

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 2757/2017

Abdul Razique Shaikh Haroon,
aged about 49 years, Occ. Business,
r/o Talegaon Mohna, Tq. Chandur Bazar,
Dist. Amravati. **.....PETITIONER**

...VERSUS...

1. Additional Collector, Collector Office,
Amravati, District Amravati.
2. Additional Commissioner, Amravati
Division, Amravati.
3. Secretary, Village Panchayat,
Village Talegaon, Tq. Chandur Bazar,
Dist. Amravati.
4. Head Master, Zilla Parishad Urdu School,
Talegaon, Tq. Chandur Bazar,
Dist. Amravati. **...RESPONDENTS**

Mr. R. J. Mirza, Advocate for petitioner.
Mrs. M. A. Barabde, A.G.P. for respondent nos. 1 and 2.
Mr. V. B. Gaoli, Advocate for respondent no.4.

CORAM:- V. M. DESHPANDE, J.
DATED :- 20.01.2021

ORAL JUDGMENT

1. Rule. Rule is made returnable forthwith. Heard finally
by consent of learned counsel for parties.

2. On 03.05.2017, notice of final disposal was issued. All the respondents are duly served. In spite of that, respondent nos.4 and 5 are not appearing. The petitioner is represented by Mr.Mirza, learned counsel. Respondent nos.1 and 2 are represented by Mrs. Barabdhe, learned A.G.P. Respondent no.3 is represented by Mr. Gaoli, learned counsel.

3. Respondent no.5 filed a proceeding before Additional Collector, Amravati for declaring the petitioner as disqualified in view of the provisions of Section 14 (1) (J-i), 16(2) of the Maharashtra Village Panchayats Act, 1958 on the ground that petitioner is having three children. The proceedings were contested by the petitioner. The learned Additional Collector, Amravati in Maharashtra Village Panchayat Case No.-3/Section 14 (1) (J-1)/Talegaon Mohna/2015-2016, allowed the proceeding filed on behalf of respondent no.5 and declared that the petitioner has incurred disqualification. The said order was carried in Appeal No.135/MVP16(2)/Talegaon Mohna/2015-16 and the learned Additional Commissioner, Amravati Division, Amravati vide order dated 22.11.2016 dismissed the appeal filed by the petitioner.

4. Mr. Mirza, learned counsel for petitioner, submitted that matter needs remand inasmuch as according to him, though respondent no.4 has given certificate in the nature of admission register of the school to show that Abdul Safan is son of the petitioner, statement was not signed by the Head Master and also copy of document was not given to him. Record of proceedings were called and at page no. 39, there is a reply on behalf of non applicant no.3 before the Collector, who is respondent no.4 in this writ petition. It shows that it was signed by his Advocate. There is no solemn statement on behalf of Head Master.

5. Disqualification is a drastic step whereby the person who is declared disqualification for having more than two children is permanently debarred from contesting election. In this situation, fair opportunity has to be given to the person who is sought to be disqualified. In view of the fact that there was no certificate from the competent authority in respect of birth of the third child and the document which was relied upon by the authorities below, which was filed on record by respondent no.4 herein, was not supplied, in my view, this matter needs remand. Hence I pass the following order.

ORDER

- (i) The writ petition is partly allowed.
- (ii) Impugned orders dated 31.05.2016 passed by respondent no.1, in G.P.Case No.MVP 3/Section 14(1)(J-1)/ Talegaon Mohna/2015-16 and dated 22.11.2016 passed by respondent no.2, in Appeal No.135-BVP/16(2)/Talegaon Mohana/ 2015-16 are quashed and set aside.
- (iii) The proceeding G.P.Case No.MVP 3/ Section 14(1) (J-1)/ Talegaon Mohna/2015-16, stands remanded to the Court of Additional Collector, Amravati. After remand, the Collector shall issue notice afresh to the parties and shall decide the same, in accordance with law, after giving full opportunity to the petitioner as well as respondent no.4.

Rule is made absolute in the above terms.
No order as to costs.

JUDGE

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