

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

WRIT PETITION NO.5499 OF 2004

1. Ashok Govindrao Karad,
age 48 years, Occ. Agri.
2. Dattatraya Nagorao Sonawane,
age 33 yrs, Occ. Agri.

Both r/o Gadepimpalgaon,
Tq. Parli, District Beed.

..Petitioners/orig.
applicants.

VERSUS

1. Anshiram Baburao Mote,
age 35 yrs, Occ. Agri,
R/o Gadepimpalgaon, Tq. Parli,
District. Beed.

Resp.1/orig.non-
applicant.

2. The State of Maharashtra,
Through the Collector, Beed.

Respondents.

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Advocate for Petitioners : Mr. Vivek V. Bhavthankar
Advocate for Resp. No. 1 : Mr. Amol Bhagat h/f H V Patil
Mr A B Chate AGP for respondent No.2.

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CORAM : V.K. JADHAV, J.

Dated : December 04, 2019

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JUDGMENT :-

1. Respondent no.1 had contested the election
of the Member of the Grampanchayat, Gadepimpalgaon,
Tq. Parli, District Beed from Ward No.2 and he got
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elected in the year 2002. Respondent No.1 had filed nomination for the said election on 7.11.2002 with the declaration that he is having two issues. Respondent no.1 also given declaration that if new child borns after the cut of date i.e. 12.9.2001, then he will be disqualified for the post of the Member of the Grampanchayat. The petitioners, who are also the Members of the said Grampanchayat filed an application before the Collector, Beed under section 14 and 16 of the Maharashtra Village Panchayat Act, 1958 praying therein for disqualification of respondent no.1 on the ground of birth of third child after the cut of date. According to the petitioners that third child was born to respondent no.1 on 24.4.2003 in the private hospital of one Dr. Sou Deshmukh from Parli Town, District Beed and after birth of the said child on 24.4.2003 said Doctor Deshmukh had informed about the birth/delivery in the hospital to the Municipal Council, Parli, which is the competent authority to record entry in its record. After receipt of the said information from the private hospital of Dr. Deshmukh, birth entry was

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taken in the relevant record of the Municipal Council, Parli and, accordingly said Municipal Council, Parli has issued a birth certificate dated 18.7.2003 of said third child of respondent no.1. However, by order dated 20.2.2004 the Additional Collector, Beed in No.2003/GB/Desk-2/GPN/CR-9/2003 rejected the application filed by the petitioners and the Additional Commissioner, Aurangabad by order dated 18.8.2004 dismissed the appeal preferred by the present petitioners. Hence, this writ petition.

2. Learned counsel for the petitioners submits that both the parties below have discarded the important evidence in the form of the entry of birth of third child of respondent no.1 taken in the record of Municipal Council, Parli Vajjnath, District Beed. Said entry was recorded in terms of the information received from Dr. Deshmukh Hospital, Parli Vajjnath, where third child of the respondent no.1 was born. Learned counsel submits that, even the relevant record of the Municipal Council, Parli was placed before this Court at the time

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of admission of this writ petition and on the basis of the said birth entry taken in the register of the Municipal Council, Parli matter was admitted and register was returned to the Municipal Council with the condition that as and when needed, said record will be called. Learned counsel appearing for the petitioners further submits that respondent no.1 has incurred disqualification on account of birth of the third child after the cut off date and as such this petition deserves to be allowed by quashing and setting aside the orders passed by the authorities below.

3. Learned counsel appearing for respondent no.1 supports the order passed by the authorities below. Learned counsel submits that the petitioners have failed to prove birth of the third child of respondent no.1. Birth certificate produced by the petitioners before the authorities below is held to be not genuine. Learned counsel submits that it is the practice followed by every hospital to submit the report of the birth in their hospital at the end of each month to the concerned

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Municipal Council or the Grampanchayat for recording entry in the birth and death register. But in the present case, report itself is forwarded by Dr. Deshmukh only with an intention to create the false document. So far as reports sent by Dr. Deshmukh in the month of April 2003 to the Municipal Council, Parli is concerned, there is no entry of birth of a female child to the wife of present respondent no.1, but after nine months Dr. Deshmukh made a statement of birth of a female child to the wife of the respondent no.1, and, as such, the authorities below have rightly discarded the said evidence. There is no substance in this writ petition. Writ Petition is liable to be dismissed.

4. I have also heard the learned AGP appearing for respondent No.2.

5. I am not inclined to consider this Writ Petition for the reason that in the report sent by Dr. Deshmukh in the month of April 2003 to the Municipal Council, Parli, there is no information of the birth of

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female child born to the wife of respondent no.1. However, belated intimation has been given after a period of nine months, for which no explanation has been tendered. Initially there was no entry about birth of a third child to respondent No.1 in the record of the Municipal Council, Parli. However, only after application dated 7.7.2003 by one Manchak Kadam, entry to that effect was taken in the Municipal Council, Parli about birth of third child on 18.7.2003 and accordingly certificate to that effect came to be issued by the Municipal Council. Thus, the authorities below have rightly discarded the said evidence. There are concurrent findings. There is no reason to interfere in the same. I find no fault in the impugned order. There is no substance in this writ petition. Hence, I proceed to pass the following order.

O R D E R

Writ Petition is hereby dismissed. No costs.

(**V.K. JADHAV, J.**)

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