

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.12957 OF 2018

VILAS BHIVA NIKAT
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Shri Yadkikar Amit A.
AGP for Respondents 1 to 4 : Shri Girase A.B. a/w Shri Bhagat N.T.
Advocate for Respondent 5 : Shri Latange V.P.

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CORAM : RAVINDRA V. GHUGE, J.
Dated: April 22, 2019
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PER COURT :-

1. On 16.4.2019, I had passed the following order:-

"1. I am constrained to pass this order in the light of a grave and emergent situation, wherein the existence of a child is at stake. His name is Pintya Yuvraj Hanumant Shelke which appears in the Anganwadi record pertaining to the beneficiaries of the Pulse-Polio programme.

2. The petitioner is the original complainant, who has moved the Returning Officer against the acceptance of the nomination form of respondent No. 5 Pushpa on the ground that a third child has been born to her on 13/05/2015, by name, Pintya Yuvraj Shelke. Grievance is that respondent No. 5 has declared on oath that she has only two daughters namely Bhagyashri who is born on 03/04/2010 and the second daughter Sanjivani who is born on 06/03/2012. The Returning Officer has passed an order accepting the nomination form.

3. The petitioner, therefore, approached the Divisional Commissioner, Nashik Division under Section 62 (1)(A) and 62(3) of the Maharashtra Zilla Parishad and Panchayat Samities Act, 1961. By the impugned order, the Divisional Commissioner has rejected the application solely on the ground that as there is no record in the Birth and Death Register maintained by the Grampanchayat or any statutory authority and there is no record to indicate as to whether, the child Pintya is born to respondent No. 5 and her husband.

4. After this matter was heard for quite some time on 19/03/2019, the petitioner as well as, respondent No. 5 were given an opportunity to re think as to whether, either of them has played a fraud on the legal system and whether they are inclined to withdraw from the respective stands taken by them. On 10/04/2019 and 11/04/2019, when the matter was again heard, the learned Advocate for the petitioner submitted on instructions that the petitioner is absolutely sure that the male child Pintya is the biological child of respondent No. 5 Pushpa Yuvraj Shelke and her husband Yuvraj Hanumant Shelke, having been born on 13/05/2015. The learned Advocate for respondent No. 5 Pushpa submits, on instructions, that she is willing to face any enquiry as Pintya is not her biological child born out of her marriage with her husband Yuvraj. I have also made Respondent No. 5 and her husband aware, that I may also order a DNA test.

5. Today, when the matter was called out in the first session, placing reliance upon the decision of this Court in **Writ Petition No. 12077/2017, Bilal Isak Shaikh Vs. The State of Maharashtra and others, (Aurangabad Bench)**, I informed

the learned Advocates that I would be following the same view and may pass similar orders as were passed in the case of Bilal Isak (supra), which judgment dated 05/07/2018, has been sustained by the Honourable Apex Court. It was made clear that if the petitioner or respondent No. 5 is found to have played a fraud on the legal system and abused the process of law, the erring litigant would be subjected to cost of Rs. 5,00,000/- and a criminal offence would be registered against the said person besides rendering him liable for disqualification from contesting the election. The petitioner and respondent No. 5 sought a pass over and after this matter was called out post lunch, both were firm on the stand taken by them and were willing to face legal consequences. For clarity, the petitioner contends that Pintya Yuvraj Shelke is the biological son of respondent No. 5 Pushpa Yuvraj Shelke and her husband Yuvraj Shelke. Respondent No. 5 Pushpa takes a firm stand that Pintya is not her biological son fathered by her husband Yuvraj Shelke.

6. *The petitioner relies upon the register maintained by the fourth respondent Health Officer, Primary Health Center, at post Koregaon, Taluka Karjat, which is maintained with regard to the Pulse Polio Programme for children between age 0 to 05 years. The name of Pintya appears on pages 19 and 29 of the petition paper book which indicates the name of Pintya as having been enrolled in the Pulse Polio Programme by his parents. The petitioner also relies upon a report prepared by the Additional C.O., Zilla Parishad, Ahmednagar who was heading a three members' committee and which is adverted to by the Additional Commissioner, Nashik in the impugned order dated 19/09/2018 wherein the official record indicates that Pintu @ Pintya was a part of the Pulse Polio Programme under*

the aegis of the Integrated Child Development Programme. This prima-facie indicates that Pintu alias Pintya, who is said to be the biological son of Yuvraj and Pushpa Shelke, appears to be a living human being.

7. *I find a serious situation that has occurred in this case because learned Advocate for respondent No. 5 submits that she does not know the whereabouts of the male child Pintya as she is not aware as to whether, such a child exists. She reiterates that she has no knowledge because she is not the biological mother of Pintya. The learned Advocate for the petitioner submits, on instructions, that Pintya is the family member of Pushpa. The learned Advocate for the petitioner submits on instructions that, the child Pintya is not seen openly in the locality though he was residing with respondent No.5.*

8. *He tenders copies of affidavits filed by Sow. Kastur Hanumant Murkute, Sow. Jayashri Gangasingh Pardeshi, Shri Dilip Rajaram Jadhav, Shri Balasaheb Vishwasrao Shelke, Shri Kakasaheb Kashinath Shelke and Shri Shivajirao Anandrao Falke, all residents of post Koregaon, Taluka Karjat in which it is stated that Pintya is the biological son of Pushpa and Yuvraj. A colour photograph is also placed on record, which ex-facie indicates that Pintya is standing in between his father and his mother, Yuvraj and Pushpa respectively, in a temple of Godess Jagdamba, situated at village Rashin, Taluka Karjat, District Ahmednagar. The said documents (13 pages), which comprise of the original affidavits and a colour photograph are taken on record and marked as 'X-1' collectively, for identification.*

9. *Shri Latange learned Advocate appearing on behalf of the*

elected member of the Panchayat Samiti Smt. Pushpa respondent No. 5 submits that his client has received an information that the affiants in the said affidavits are pleading ignorance of the contents of the affidavits. Shri Latange hastens to add that he had received two original affidavits of Kasturbai Murkute and Shri Vikram Udhav Kokate, in which they state that they are not aware about the contents of the affidavits filed by the petitioner as they have not sworn the said affidavits. These two affidavits (4 pages) filed by Shri Latange are taken on record and marked as 'X-2' collectively, for identification.

10. I am, therefore, though inclined to follow the order passed by this Court on 05/07/2018 in the case of Bilal Isak Shaikh (supra). The issue that needs to be addressed immediately/now is the well being of Pintya, with regard to whom respondent No. 5 has claimed that she has no knowledge about the existence of such a child.

11. In view of the above, I deem it appropriate to direct the District Superintendent of Police of Ahmednagar to immediately start a child hunt to trace out Pintya and produce him before this Court. The S.P. Ahmednagar, would be at liberty to interrogate the petitioner Vilas Bhiva Nikat, Pushpa Yuvraj Shelke, Yuvraj Hanumant Shelke and those affiants whose names are appearing in the affidavits. In short, the District Superintendent of Police is permitted to follow the due procedure of law for carrying out investigation and trace out Pintya so as to be produced before this Court on 22/04/2019 at 10.30 a.m.

12. The petitioner as well as respondent No. 5 are informed that if this Court comes to a conclusion while deciding this

petition that either of them have played a fraud on the legal system and abused the process of law, the delinquent litigant would be subjected to costs of Rs. 5,00,000/- besides registering a criminal offence against such a litigant, coupled with further orders as regards disqualification from contesting the elections.

13. Considering the seriousness of the issue, the learned AGP shall act on the authenticated copy of this order and shall ensure that the District Superintendent of Police, Ahmednagar is intimated of the same immediately so that he can initiate appropriate steps forthwith.

14. Stand over to 22/04/2019 in the "Passing Orders category."

15. After the child is produced before this Court, he may be interviewed in the chamber of the Court and this Court, if found necessary, would order a DNA test of the child, Pushpa and Yuvraj."

2. The learned Government Pleader along with the learned AGP, placed an envelope before this Court after the Lunch Session. The envelope was opened before the parties. The District Superintendent of Police, Ahmednagar has submitted his report, dated 22.4.2019, addressed to the learned AGP. The report indicates that a team of officers comprising of the Additional Superintendent of Police, Ahmednagar, the Sub-Divisional Police Officer, Karjat, the Police Inspector, Karjat Police Station and the Police Inspector, Local Crime

Branch, Ahmednagar was formed. The Police Sub-Inspector Shri Karkare was also involved in the investigation, who is present in the Court. A search panchanama of the house of respondent No.5 was prepared and in the said search, the child Pintya was not located. However, certain residents, whose names are mentioned in the report (about 7 of them), were interrogated. The documents maintained with the Integrated Child Development Center were also scrutinized. A *prima facie* view has been arrived at that the child Pintu Yuvraj Shelke is a living human being, though, he has suddenly disappeared from public view. The District Superintendent of Police has, therefore, informed that since the parents are refusing to cooperate in the enquiry and are neither disclosing his whereabouts, nor are they willing to lodge any complaint that the child is missing, it has become cumbersome to register a 'missing' complaint. The Government Circular No. CRT-0912/Pra Kra 54/Pol-13, dated 10.4.2013, requires a missing complaint from the parents, so as to cause further investigation. Yet it is assured that the child would be traced out with further investigation and would be produced before this Court.

3. In view of the above, I conveyed it to the learned Advocate for respondent No.5, who is alleged to be the biological mother of Pintu, that in order to ensure that the child is traced out, this Court would direct the District Superintendent of Police to register a complaint

and begin investigation for a child hunt. If need be, respondent No.5 and her husband would be further interrogated.

4. Noticing that I am taking a serious note, the learned Advocate for respondent No.5 sought time to take instructions. A pass over was granted.

5. This matter was called out after about two hours at 5.00 pm and the learned Advocate for respondent No.5 admitted, on telephonic instructions from respondent No.5 that she would forthwith tender her resignation as Member of the Taluka Panchayat Samiti, Karjat and her third child Pintya is safe.

6. Learned Advocate for the petitioner submits that the intention of the petitioner is not to persecute respondent No.5. He was prosecuting this case only to prove that respondent No.5 has a male child, who is her third child. He submits that this petition can then be disposed off, in view of the statement of respondent No.5 as she stands disqualified.

7. The learned Government Pleader strenuously submits that during this very hectic and testing period of General Elections and the polling day being tomorrow i.e. 23.4.2019, had the fifth

respondent acted wisely, this exercise, which required overnight movements of the Police Officers in deference to the orders of this Court, could have been avoided. The prevailing emergent situation has caused great hardships and pressure on the Police Department and therefore, costs of atleast Rs.5,00,000/- be imposed on respondent No.5.

8. I quite agree with the submissions of the learned Government Pleader since time was granted to respondent No.5 to think and let wisdom dawn upon her. However, since she and her husband stuck to their stand that there was no third child, that I was constrained to pass the order on 3.4.2019. However, now respondent No.5 has tendered her apology, through her learned Advocate with a further statement that her third child Pintya is safe and she would now never disown him.

9. Notwithstanding the above, it cannot be over-looked that respondent No.5 and her husband did attempt to hood-wink the law and abuse the process of law. It, being a clear attempt to lie before the Court, that I am imposing costs of Rs.50,000/- which shall be deposited by respondent No.5 on/or before 15.6.2019 in this Court. By the consent of the parties, the amount shall be donated in equal proportions to the Government Medical College and Hospital,

Aurangabad and the Cancer Hospital, Aurangabad **through Medical Officer, High Court Dispensary, Aurangabad**, either in cash or by Demand Draft (Demand Drafts be drawn in the names of “**Dean, Government Medical College and Hospital Dengi Samiti, Aurangabad**” and “**Shaskiya Karkarog Rugnalaya, Aurangabad Dengi Samitee**”). The learned Registrar (J) shall report compliance to this Court on 21.6.2019.

10. In view of the above, respondent No.5 Pushpa shall tender her resignation as a Member on/or before 26.4.2019. Nevertheless, this petition stands allowed and the impugned order dated 19.9.2018 stands quashed and set aside. Shri Jyotiba Patil, Additional Divisional Commissioner, is cautioned to be careful while dealing with such cases and shall refrain from casually passing orders in such matters. So also, respondent No.5 Pushpa and her husband Yuvraj shall be disqualified from contesting any elections, to which a disqualification for being parents of more than two children, is prescribed.

11. I wish to record that the District Superintendent of Police, Ahmednagar Shri Ishu Sindhu has responded with a great sense of responsibility. His team of officers mentioned in the first paragraph of his report dated 22.4.2019, have done an admirable job having conducted their search for the said child, owing which, it is now

admitted by respondent No.5 that said child is her biological son and is safe.

(RAVINDRA V. GHUGE, J.)

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