

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

134 WRIT PETITION NO.7507 OF 2020

PRATAP DITA BARELA
VERSUS
SHEPABAI BHARAT BARELA AND ANOTHER

...
Advocate for Petitioner : Mr. Wani Girish V.

.....

CORAM : V. K. JADHAV, J.
DATED : 4th NOVEMBER, 2020

PER COURT:-

1. I have heard the learned counsel for the petitioner.
2. The petitioner is resident of Jamnya, Tq. Yawal, District Jalgaon and respondent No.1 is the Sarpanch of the said village, elected in the general elections held in the year 2017. The respondent No.1 in her nomination form had furnished false information that she is having two children. The petitioner therefore, moved an application for disqualification of respondent No.1 under the provisions of Section 14(J-1) of the Maharashtra Village Panchayat Act, 1958 bearing No. 144 of 2018. The learned Collector, Jalgaon, before whom the proceeding were initiated, has called report from the Chief Executive Officer, Zilla Parishad, Jalgaon. Thereafter, the learned Collector, heard both sides and by order dated 13.5.2019 has allowed the application and disqualified the respondent No.1.

3. Being aggrieved by the order dated 13.5.2019 passed by the Collector, Jalgaon, respondent No.1 herein preferred an appeal before the Additional Commissioner, Nashik Division, Nashik bearing appeal No. 34 of 2019. After hearing both sides, the learned Additional Commissioner, has remanded the matter back to the Collector, Jalgaon. Hence, this writ petition.

4. Learned counsel for the petitioner submits that the learned Additional Commissioner has remanded the matter on flimsy grounds. Learned counsel submits that the report submitted by the Chief Executive Officer, Zilla Parishad, Jalgaon clearly established the fact that respondent No.1 is having third child after the cut off date. Learned counsel submits that the birth certificates of all three children came to be produced on record as well as the entries in the Register maintained under the scheme of Integrated Child Development Programme were also produced on record to establish the fact that respondent No.1 is having third child after the cut off date i.e. 12.9.2001. Learned counsel submits that school leaving certificate produced before the Commissioner is false and fabricated document. However, on the basis of said false and fabricated documents, the learned Commissioner has passed remand order. Learned counsel submits that the said certificate was produced before the Collector and the learned Collector upon perusal of the same passed the order of disqualification. Learned counsel submits that thus the remand order is unwarranted and uncalled for.

5. I have carefully considered the submissions advanced by the learned counsel for the petitioner. With his able assistance, I have perused the pleadings, grounds taken in the writ petition and annexures thereto.

6. I have perused the report submitted by the Chief Executive Officer, Zilla Parishad, Jalgaon, annexed at page 14 (Exhibit "B"). It appears that even before the Chief Executive Officer, respondent No.1 has given a statement that the said child viz. Rajnandini is the daughter of brother of her husband. However, neither the Chief Executive Officer has examined the said issue in detail nor there is any discussion in the report in that regard. On perusal of the order passed by the Collector, it appears that though respondent No.1 has raised the same defence, the learned Collector, has not discussed about it in the entire order.

7. On perusal of order passed by the Additional Commissioner, Nashik Division, Nashik, it appears that the learned Commissioner in para 3 of the judgment has referred the school leaving certificate indicating the said third child is daughter of the brother of husband of respondent No.1 and in para 4 has observed that detail enquiry in respect of the said school leaving certificate is also necessary. Though the learned counsel for the petitioner by referring Exhibit "G" page 35 has pointed out the infirmities in the said school leaving

certificate as referred in para No.3 of the order passed by the learned Commissioner, however, it is for the Collector to examine the record of the said school to find out as to whether the said school leaving certificate is genuine or not. I do not find any fault in the order passed by the learned Commissioner, Nashik Division, Nashik.

8. Respondent No.1 is the elected Sarpanch of village Jamnya, Tq. Yawal, District Jalgaon and in view of the same, before disqualifying her, learned Additional Commissioner, has rightly directed the Collector to examine the school leaving certificate produced by respondent No.1 on record. Hence, I proceed to pass the following order:

O R D E R

Writ petition is hereby dismissed.

(V. K. JADHAV, J.)

rlj/