

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.7412 OF 2008

Shankar s/o Rama Mane

Petitioner

versus

Sakhubai w/o Dhanraj Darunte & others

Respondents

Mr. D.P. Palodkar advocate for the petitioner

Mr. S.K. Tambe, AGP for respondents No.2 to 5

Mr. M.S. Karad h/f Mr. S.S. Thombre, advocate for respondent No.1.

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CORAM: ROHIT BABAN DEO, J.

Date: JANUARY 2nd, 2020

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PER COURT :-

1 The petitioner is assailing the order dated 17.10.2008, rendered by respondent No.2 whereby and where-under the application preferred under section 16(1)(n) of the Maharashtra Zilha Parishad & Panchayat Samitis Act, 1961 preferred by the petitioner, seeking disqualification of respondent No.1 as a Member of the Panchayat Samiti Sillod, is rejected.

2 The contention of the petitioner was and is that since respondent No.1 gave birth to fourth child Master Samadhan after the relevant date i.e. after 13.9.2001, she stands disqualified.

3 The factual dispute before the authority was whether the

fourth child was born on 24.11.2001 as is contended by the petitioner are on 24.8.2001 as is the case of respondent No.1.

4 The tenure of the Panchayat Samiti has expired some time in 2012. However, the submission is that the issue of disqualification needs to be adjudicated finally, since respondent No.1 may contest a further election which she is not entitled to do, if the date of birth of the fourth child is found to be 24.11.2001, as is contended by the petitioner.

5 This petition can be disposed of by observing that if the occasions arises, the issue will be considered afresh without the authority being influenced by the observations in the order impugned.

6 The reason why I am inclined to keep the issue open is that, after the arguments were heard, the petitioner was permitted to place on record documents. In the order dated 17.10.2008, the Additional Commissioner observed that despite the opportunity granted, the petitioner has not placed on record the documents. The petitioner preferred an application, pointing out to the Additional Commissioner that, the said observation in the order dated 17.10.2008 was incorrect since the petitioner did place on record many documents on 15.10.2008. This application came to be disposed of by the Additional Commissioner by observing that all the documents placed on

record are duly considered. It is obvious that there is some inconsistency between the observations in the order dated 17.10.2008 and the subsequent order dated 24.10.2008. While in the first order the observation is that no documents are filed, when it was pointed out to the Additional Commissioner as a matter of fact that documents were placed on record, the response of the Additional Commissioner was to observe that all the documents are considered. Since the tenure has ended, I have considered it proper to keep the issue open and if any authority has any occasion to decide the eligibility of respondent No.1 to contest any further election, the same shall be done on merits and independent of observations in the order impugned.

7 Subject to afore-stated observations, the petition is disposed of.

8 Since the petition is disposed of, the Civil Application No.6305/2010 which is for early hearing of the petition, does not survive and is also disposed of.

(ROHIT BABAN DEO, J)