been used in Section 16(1)(nA) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, the explanation contemplates that the couple must have more than two children. He submitted that the child born out of second wedlock after death of first wife cannot be treated as a third child to the couple and the second wife is having only one child. It is, therefore, submitted that children from two different marriages cannot be clubbed together for the purpose of disqualifying the petitioner from contesting the elections. He, therefore, contends that the petitioner's case fits in the exemption clause.

3] Section 16(1)(nA) of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961, reads as under :-

"16 (1) Subject to the provisions of sub-section (2), a person shall be disqualified for being chosen as, and for being, a councilor -

(a) to (n)

(nA) if he has more than two children."

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4] It is apparent that the intention of the legislature in incorporating that condition was to discourage people from having more than two children. The explanation of the petitioner that two children were born from the first marriage and after the death of his first wife, he got remarried and, therefore, he had one child from the second marriage, cannot be accepted for the reason that the word "he" is used in Section 16(1)(nA). It is not in dispute that the petitioner has three children; two from the first marriage and one from the second marriage. He, therefore, clearly violates the prohibition which is imposed by Section 16(1)(nA) of the Act.

5] For the aforesaid reasons, it is not possible to give direction to the Returning Officer to accept the nomination paper of the petitioner. The petition is, therefore, dismissed. No costs.

(SANGITRAO S.PATIL, J.)

(V.M. KANADE, J.)