

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

WRIT PETITION NO.6758 OF 2019

Mr.Sandip Vasant Umbre ... Petitioner
V/s.

Addl. Commissioner,
Pune Division and ors. ... Respondents

Mr.S.P.Kadam i/by Ms.Sneha Bhange, Advocate for the
petitioner.

Mr.A.B.Kadam, AGP for Respondent Nos.1,2 and 4.

Mr.Suresh Sabrad, Advocate for Respondent No.3.

CORAM : UJJAL BHUYAN, J.

DATE : NOVEMBER 19, 2019.

P.C.:-

1. Heard Mr.S.P.Kadam, learned counsel instructed by Ms.Sneha Bhange, learned counsel for the petitioner; also heard Mr. A.B.Kadam, learned AGP for respondent Nos.1,2 and 4; and Mr. Suresh Sabrad, learned counsel for respondent No.3.

2. By filing this petition under Article 227 of the Constitution of India, petitioner has assailed legality and

correctness of order dated 27th March, 2019 passed by respondent No.1-Additional Commissioner, Pune Division, Pune in Gram Panchayat Appeal No. 14 of 2018.

3. Case of the petitioner is that petitioner was elected as the member of Grampanchayat and Sarpanch of Grampanchayat Kunenama, Taluka Maval in the district of Pune on 17th October, 2017. After the election, respondent No.3 filed a Dispute Application under Section 14(j-1) of the Maharashtra Village Panchayats Act, 1959 (briefly “the Act” hereinafter) challenging the election of the petitioner on the ground of having more than two children; the dispute was filed before the Collector of Pune i.e. respondent No.2. Petitioner contested the dispute of filing his say and denying the allegations of respondent No.3.

4. Respondent No.2 passed order dated 4th September, 2018, whereby the Dispute Application was allowed and the petitioner was disqualified as member of the Grampanchayat as well as Sarpanch.

5. Making his grievance on various grounds, petitioner challenged the aforesaid order dated 4th September, 2018 by filing appeal before respondent No.1, which was registered as Grampanchayat Appeal No.14 of 2018. Initially, status-quo order was passed by respondent No.1 on 25th September, 2018. However, by the impugned order dated 27th March, 2019, respondent No.1 dismissed the appeal by confining the order passed by the respondent No.2.

6. Aggrieved, present writ petition has been filed.

7. A perusal of the appellate order would go to show that respondent No.1 took the view that petitioner was the father of the third child (Avni) and in the birth certificate the name of his wife was mentioned as the mother of the child. Accordingly, the appeal was dismissed.

8. It is the case of the petitioner that there was a clerical error in the hospital at the time of birth of the third child. At the relevant time, sister-in-law of the petitioner was traveling with the petitioner and his wife when she was in an advanced stage of pregnancy. Because of labour pain, she had to be admitted in a hospital at Khopoli and while taking admission signature of the petitioner's wife was obtained as guardian of the patient. When the delivery was made, inadvertently the petitioner and his wife were shown as parents of the child by the hospital. Petitioner filed an application before the Judicial Magistrate First Class, Khalapur, Raigad for correction of name of parents of the child, which was registered as Civil Inquiry Application No.239 of 2018. However, the said application was dismissed on 9th April, 2019 with the observation that petitioner should approach the concerned authority of Khopoli Town Council.

9. According to the petitioner, he approached the Authority- Khopoli Town Council thereafter and the

Khopoli Town Council has since issued corrected Birth Certificate showing the actual parentage of the child-Avni, which is not the petitioner and wife, but sister-in-law.

10. During the hearing it has come to light that following disqualification of the petitioner, Election Officer has been appointed and he has issued election schedule to fill up the vacancy consequent upon disqualification of the petitioner.

11. However, in the light of the subsequent developments as indicated above, the court is of the view that the matter is required to be re-examined by the Appellate Authority i.e. respondent No.1 afresh taking note of the subsequent developments.

12. At this stage, learned counsel for respondent No.3 submits that during the entire proceeding before respondent No.2 petitioner was silent regarding parentage of the third child.

13. Be that as it may, when the court is confronted with the subsequent developments, court is of the view that it would be in the interest of justice if the matter relating to disqualification of the petitioner is re-examined afresh.

14. Consequently, the Appellate Order dated 27th March, 2019 passed by respondent No.1 is set aside and the matter is remanded back to respondent No.1 for hearing the appeal afresh in accordance with law.

15. Since both the parties are before the court, they are directed to appear before respondent No.1 on 10th December, 2019 at 10.30 a.m. whereafter respondent No.1 shall proceed with the appeal filed by the petitioner in accordance with law.

16. Needless to say, since the Appellate Order has been set aside, all consequential actions would be kept in abeyance till disposal of the appeal.

17. Writ Petition is disposed of.

(UJJAL BHUYAN, J.)

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