

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

907 WRIT PETITION NO.3045 OF 2021

SWAPNA SANDIP KHIROLKAR
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

...
Advocate for Petitioner:Mr. R R Karpe h/f Gite Umesh B.
AGP for Respondents-State : Mr. K B Jadhavar
Advocate for Respondent 4 : Mr. S S Patil

...
CORAM : V.K. JADHAV, J.
Dated : February 18, 2021

PER COURT :-

1. I have heard the learned counsel for the petitioner, at length.

2. Learned counsel for the petitioner submits that in terms of the provisions of Section 28 of the Maharashtra Village Panchayats Act 'the term of office of the members elected at general election or appointed under sub-section (3) of Section 10 of the Act shall be deemed to be commenced on the date of the first meeting of the Panchayat.' Learned counsel for the petitioner submits that first meeting of the Panchayat is yet to be scheduled. Learned counsel for the petitioner further submits that the petitioner has

aaa/-

been elected as a Member of the Grampanchayat from Scheduled Tribe (Woman) Category and she is the only person elected from that category. The post of the Sarpanch of Village Panchayat, Wadoda is reserved for Scheduled Tribe (Woman) category. Learned counsel for the petitioner submits that the Collector has kept the hearing of the disqualification today itself and also the election for the post of the Sarpanch.

3. Learned counsel for the petitioner submits that first child of the petitioner namely Sonam Sandip Khirolkar born on 2.1.2012 and died on 24.9.2012. Learned counsel submits that in view of the findings recorded by the Full Bench in Writ Petition No.6993 of 2008 (Subhash Sajesingh Gavit Vs. The Returning Officer ZP Nandurbar and others) with connected petition dated 17.10.2019, on the reference which covers the present issue, the petitioner cannot be held to be disqualified. It has been concluded in the said reference by the Full Bench that demise of a child can be excluded while computing the number of living children and the number of the children that a

aaa/-

candidate has on the date of filing of the nomination paper, would be reckoned.

4. Though, the learned counsel appearing for respondent No.4 has vehemently submitted that this verdict is under challenge before the Supreme Court, however, as on today the authorities below are bound by the ratio laid down by this Judgment.

5. Since the Collector has kept the matter for hearing on the point of disqualification today itself i.e. 18.2.2021, it would be just and appropriate for the parties to appear before the **Collector** and make their appropriate submissions. Needless to say that, it is for the Collector to decide the issue in accordance with law on merits. Writ Petition accordingly disposed off.

6. Parties to act on an authenticated copy of this order.

7. The learned AGP shall communicate this order forthwith to the Collector concerned.

aaa/-

(V.K. JADHAV, J.)

...