

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.57 OF 2016
(Vasant Gulji Vasave Vs. The State of Maharashtra and others)

Mr.Y.B.Bolkar, Advocate for the petitioner.
Mr.N.T.Bhagat, AGP for respondent Nos.1 to 3.

(CORAM : Ravindra V.Ghuge, J.)
DATE : 09/06/2017

PER COURT :

1. The petitioner is aggrieved by the order dated 20/02/2014 passed by respondent No.3/District Collector by which the petitioner has been disqualified u/s 14(1)(j) and 16 of the Maharashtra Village Panchayat Act for having given birth to a fourth child after the cut off date 13/09/2001, which disqualifies a member of the Gram Panchayat if he or she has more than 2 children.

2. The petitioner submits that he did not possess the birth certificate of the 4th child Sharda. There is no record about her birth. The complainant/ respondent No.4 produced a certificate from the Gram Sevak of the concerned village stating that the fourth child of the petitioner was born on 15/03/2003. Grievance is that the Gramsevak was not examined and the procedure for proving the birth of the fourth child was not followed. The impugned order

disqualifying the petitioner is therefore unsustainable.

3. The petitioner also challenges the judgment dated 18/09/2015 passed by respondent No.2/Additional Divisional Commissioner by which the order of disqualification has been sustained.

4. Learned AGP has defended the impugned orders.

5. Section 14(1)(j) and 16 of the Maharashtra Village Panchayat Act, read as under :-

“14(1) No person shall be a member of a Panchayat continue as such, who -

(a) to (i)

(j) has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgment of allegiance or adherence to a foreign State ; or

[(j-1) has more than two children]

Provided that, a person having more than two children on the date of commencement of the Maharashtra Village Panchayats, and the Maharashtra Zilla Parishads, and Panchayat Samitis (Amendment) Act, 1995 (hereinafter in this clause referred to as “the date of such commencement”), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase :

Provided further that, a child or more than one child born in a

single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause; or]

16. Disability from continuing as member :- (1) *If any member of a Panchayat*

(a) who is elected or appointed as such, was subject to any of the disqualification mentioned in Section 14 at the time of his election or appointment, or

(b) during the term for which he has been elected or appointed incurs any of the disqualifications mentioned in Section 14, he shall be disabled from continuing to be a member, and his office shall become vacant.

(2) [If any question whether a vacancy has occurred under this Section is raised by the Collector suo motu or on an application made to him by any person in that behalf, the Collector shall decide the question as far as possible within sixty days from the date of receipt of such application. Until the Collector decides the question, the member shall not be disabled under sub-section (1) from continuing to be a member.] Any person aggrieved by the decision of the Collector may, within a period of fifteen days from the date of such decision, appeal to the State Government, and the orders passed by the State Government in such appeal shall be final :

Provided that no order shall be passed under this sub-section by the Collector against any member without giving him a reasonable opportunity of being heard."

6. There is no dispute that the cut off date with regard to the number of children is 13/09/2001.

7. Learned Advocate for the petitioner is unable to make a statement, for lack of instructions, as to whether the petitioner admits that the fourth child Sharada is his biological child.

8. The documents produced from the Gram Panchayat records at page Nos.47 to 53 and 57 to 63 before respondent No.2, indicate that the first girl child of the petitioner namely Manisha was born on 23/04/1994, the second male child Akhil was born on 02/11/1996, the third girl child Himisha was born on 09/08/2000 and the fourth girl child Sharada was born on 15/03/2003. The petitioner did not participate in the proceedings before respondent No.3. After having suffered disqualification by the impugned order dated 20/02/2014, he preferred an appeal before respondent No.2.

9. It appears from the record that the petitioner has made an effort to suppress facts from the authorities. He is non-committal as regards the fourth child. The documentary record of the Gram Panchayat indicates the birth of the third child on 09/08/2000 which is not disputed. Record indicates the birth of the fourth child

on 15/03/2003.

10. Considering the above and keeping in view that both the authorities below have considered the record and have confirmed that the fourth child was born on 15/03/2003, I do not find that the disqualification of the petitioner could be termed as being unsustainable or illegal.

11. This petition, being devoid of merit, is therefore, dismissed.

(Ravindra V.Ghuge, J.)