

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 10692 OF 2018

RAJU CHANGDEV ANAP
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioners : Mr. Shaikh M.A. Jahagirdar.
AGP for Respondent Nos. 1 to 4 : Mr. K.S. Patil.

CORAM : RAVINDRA V. GHUGE, J.
Dated : 25th September, 2018.

PER COURT :

1. The petitioner is aggrieved by the order dated 02/07/2018, passed by the Additional Commissioner, Nashik, by which, his Appeal under Section 16 of the Maharashtra Village Panchayat Act, challenging the judgment of the District Collector dated 17/04/2018, disqualifying the petitioner for having more than two children from the date of the application under Section 14 (1) (j-1), has been rejected.

2. The strenuous submissions of the learned counsel for the petitioner are that his fourth child was born on 28/01/2002. The cut off date was 13/09/2001 and on the said date, his wife was

already carrying and the fourth child was born on 21/08/2002. As such, it was beyond his control and hence, the birth of the fourth child cannot lead to his disqualification. It is also submitted that the Additional Divisional Commissioner has rejected the Appeal of the petitioner on the ground that it was filed after 15 days from the date of the order of the District Collector and hence, he had no jurisdiction to invoke Section 5 of the Limitation Act and condone the delay. Grievance is that the 15 days period is to be computed from the date of the knowledge of the order and hence, the Appeal is within limitation.

3. Learned counsel appearing on behalf of respondent Nos. 1 to 4 submits that Section 16 of the Maharashtra Village Panchayat Act, does not provide for condonation of delay. As the Revenue authorities do not fall within the definition of Court, Section 5 of the limitation Act cannot be invoked for condonation of delay assuming that the Revenue authority is a Court.

4. I find that the submission of the learned AGP is sound. Unless the concerned authority is not defined as the Court under the Limitation Act, it cannot invoke of Section 5 for enlarging the time period and for condoning the delay. Similarly, there is no

provision under the Maharashtra Village Panchayat Act to accept the Appeal beyond the limitation period of fifteen days. The impugned order, therefore, cannot be faulted.

5. Notwithstanding the above, I find that the contention of the petitioner as regards the cut off date with reference to the number of children, is fallacious. Sub-Section (j-1) was introduced under Section 14 (1) on 13/09/2000, by Maharashtra 44 of 2000. The said proviso reads as under :

“(j) has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement 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 taken into consideration for the purpose of disqualification mentioned in this clause.”

6. It is, therefore, obvious that a person can be disqualified as a member of the Panchayat, if he has more than two children, provided that he was having more than two children on the date of the commencement of the said provision which is 13/09/2000 and the said number of children did not increase after the introduction of the said provision. As such, if the candidate has more than two children on the date of the commencement of the Sub-Section j-1, he would not incur disqualification if the number of children he had on the date of commencement, did not increase.

7. In the instant case, the petitioner already had three children as on 13/09/2000, which is the commencement date. He was insulated against disqualification under the first proviso to j-1, if the number of his children did not increase. His fourth child has born on 28/01/2002. He, therefore, cannot take advantage of the one year extension granted by the State in order to protect elected candidates, if the third child is born between 13/09/2000 to 12/09/2001. As such, even on the merits of the petitioner’s case, the petitioner cannot protect himself against disqualification as the

fourth child is born on 21/08/2002. In view of the above, this petition is devoid of merit and is therefore, dismissed.

(RAVINDRA V. GHUGE, J.)

S.P.C.