

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.2154 OF 2017

Namdeo Sukhdeo Khandekar ... Petitioner

V/s.

The State of Maharashtra and ors. ... Respondents

Mr.Suhas S. Inamdar, Advocate for the Petitioner.

Mr.A.B.Kadam, AGP for Respondent Nos.1 to 3-State.

Mr.Anand S. Kulkarni, Advocate for Respondent No.5.

CORAM : UJJAL BHUYAN, J.

DATE : DECEMBER 09, 2019.

P.C.:-

1. Heard Mr.Suhas S. Inamdar, learned counsel for the petitioner; and Mr.A.B.Kadam, learned AGP for respondent Nos.1 to 3.

2. Mr.Anand Kulkarni, learned counsel submits that though he had initially appeared for respondent No.5, he has returned the brief to respondent No.5.

3. Be that as it may, contesting respondent is respondent No.6. Despite service, he has not appeared to contest the proceeding.

4. By filing this petition under Articles 226 and 227 of the Constitution of India, petitioner seeks quashing of order dated 31st December, 2014 passed by the Additional Collector, Solapur in Grampanchayat Dispute No.9 of 2014 as well as order dated 16th March, 2016 passed by the Additional Commissioner, Pune Division, Pune in appeal.

5. Short point for consideration is whether in the facts and circumstances of the case the authorities below were justified in disqualifying the petitioner as member of Grampanchayat on the ground of having more than two children after the relevant date.

6. Election for seven members of Grampanchayat Hanmantgaon, Taluka Sangola, District Solapur was held in 2010 for five years. Petitioner contested the election and was declared elected. Because of political rivalry respondent No.6 lodged complaint contending that petitioner has four children and therefore, should be disqualified. This complaint of respondent No.4 was registered as Grampanchayat Dispute No.9 of 2014 before the Additional Collector, Solapur. By the order

dated 31st December, 2014, the complaint of respondent No.6 was accepted and petitioner was disqualified.

7. Appeal filed by petitioner before Additional Commissioner, Pune Division, Pune i.e. respondent No.2 was unsuccessful in as much as respondent No.2 dismissed the appeal of the petitioner vide order dated 16th March, 2016 by affirming the order of Additional Collector.

8. Aggrieved, present writ petition has been filed.

9. In the hearing today, learned counsel for the petitioner has furnished English translation of the two orders dated 31st December, 2014 and 16th March, 2016.

10. A perusal of the two orders would go to show that both the authorities below had taken the view that four children were born to the petitioner after 12th September, 2001 and that petitioner had not produced any *prima facie* rebuttal evidence.

11. Learned counsel for the petitioner submits that it would be evident from all official records that he and his wife are parents of only two child, one daughter and one son. This aspect could have been easily verified from the

official record since the other two children who were treated to be children of the petitioner were infact children of his brother.

12. Learned counsel for the petitioner further submits that consequence of disqualification would be that petitioner would be permanently debarred from contesting future election, if this finding remains on record.

13. However, learned AGP supports the two impugned orders.

14. On a thorough consideration, court is of the view that this aspect of the matter requires reconsideration by the original authority i.e. Additional Collector, Solapur. Consequently, both the orders are set aside. Matter is remanded back to the Additional Collector, Solapur, who shall decide Grampanchayat Dispute No.9 of 2014 afresh and in accordance with law within a period of six weeks from the date of receipt of an authenticated copy of this order. Petitioner would be at liberty to produce such additional evidence as is considered necessary to prove this case.

15. Let the petitioner appear before the Additional Collector, Solapur in connection with Grampanchayat Dispute No.9 of 2014 on 7th January, 2020 at 10.30 a.m.
16. Writ Petition is disposed of.

(UJJAL BHUYAN, J.)

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