

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 13256 OF 2016**

Shri Vilas Balaku Patil	)	
Age 41 yrs. Occ: Agri	)	
At & Post Ite, Taluka Ajara	)	
District Kolhapur	)	..Petitioner

Vs.

1 Shri Vilas Shamrao Patil & Ors	)	
Age 41 yrs. Occ: Agri	)	
At & Post Ite, Taluka Ajara	)	
District Kolhapur	)	
 2 Grampanchayat Ite,	)	
Taluka Ajara, District Kolhapur	)	
Through Gram Sevak	)	
 3 The Collector, Kolhapur	)	
 4 The Additional Commissioner	)	
Pune, Division, Pune	)	..Respondents

Mr. A. B. Borkar for the Petitioner
Mr. Tanaji Mhatugade for the Respondent No.1
Mr. S. L. Babar AGP for the Respondent Nos.3 and 4

CORAM : R. M. SAVANT, J.
DATE : 19th JANUARY, 2017

ORAL JUDGMENT

1 At the outset, the Learned Counsel for the Petitioner seeks deletion of the Respondent No.2 from the cause title. The said Respondent No.2 is accordingly deleted at the risk of the Petitioner. Amendment to be carried out forthwith.

2 Rule. With the consent of the Learned Counsel for the parties made returnable forthwith and heard.

3 The Writ Jurisdiction of this Court is invoked against the order dated 14-9-2016 passed by the Additional Commissioner, Pune Division, Pune, by which order the Appeal filed by the Respondent No.1 herein came to be allowed and resultantly the order dated 19-1-2016 passed by the Additional Collector, Kolhapur, came to be set aside.

4 It is not necessary to burden this order with unnecessary details. Suffice it would be to state that the Petitioner herein had filed an application for disqualification of the Respondent No.1 under Section 14(j-1) of the Maharashtra Village Panchayat Act (for short the said Act) on the ground that he has more than 2 children after the cut of date i.e. 13-9-2001 in terms of Section 14(j-1) of the said Act. The Petitioner in support of his case that the Respondent No.1 has 3 children after the cut of date, had inter alia relied upon the certificates issued by the hospital of a female child born to the Respondent No.1, the birth and death register of the Grampanchayat It, and the extract in respect of the vaccination scheme under the Integrated Child Development Scheme. The said application was replied to on behalf of the Respondent No.1 and the case of the Petitioner was denied. The Additional Collector, Kolhapur

by his order dated 25-1-2016 allowed the said application. The Additional Collector on the basis of the material which was placed on record by the Petitioner which has been referred to herein before came to a conclusion that the Respondent No.1 had more than 3 children after the cut of date i.e. 13-9-2001.

5 The said order passed by the Additional Collector dated 25-1-2016 was taken exception to by the Respondent No.1 by filing an Appeal under Section 16(2) of the said Act. The said Appeal came to be allowed by the Additional Commissioner, Pune Division, Pune by the impugned order and resultantly set aside the order passed by the Additional Collector, Kolhapur. The Additional Commissioner has set aside the order only on the ground that only in respect of the first child Kum. Dipika the certificate was produced from the Competent Authority. The Additional Commissioner thereby refused to consider the material which was placed on record by the Petitioner and which has been adverted to in the earlier part of this order. A reading of the order passed by the Additional Commissioner discloses that the same is sans any reasons as to why the other material produced by the Petitioner could not be taken into consideration whilst considering the application for disqualification.

6 In my view therefore, the interest of justice would be served if the impugned order dated 14-9-2016 is set aside and the matter is relegated back

to the Additional Commissioner for a denovo consideration of the Appeal.

Hence the following directions:

(i) The impugned order dated 14-9-2016 passed by the Additional Commissioner, Pune Division, Pune, is set aside and the matter is relegated back to the Additional Commissioner for a denovo consideration of the Appeal.

(ii) The Additional Commissioner on remand is directed to decide the Appeal within two months of the parties appearing before the Additional Commissioner. The parties to appear before the Additional Commissioner on 6-2-2017, the period of two months would start to run from then.

(iii) In so far as the Respondent No.1 is concerned, the order of disqualification passed against him was set aside. He continued to be a member of the Grampanchayat. The same position would be continued, but would be subject to the result of the Appeal.

(iii) Needless to state that the contention of the parties are kept open for being urged before the Additional Commissioner. The Additional Commissioner may decide the Appeal on its own merits and in accordance with law.

7 The Petition is allowed to the aforesaid extent. Rule is accordingly made absolute in the aforesaid terms with parties to bear their respective costs of the Petition.

[R.M.SAVANT, J]