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

WRIT PETITION NO.2489 OF 2017

Momin Khalid Ahmed Altaf Husain,
Age 24 years, Occu. Labourer,
R/o Hajira Mohalla, Faizpur,
Tq. Yaawal, District Jalgaon

... PETITIONER

VERSUS

1. The Collector,
Jalgaon, District Jalgaon
2. The Deputy Director of Health Services and
Deputy Chief Registrar, Birth and Deaths,
Office of the State Health Information &
Vital Statistics, Maharashtra State,
Pune - 1
3. The Chief Officer and Registrar
Birth and Deaths, Municipal Council,
Faizpur, Tq. Faizpur, Dist. Jalgaon.
4. The Chief Officer,
Dondaicha Municipal Council,
Dondaicha, Tq. Sindhkheda,
District Dhule.
5. Kalimkhan Haidarkhan Manyar,
Age major, Occu. Business,
R/o Madarwada, Faizpur,
Tq. Yawal, District Jalgaon.

... RESPONDENTS

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Shri Y.B. Bolkar, Advocate for petitioner
Shri C.S. Kulkarni, A.G.P. for respondents No.1 and 2
Shri Milind M. Patil (Beedkar), Advocate for respondent No.3
Shri Milind Patil, Advocate for respondent No.4
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((2))

CORAM: PRASANNA B. VARALE AND
 MANISH PITALE, JJ.

DATED : 8th OCTOBER, 2018.

JUDGMENT (PER MANISH PITALE, J.) :

1. Rule. Rule made returnable forth and heard finally by consent of learned counsel for the parties.

2. By this petition, the petitioner has challenged the order dated 13.6.2014, issued by respondent No.4, whereby entry made in birth register pertaining to alleged third child born to respondent No.5 has been cancelled. The said entry assumes significance, because the existence or otherwise of the same would determine as to whether the respondent No.5 would be disqualified to hold the office of an elected Councillor in the Municipal Council, Faizpur, Taluka Yawal, District Jalgaon, the office to which he stood elected in the year 2016. The disqualification would be incurred under the provisions of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (hereinafter referred to as the Act for short).

3. Since the stakes are high for respondent No.5, the elected Municipal Councillor and the petitioner, the defeated candidate in the said elections, the arguments advanced by the

contesting parties have been vehement. A few facts leading to the present Writ Petition need to be appreciated for deciding the present Writ Petition.

4. The respondent No.5 has been an elected Municipal Councillor of the Faizpur Municipal Council, Taluka Yawal, District Jalgaon in the elections held in the year 2011 and 2016. He has been elected from Ward No.4-A of the said Municipal Council. It is an admitted position that the petitioner herein lost the election in the year 2016 against the respondent No.5. The case of the petitioner is that, the respondent No.5 has more than two children, as a result of which he has incurred disqualification to stand for election of a Municipal Council under the provisions of the aforesaid Act of 1965.

5. Although it is claimed by the petitioner that the respondent No.5 has sired 4 children, in the present case, we are concerned with the birth entry of the alleged third child Sayma Anjum, said to have been born on 23.12.2004 to the respondent No.5 and his wife. The allegations regarding fourth child made by the petitioner herein is not the subject matter of the present Writ Petition and, therefore, this Court refrains from considering the said allegations.

6. The basis for the petitioner to claim that the said

Sayma Anjum was a girl child (third in number) born to the respondent No.5 is a birth entry in the birth register maintained by the Dondaicha Municipal Council. The said entry was said to have been made on 14.1.2005 on an oral information provided by one Mehboob Rahman, allegedly the father-in-law of respondent No.5. It has come on record that, one Salim Ismail Pinjari had applied to the said Municipal Council in January 2012 for addition of name of child and the permanent address of the parents of the said child and that such modification was made in the aforesaid entry. The respondent No.5 received this information on 19.4.2012 from the said Dondaicha Municipal Council and according to him, this was the handy work of his political rivals including the said Salim Ismail Pinjari who was allegedly related to the petitioner herein. In fact, said Salim Ismail Pinjari had submitted an application before the respondent No.1 Collector, Jalgaon for disqualification of respondent No.5 on the basis of the said birth entry showing the birth of third child to the respondent No.5. On 25.4.2012, the said Salim Ismail Pinjari withdrew the said complaint made before the respondent No.1 Collector.

7. On 12.7.2012, the respondent No.5 applied for deletion of the said entry in the birth register of the Dondaicha municipal Council. In this context, on 23.4.2014, the respondent No.4 sent a letter to the Deputy Director of Health Services and Deputy Registrar, Births and Deaths Office, Pune, seeking

guidance in respect of the said application for deletion of entry in birth register made by respondent No.5. On 21.4.2014, the respondent No.2 i.e. Deputy Director of Health Services and Deputy Registrar, Births and Deaths, Pune sent a letter to the respondent No.4 providing guidance by directing the respondent No.4 to call for documentary and other evidence for considering the application for deletion of entry in the birth register, including police enquiry, if necessary, and then to make any change in the entry. The respondent No.2 also directed that appropriate action be taken as per the Circular dated 9.9.2009, issued by the office of respondent No.2 and further that, proper action be taken against those found responsible for providing false information. On 13.6.2014, the respondent No.4 issued the order/ letter addressed to the respondent No.2, stating that the aforesaid entry of alleged third child pertaining to respondent No.5 was cancelled as the original entry taken in the register on 14.1.2005 for the birth of the child on 23.12.2004 was not supported by convincing evidence. It is this order/ letter which is the subject matter of the present Writ Petition.

8. It would be relevant to refer to certain subsequent events. In 2015, a dispute was raised regarding disqualification of respondent No.5 for having more than 2 children, particularly in the context of the birth of the aforesaid girl allegedly on 23.12.2004. On 22.2.2015, the Collector passed an order holding

that the respondent No.5 was disqualified from the post of Municipal Councillor on the basis of birth of the aforesaid third child. The appeal filed by the respondent No.5 was dismissed by the Hon'ble Minister on 8.5.2017. The respondent No.5 filed Writ Petition No.7857/2017 before this Court challenging the order of the Collector and that of the Hon'ble Minister. During the pendency of the said Writ Petition, on 17.2.2017, the present Writ Petition was filed challenging the said order/ letter dated 13.6.2014 issued by the respondent No.4, whereby entry in the said birth register pertaining to the said girl child had been cancelled. On 23.3.2017, the respondent No.2 i.e. Deputy Director of Health Services and Deputy Registrar, Births and Deaths, Pune filed its reply in the present Writ Petition, stating that the impugned order dated 13.6.2014, deleting the entry in the birth register had been passed without following proper procedure.

9. The Writ Petition No.7857/2017 filed by the respondent No.5 before this Court was allowed by the learned Single Judge of this Court by judgment and order dated 13.7.2017 and the orders passed by the Collector and the Hon'ble Minister, disqualifying the respondent No.5 as Municipal Councillor were quashed and set aside. Although a reference was made to various facts of the present case, including deletion of the said entry in the birth register, the validity of the order/ letter dated

13.6.2014, deleting the birth entry, was not decided. It is in this backdrop that the present Writ Petition has come up for hearing before us.

10. Heard counsel for the parties. It has been vehemently argued on behalf of the petitioner that the impugned order/ letter dated 13.6.2014 is wholly unsustainable because the respondent No.4 has not followed the mandate of the Registration of Births and Deaths Act, 1969 the rules framed thereunder, the requirements of Circular dated 9.9.2009 and the specific guidance given by respondent No.2 in its letter dated 21.4.2014, while passing the said order. It is submitted that, the said order/ letter dated 13.6.2014 does not divulge any reason for deleting the entry of the said third child born to respondent No.5 on 23.12.2004. It was submitted that, the said entry has been made on oral information given by the father-in-law of respondent No.5 on 14.1.2005 and that, therefore, such entry could not have been deleted by the impugned order in such a casual manner by the respondent No.4.

11. On the other hand, it was argued on behalf of respondent No.5 that the entire entry pertaining to alleged third child born to respondent No.5 was bogus and that it was the handy work of political rival of respondent No.5 like the petitioner. It was submitted that, the name of the person mentioned in the

entry who had given oral information on 14.1.2005 was not the father-in-law of respondent No.5. It was further submitted that, the very entry in the birth register was not made by following the mandatory procedure laid down in the Registration of Births and Deaths Act, 1969 and the rules framed thereunder. It was further submitted that, the said alleged entry was later added/ modified/ tampered with on the basis of application made in January 2012 by one Salim Ismail Pinjari who was related to the petitioner, thereby showing that the entire dispute sought to be raised by the petitioner was nothing but a dirty political game.

12. Perusal of the documents and the original record produced by the respondent No.4 shows that, there is indeed an entry made on 14.1.2005 in the birth register of respondent No.4 Dondaicha Municipal Council showing birth of a child named Sayma Anjum as born on 23.12.2004. The said entry shows the name of respondent No.5 as father of the said child and there is overwriting in the column pertaining to the permanent address of the parents of the child. The name of Mehboob Rahman is recorded as the person who has given oral information regarding such entry. The letter dated 19.4.2012 issued by the respondent No.4 Dondaicha Municipal Council under the Right to Information Act to the respondent No.5 shows that the name of the girl child and permanent address of her parents in the said entry were taken on an application dated 7.1.2012, submitted by one Salim

Ismail Pinjari. The original record produced by the respondent No.4 Municipal Council also shows that an application was submitted by the said Salim Ismail Pinjari on 22.2.2012 seeking information regarding the said entry in the birth register, wherein statements were made by the said person that the respondent No.5 was resident of Faizpur and that information regarding the entry was required for some Government purposes. Thus, the record does show existence of the aforesaid entry and modifications made therein in the year 2012. The claim of respondent No.5 is that the entry itself is bogus, while it is contended on behalf of the petitioner that the said entry pertains to third child born to respondent No.5, thereby disqualifying him from being a Municipal Councillor.

13. The manner in which the entries and modifications therein are to be made in the birth register, is governed by the provisions of the Registration of Births and Deaths Act, 1969, Rules framed thereunder and Circular dated 9.9.2009 issued by respondent No.2, which was placed on record by the contesting parties. There is lack of material on record to support the exact manner in which the said entry in the birth register was taken pertaining to the child Sayma Anjum, the modifications/alterations made therein and the manner in which the entries itself stood deleted by the impugned order dated 13.6.2014.

14. It is in this backdrop that the letter dated 21.4.2014, issued by the respondent No.2 to the respondent No.4 assumes significance. In fact, the said letter was issued in response to a specific letter sent by the respondent No.4 to respondent No.2 seeking guidance in respect of the application for deletion of aforesaid entry made by the respondent No.5. In the said letter dated 21.4.2014, sent by the respondent No.2 to respondent No.4, it was clearly stated that the respondent No.4 was expected to call for documentary and other evidence for verifying the claims of the rival party, including police enquiry, if necessary, and upon following the procedure laid down in Circular dated 9.9.2009 issued by respondent No.2, appropriate action was expected to be taken.

15. But, a perusal of the impugned order dated 13.6.2014 does not show any kind of detailed enquiry conducted by respondent No.4 while directing deletion of the aforesaid entry in the birth register maintained by the respondent No.4. Neither respondent No.5 nor any other party has been called upon by the respondent No.4 to verify the genuineness of the said entry in the birth register. It has been simply stated that, convincing evidence has not been found as regards the said entry and, therefore, the same was deleted. It is evident that, the direction contained in the letter dated 21.4.2014 sent by the respondent No.2 for conducting detailed enquiry was not followed by

respondent No.4.

16. The manner in which entries are to be made in the birth register, as noted above, has been specified in the Act, Rules and the Circular dated 9.9.2009. The respondent No.4 was expected to verify the material on record and to call for further documentary and oral evidence and thereupon to give a decision on the question as to whether the entry could be sustained or that it deserves to be deleted, but the aforesaid exercise was admittedly not carried out while passing the impugned order dated 13.6.2014.

17. As a result, there is no alternative but to set aside the impugned order dated 13.6.2014 and to call upon the respondent No.4 to conduct a detailed enquiry by calling upon the respondent No.5 and the petitioner to adduce documentary and oral evidence in support of their rival claims pertaining to the aforesaid entry in the birth register concerning alleged third child born to respondent No.5. The respondent No.4 should conduct the enquiry by applying the provisions of the Registration of Births and Deaths Act, 1969 and Rules framed thereunder, as also the Circular dated 9.9.2009, before rendering findings on the said issue. Since the findings on the said issue have irreversible effect on the eligibility of the respondent No.5 to contest elections for Municipal Council and other local bodies, the

respondent No.4 is expected to carry out the exercise in a detailed manner and by adhering to principles of natural justice.

18. Accordingly, the letter dated 13th June 2014, issued by respondent No.4, thereby cancelling birth entry of 3rd child of respondent No.5 is quashed and set aside.

19. The matter is remitted back to respondent No.4 for passing orders afresh by considering the guidance provided by the Deputy Director of Health Services, Maharashtra State, Pune-1, under communication dated 21st April 1969 and Rules thereunder, as expeditiously as possible and not later than eight weeks from the order of this Court.

20. We further direct respondent No.1 the Collector, Jalgaon not to take any coercive steps against respondent No.5, till the fresh orders are passed by respondent No.4 and two weeks thereafter. We further make it clear that while passing order afresh, respondent No.4 may grant liberty of hearing to the petitioner as well as respondent No.5. If any adverse order is passed, the petitioner and respondent No.5 are at liberty to avail an appropriate remedy. The liberty to file the documents in which the parties would like to rely upon is granted. Needless to state that all the contentions raised by the parties are kept open.

21. Rule made absolute in above terms.

22. The original record submitted by respondent No.4 for the perusal of this Court shall be returned to the respondent No.4 forthwith.

(MANISH PITALE)
JUDGE

(PRASANNA B. VARALE)
JUDGE

fmp/-