

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 4939 OF 2020

Sayyed Zafaroddin s/o Afzalodin
Age : 42 years, occ : agri.,
R/o Phulambri, Tal. Phulambri,
District Aurangabad

Petitioner

Versus

1. The State of Maharashtra
Through its Secretary,
Urban Development Department
Mantralaya, Mumbai.
2. Zamir s/o Sair Pathan
Age : 45 years, occ : social work
R/o Phulambri, Taluka Phulambri,
District Aurangabad.
3. Chief Officer, Nagar Panchayat,
Phulambri, Dist. Aurangabad.
4. The Collector, Collector Office,
Aurangabad.

Respondents

Mr. S.S. Thombre, Advocate holding for
Mr. K.F. Shingare, Advocate for the petitioner.
Mr. G.O. Wattamwar, A.G.P. for respondent Nos.1 and 4.
Mr. R.V. Gore, Advocate for respondent No. 2.
Mr. A.K. Tiwari, Advocate for respondent No. 3.

CORAM : N.J. JAMADAR, J.

Judgment reserved on : 23rd April 2021.
Judgment pronounced on : 7th May 2021.

JUDGMENT :

Rule. Rule made returnable forthwith and with the consent of the Counsels for the parties, heard finally at the stage of admission.

2. The challenge in this petition is to a judgment and order dated 6th March 2020 passed by the Minister (Urban Development) in Appeal No. MUN/4419/Appeal No.119/Nagar Panchayat – 15, whereby the appeal preferred by the petitioner came to be dismissed by affirming the judgment and order dated 28th June 2019 passed by the Collector in Dispute No.2018/MUN. Council Adm.Branch/CR-2, whereunder the petitioner was declared to have incurred disqualification under Section 16 read with Section 44 of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 (the Act 1965) for having more than two children.

3. The background facts leading to this petition can be stated, in brief, as under :

a) In the year 2017, the petitioner contested election from Ward No. 10 of Phulambri Nagar Panchayat. The petitioner was declared elected. Respondent No.2, who had contested election against the petitioner, lodged a dispute with the Collector, Aurangabad alleging that the petitioner was disqualified to be a Member of Nagar Panchayat as the petitioner had four children and two of them were born after the cut-off date of 13th September 2001. Respondent No. 2 contended that in the nomination form the petitioner made a false declaration that he had only two children. In fact, two more daughters namely Afreen and Anas were born to the petitioner after the

cut-off date. Copies of extract of admission register, copies of SECC Draft List and Register of Birth maintained by the Nagar Panchayat were filed in support of the said contention.

b) The petitioner contested the claim of respondent No.2. The petitioner asserted that respondent No. 2 had lodged the dispute to wreak vengeance as the petitioner had defeated respondent No.2 in the municipal election. The petitioner has two children namely Sayyed Gajanfar born on 2nd March 1998 and Sayyed Samreen born on 22nd June 2000. Afreen and Anam, whose name is incorrectly mentioned as Anas, are the daughters of his brother Sikandar. There are documents in the nature of birth certificate, school record and ration card to show that Afreen and Anam @ Anas are not daughters of the petitioner.

c) The Collector called for a report from the Chief Officer, Nagar Panchayat, Phulambri. In the said report, it was mentioned that from the perusal of the birth register maintained at Nagar Panchayat, Phulambri, a girl child is recorded to have been born to the petitioner and his wife Masrat Begum, on 28th December 2006.

d) After appraisal of the application preferred by respondent No. 2, reply thereto, report of the Chief Officer, Phulambri Nagar Panchayat and the documents tendered for his perusal, the Collector was persuaded to hold that there was record to indicate that 4th child was born to the petitioner on 10th

December 2006. The factors which weighed with the Collector were, firstly, there was an entry in the birth register maintained at Phulambri Nagar Panchayat to the effect that a girl child was born to the petitioner on 10th December 2006, secondly, a report to that effect was submitted by the Chief Officer and thirdly, in the SECC census, the petitioner was shown to be the head of the family consisting of one son and three daughters. Thus, the petitioner was declared to have incurred disqualification under Section 16 (k) of the Act 1965.

e) Being aggrieved, the petitioner preferred an appeal to the State Government under Section 44 (4) of the Act 1965. The Minister (Urban Development) was persuaded to dismiss the appeal concurring with the findings recorded by the Collector.

f) Being further aggrieved by the impugned judgment and order, the petitioner has invoked writ jurisdiction of this Court.

4. I have heard Mr. S. S. Thombre, the learned Counsel for the petitioner, Mr. Wattamwar, the learned A.G.P. for respondent Nos. 1, 3 and 4 and Mr. R.V. Gore, the learned Counsel for respondent No.2.

5. Mr. Thombre, the learned Counsel for the petitioner urged that the authorities have committed a grave error in holding that the petitioner has incurred disqualification sans any credible material. The findings recorded by the authorities are

not based on cogent evidence. The authorities have misdirected themselves in lightly discarding the material in the nature of birth certificate and school record which unequivocally establishes that Afreen and Anam @ Anas are not the daughters of the petitioner. The reliance by the authorities on the entries made in the SECC census draft list, which is of doubtful authority, was wholly misplaced. Likewise, there is a serious cloud of doubt over the genuineness and reliability of the entries made in the birth register allegedly maintained by the Nagar Panchayat, Phulambri.

6. In contrast to this, Mr. Wattamwar, the learned A.G.P. would urge that no fault can be found with the findings of facts recorded by the authorities below. The authorities have come to a reasonable conclusion based on the documents which have been maintained in discharge of public duty by the concerned officers. There is no reason to interfere with the findings of fact in exercise of writ jurisdiction, which is of a limited nature, urged Mr. Wattamwar.

7. Mr. Gore, the learned Counsel for respondent No. 2 professed to lend support to the submissions of learned A.G.P. Mr. Gore would urge that there is no perversity in the impugned judgment and order. It was strenuously submitted that, in view of the concurrent findings of fact, which cannot be said to be based on no evidence, interference in exercise of writ jurisdiction

would be unwarranted. Mr. Gore further submitted that the entries made in birth register maintained by the Nagar Panchayat have presumptive value in view of the provisions contained in Section 15 of the Registration of Births and Deaths Act, 1969 and Rules framed thereunder. In the absence of any challenge to the entries made therein, at the hands of the petitioner, the authorities were fully justified in placing reliance on those entries, canvassed Mr. Gore.

8. I have given anxious consideration to the rival submissions. The controversy in the case at hand revolves around the question as to whether Afreen Begum and Anam @ Anas are the daughters of the petitioner. Though in the documents pressed into service on behalf of the petitioner, Anam @ Anas is shown to have been born on 23rd November 2006 and in the extract of birth register pressed into service on behalf of the respondents, her date of birth is recorded as 28th December 2006, yet, in the context of the disqualification incorporated under Section 16 (k), the discrepancy in the dates does not bear upon the controversy. The moot question that comes to the fore is whether Afreen and Anam @ Anas are the daughters of the petitioner or Sikandar?

9. To begin with, the controversy surrounding the birth of Afreen. To demonstrate that Afreen is the daughter of the petitioner, two circumstances were arrayed against the

petitioner. One, in the SECC Census Draft List, against family unit No. 0039 of village Phulambri, entries were made to the effect that the petitioner was the head of the family consisting of his wife Masrat Begum, son Sayyed Gajanfar and three daughters including Afreen (born in 2002) and Anas (born in 2006). Two, in the extract of the admission register, against the name of Afreen corrections were made to the effect that the name of ward's father was corrected to Sikandar from Zafaroddin (petitioner) and mother from Masrat – wife of petitioner to Rubina. The authorities were of the view that the entries made in the SECC Draft List were at the instance of the petitioner and interpolation in the admission register suggested that the record was sought to be manipulated to suppress the said fact.

10. In opposition to this, it is imperative to note that a birth certificate was issued by Nagar Panchayat, Phulambri certifying that Afreen was born on 18th July 2003 to Sikandar and Rubina Chisti. The registration of birth was made on 7th August 2003. There are documents to indicate that Afreen was initially enrolled in Z.P. Primary School and then Secondary School. In the extract of admission register Afreen is shown to have been born on 18th July 2003 to Sikandar Chisti. Afreen, eventually passed SSC examination in March 2018. The passing certificate records the same date of birth and the fact that she is the daughter of Sikandar and Rubina. To add to this, the Chief

Officer of Phulambri Nagar Panchayat, in the communication dated 15th October 2018, has confirmed that an entry was made in the birth register for the year 2003-04 at Sr. No. 35 that a girl child was born to Sikandar and Rubina on 18th July 2003. The register was maintained by the Village Panchayat, Phulambri before it was converted into Nagar Panchayat, Phulambri.

11. As regards Anam @ Anas, in addition to the entries in the SECC Census Draft List, the extract of birth register maintained by Nagar Panchayat, Phulambri wherein the entry, at Sr. No. 386, dated 28th December 2006 to record birth of a girl child namely Anas to the petitioner Zafaroddin and his wife Masrat Begum, is shown to have been made pursuant to information furnished by Afzaloddin Chisti, the father of the petitioner, was heavily relied upon to show that the said girl child was born to the petitioner. In contrast, the petitioner relied upon the extracts of admission register to bolster up the case that Anam @ Anas was born to Sikandar Chisti.

12. The learned A.G.P. and the learned Counsel for the respondents urged that in the light of the nature of the inquiry contemplated by Section 44 of the Act 1965, the aforesaid material is sufficient to draw an inference that the petitioner did, in fact, incur the disqualification.

13. In support of the aforesaid submission, reliance was placed by Mr. Gore, the learned Counsel for respondent No.2, on a judgment of a learned Single Judge of this Court in the case of ***Ravikiran Abasaheb Deshmukh and another vs Additional Commissioner and others, 2010 (3) Mh.L.J. 184***, wherein it was enunciated that the enquiry contemplated under the provisions of Section 14 read with section 16 of the Bombay Village Panchayat Act is not adversarial. It is only a summary enquiry. The enquiry contemplated under the relevant provisions is of inquisitorial nature.

14. The learned A.G.P. placed reliance on a judgment in the case of ***Vishwas Laxman Bhagat vs Devendra Gana Bhagat and others (Letters Patent Appeal No. 162 of 2012 in Writ Petition No. 5606 of 2012)***, decided on 6th May 2016, wherein a Division Bench of Bombay High Court observed that Section 16 of the Maharashtra Village Panchayat Act, 1959 makes it clear that the enquiry thereunder is in the nature of summary and inquisitorial proceedings. Though it casts a duty on the Collector to make enquiry into such Application, it does not lay down any procedure, much less, the manner in which the enquiry is to be conducted.

15. The learned A.G.P. also placed reliance on a judgment of the learned Single Judge of this Court in the case of ***Hanumant Sahebrao Patil vs The Additional Commissioner and***

others, 2017 (3) All M.R. 209, wherein it was enunciated that the entries made in the birth register have presumptive value.

16. In the backdrop of the aforesaid submissions, the question of weight to be attached to the documents to draw a legitimate inference about the paternity of Afreen and Anam @ Anas, crops up for consideration.

17. Recently, I had an occasion to deal with the issue of evidentiary value of the entries in the birth certificate and school registers in Writ Petition No. 14440 of 2017 in the matter of Gulabrao Tuljaram Mandge vs The additional Commissioner, Nashik and others decided on 6th April 2021. The issue was dealt with as under :

"14. A brief recourse to the statutory framework, which governs the registration of births and deaths and issue of certificates would be advantageous. Section 7 of the Registration of Births and Deaths Act, 1969 (the Act 1969) casts duty on the Registrar to make entries in the register maintained for the purpose of registration of births and deaths. Section 8 of the Act 1969 enlists the persons who are enjoined to give information of births and death. Duty is also cast on certain persons under Section 10 of the Act 1969 to notify the births and deaths and to certify cause of death. Section 11 of the Act 1969 makes it obligatory upon a person who has verbally given information to the Registrar to sign the register. Under Section 12 of the said Act, the Registrar is required to issue extracts of registration entries.

15. If the Registrar is satisfied that any entry of birth or death in any register kept by him under this Act, is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to the rules, correct the error or cancel the entry, under

Section 15 of the Act 1959. Section 30 of the Act 1969 empowers the State Government to make rules to carry out the purposes of the said Act. In exercise of the said power, the Government of Maharashtra has framed the Rules entitled the Maharashtra Registration of Births and Deaths Rules, 2000 (Rules 2000). In the context of the question in controversy at hand, it would be imperative to note that Rule 11 (4) of the Rules 2000 provides that if any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under section 15 upon production by that person of a declaration setting forth the nature of the error and true facts of the case made by two credible persons having knowledge of the facts of the case.

17. Section 35 of the Indian Evidence Act provides that an entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, is kept, is itself a relevant fact. In the backdrop of the aforesaid provision, the entries in the births and deaths register and even in school admission register have been considered as relevant and admissible. However, the question of weight to be attached to the entries made therein often turns on the supporting material on the basis of which those entries were made.

*18. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of **Birad Mal Singhvi vs Anand Purohit**, AIR 1988 SC 1797, wherein the election petition arose on account of alleged improper rejection of the nomination papers to the election of the Legislative Assembly as the candidates were held to be below 25 years of age. The entries made in the school register were pressed into service to demonstrate the improper rejection of the nomination papers.*

19. In the backdrop of the aforesaid fact situation, the Supreme Court enunciated the legal position in the following words :

"15.....Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a

public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.

17.....The entries regarding dates of birth contained in the scholar's register and the secondary school examination have no probative value, as no person on whose information the dates of birth of the aforesaid candidates was mentioned in the school record was examined. In the absence of the connecting evidence the documents produced by the respondent, to prove the age of the aforesaid two candidates have no evidentiary value.

*20. A useful reference can also be made to a judgment of Supreme Court in the case of **Madan Mohan Singh vs Rajni Kant, (2010) 9 SCC 209** wherein the Supreme Court underscored the proposition that the authenticity of the entries would depend upon whose information such entries stood recorded. The Supreme Court held as under :*

"20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under [Section 35](#) of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entry in School Register/School Leaving Certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.

21. For determining the age of a person, the best evidence is of his/her parents, if it is supported by un-impeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the un-impeachable evidence of reliable persons and on temporaneous documents like the date of birth register of

the Municipal Corporation, Government Hospital/Nursing Home etc, the entry in the school register is to be discarded. (Vide: *Brij Mohan Singh Vs. Priya Brat Narain Sinha & Ors.* AIR 1965 SC 282; *Birad Mal Singhvi Vs. Anand Purohit* AIR 1988 SC 1796; *Vishnu Vs. State of Maharashtra* (2006) 1 SCC 283; and *Satpal Singh Vs. State of Haryana* JT 2010 (7) SC 500).

22. *If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) or Sections 50, 51, 59, 60 & 61 etc. of the Evidence Act by examining the person having special means of knowledge, authenticity of date, time etc. mentioned therein”.*

(emphasis supplied)

18. Mr. Gore, the learned Counsel for respondent No.2, placed reliance upon the observations in para 15, extracted above, to bolster up the submission that in the case at hand, so far as the birth of Anam @ Anas, the petitioner has not questioned the correctness of the entry in the register of births maintained by Nagar Panchayat, Phulambri in terms of Rule 11 (4) of the Maharashtra Registration of Births and Deaths Rules, 2000 (Rules 2000), and, therefore, the petitioner cannot be permitted to assail the correctness thereof.

19. In the light of the aforesaid exposition of law, reverting to the facts of the case, so far as the birth of Afreen, the entries in the birth register, on the basis of which the birth certificate came to be issued, appear to have been made in conformity with the governing provisions of the Act 1969 and Rules 2000. As indicated above, the birth certificate of Afreen indicates that it was issued on the basis of entry No. 35 made in

the register maintained with the erstwhile Phulambri Village Panchayat, on 17th August 2003. There are two documents which fortify this inference. One, the copy of report submitted to register the birth of Afreen in the form, prescribed under Rule 5 of the Rules 2000. It indicates that the information was furnished on 17th August 2003 that a girl child was born to Sikandar and Rubina. The person who reported the said birth is shown to have signed the report. Two, the Chief Officer, Phulambri Nagar Panchayat has informed, vide communication dated 15th October 2018, that such an entry was made in the register maintained by erstwhile Village Panchayat at Sr. No. 35 and the names of the parents were recorded as Sikandar and Rubina.

20. In the face of the aforesaid record, the authorities were not justified in brushing aside the birth certificate on the count that there was an interpolation as regards the name of the parents in the school admission register. The fact that the record as to the identity of the parents of Afreen remained intact till Afreen passed out Secondary School Certificate, in the year 2018, assumes significance. It is not the case that the aspect of disqualification for electoral purpose was in the contemplation when the entry was made in the birth register, then maintained by the erstwhile Phulambri Village Panchayat. For these reasons, I am of the firm view that the finding that Afreen is the daughter of the petitioner suffers from the vice of non consideration of

vital piece of evidence and, conversely, placing reliance on an irrelevant material.

21. In case of Anam @ Anas also, the consideration by the authorities below is far from satisfactory. Undoubtedly, the entries made in the admission register in the Primary School and Secondary School may not command evidentiary value in the absence of the documents on the basis of which those entries were made, or for that matter, the source thereof. However, it seems that the authorities were influenced by the fact that in the birth register maintained by Phulambri Nagar Panchayat, Anam @ Anas was shown to have been born to the petitioner.

22. Ordinarily, as adverted to above, if the entries in the birth register are shown to have been made in conformity with the provisions of the Act 1969 and Rules 2000, such entries command primacy and presumptive value. In the case at hand, however, the fact that birth register has been maintained by Phulambri Nagar Panchayat in conformity with the provisions of the Act 1969 and Rules 2000 has not been satisfactorily established. It is true that in the report dated 15th October 2018 it was apprised to the Collector that in the birth register maintained at Nagar Panchayat, Phulambri the entry at Sr. No.386 records that a girl child was born to the petitioner on 28th December 2006. However, the crucial aspect which has not been adverted to by the authorities below is the fact that at the time

of birth of Anam @ Anas, Phulambri was the Village Panchayat. Birth register was then maintained by Phulambri Village Panchayat.

23. It would be contextually relevant to note that the petitioner had sought copies of documents on the basis of which entry No. 386 of 2006 was made in the birth register. Vide communication dated 15th October 2018 the Chief Officer, Phulambri Nagar Panchayat informed the petitioner that the relevant entries were made by the erstwhile Village Panchayat. Record was not maintained by Village Panchayat. Therefore, no documents were available in respect of entry No. 386.

24. The situation which, thus, obtains is that there is an element of uncertainty as to the source of entries in the birth register maintained at Phulambri Nagar Panchayat. Whether the original birth register maintained by the erstwhile Phulambri Village Panchayat itself is maintained and carried forward by the Nagar Panchayat, Phulambri, is of material significance. If the register currently maintained by Phulambri Nagar Panchayat records the births registered while Phulambri was a Village Panchayat, by reproduction of the entries therein as a historical fact, then the entries therein may not command presumptive value as it would be in the nature of secondary record.

25. So far as the entries made in the SECC Census Draft List, by the very nature of those entries, it would be rather hazardous to place implicit reliance thereon. Moreover, there is material to indicate that Mr. Sikandar Chisti had lodged an objection to the entries therein on 18th September 2012 itself, much before the petitioner contested election to the Nagar panchayat. Conversely, there is positive evidence to show that the entry therein is not correct *qua* Afreen.

26. The conspectus of the aforesaid consideration is that the question as to whether Anam @ Anas is the daughter of the petitioner hinges upon the entry made in the birth register. The Collector has not adverted to the evidentiary value of the entry in the birth register in the backdrop of the fact that the birth was initially registered while Phulambri was a Village Panchayat and the questions which thus arise, as adverted to in preceding para. It is, therefore, necessary to remit the matter back to the Collector to decide the said question afresh after providing an opportunity of hearing to the parties. The petition, therefore, deserves to be partly allowed. Hence, the following order.

ORDER

- (i) The petition stands partly allowed.
- (ii) The impugned judgment and order passed by the Minister (Urban Development) in Appeal No.MUN/4419/Appeal No.119/Nagar Panchayat – 15 dated 6th March 2020 and the order dated 28th

June 2019 passed by the Collector in Dispute No.2018/MUN.Council Adm.Branch/CR-2 stand quashed and set aside.

- (iii) The Dispute No.2018/MUN.Council Adm.Branch/CR-2 stands remitted back to the Collector for a decision afresh on the question as to whether Anam @ Anas is the daughter of the petitioner.
- (iv) The Collector shall decide the Dispute Application in the light of the observations made hereinabove, after providing an effective opportunity of hearing to the parties.
- (v) The Collector shall make an endeavour to decide the Application as expeditiously as possible and preferably within a period of three months from the date of appearance of the parties.
- (vi) The parties shall appear before the Collector, Aurangabad on 14th June 2021.

Rule made absolute in aforesaid terms.

No costs.

(N.J. JAMADAR, J.)

VD_Dhirde