

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO. 11733 OF 2018

Rajeshree Anil Chavan

....Petitioner

v/s.

Uma Vijay Parsekar and ors.

.... Respondents

Mr. Ashok B. Tajane a/w. Mr. Y.G. Thorat for the Petitioner.

Mr. Ajit V. Alange for Respondent No.1.

Mr. Deepdayal G. Dhanure for Respondent Nos.2 and 3.

CORAM: SMT. ANUJA PRABHUDESSAI, J.

DATED : 15th MARCH, 2021.

P. C. :-

. Heard Mr. A.B. Tajane, learned counsel for the Petitioner, Mr. Ajit V. Alange, learned counsel for Respondent No.1 and Mr. Deepdayal G. Dhanure for Respondent Nos.2 and 3.

2. The Petitioner herein has challenged the validity and legality of the order dated 26/09/2018 in Election Petition No.4 of 2017 passed by learned 4th Joint Civil Judge, Senior Division, Solapur. By the impugned order, the learned Judge has partly allowed the Election Petition filed under Article 16 of the Maharashtra Municipal Corporation Act, 1949 (hereinafter referred to as 'the said Act') and

declared the election of the Petitioner as a counselor from Ward No.26B of the Solapur Municipal Corporation, null and void.

3. The Petitioner was elected as a Counselor of Solapur Municipal Corporation in the elections held on 21/02/2017. Respondent No.3, who is a defeated candidate, questioned validity of her election by way of Election Petition under Section 16 of Maharashtra Municipal Corporation Act, 1949, for short 'the Act'. The election was challenged mainly on the ground under Section 10(1)(i) of the Act, for having more than two children. Learned Judge, relying upon the Birth Certificate and other documentary evidence, has held that the Petitioner is disqualified under Section 10(1)(i) for having more than two children after the cut off date and have declared the election of the Petitioner as null and void.

4. Mr. A.B. Tajane, learned counsel for the Petitioner submits that the Respondent No.3 had not raised any objection at the time of scrutiny and this fact itself reveals that the Election Petition was nothing but an outcome of political vendetta. He submits that learned Judge has failed to consider that the Birth Certificate at Exhibit – 119 is not duly proved. He contends that several columns in the birth report

are blank. He urges that the Court could not have passed such drastic order based on such incomplete report.

5. Per contra, Mr. Ajit Alange, learned counsel for Respondent No.1 submits that the Petitioner had herself disclosed in the nomination form that she has 03 children and that one of the children was born on 28/01/2004. He submits that the said declaration vis-a-vis the documentary evidence, viz., birth certificate, school record, ration card, etc. amply proves that the Petitioner has more than 02 children. He further submits that the Petitioner has not stepped into witness box and has not adduced any evidence and as such the learned Judge was perfectly justified in drawing adverse evidence. He submits that the birth report contains material information and hence, the birth report cannot be discarded for failure to give certain details which do not materially affect the case. In support of this contention, he has relied upon the decision of the learned Single Judge of this Court in ***Shaikh Siraj Ilias v/s. Vishwas Pandurang Ghadigaonkar and ors. in Writ Petition No.8555 of 2014.***

6. Mr. Deepdayal Dhanure, learned counsel for the Corporation supports the case of the Respondent No.3. He submits that the report

submitted by the Commissioner also reveals that the Petitioner has more than 02 children and that she is disqualified in terms of section 10(1)(i) of the said Act.

7. I have perused the records and considered the submissions advanced by the learned counsels for the respective parties.

8. The election of the Petitioner as a counselor has been challenged on the ground under Section 10(1)(i) of the Maharashtra Municipal Corporation Act, 1949 which reads thus :-

“ 10. (1) Subject to the provisions of sections 13 and 404, a person shall be disqualified for being elected and for being a councillor, if such person –

(i) has more than two children :

Provided that, a person having more than two children on the date of commencement of the Maharashtra Municipal Corporations and Municipal Councils, Nagar Panchayats and Industrial Townships (Second Amendment) Act, 1995 (hereinafter in this clause referred to as “the date of such number of children he had on the date of such commencement does not increase :

Provided further that, a child or more than one child born in a single delivery within a period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification

mentioned in this clause. ”

9. The records reveal that the Petitioner who was desirous of contesting the election from ‘Ward B’ as a Corporator of the Solapur Municipal Corporation which was reserved for Scheduled Tribe, had filled a nomination form, copy of which is placed on record at ‘Exhibit – 139’. A perusal of the said nomination form clearly indicates that the Petitioner had declared that she has 03 children and that one of the children was born on 28/01/2004 i.e., after the cut off date of 12/09/2001. She has also solemnly affirmed that the contents of the nomination form were true to her knowledge and no part of it was false or erroneous. She had also stated that she was aware that she was liable to be disqualified for having more than 02 children born after the cut off date of 12/09/2001.

10. The declaration made in the nomination form itself indicates that the Petitioner has 03 children and that one of the children was born after the cut off date. It was on the basis of the declaration made in the nomination form, the Respondent No.1 had filed the Election Petition under Section 16 of the said Act. It is to be noted that the Petitioner had merely stated that she had made in the said statement/declaration

due to inadvertence without denying the fact that she has 03 children and that 01 child was born after the cut off date.

11. The Petitioner has not stepped in the witness box to explain that there has been a genuine error in mentioning the number of children and/or the date of birth of the third child. Whereas, Respondent No.1 has adduced evidence and has placed on record the birth certificates at 'Exhibit – 81', 'Exhibit – 82' and 'Exhibit – 84' to prove that the Petitioner has a male child born on 12/09/1995 at 'Sarvopchar Rugnalaya' ; and two daughters born on 19/01/1998 and 28/01/2004 at Chhatrapati Shivaji Maharaj Hospital, Solapur. The birth report at Exhibit – 117 of the 3rd child born on 28/01/2004 was given by the Medical Officer at Chhatrapati Shivaji Maharaj Hospital, Solapur and on the basis of the said report, the birth of the 3rd child was registered by the Office of the Sub-Registrar at Solapur Municipal Corporation. The birth certificate issued by the Registrar under the Births, Deaths and Marriages Act, 1886 carries presumptive value in relation to the entries in such certificate in terms of Section 114 of the Evidence Act.

12. As noted above, the Petitioner has not stepped in the witness box and has not rebutted the presumption. The Respondent has also placed

on record copy of the ration card at Exhibit – 90, a perusal of which shows that the Petitioner has one son and two daughters. The said birth certificate cannot be discarded due to some insufficient information or blanks in the birth report given by the Medical Officer moreso, when the Petitioner has neither disputed the genuineness of the birth certificate nor disputed maternity of the concerned child.

13. Thus, the finding of the fact that the Petitioner has three children is consistent with documents placed on record and does not warrant interference in Writ jurisdiction. Under the circumstances, the learned Judge was perfectly justified in holding that the Petitioner has three children & one of the children was born after the cut off date i.e., 12/09/2001. The Respondent No.1 had filed the Election Petition within 10 days and the fact that the Respondent No.1 had not raised any objections earlier at the time of scrutiny, would not prevent him from raising any such objections under Section 16 of the said Act or challenge the Election Petition on any of the grounds mentioned under Section 10 of the Act.

14. Under the circumstances, the Petition has no merits and is accordingly dismissed.

15. Learned counsel for the Petitioner states that the learned Judge had granted stay on 27/09/2018 and that the same is operating till date. Hence, the stay granted by the 4th Joint Civil Judge, Senior Division, Solapur is continued for a period of three weeks from today, to enable him to exhaust all remedies available under the law.

Preeti H.
Jayani

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(SMT. ANUJA PRABHUDESSAI, J.)