

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

925 WRIT PETITION NO.416 OF 2019

SUVARNA INDRAJEET ALIAS BALAJI BAIKARE
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

WITH WP/489/2019

...
Advocate for Petitioner : Mr. Nagargoje Ankush N.
AGP for Respondents-State : Mr. K.B.Jadhavar.
Advocate for Respondent No.4 & 5 : Mr. Irpatgire A.N.

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CORAM : V. K. JADHAV, J.
DATE : 24.01.2020

PER COURT :-

1. The learned counsel for the petitioners submits that the learned Single Judge of this Court has passed an order on 28.02.2019, by which, a request was placed before the Hon'ble Chief Justice under Chapter I Rule 8 for considering the formation of the Larger Bench. In view of the same, by the order of the Hon'ble Chief Justice, the larger Bench came to be constituted. The Larger Bench has answered issue Nos.2 and 3 in the following manner. Issue Nos.2 and 3 reproduced herein below :

“(2) Whether the clause of disqualification can be attracted, considering the number of birth of the children irrespective of whether any of the children have died or whether a child who has died and is not in existence on the date of the filing of the nomination papers, will have to be excluded from the number of children procreated by the candidate ?

(3) Whether such demise of the child can be excluded by interpreting the word ‘had’ appearing in the proviso so as to be read as ‘has’ appearing in Section 16(1)(k) ?”

2. The Larger Bench in paragraph No.53 of the judgment held as below :

“We, therefore, hold that the demise of a child can be excluded while computing the number of living children in these three Acts and the number of children that a candidate has on the date of the filing of the nomination paper, would be reckoned. We answer issue Nos.2 and 3 accordingly.”

3. The learned counsel submits that in the facts of the instant Writ Petitions and since the issue Nos.2 and 3 are answered by the Larger Bench, as aforesaid, both the Writ Petition deserves to be allowed. The learned counsel for respondent Nos.4 and 5 and the learned AGP for respondent Nos.1 to 3-State have also not disputed this legal position.

4. In view of the above, both the writ petitions are allowed in terms of prayer clause 'A'. Both the Writ Petitions are accordingly disposed off.

(V. K. JADHAV, J.)

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vmk/-