

FARAD CONTINUATION SHEET No.
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 3302/2017

(PRADIP KUMAR PREMDAS MESHARAM **VERSUS** DIVISIONAL COMMISSIONER, NAGPUR
 DIVISION, NAGPUR & ANOTHER)

 Office Notes, Office Memoranda of Coram,
 appearances, Court's orders of directions
 and Registrar's orders

Court's or Judge's orders

 Shri V.R. Borkar, counsel for petitioner.
 Shri D.P. Thakare, Additional G.P. for R-1.
 Shri I.N. Choudhari, counsel for R-2.

CORAM : A.S. CHANDURKAR, J.

DATE : APRIL 09, 2019.

Heard finally with consent of the learned counsel for the parties.

The petitioner who was elected as Member of Panchayat Samiti Tirora, Tahsil Tirora, District Gondia in elections that were held on 30.06.2015. In the said election, the petitioner defeated the respondent no.2. The respondent no.2 thereafter filed proceedings under Section 16(1)(n) read with Section 40 of the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961 (for short, 'the said Act') seeking disqualification of the petitioner on the ground that he had more than two issues after the cut-off date and hence was not entitled to continue as Member of the Panchayat Samiti. The petitioner filed the reply to the aforesaid proceedings stating therein that though he had three children, one child had been given in adoption by executing a valid adoption-deed. On the date of election, the petitioner therefore had only two issues. The Divisional Commissioner after considering the material on record came to the conclusion that since the petitioner had three issues and one of them was born after the cut-off date, the petitioner was liable to be disqualified under Section 16(1)(n) of the said Act.

Hence, by order dated 28.11.2016, the petitioner was disqualified. That order is challenged in the present writ petition.

Shri V.R. Borkar, learned counsel for the petitioner submitted that in view of the valid adoption-deed followed by a gazette notification indicating the fact that one child of the petitioner was adopted by his uncle, the disqualification in question ceased to operate. It was further submitted that the petitioner was not sought to be removed by filing an election petition and instead remedy under Section 40 of the said Act was invoked. Placing reliance on the decision in *Shrikrishna Wasudeo Dhage Versus Shivcharan Trimbakrao Kalne & Others* [2010(3) Mh.L.J.281], it was submitted that the Divisional Commissioner had no jurisdiction to disqualify the petitioner. The petitioner could have been removed only by filing an election petition that could have been tried in the District Court. On this count, it was submitted that the impugned order was liable to be set aside.

On the other hand, Shri D.P. Thakare, Additional Government Pleader for respondent no.1 and Shri I.N. Choudhari, learned counsel for respondent no.2 supported the impugned order. Shri I.N. Choudhari submitted that mere fact that one child was given in adoption would not wipe out the disqualification as per the explanation to Section 16(1)(n) of the said Act. Only the person who takes the child in adoption can contend that the adopted child does answer the definition of the expression "child". He further submitted that the proceedings under Section 16(1)(n) of the said Act were rightly initiated by invoking the provisions of Section 40 of the said Act and for said purpose he referred to the decision in *Vishwas Laxman Bhagat Versus Devendra Gana Bhagat & Others* [2016(4) Mh.L.J. 178]. It was thus submitted that the impugned order did not warrant any interference.

Heard the learned counsel for the parties and perused the documents on record. The petitioner has not disputed the fact that he has three issues. It is however his case that one child was given in adoption. He had only two children on the date of filing the nomination form. The provisions of Section 16(1)(n) read with Explanation thereto indicate that it is only the person who has taken a child in adoption is exempted from the rigours of that provision. The expression “child” excludes an adopted child and the intention behind that is not to disqualify a person taking a child in adoption. In the present case, the petitioner is the natural father of three children and hence the disqualification is rightly attracted. The observations of the Hon'ble Supreme Court in *Javed & Others Versus State of Haryana & Others* [AIR 2003 SC 3057] apply to the case in hand. As regards the submission that the remedy of filing an election petition under Section 15 of the said Act ought to have been availed of, that contention cannot be accepted. The disqualification as prescribed under Section 16(1)(n) of the said Act disentitles an elected member from continuing as such. The grievance in that regard can be made under Section 40 of the said Act. The Divisional Commissioner therefore had the jurisdiction to examine the question of disqualification and pass orders thereon. The ratio of the judgment in *Vishwas Laxman Bhagat* (supra) applies to the case in hand. In that view of the matter, there is no reason found to interfere with the order of disqualification as passed by the Divisional Commissioner.

The Writ Petition is therefore dismissed. No costs.

JUDGE