

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 6794 OF 2017

SUBHASH HANMANTRAO MORE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Gaikwad Anil M.
AGP for Respondents 1 to 3 : Shri Tambe S.K.
Advocate for Respondent 4 : Shri Deshmukh Umakant B.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: June 11, 2018
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PER COURT :-

1. On 9.10.2017, I had passed the following order:-

"1 The Petitioner is aggrieved by the order dated 19.11.2016 passed by the Additional Commissioner, Aurangabad, by which the appeal filed by Respondent No.4 seeking disqualification of the Petitioner for having a third child, is allowed and the order of the Additional Collector, Nanded dated 04.05.2016 by which the Petitioner's election was sustained, has been quashed and set aside.

2 I have heard the learned Advocates for the Petitioner, Respondent No.4/ Caveator and the learned AGP on behalf of Respondent Nos.1, 2 and 3.

3 The Petitioner, who is an elected member to the Gram Panchayat under the Maharashtra Village

Panchayats Act, has come up with a specific case of having only two sons, namely, Dnyaneshwar and Yogeshwar born on 25.10.2002 and 07.10.2006, respectively.

4 *Respondent No.4 contends that the third child, which is a girl child, namely, Vaishnavi was born to the Petitioner and his wife, namely, Rekha on 05.10.2008.*

5 *The Petitioner has taken a stand that Vaishnavi was born to the father of the Petitioner, Hanumantrao, who was 65 years of age and his mother, Panchaphulabai, who was about 60 years old. Vaishnavi is, therefore, the sister of the Petitioner and not his biological daughter. The Petitioner further contends that unless the birth certificate, which is maintained in the statutory record, is not set aside, any other document produced by Respondent No.4 cannot be relied upon.*

6 *I find a peculiar case having been brought before me wherein, an elected candidate contends that the alleged third child, namely, Vaishnavi is born to his parents, who are both senior citizens.*

7 *In this situation, the law can take the assistance of medical science as is held by this Court [Coram : Ravindra V. Ghuge, J. (Myself)] in Namdeo Babasaheb Korde and another vs. Babasaheb @ Babarao Ramkrishna Korde and others, (Writ Petition No.7402/2012 decided on 21.12.2013), **2015 (1)***

Mh.L.J. 888, relying on the law laid down by an Australian Judge in Buckly vs. Rice Thomas, (1554) 1. Plowden 118.

8 Considering the law laid down by this Court, a DNA test of the Petitioner (Subhash) and his wife (Rekha) as well as his parents, namely, Hanumantrao and Panchphulabai can be ordered so as to trace out the biological parents of Vaishnavi, who is said to be about 09 years of age today.

9 Before I order this DNA test, which I intend to do on the next date by giving an opportunity to the Petitioner to think over this issue, the Petitioner as well as Respondent No.4 are preempted that if pursuant to the DNA test, either of the parties is found to have attempted to mislead the Authorities and this Court, this Court would not hesitate to impose costs of at least Rs.5 lac as well as direct registering of a criminal offence for the fraud being played on the Government as well as the Court. I make it clear that this would happen only if this Court comes to a conclusion that a fraud was so played.

10 Since all the parties have appeared in this matter, it is deemed that they have waived service of notice.

11 Stand over to 08.11.2017 for passing orders. The Petitioner would be at liberty to take instructions and make a statement on the said date.

12 Needless to state, in the event, the position

which has fallen vacant, is filled in by the statutory authorities by holding any election, the same shall be subject to the result of this petition and no equities would be created in favour of the newly elected candidates.”

2. Learned counsel for the petitioner submits on instructions that he desires to withdraw this petition and accept the verdict of the authorities below, by which, he has been disqualified from contesting elections on account of having a third child.

3. Learned counsel for respondent No.4 opposes the said withdrawal on the ground that the petitioner would once again contest some election notwithstanding the said disqualification. I find that the apprehension of respondent No.4 is misplaced since the law now disqualifies the petitioner and his wife from contesting any election, for which, a disqualification on account of having a third child after the cut off date is prescribed.

4. With the above observations, the petition is dismissed as withdrawn.

(RAVINDRA V. GHUGE, J.)

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