

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 2882 OF 2017

Dattatraya Veerbhadra Konmare ...Petitioner

versus

Vijay s/o Vishwanath Mule and others ...Respondents

.....
Mr. P.G. Rodge, advocate for the petitioner
Mr. R.K. Ashtekar, advocate for respondent No.1
Mr. S.B. Madde, advocate for respondent No.4.
Mr. K.G. Patil, advocate for respondent No.5.
.....

CORAM : V. K. JADHAV, J.
DATED : 8th FEBRUARY, 2018

PER COURT:-

1. By consent of the parties, heard finally at admission stage.
2. By this writ petition, the petitioner is challenging the judgment and order dated 28.12.2015 passed by the Additional Collector, Latur in application No. 2015/GPE/CR/20 and the judgment and order dated 03.11.2016 passed by the learned Additional Commissioner, Aurangabad in appeal No. CR/28/2016, thereby confirming the order passed by the Additional Collector.
3. Brief facts giving rise to the present writ petition are as follows:-

a) The elections of the Gram Panchayat, Kaulkhed, Tq Udgir, District Latur, were held in the month of April, 2015. The petitioner and respondent Nos. 1 to 3 have contested the elections for the post of Member from ward No. 1 of the said Gram Panchayat and respondent No.1 herein came to be elected as a member from ward No.1 of the Gram Panchayat. According to the petitioner, respondent No.1 has suppressed material fact and by misleading the authorities, has contested the said Gram Panchayat election from ward No.1. Respondent No.1 was not eligible and qualified to contest the elections of the said Gram Panchayat, as his third son viz. Dipak born after the cutoff date and in view of the provisions of Section 14 (j-i) of the Maharashtra Village Panchayat Act 1958 (hereinafter for short, referred to as the "the Act of 1958"), respondent No.1 has incurred disqualification.

b) The petitioner therefore filed application No. 2015/GPE/CR/20 before the learned Additional Collector, Latur on 20.5.2015 requesting therein to disqualify respondent No.1 on the aforesaid ground. The petitioner has also produced on record various documents to substantiate his contentions. Respondent No.1 has appeared before learned Additional Collector, Latur and submitted that the third child was born to him before the cutoff date and in the

school record, the date of birth of his third child was wrongly mentioned and thus by making an application to the Education Officer through the Head Master on 30.4.2015, he got corrected the said date of birth. The learned Additional Collector, by the impugned order dated 28.11.2015 rejected the application of the petitioner.

c) Being aggrieved by the said judgment and order, the petitioner preferred an appeal before the Additional Divisional Commissioner, Aurangabad under Section 16(2) of the Act of 1958. The learned Commissioner by judgment and order dated 3.11.2016 dismissed the said appeal and confirmed the judgment and order passed by the learned Additional Collector, Latur. Hence, this writ petition.

3. Learned counsel for the petitioner submits that the petitioner has placed before the Additional Collector, a copy of application form which has been submitted by respondent No.1 to the school authority i.e. Zilla Parishad Primary School at Kaulkhed on 15.6.2007, wherein the date of birth of the third child of respondent No.1 viz. Dipak is mentioned as 27.5.2002. Similarly, the petitioner has also placed on record the extract of admission register of Vishwanath Chawla Primary School, Udgir in which the date of birth of the third child of respondent No.1 is shown as 27.5.2002. The petitioner has also

placed on record the school leaving certificate issued by the said school. Thereafter, the third child of respondent No.1 admitted in Sangram Smarak Vidyalaya, Udgir in 6th standard, wherein the date of birth of his third child is also shown as 27.5.2002. Further the Gram Sevak of Gram Panchayat, Kaulkhed, who has maintained the register of death and birth, has issued the birth certificate on 6.8.2015 wherein the date of birth of the third child of respondent No.1 Dipak Mule is shown as 27.5.2002.

4. Learned counsel for the petitioner submits that even in the record maintained by Anganwadi Sevika, under Integrated Child Development Scheme, the date of birth of the third child of respondent No.1 is shown as 27.5.2002. However, both the authorities below have not given due weightage to the aforesaid documents and passed the impugned orders. Learned counsel submits that the authorities below have given much emphasis to the correction of date of birth of third child of respondent No.1 viz. Dipak in the school record by the Education Officer, Zilla Parishad, Latur. Learned counsel submits that the Education Officer in a very casual manner has directed to correct the date of birth in the school record. The Education Officer has not considered and verified the birth record from the Gram Panchayat as well as from Anganwadi Center. Both the authorities below have not considered the authenticated

record which was produced by the petitioner. Learned counsel submits that respondent No.1 has deliberately submitted application to the Education Officer for correction of date of birth of third child belatedly and got corrected the said date from the Education Officer as 27.5.2001 instead of 27.5.2002.

5. Learned counsel for respondent No.1 submits that the date of birth of third child of respondent No.1 viz. Dipak is 27.5.2001 and in the school record, the date of birth is wrongly shown as 27.5.2002. Original relevant record of birth and death register, issued by the Gram Panchayat authorities, is placed on record. As per the original record, the entry in the death and birth register maintained by the competent authority, the date of birth of third child of respondent No.1 is 27.05.2001 i.e. before the cutoff date. Learned counsel submits that both the authorities below have gone through the original record of death and birth register and rejected the applications submitted by the petitioner. Learned counsel submits that the Education Officer, after considering original birth register passed the order for correcting the date of birth in school record of third child of respondent No.1 viz. Dipak. Thus, considering the correction in the date of birth and the original extract, both the lower authorities have rightly come to the conclusion that there is no substance in the complaint. Learned counsel submits that the

petitioner is only harping upon the school record but he has not produced original extract of birth register alongwith the writ petition. Learned counsel submits that the extract of birth and death register maintained by the Gram Panchayat, as placed alongwith the petition, is a false document.

Learned counsel for respondent No.1, in order to substantiate his submissions, placed reliance on the judgment of this Court in the case of ***Smt. Vasudha Gorakhnath Mandvilkar vs. The City and Industrial Development Corporation of Maharashtra Limited, reported in 2008 (5) All MR 358.***

6. I have also heard the learned counsel for other respondents.

7. During pendency of this writ petition, this Court by order dated 18.09.2017 permitted the petitioner herein to implead the Education Officer by name as respondent No.5 and also directed the added respondent No.5 Education Officer to file his personal affidavit. By order dated 10.10.2017 this court has also directed the Gram Sevak to personally remain present alongwith original record as regards birth and death register of the said date.

8. In consequence of above orders passed by this Court,

respondent No.5 Education Officer has filed his affidavit in reply and has contended therein that on 30.04.2015 an application was received from the Head Master of Sangram Smarak Vidyalaya, Udgir, seeking permission for correcting the date of birth of Dipak Vijay Mule in the school record on the ground that his date of birth has been wrongly recorded as 27.5.2002 instead of 27.5.2001. The said application was accompanied by various documents, prominent amongst them is birth certificate issued by the Gram Sevak, Gram Panchayat, Kaulkhed, wherein the date of birth of third child Dipak is mentioned as 27.05.2001. Respondent No.5 Education Officer has thus concluded on the basis of said birth extract and other relevant documents that the date of birth of student Dipak is wrongly entered as 27.5.2002 instead of 27.5.2001 at the time of admission of the child in the school and the same is for the reason that grandfather has wrongly mentioned the date of birth of the said child. The said application has been entertained by respondent No.5 under Rule 26.3 and 26.4 of Secondary School Code and in accordance with the procedure prescribed under Appendix-six to the Code. Respondent No.5 has stated in his affidavit in reply that in view of the procedure prescribed seeking change in the date of birth, the basic document regarding date of birth is certificate issued by the competent authority under the Registration of Birth and Deaths Act 1969 and the Rules thereunder, who at the village level is Gram Sevak. The Gram Sevak

of the concerned Gram Panchayat has issued certificate on 12.4.2015 wherein the date of birth has been certified as 27.5.2001.

9. In view of the aforesaid order passed by this Court, the concerned Gram Sevak has also produced original record before this court. In the light of affidavit in reply filed by respondent No.5 Education Officer and on careful perusal of original record of Birth and Death Register of Gram Panchayat Kaulkhed, I find that by registration No.16, the date of birth of third child of respondent No.1 Dipak is recorded as 27.5.2001. There are in all 39 entries in the said register and entry about birth date of child of respondent No.1 is duly recorded under the signature of Village Development officer, Gram Panchayat, Kaulkhed as '27.5.2001' on 31.5.2001.

10. The petitioner has produced before this Court one another birth certificate allegedly issued by the Village Development Officer, Gram Panchayat, Kaulkhed wherein the name of Dipak Vijaykumar Mule is mentioned as 27.05.2002. On careful perusal of the said birth certificate, it appears that the registration number of said certificate is mentioned as 22 whereas in original record of birth register, as referred above, the registration number 22 pertains to the child of one Gunwant Maruti Kamble and date of birth is mentioned as 2.6.2001 and the said baby is female one. The petitioner has not

explained as to how he got the said copy of birth certificate, which apparently is not in accordance with the original record maintained by the Gram Panchayat, Kaulkhed.

11. So far as the entries taken by Anganwadi Sevika under the Integrated Child Development Scheme is concerned, on careful perusal of document of the said scheme, it appears that Anganwadi Sevika is supposed to look after the mother of newly born child and also to help the parents and to confirm whether the entry of such birth of child has been taken in the birth and death register maintained by the competent authority. I am not inclined to give much importance to the entry taken by Anganwadi Sevika in her record about date of birth in terms of the said scheme. The Anganwadi Sevika is not supposed to maintain the record of birth date of the newly born child nor there is any document produced on record to indicate on what basis the Anganwadi Sevika has taken aforesaid entry of date of birth of third child of respondent No.1 in her record.

12. The petitioner has filed his complaint in the month of May, 2015 whereas respondent No.1 has initiated the proceeding for correction of date of birth of his third child in the month of April, 2015 itself. In view of original record of birth and death maintained by the

Gram Panchayat, Kaulkhed, respondent No.1 has filed an application for change of date of birth under the provisions of Rules 26.3 and 26.4 of the Secondary School Code, through the Head Master. The petitioner has relied upon those documents, wherein the date of birth of third child of respondent No.1 has been recorded incorrectly. Both the authorities below have rightly given weightage to the entries taken in the birth and death register maintained by the competent authority.

13. In the case of ***Smt. Vasudha Gorakhnath Mandvilkar vs. The City and Industrial Development Corporation of Maharashtra Limited, (supra)***, relied upon by learned counsel for respondent No.1, the Division Bench of this Court has given weightage to the certified copy of birth certificate issued by the Municipal authority as a document and given weightage to the same until it is rebutted. It has been held by the Division Bench of this Court that copies of the documents i.e. school leaving certificate etc. cannot be taken authentic unless verified from the authenticated documents.

14. In view of above discussion, I do not find any substance in this writ petition and the same is liable to be dismissed. Hence, the writ petition is hereby dismissed. In the circumstances, there shall be

no order as to costs.

15. The original record of Gram Panchayat of village Kaulkhed, Tq. Udgir, District Latur, be returned to the said Gram Panchayat forthwith.

(V. K. JADHAV, J.)

rlj/