IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 13446 OF 2017

Abdul Aziz Abdulla Alkesari ...Petitioner

versus

The State of Maharashtra and others ...Respondents

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Mr. R.S. Deshmukh, advocate for the petitioner
Mr. N.T. Bhagat, A.G.P. for respondent Nos. 1 to 4
Mr. D.P. Palodkar, advocate for respondent No.9
(Respondent Nos. 5 to 8 are deleted as per Court's order dated 17.11.2017)

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CORAM : V. K. JADHAV, J.

Date of Reserving the Order : 08.01.2018

Date of pronouncing the Order: 30.01.2018

PER COURT :-

1. By consent of the parties, heard finally at admission stage.

2. Being aggrieved by order dated 18.10.2017 passed by the Additional Divisional Commissioner No.1, Aurangabad thereby confirming the order dated 28.06.2017 passed by the Additional Collector, Aurangabad in disqualification Case No. 126, thereby disqualifying the petitioner as a member of the Gram Panchayat, the petitioner has preferred this writ petition.

3. Brief facts giving rise to the present writ petition are as follows:-

a) In the general elections of Gram Panchayat Ajintha, Tq. Sillod, District Aurangabad, held in the month of August, 2015, the petitioner got elected from ward No.1 and subsequently also elected as Up-Sarpanch of the said Gram Panchayat. Respondent No.9 herein filed a complaint with the Additional Collector, Aurangabad contending that the petitioner has third child born after the cut of date and therefore, the petitioner is disqualified as a Member of the Gram Panchayat.

b) In response to the notice issued by the Additional Collector, Aurangabad in disqualification petition, the petitioner appeared in the matter and filed his reply. The Additional Collector by order dated 28.6.2017, on the basis of material placed before him has allowed the disqualification petition and disqualified the petitioner as member of Gram Panchayat on the ground that he has third child, born after the cut of date.

c) The petitioner being aggrieved by the order passed by the Additional Collector has preferred appeal bearing No. 25 of 2017 under Section 16(2) of the Maharashtra Village Panchayat Act before

the Additional Divisional Commissioner, Aurangabad. The learned Additional Commissioner vide order dated 20.07.2017 has granted status quo till disposal of said appeal. However, by order dated 18.10.2017, the learned Additional Divisional Commissioner, Aurangabad has dismissed the appeal and confirmed the order passed by the Additional Collector. Hence, this writ petition.

4. Learned counsel for the petitioner submits that the Additional Collector has failed to appreciate the Government Circular dated 24.4.2017 in which it is made clear that the Additional Collector is not having power to entertain the matter relating to Election of Gram Panchayat and therefore, the petition filed by the respondent No.9 before the said authority is not at all maintainable. The Additional Collector has not considered the report dated 16.8.2016 submitted by the Circle Officer, Ajintha. Both the lower authorities have failed to appreciate that the petitioner is not having third child and is having two children viz. Fatema and Abdul Raheman, only. The petitioner's name is Abdul Aziz Abdulla Alkesari and not Abdul Aziz Bin Abdullaha Al-Kesari Chous. Learned counsel further submits that on 11.10.2010 only one child is born in Ajintha village and that is at “Sarai Mohalla” and as per the entry in R-15 and R-16, the name of his father is “Aziz Khan Shoukat Khan” and the name of mother is “Gousiya Khan” are recorded” The child, which as been referred in

the complaint, is of “Aziz Khan Shoukat Khan” and not of the petitioner. Even there is no entry in the record of Gram Panchayat or any kind of evidence in respect of third child of the petitioner.

5. Learned counsel for respondent No.9, who is the only contesting party in this writ petition, submits that the family members of the petitioner, including the petitioner, are actively involved in the politics and some of them got elected due to influential role of the petitioner in politics. The father of petitioner was Sarpanch of village Panchayat for ten years and also the Administrator of the said Village Panchayat for two years. Respondent No.9 has also given details in respect of children of petitioner in the affidavit in reply at page 127 of the compilation. Though the third child born on 11.10.2010 to the petitioner, intentionally the petitioner has not registered the details of said third child with the Gram Panchayat and consequently, the details of same are not recorded with the Gram Panchayat. Learned counsel submits that the petitioner was unaware of Form No.16 maintained at Primary Health Center. When the complainant received information about Form No.16, the petitioner has manipulated Form No.15 and thereby the petitioner tried to pretend that the said child is born to Gausiya and entry in Form No.16 related to Gausiya and respondent No.8. Learned counsel submits that third child of the petitioner is also possessing valid passport and travelled

abroad but the passport office is not supplying the information. Learned counsel therefore, prayed for dismissal of writ petition.

6. I have also heard learned A.G.P. for respondent Nos. 1 to 4.

7. The learned counsel for the petitioner has vehemently submitted that the petitioner had filed an application on 20.01.2016 under the provisions of the Right to Information Act to the Medical Officer, Primary Health Center, Shivana and sought complete and detail information regarding the alleged third child, whose birth date is 11.10.2010 and belonging to “Sarai” area alongwith the names of the parents. The aforesaid Primary Health Center had provided information to the petitioner mentioning the names of the father and mother of the said child as Aziz Khan Shaukat Khan and Gausiya Aziz Khan, respectively, resident of Sarai Mohalla, Ajintha. The petitioner had filed similar application on the same day to the concerned Anganwadi Sevika and sought information regarding birth entry and the names of the parents of the said child. The Anganwadi Sevika vide communication dated 28.01.2016 provided the information and documents of birth and death entry register wherein also it has been specifically

mentioned that on 11.10.2010 one child is born in Sarai Mohalla at Ajintha and the name of the father of the child is Aziz Khan Shaukat Khan and the name of the mother of child is Gausiya Khan. The learned counsel for the petitioner has also submitted that one Aziz Khan who is biological father of the said child born on 11.10.2010, had also filed an application on 12.01.2016 to the Medical Officer, Primary Health Center, Shivana and sought relevant documents. Accordingly, the said Medical Officer has provided the said documents to Aziz Khan Shaukat Khan on 13.01.2016. The learned counsel submits that the affidavit of said Aziz Khan Shaukat Khan is also placed before this Court wherein he has categorically stated that on 11.10.2010 he and his wife Gausiya blessed with a male child.

8. The learned counsel for Respondent No.9 - original complainant submitted that the petitioner is a prominent political leader of Sillod Taluka, District Aurangabad and belongs to an influential political family. The father of petitioner was Sarpanch of village Panchayat Ajintha for a period of ten years. After the demise of the father of petitioner, his real cousin Faisal Bin Hamid Alkesari Chaus entered in the active politics and he was also

elected as a Member of Panchayat Samiti, Sillod in the year 2002. Thereafter, one more real cousin of the petitioner became Sarpanch of village Panchayat, Ajintha in the year 2005. According to the learned counsel, the petitioner has one daughter and two sons and the third child, whose name is Umar @ Munna born on 11.10.2010 i.e. after the cutoff date. Respondent No.9 had secured the information under the Right to Information Act from the Medical Officer, Primary Health Center, Shivana, Taluka Sillod, District Aurangabad and as per the details provided, it appears that one more son born to the petitioner on 11.10.2010. However, the entry of the said son neither taken in Form No.15 nor in any other record. It is the case of Respondent No.9 that the petitioner being an influential political leader of Sillod Taluka, has destroyed most of the proofs with regard to birth of third child after the cutoff date. However, fortunately, the petitioner was unmindful of Form No.16 maintained by the Primary Health Center and when Respondent No.9 received the information under the Right to Information Act about Form No.16, the petitioner has manipulate Form No.15. The petitioner has tried to pretend that the said child is born to one Gausiya and Aziz Khan. The learned counsel submits that From No.15 is also doubtful.

9. On the backdrop of these rival submissions, I have carefully gone through all the documents. Though most of the documents including Form No.15 are in favour of the petitioner, however, in Form No.16 maintained by Primary Health Center, Shivana, the relevant entry is of 11.10.2010 wherein the name of the child is shown as Munna Aziz Chaus. The petitioner has not tendered any explanation to the entry taken in Form No.16. On the other hand, the learned counsel for the petitioner has vehemently submitted that the petitioner's name is Abdul Aziz Abdulla Alkesari and his name is not Aziz Chaus as mentioned. However, Respondent No.9 - original complainant has submitted his affidavit in reply pointing out therein specifically the real cousin and uncle of the petitioner elected time to time in Grampanchayat and also in Panchayat Samiti, Sillod by showing their full name with surname Alkesari alongwith Chaus. Both the authorities below have given importance to the entry taken in birth entry register No.16 maintained by the Primary Health Center, Shivana, Taluka Sillod, District Aurangabad. Furthermore, the Additional Commissioner, Aurangabad has also observed about scoring and erasing in Form No.15 and opined that the said document appears to be a

suspicious document. In view of the concurrent findings recorded by both the lower authorities on facts, I am not inclined to interfere in those findings of fact while exercising the writ jurisdiction. Hence, the following order:

O R D E R

The writ petition is hereby dismissed. No costs.

(V. K. JADHAV, J.)

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