

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

947 WRIT PETITION NO.3907 OF 2019

ASHOK BHAUSAHEB ROKADE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Advocate for Petitioner : Shri V.P. Latange
AGP for Respondents – State : Shri K.S.Patil

CORAM : P.R. BORA, J.
Date: March 22, 2019

CORAM : P.R.BORA, J.
DATE: 22nd March, 2019

PER COURT:-

1 The petitioner has filed the present petition challenging the orders passed by the Government authorities holding that the petitioner stood dis-qualified from holding the post of Member of Gram Panchayat being having third child after coming into effect the provisions of Section 14(J-1) r/w Section 16 of the Maharashtra Village Panchayats Act, 1958 (hereinafter referred to as the Act).

2 The learned Counsel appearing for the petitioner submitted that the Government authorities have failed in appreciating that the third child allegedly procreated by the petitioner has been given in adoption and as such on the date of scrutiny of the nomination, the petitioner was having only two children and as

such he could not have been disqualified. The learned Counsel submitted that the Collector as well as the Commissioner both have ignored such submission made on behalf of the petitioner. The learned Counsel in the circumstances prayed for setting aside the order passed by the Government authorities.

3 Shri K.S.Patil, learned AGP appearing for the State has supported the impugned orders.

4 It is not in dispute that the petitioner procreated a third child after the cut-off date. It is the argument on behalf of the petitioner that since the petitioner has given one child in adoption, the numbers of his children are not exceeded two and as such he could not have been disqualified on the ground that he has three children on the date of filing nomination.

5 The aforesaid issue was dealt with by the Hon'ble Apex Court in the case of **Javed Vs. State of Haryana [AIR 2003 S.C. 3057]** and relying on the said Judgment, the similar issue was dealt with by the Division Bench of this Court in the case of **Suleman Abbas s/o.Chiragali Hydary Vs. Pramod s/o. Nandlal Yadav & Ors. [2007 (5) ALL MR 255]**. The Division Bench has held that 'a person giving birth to third child after the cut-off date, even if gives one of his child in adoption, cannot avoid disqualification. The learned Collector, therefore, has rightly dis-qualified the present

petitioner. The learned Additional Commissioner has rightly confirmed the said order. The Writ Petition being devoid of any substance deserves to be dismissed and is accordingly dismissed.

(P.R.BORA)
JUDGE

SPT