

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

WRIT PETITION NO. 14101 OF 2018

Ujwala Laxman Bobade

...Petitioner

VERSUS

The Additional Divisional
Commissioner 1 Revenue
Aurangabad and others

...Respondents

Mr. V.B.Kulkarni, advocate for Petitioner

Mr. S.B.Pulkundwar, AGP for Respondents-State

Mr. Nitin Chaudhari, advocate for Respondent no.7

Coram : N.M. Jamdar, J.

Date : 19 December 2018.

Oral Order :

By this petition, the petitioner has challenged the order passed by the Divisional Commissioner, Aurangabad, remanding the proceedings to the Collector. The impugned order is passed on 15. October 2018.

2. The petitioner-complainant has made a complaint that respondent no.7 gave birth to third child after the cut off date stipulated under the Act and he should be disqualified on that ground.

3. The Collector, by the order, dated 30 January 2018 held that the respondent stands disqualified. Appeal was filed by the respondent to the Additional Commissioner, in which the Additional Commissioner has opined that there are inconsistencies in the record, which the first fact finding authority ought to have considered in detail.

4. Learned counsel for the petitioner sought to contend that all these documents were looked into by the Collector and decision was taken and there was no need for remanding of the proceedings.

5. Disqualification on the ground where third child was born after the cut off date entails factual investigation. In the impugned order, the Additional Commissioner has noted that the entry in the District Hospital was on 10 July 2001. There is also entry on 12 December 2002. The Additional Commissioner opined that in view of the inconsistent record, it is necessary to examine the original record and to check the same properly before taking a

decision.

6. So far as the order of the Collector is concerned, the Collector has referred to the birth date of 10 July 2001. Thereafter, he has referred to the application made for change of it and the register of the District Hospital. The Collector, after referring to these documents has observed that one of the documents has only a torn page and other entries are not available and from this he has straight away concluded that possibility cannot be ruled out that to save the elected post, the respondent may have tampered the birth record. Therefore, the Collector has proceeded on the basis of presumption that it is likely that respondent has tampered with the record.

7. The drastic step of disqualification of an elected representative cannot be so casually decided solely on the presumption of likelihood of tampering of the record. The Additional Commissioner, therefore, was right in remanding the matter to the Collector to hold an inquiry in detail and not merely on presumptions.

8. The grievance of the petitioner-complainant that this

course of action would inure to the benefit of respondent-elected representative, cannot be a sole ground to set aside the order of remand. This grievance can be met with by time bound schedule for disposal of the matter before the Collector. The Collector will decide the application on remand within a period of six weeks from today, subject to earlier time bound directions.

9. It is clarified that what is observed in this order is only to sustain the order of remand and it is not to be construed as a reflection on merits of the proceedings pending before the Collector.

10. Writ Petition is accordingly disposed of in above terms.

N.M.Jamdar, J.