

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

901 WRIT PETITION NO.5035 OF 2021

MIRZA GAFFAR BAIG JAFAR BAIG
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

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Advocate for Petitioner : Mr. Choudhari Dilip J.
AGP for Respondent/s-State : Mr. S. P. Deshmukh.
Advocate for Respondent Nos.2 & 3 : Mr. S. K. Kadam.
Advocate for Respondent No.4 : Mr. K. J. Suryawanshi.
Advocate for Res.No.5/Caveator : Mr. V. D. Sapkal (Senior
Counsel) i/b Mr. Govind R. Ingole.
Advocate for Respondent No.7 : Mr. S. B. Pulkundwar.

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CORAM : V. K. JADHAV, J.
DATE : 24.03.2021

PER COURT :-

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

2. The petitioner has raised the objection about the nomination of respondent No.5 that respondent No.5 is having third child after the cut off date and as such he is not eligible to contest the election. Admittedly, the petitioner has not submitted any documents along with his objection. Thus,

respondent-Returning Officer by mentioning the same has rejected the objection.

3. The learned counsel for the petitioner has placed before this Court along with this petition, the extract of birth register of Gram Panchayat Cholakha, Taluka Dharmabad, District Nanded. The learned counsel submits that respondent No.5 is a politically influential person and as such even after the due efforts taken by the petitioner, the petitioner could not get the relevant documents for submitting the same along with his objection before the Returning Officer. The learned counsel submits that after much efforts, the petitioner could get the extract of the birth register of the concerned Gram Panchayat. The learned counsel submits that this birth extract indicates the information about the birth of third child on 07.09.2020, information of which has been given by respondent No.5 himself, and, on the basis of his information submitted on 15.09.2020, the entry was taken in the birth register of the concerned Gram Panchayat. The learned counsel submits that if the date of birth i.e. 07.09.2020 is considered, it is clear that the third child is born to respondent No.5, after the cut off date.

4. The learned senior counsel Mr. Sapkal appearing for respondent No.5 submits that respondent No.5 has submitted the affidavit and respondent No.5 has disputed this particular extract. Furthermore, the concerned Gram Sevak has not filed the affidavit before this court. The learned senior counsel submits that for disputed question of facts, the writ jurisdiction should not be exercised to decide the point involved.

5. Mr. Kadam, the learned counsel appearing for the Returning Officer submits that the petitioner has not submitted any document along with his objection and by mentioning the same precisely in the order, the Returning Officer has rejected the objection. The petitioner has no explanation as to why this document could not be received on the earlier occasion at the time of filing the objection. The learned counsel Mr. Kadam submits that as per the election programme, now the list of the validly nominated candidates has been displayed and the today's date is for allotment of the symbols. The learned counsel, Mr. Kadam submits that at this belated stage, this writ petition should not be considered.

6. It appears that the petitioner has submitted the document i.e. the extract of the birth register of concerned Gram Panchayat at page No.23 along with this petition for the first time. It is not clear from the said extract as to when the petitioner has received the copy of the said extract. It is also not made clear in the petition as to what prevented the petitioner from filing this copy of the extract along with his objection before the respondent / Returning Officer. Furthermore, respondent No.5 has disputed the birth extract and according to respondent No.5 this is not an authentic document.

7. The learned AGP submits that the Gram Sevak has come today with the record, however, the affidavit of the Gram Sevak is not filed before this Court. It is not possible for this Court in the course of this virtual hearing and even otherwise also to go through the record and find out the authenticity of the extract of the birth register, page No.23 filed along with this petition. This Court while exercising the writ jurisdiction cannot go into the question of disputed facts and the same is also not possible for this court at this belated stage. As per the

election programme, the date is fixed today for the allotment of the symbols.

8. In view of the same, I am not inclined to entertain this Writ Petition, however, the petitioner is at liberty to raise the election dispute at an appropriate stage or avail the alternate remedy so available in law.

9. With these observations, the Writ Petition is disposed off.

(V. K. JADHAV, J.)

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vmk/-