

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9690 OF 2017

ASHRUBA SARJERAO BIRGAD
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner : Shri Irpatgire A.N.
AGP for Respondent 1 : Shri Kendre S.N.
Advocate for Respondents 2 to 4 : Shri Kadam S.K.
Advocate for Respondent 5 : Shri Ambad S.A.

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WITH
WRIT PETITION NO. 9698 OF 2017

SUNDAR MAROTI GADADE
VERSUS
THE STATE CO OPERATIVE ELECTION AUTHORITY AND OTHERS

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Advocate for Petitioner : Shri Patil B.N. h/f Shri Salunke V.D.
Advocate for Respondents 1 & 2 : Shri Kadam S.K.
Advocate for Respondent 3 : Shri Hon V.D. Sr. Adv. i/b Shri Hon A.V.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: August 09, 2017

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PER COURT :-

1. The petitioners, who are original objectors are aggrieved by the order dated 26.7.2017, passed by the Returning Officer, by which, the nomination form of Shri Madhukar Balasaheb Kachgunde has been accepted. Both the petitioners are identically placed and are objecting to the acceptance of the nomination form of Shri Madhukar - respondent No.5 in the first petition and respondent No.3 in the second

petition.

2. Respondent No.6 Society, which is not a party to the second petition, has been served in the first petition. No appearance has been caused.

3. The issue in both these petitions is as to whether the concerned candidate Shri Madhukar has given birth to two children after the cut off date, which is 7.9.2001 in the admitted backdrop that he has two wives and has five children. Two children have been born to the first wife Urmila and three children have been born to the second wife Minakshi. There is no dispute to this extent.

4. Issue raised is whether two children, namely, Ku. Meghana and Chi. Akshay or Gajanan have been born after the cut off date.

5. The elections at issue are with regard to a cooperative society, by name, Seva Sahakari Sanstha. The election programme has been declared on 12.7.2017 and 10.8.2017 is the date for withdrawing of the nominations.

6. After considering the submissions of the learned Advocates for the respective sides and upon going through the provisions of the

Maharashtra Cooperative Societies Act, Rules framed thereunder, judgments cited and the documents placed on record, I find it advantageous to focus on the documents relied upon by the objectors and by Madhukar.

7. The petitioners / objectors have attempted to canvass that Madhukar has fathered the fourth and the fifth child after the cut off date, on the basis of the following documents:-

(a) The Valid Voters' list pertaining to the Legislative Assembly Constituency of Taluka Kaij indicates that Madhukar is at Sr. No.328. His first wife Urmila is at Sr. No.330 and his second wife Minkashi is at Sr. No.331. His two sons Hanumant and Dnyaneshwar are also at Sr. Nos. 332 and 333.

(b) The birth certificate of a female child dated 29.5.2003 indicates that the name of the mother is Vinit, though the father's name is Madhukar Kachgunde and the place of birth is S.R.T.Hospital, Ambajogai.

(c) The birth certificate of a male child dated 9.6.2006 indicates the name of the mother as Mina and father's name is Madhukar Kachgunde. The place of birth is Patil Hospital,

Ambajogai.

(d) The Child Development Project Officer under the Integrated Child Development Programme has issued certain documents which are supplied to Shri Ganesh Ramrao Pawar, by covering letter dated 30.6.2017.

(e) The above stated documents pertain to the registers maintained for the pregnant ladies under the said Scheme, which includes supplying of nutritious food to the pregnant women.

(f) At Sr. No.23 in such register, the name Minakshi Madhukar Kachgunde has been entered on 1.10.2002.

(g) In the subsequent extract, the name of Minakshi is entered at Sr. No.21 on 20.6.2005.

(h) The Birth - Death Register maintained under the Integrated Child Development Programme indicates the Birth of a female child Meghana on 29.5.2003 and one more entry indicates the Birth of a male child Akshay on 24.3.2006.

(i) Similar entries with regard to supplying nutritious food

indicates the birth of Meghana on 29.5.2003 and the birth of Akshay on 24.3.2006.

(j) One College Certificate issued by Kholeshwar Junior Mahavidhyalay, which is a transfer certificate with regard to Mohini, who is said to be the first daughter of Madhukar, indicates the name of the mother as Mina. This document is not denied by Madhukar and the date of birth of the daughter Mohini is shown to be 24.6.1997.

(k) The five children born to Madhukar are as follows:-

- (i) Hanumant s/o Urmila and Madhukar
- (ii) Dnyaneshwar s/o Urmila and Madhukar
- (iii) Mohini d/o Mina @ Minakshi and Madhukar
- (iv) Meghanan d/o Minakshi and Madhukar
- (v) Akshay @ Gajanan s/o Minakshi and Madhukar.

(l) Since the transfer certificate of one daughter Mohini indicates the mother's name as Mina, the petitioners contend that Mina is the same Minakshi, who is the second wife of Madhukar. Therefore, where ever the name Mina appears, it has to be taken to mean as Minakshi and the denial of this fact by Madhukar is only for self serving purposes.

8. For the sake of clarity, the issue now is with regard to the birth of the daughter Meghana and the son Akshay @ Gajanan.

9. Shri Hon, the learned Sr. Advocate appearing on behalf of Madhukar has also relied upon certain documents, which are referred to hereunder:-

(a) The register of admissions of the Zilla Parishad Primary School, Rajewadi indicates the birth date of Meghana as 26.1.1999 and her date of admission in the second standard is 29.6.2009. The name of the mother is Minakshi.

(b) Another admission register extract of the Zilla Parishad School Mangaiwadi indicates the date of birth of Meghana as 26.1.1999 and the date of admission in school is 16.8.2008 in the first standard.

(c) On reconciliation of these two documents, it appears that she left the school at Mangaiwadi and took admission at Rajewadi on 29.6.2009.

(d) The birth certificate issued by the Gram Panchayat

Rajewadi on 24.7.2017 indicates the mother's name of Meghana as Minakshi. The date of birth is 26.1.1999.

(e) The birth certificate issued by the Gram Panchayat Rajewadi on 24.7.2017 indicates the name of the child as Gajanan Madhukar and the date of birth is shown as 15.6.2000. Mother's name is indicated as Minakshi.

(f) The School Admission Register of Zilla Parishad School, Mangaiwadi indicates the name of the child as Gajanan and date of birth is 15.6.2000. He was shown to be admitted in the second standard in 2009.

(g) Another Students' Admission Register of Zilla Parishad School, Rajewadi indicates the name of the child as Gajanan and mother's name as Minkashi. Date of admission is 7.7.2010 and shown to be admitted in the first standard.

(h) Another Student Admission Register of Zilla Parishad School, Bhilegaon indicates that Gajanan was admitted in the school on 3.7.2008 in the first standard. His mother's name is indicated as Minakshi.

10. The petitioners have relied upon the following judgments to canvass that if there is an apparent disqualification, which is attracted, this Court should not hesitate to cause an interference and prevent a disqualified candidate from contesting the election:-

- (i) Pandurang Hindurao Patil Vs. State of Maharashtra (DB) - 1984 CTJ 125,
- (ii) Smt. Vasudha Gorakhnath Mandvikar Vs. City and Industrial Development Corporation - 2008 (5) Mh. L.J. 147 (DB)
- (iii) Dalsing Shamsing Rajput Vs. State of Maharashtra - 2006 (3) Mh. L.J. 592 (DB)
- (iv) Manchak Shahaji Pawar Vs. State of Maharashtra - 2011 (3) Mh.L.J. 833 (SJ)
- (v) Dattatray Kachru Chine Vs. State of Maharashtra - 2005 (4) Mh.L.J.243 (DB)
- (vi) Bapu Maruti Rakshe Vs. State of Maharashtra - 2007 (5) AIR Bom. R. 636

11. Shri Hon has placed reliance upon the judgment of this Court in the matter of Shriram Mukundrao Korde Vs. State of Maharashtra [2015 (3) BCR 129], to support his contention that once the election

process is said to be in motion, this Court should refrain from causing any interference.

12. Shri Kadam, learned Advocate appearing on behalf of respondents / State Cooperative Election Authority and Returning Officer and Taluka Cooperative Election Officer, submits that the impugned order has been passed by the Returning Officer, accepting the nomination form of Madhukar since he found that the documents cited by both the sides did not create a clear picture before him.

13. He clarifies to say that in two birth and death register extracts, submitted by the objectors, the name of the mother of the female child is shown to be Vinit. Apparently, Vinit is not one of the wives of Madhukar and it is not the contention of the objectors that Vinit is a second name of any of the wives of Madhukar. This document, therefore, has to be discarded.

14. The birth certificate of a male child indicates the name of the mother as Mina. Address of the parents is shown at Ambajogai in both the above cases. Madhukar has not used the name Mina to indicate that his wife Minakshi also carries a second name as Mina. It is not the case of the objectors that the address of Madhukar was Ambajogai at any time. Because of this confusion, the Election Officer had to give the

benefit of doubt to Madhukar since it is a matter of elections and a democratic set up where the nomination of a candidate could not be rejected only on suspicion and more so, when the documents cited by both the sides do not give a clear picture.

15. The Returning Officer does not have the authority to conclude as regards the exact dates of birth of the two children at issue. The Village Panchayat Birth Certificates and the School Records produced by Madhukar indicates that Meghana and Gajanan were also born before the cut off date. The School record also indicates identical dates, though all these documents have been obtained by Madhukar in July 2017 and produced on record. He, therefore, submits that the impugned order cannot be faulted.

16. After considering the entire set of factors recorded as above, the discrepancy in the versions of the objectors as well as Madhukar appears to be as under:-

(a) Whether the name of his second wife Minakshi can also be said to be Mina as is reflected in the transfer certificate issued by a Junior College with regard to his first daughter Mohini, indicating the mother's name as Mina?

(b) Whether any of the wives of Madhukar carry a second name as Vinit?

(c) The birth certificates of Meghana and Akshay indicate the name of the mother as Vinit and Mina.

(d) Madhukar was not staying in Ambajogai town, but the address of mother Vinit and mother Mina is shown to be at Ambajogai.

(e) The handwritten extract of the record submitted by the Child Development Project Officer, which is the official record maintained by the said officer under the Integrated Child Development Scheme, indicates the registration of Minakshi as a pregnant woman, who has been supplied with nutritious food. Her delivery record is also maintained by the said department, which is placed on record, indicating the date of birth of Meghana as 29.5.2003 and the date of birth of Akshay as 24.3.2006.

(f) Whether the name of the disputed child is Akshay or Gajanan since the record produced by Madhukar nowhere reflects the name Akshay?

(g) According to the birth certificates, the mother of Meghana is Vinit and the mother of Akshay @ Gajanan is Mina.

17. Considering the above disputed factors, I am of the view that if the record would have been conclusive, I would not have hesitated in disqualifying Madhukar and would have rejected his nomination form. However, the disputed aspects about different names of the wives of Madhukar, different names of the son of Madhukar, precludes me from going into disputed questions in my supervisory jurisdiction. The Honourable Apex Court in the matters of Syed Yakoob Vs. K.S. Radhakrishnan and others [AIR 1964 SC 447] and Surya Dev Rai Vs. Ram Chander Rai [(2003) 6 SCC 682], has concluded that unless the impugned order is perverse, erroneous and likely to cause gross injustice, this Court should not exercise its supervisory jurisdiction.

18. Notwithstanding the above, I find one aspect to be quite obvious and peculiar. Madhukar has produced a record which he has obtained in July 2017. The birth certificates issued by the Gram Sevak are also of July 2017. It appears that he has procured these documents with electric speed keeping an eye on the elections which are scheduled on 17.8.2017.

19. It is also conspicuous that Gajanan was initially admitted in the first standard in one school. He joined the second school in the second standard in the next year and then he joined the third school in the third year and was reverted back to the first standard. Instead of being admitted in the third standard, he was admitted in the first standard.

20. So also Meghana and Gajanan are shown to taken admission in the school when they were in the 9th year of their age, whereas, Mohini, the first daughter from the second wife Minkashi born on 26.4.1997, has completed her H.S.C. in the Science faculty in February 2015, when she was 18 years' old indicating that she was admitted in School, when she was about 5-6 years' old. This, therefore, creates a doubt, as to whether Madhukar had admitted his fourth and fifth child in the school in the first standard when they were 9 years' old, thereby wasting their four years of education. All these aspects need to be investigated.

21. Since, I am not causing an interference in the impugned order and as there are suspicious documents on record and which require an investigation, I deem it appropriate to ensure that the law of the land and the Rule of Law is not abused. If any person or any of these petitioners challenge the election of Madhukar, if he is elected, by resorting to the remedy available under Rule 78 of the Maharashtra

Cooperative Societies (Election to the Committees) Rules, 2014, immediately after his election, the competent authority dealing with the said proceedings would arrive at its conclusions and dispose off the proceedings within a period of one year and six months from the date of the lodging of the proceedings. The competent authority would refuse adjournments, if the same are sought on unreasonable and trivial grounds and may also impose costs on the litigating sides, attempting to delay the proceedings.

22. I deem it appropriate to record, since I had preempted the litigating sides during the hearing of these matters, that if the competent authority arrives at a conclusion that either the objector or Madhukar have resorted to falsehood and have attempted to abuse the process of law and make a mockery of the Rule of democracy, it shall order the Registrar of Cooperative Societies to register criminal offences against the erring litigating sides and would also impose costs of Rs.1,00,000/- (Rs. One Lakh only/-) on such a litigating side, to be deposited in the State exchequer. The objectors and Madhukar are agreeable.

23. It is informed that these petitioners can also approach the Registrar of Cooperative Societies seeking disqualification of elected candidate Madhukar, if so elected, under Section 73CA of the

Maharashtra cooperative Societies Act. If this remedy is resorted to, the above observations and directions in paragraph Nos.21 and 22 shall apply equally to the said proceedings before the Registrar.

24. With the above observations / directions, both these petitions are disposed off.

(RAVINDRA V. GHUGE, J.)

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