

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

42 WRIT PETITION NO. 3431 OF 2017

DEVIDAS SAMBHAJI LOKHANDE
VERSUS
SHUDDHODHAN GAUTAM BANSODE MINOR U/G
GAUTAM GYANOBA BANSODE AND OTHERS

...
Advocate for Petitioners : Mr. G. R. Syed.
Advocate for Respondent No.1 : Mr. Anil M. Gaikwad.
Advocate for Respondent No.3 : Mr. S. N. Lale.
...

CORAM : **V. K. JADHAV, J.**
DATE : 15th January, 2018.

ORDER:

. By way of this writ petition, the Petitioner has challenged the order passed by the learned Judicial Magistrate, First Class, Loha, District Nanded dated 13th October, 2015 below Exhibit 1 in O.M.C.A. No.180 of 2015.

2 Brief facts giving rise to the present writ petition are as follows:

The Respondent No.1 herein has filed an application under Section 13 of the Registration of Births and Deaths Act, 1969 before the Magistrate stating therein that though the date of birth of the Applicant is 25th August, 2001, the same is not recorded with the Respondent Gram Sevek, Gram Panchayat Office, Shambhargaoon.

The Respondent / Gram Sevak though served with the notice, failed to appear in said O.M.C.A. No.180 of 2015. The learned Judicial Magistrate First Class has allowed the application by impugned order dated 13th October, 2015 directing the Respondent / Gram Sevak to take entry in respect of date of birth of Applicant to be 25th October, 2001 as observed in the order. Hence, this writ petition.

3 The learned counsel for Petitioner submits that the mother of Respondent No.1 / Applicant has contested the Gram Panchayat election of village Shambhargaon and elected as a member. The Petitioner herein has raised the dispute about her disqualification on the ground that she gave birth to third child after the cutoff date. The learned counsel submits that though the Gram Sevak of Gram Panchayat, village Hatani, Taluka Loha, District Nanded has issued a birth certificate as informed to him and on the basis of the entry taken by Anganwadi Sevika, the Respondent No.1 or the mother of Respondent No.1 has not brought these facts to the notice of the Magistrate. Consequently, the learned Magistrate has decided the said application in routine and casual manner as a non-contentious petition. The learned counsel submits that village Hatani is the parents' place of the mother of Respondent No.1.

4 The learned counsel for Respondent No.1 submits that during the course of inquiry about birth certificate issued by the Gram Sevak, village Hatani, the statements of the then Gram Sevak and Anganwadi Sevika came to be recorded and they have specifically stated in their respective statements that under pressure the said incorrect birth entry was taken. The learned counsel submits that after due proclamation, none has raised the objection in the said O.M.C.A. No.180 of 2015. The present Petitioner was not diligent to raise the objection in said pending O.M.C.A. No.180 of 2015 when the proclamation was issued and thus, considering the evidence placed on record, the learned Magistrate has rightly directed to Respondent / Gram Sevak to take entry in respect of date of birth of Applicant to be 25th October, 2001. No interference is required.

5 On careful perusal of the contents of O.M.C.A. No.180 of 2015 and the impugned order passed thereon, I find that Respondent No.1 herein has not disclosed all the material facts in his application to the Magistrate. Admittedly, in the month of August 2015, the Petitioner has raised the dispute about the disqualification of the mother of Respondent No.1 solely on the ground that she had a third child after the cutoff date. If the same would have been disclosed in the

application, the Magistrate would have issued notice to the present Petitioner or the Magistrate would have taken care in deciding the application. It further appears that though there is a birth certificate issued by the Gram Sevak, village Hatani, which is admittedly the place of the parents' resident of the mother of Respondent No.1, the then Gram Sevak of the said village and the Anganwadi Sevika, belatedly given their statements in the so-called inquiry that under the political pressure, they have taken the incorrect entry in the record. It is for the learned Magistrate to consider as to whether they have recorded the said entry under pressure or whether now they have changed their versions under pressure.

6 In view of the above, this Court left with no other alternative but to remand the matter to the learned Magistrate with some directions. Hence, the following order:

ORDER

- I. The writ petition is hereby partly allowed. No costs.
- II. The impugned order is hereby quashed and set aside and the matter is remitted back with the

following directions:

- a) Re-admit O.M.C.A. No.180 of 2015 to its original number.
- b) The Petitioner and Respondent No.1 herein shall appear before the learned Magistrate in said O.M.C.A. No.180 of 2015 on 15th February, 2018.
- c) The Petitioner herein is at liberty to file his written statement / objection, if any.
- d) The learned Magistrate is directed to dispose of said O.M.C.A. No.180 of 2015 after giving an opportunity of being heard to both the sides on its own merits without getting prejudiced by the observations made by this Court while disposing of the present writ petition.

III. The writ petition is accordingly disposed of.

[V. K. JADHAV, J.]

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