

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

WRIT PETITION NO. 12078 OF 2017

PRAKASH GOROBA KORE
VERSUS
RAMESH SUBHASH PATIL AND OTHERS

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Advocate for the Petitioner : Shri A.N.Sabnis h/f Shri Gunale V.D..

Advocate for Respondent 1 : Shri A.S.Shivpuje.

AGP for Respondents 2 to 4 : Shri N.T.Bhagat.

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CORAM: RAVINDRA V. GHUGE, J.

DATE :- 12th October, 2017.

Per Court:

1 The Petitioner is aggrieved by the orders dated 22.09.2016 and 28.08.2017 both passed by the Additional Commissioner, Aurangabad in Appeal No.CR/100/2015 and in Review Application No.342/2016, respectively, by which the Petitioner has been disqualified for having more than two children born after the cut off date which is 12.09.2001.

2 I have considered the strenuous submissions of the learned Advocates for the respective sides and the learned AGP on behalf of Respondent Nos.2, 3 and 4.

3 Considering the factors involved in this matter, I am not required to advert to the entire submissions of the learned Advocates.

4 The Petitioner, who has been disqualified by the impugned

orders as a member of the Village Panchayat, Halki, Taluka Shirur Anantpal, District Latur, has undisputedly fathered four biological children. There is no dispute about the first three children. The fourth child, according to Respondent No.1, is born on 18.06.2002 and based on the said grievance raised by Respondent No.1, the Additional Commissioner has disqualified the Petitioner.

5 By the first impugned order dated 22.09.2016, the Additional Commissioner concluded that the fourth child of the Petitioner was born on 18.06.2002.

6 The grievance of the Petitioner is that by the judgment of the Civil Court dated 07.02.2014, Regular Civil Suit No.198/2013 filed by the Petitioner herein has been allowed and his fourth child is declared to have been born on 18.06.2001. It is not the case of the Respondents that the judgment of the Civil Court has been challenged before the superior court, much less set aside by the superior court. Consequentially, the judgment of the Civil Court has attained finality.

7 With this factual matrix, it would not be open for any Revenue Authority to conclude that the date of birth of the fourth child is 18.06.2002. In both the impugned orders, the Additional Commissioner has concluded that the fourth child of the Petitioner is born after the cut off date. The judgment of the Additional Collector dated 05.09.2015 has been set aside.

8 Considering the above, this Writ Petition is allowed. Both the impugned orders dated 22.09.2016 and 28.08.2017 are quashed and set aside. The appeal filed by Respondent No.1 before the Additional Commissioner stands dismissed and the order of the Additional Collector dated 05.09.2015 is sustained.

9 Despite the above, at this stage, Respondent No.1 insists that the date of birth of the fourth child is 18.06.2002 and the view taken by the Civil Judge by it's judgment dated 07.02.2014 is erroneous.

10 On account of the stand taken by Respondent No.1, I deem it appropriate to impose costs of Rs.10,000/- (Rupees Ten Thousand), which Respondent No.1 shall deposit in this Court.

11 The learned Advocate for the Petitioner submits that the amount of costs be donated to the Advocate Association's Bar Library, High Court, Aurangabad.

12 The statement is accepted. Respondent No.1 shall deposit the said costs within SIX WEEKS with the Advocate Association's Bar Library, High Court, Aurangabad, failing which the appropriate Revenue Authorities shall initiate steps for the recovery of the said costs as a land revenue and report compliance to this Court through the Registrar (Judicial) within SIX MONTHS from today.