

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

WRIT PETITION NO.4892 OF 2018

**CHAUSH ARSHIYA BEGUM SAEED
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS**

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Advocate for the Petitioner : Shri D. P. Palodkar h/f.

Shri Sayyed Tauseef Yaseen

AGP for Respondent Nos. 1 to 3 : Shri N. T. Bhagat

Advocate for Respondent No.5 : Shri G. K. Naik Thigle h/f.

Shri D. D. Deshmukh

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CORAM : RAVINDRA V. GHUGE, J.

DATED : 11th JANUARY, 2019.

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PER COURT :

1. On 18/05/2018, this Court (Coram : Sunil K. Kotwal
-Vacation Judge) has passed the following order :-

"1. This Writ Petition is filed for quashment of the order dated 26.04.2018 passed by the Statutory Appellate Authority, dismissing the Statutory Appeal filed by the petitioner under Section 44 (4) of the Maharashtra Municipal Council, Nagar Panchayat and Industrial Township Act, 1965. Interim relief is claimed to allow the petitioner to exercise her right to vote at Biennial elections of Local Authorities Constituencies to be held on 21.05.2018 and other meetings of the Municipal Council and to exercise other rights vested in law with the

Municipal Councillor.

2. *Heard learned Counsel for the petitioner at length, learned A.G.P. for respondent Nos.1 to 3 and learned Counsel Mr.Thigle for respondent No.5. Respondent No.4 - Chief Officer of Beed Municipal Council, District Beed is not yet served with the notice of this Petition.*

3. *Perused the impugned order passed by the Appellate Authority dated 26.04.2018 and the order passed by Collector dated 21.09.2017 holding that the present petitioner is not eligible to work as a Councillor of Municipal Council, Beed. The seat reserved for woman candidate from the reserved category from Ward No.11 was declared as 'vacant' and accordingly the State Election Commission was informed by the Chief Officer, Municipal Council, Beed and the election is scheduled on 21.05.2018.*

4. *The petitioner is held not eligible to work as a Councillor only on the ground that she has third child born after cut-off date i.e. after 12.09.2001. It is alleged by respondent No.5 that third child of the petitioner was born on 14.09.2004 by name "Saad Saeed Choush". To substantiate this contention, number of documents were filed before the Collector including birth certificate issued on 07.12.2016 by Registrar (Birth and Death), Municipal Council, Beed and other school record. The sum and substance of the argument submitted by learned Counsel for the petitioner is that the birth certificate dated*

07.12.2016 relied upon by respondent No.5 is a forged document, as original birth record indicates that name of the father of child was "Akbar Ahmed Shaikh" and name of his mother was "Shabana Ahmed Shaikh" and by bracketing these names subsequently name of "Saad Saeed Chaush" is added and name of the mother is added as "Arshiya Begum". He has also drawn my attention towards certificate issued by Dhoot Hospital, Beed regarding birth of male child to one Shabana Akbar Shaikh in Dhoot Hospital, Beed on 14.09.2004.

5. *At the outset, I must observe that no importance can be given to the certificate issued by Dhoot Hospital, Beed as it is not supported by copy of xerox of original register maintained by the said hospital and affidavit of the concerned doctor. However, from the original birth record, it emerges that certainly initially the name of child was not mentioned. It was recorded only as 'male child' and subsequently "Saad Saeed Mohammad Chaush" was added in the column of the name of child. Name of the father of the child was previously mentioned as "Akbar Ahmed Shaikh" and name of his mother was mentioned as "Shabana Akbar Shaikh". This entry was bracketed and in the record name of Arshiya Begum is added. Information of this birth entry was given by one Salma Mohammad Chaush. However, my attention was drawn towards record of Municipal Council, Beed which indicates that, on an application submitted by husband of the petitioner, which was supported by his affidavit and*

no objection given by Salma Begum Mohammad Chaush (informant) with her affidavit, the above correction was made.

6. *Thus, at this stage it is very hard to accept that original entry in the birth register was tampered by somebody to prepare record regarding birth entry of the so called son of petitioner namely Saad Saeed Chaush.*

7. *Apart from this, from the order of the Collector as well as impugned order passed by Appellate Authority, it emerges that these both concurrent findings are not based only on the birth certificate issued by the Municipal Council dated 07.12.2016, but on various documents including school record showing entry of the name of Saad Saeed Chaush with his date of birth as 14.09.2004, are considered by both Authorities.*

8. *Learned Counsel for respondent No.5 has also drawn my attention towards copies of school record which shows that consistently name of Saad Saeed Chaush is recorded in various school record as son of the petitioner born on 14.09.2004. It is not disputed that the petitioner was having two more children born before 12.09.2001. Correctness of this school record is not disputed by the petitioner. Thus, prima facie the orders passed by Collector as well as the Minister as Appellate Authority, cannot be termed as perverse orders. The other niceties of the matter can be considered only at the stage of final hearing of the petition.*

9. *I hold that interim relief as prayed by the*

petitioner cannot be granted. Hence, prayer for grant of interim relief is rejected.

10. If the elections are declared by the Collector, the petitioner will be at liberty to move this Court for appropriate relief.

11. Issue fresh notice to respondent No.4, returnable on 08.06.2018.

12. Parties to act on an authenticated copy of this order."

2. On 04/01/2019, I had passed the following order :-

"1. This Court (Coram : Sunil K.Kotwal, Vacation Judge), delivered a detailed order on 18/05/2018 and refused interim relief to the petitioner.

2. The election programme has been declared on 29/12/2018 and polling is posted on 27/01/2019. The petitioner moved this matter on 24/12/2018 before this Court (Coram : R.G. Avachat, Vacation Judge), which again refused interim relief to the petitioner

3. I have briefly heard the learned Advocates for the respective sides on 03/01/1990. Issue is as regards a living human being by name Saad, a child of 14 years of age, who is disowned by the petitioner/mother. The child is attending a school for seeking education and the petitioner claims that he is not her biological son. Hence I called upon the learned Advocate for the petitioner to take instructions as to

whether the petitioner and her husband are agreeable to undergo a DNA test in the light of the Law laid down by the Hon'ble Apex Court in Rohit Shekhar Vs. Narayan Datta Tiwari and another [2012(12) SCC 554] and the view taken by this Court in Namdeo Babasaheb Korde and another Vs. Babasaheb @ Babarao Ramkrushna Korde and another [2015(1) Mh.L.J. 888], for considering the request for interim relief.

4. Today, the learned Advocate submits on instructions that the petitioner is not willing to make any statement before this Court, though the prayer for interim relief is maintained.

5. By consent of the parties, stand over to 08/01/2019 for considering the prayers of the petitioner on their merits. This matter shall appear first in the "Urgent Admissions Category".

3. Again on 08/01/2019, I had passed the following order :-

"1. Pursuant to the order dated 4.1.2019, the hearing on the merits of the matter have commenced today. During the course of the hearing, it is revealed that the petitioner neither desires to make a statement that the child Saad is her biological son, nor does she desire to make a statement that the said child Saad is not her son. It is conceded that the petitioner has not made this statement before any of the authorities, who

have dealt with the proceedings pertaining to her disqualification.

2. I have observed in paragraph No.3 of the order dated 4.1.2019 as under:

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"3. I have briefly heard the learned Advocates for the respective sides on 03/01/1990. Issue is as regards a living human being by name Saad, a child of 14 years of age, who is disowned by the petitioner / mother. The child is attending a school for seeking education and the petitioner claims that he is not her biological son. Hence, I called upon the learned Advocate for the petitioner to take instructions as to whether the petitioner and her husband are agreeable to undergo a DNA test in the light of the law laid down by the Honourable Apex Court in Rohit Shekhar Vs. Narayan Datta Tiwari and another [2012 (12) SCC 554] and the view taken by this Court in Namdeo Babasaheb Korde and another Vs. Babasaheb @ Babarao Ramkrushna Korde and another [2015 (1) Mh.L.J. 888], for considering the request for interim relief."

3. In the above backdrop, the issue is, whether this Court should turn a blind eye and accept the contention of the petitioner as is put forth or whether this Court should exercise its jurisdiction so as to do complete justice to the parties. The issue is as to whether Saad is the third

biological child of the petitioner or not? This issue can be dealt with only if the petitioner takes a stand that Saad is either her biological son or is not her biological son. If she declares that Saad is her biological son, the issue as regards his date of birth can be gone into, keeping in view the cut off date 13.9.2000 (though the misconception is that the cut off date is 13.9.2001). If the petitioner takes a stand that Saad is not her biological son in the face of complaint by respondent No.5, who claims to be the close relative of the petitioner, that Saad is the biological son of the petitioner, this Court would have to rely upon the judgment of the Honourable Apex Court in the matter of Rohit Shekhar (supra), so as to arrive at the truth.

4. *In view of the above, an opportunity is being granted to the petitioner to make a statement before this Court as regards, whether Saad is her biological son or not. Learned Advocate for the petitioner seeks time till 11.1.2019 to make such a statement, after gathering information.*

5. *In view of the above, this matter would be listed as a part heard matter on 11.1.2019 to be taken up first after the urgent order's board is done with."*

4. Pursuant to the above, the petitioner Chaush Arshiya Begum w/o Saeed has filed an affidavit dated 11/01/2019

which is tendered by the learned Advocate for the petitioner. The said affidavit is taken on record and is marked as 'X' for identification.

5. The learned Advocate for the petitioner submits on the basis of the affidavit 'X' that the petitioner admits that the boy namely Saad Saeed Chaus is her biological son and his father is her husband namely Saeed Mohammad Chaus.

6. The issue, therefore, is as regards whether, the son Saad is born after the cut off date which is 13/09/2000. It is made clear that the cut off date is not 13/09/2001 and as such it will have to be investigated as to whether, the child Saad is born after the cut off date 13/09/2000. According to the birth certificate issued by the Municipality, Beed under the Maharashtra Registration of Births and Deaths Act, 1969 and the Maharashtra Registration of Births and Deaths Rules, 2000, it is the case of the respondents that Saad is born on 14/09/2004.

7. Shri Thigle, learned Advocate appearing on behalf of

respondent No. 5 submits that there has been no dispute as regards the date of birth of Saad. He further submits that the petitioner will have to be heard by the learned Minister since the impugned order that is passed, was without giving a reasonable opportunity to the litigating sides. He, therefore, submits that if the matter is remanded to the learned Minister for a re-hearing in view of the petitioner admitting that Saad is her biological son, the respondent would substantiate that the birth of Saad is after the cut off date.

8. The learned AGP submits that this petition is devoid of merit and deserves to be dismissed. There is no reason to remand the matter to the learned Minister.

9. I find that the learned Minister has passed the impugned order dated 26/04/2018 after recording that he has heard the litigating sides on 24/10/2017. The petitioner preferred the Appeal in the Apex Court on 23/03/2018 being Special Leave to Appeal No. 5464/18. By an order passed by the Court it was observed that the concerned authority would hear the litigating sides and pass an appropriate order. I find that no

hearing was conducted after 23/02/2018 and yet the impugned order has been passed.

10. In the light of the above, this petition is partly allowed. The impugned order dated 26/04/2018 is quashed and set aside and the Appeal bearing No.MUN-4417/682/Pra.Kra.144/Navi-15 preferred by the petitioner is remitted to the office of the learned Minister for State Urban Development, State of Maharashtra for hearing the litigating sides only on the ground as to whether, the child Saad has been born after 13/09/2000. Since the petitioner has accepted that Saad is her third biological child, the matter shall be restricted only to record the date of birth of the child Saad.

11. The learned Minister would consider all the relevant and statutory records while drawing a conclusion, including the admission of the child in the School record and the number of classes that he is passed as on date. It is made clear that the learned Minister would be at liberty to impose heavy costs on the litigating sides which appears to have played any fraud and is also liberty to direct criminal prosecution if he finds that a

particular litigating side has made a deliberate attempt to mislead the authorities and abuse the process of law.

12. The affidavit 'X' shall be a part of the record and shall be a part of this order.

13. The litigating sides shall appear on 22/01/2019 at 03.00 p.m. before the learned Minister. Formal notices need not be issued. Needless to state, since by two orders the petitioner has been deprived of interim relief noted above, the election shall go on in view of the fact that the truth has now surfaced by the petitioner admitting for the first time that Saad is her biological son. Apparently, therefore, the petitioner has a third child and *prima-facie* as per the records, the child is said to have been born on 14/09/2004, which is four years after the cut off date.

14. The learned Advocate for the petitioner submits that he disputes the record on the basis of which the Municipality, Beed has registered the date of birth of Saad as 14/09/2004.

15. The learned Advocate for the petitioner and respondent No. 5 jointly submit that the learned Minister be directed to decide the proceedings within six weeks from the date of appearance. As such, the said request is accepted and the learned Minister shall decide the said proceedings within six weeks from the date of appearance of the parties.

(RAVINDRA V. GHUGE, J.)

shp/-