

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

936 WRIT PETITION NO.3555 OF 2022

JAYSHRI PUNDLIK PATIL BEHRE
VERSUS
THE ADDITIONAL COMMISSIONER AND OTHERS

...

Advocate for Petitioner : Mr Girish V. Wani
AGP for Respondent/State : Mr S.N. Morampalle
Advocate for Respondent No. 5 : Mr A.S. Savale

CORAM : SANDEEP V. MARNE, J.

DATE : 10th NOVEMBER, 2022

PER COURT :

1. By this writ petition, the petitioner assails order dated 02.11.2021 passed by the Collector, Dhule in Application No. 38/2021 thereby disqualifying her to be Member and Sarpanch of Gram Panchayat. The petitioner also assails order dated 16th February, 2021 passed by the Additional Divisional Commissioner, Nashik, rejecting Gram Panchayat Appeal No. 40/2021.

2. The short issue is about the date of birth of the petitioner. She contested the election of Gram Panchayat by relying upon the birth certificate showing her date of birth as 3rd March, 1998. The petitioner was elected as Member and later as Sarpanch of Gram Panchayat. Respondent No. 5 raised an objection to the election of the petitioner and sought disqualification by filing application under section 14A of the Maharashtra Village Panchayat Act (for short "Act"). The Collector initiated

an inquiry and after hearing both the sides, arrived at conclusion that the certificate of date of birth submitted by the petitioner was forged. He therefore proceeded to disqualify the petitioner from the post of Member and Sarpanch. The Collector further directed initiation of criminal prosecution against the petitioner for submitting false certificate of date of birth. The petitioner aggrieved by the order of the Collector, filed Gram Panchayat Appeal No. 40/2021 before the Additional Divisional Commissioner, who was pleased to reject the appeal by order dated 16.02.2022.

3. Appearing for the petitioner, Mr Wani, learned counsel would submit that even if it is found that the petitioner was below the age of 21 years, the same cannot be a reason to disqualify her under the provisions of Section 14 of the Act. In support of his contention, Mr Wani, relied upon the Judgment of this Court in ***Tulsabai Maroti Shelke Vs. Additional Collector, Amravati reported in 2004 (2) Mh.L.J. 48***. Alternatively, Mr Wani would further contend that the petitioner was not provided proper opportunity to deal with various records produced before the Collector and the Additional Divisional Commissioner.

4. Per contra, Mr Savale, learned counsel appearing for respondent No. 5 relied upon the decision of this Court in ***Popat s/o Bajirao Gaikwad Vs Dinkar s/o Bhagwanrao Gaikwad and ors. reported in 2014 (3) AIR Bom. 117*** to contend that the Judgment of this Court in ***Tulsabai Maroti Shelke*** (supra) has been considered by this Court. He would further submit that the petitioner was not eligible to

contest the election under the age of 21 years and has been rightly disqualified.

5. The learned AGP relies upon the various records produced along with the affidavit-in-reply and demonstrates that entry No. 4 referred to in the forged certificate submitted by the petitioner pertains to some other person and not the petitioner. He also relies upon the entry in the birth and death register of the petitioner which depicts her date of birth as 3rd March, 2000. He prays for dismissal of the writ petition.

6. Having heard the learned counsel for the parties, and after having gone through the record, it is revealed that the petitioner has submitted forged date of birth certificate. The learned AGP has placed on record relevant extract of the birth and death register of the village Kothali. The birth certificate produced at Exh. A to the petition is showing date of birth of the petitioner as 3rd March, 1998. The registration number is shown as "04". However, upon perusal of entry No. 4 relating to March, 1998, it is found that the same is in respect of "Gavrav" and not of the petitioner. Furthermore, I have also perused the extract of birth register for March, 2000 in which the name of the the petitioner is included at serial No. 4 showing her date of birth as 3rd March, 2000. Thus, there is no iota of doubt that the petitioner is born on 3rd March, 2000 and has submitted forged certificate showing her date of birth as 3rd March, 1998. Such a conduct on the part of the petitioner does not commend this Court and required to be deprecated.

7. Coming to the Judgment cited by Mr Wani in **Tulsabai Maroti Shelke** (supra), the same is clearly distinguishable. The issue in that Judgment was about creation of the vacancy under section 16 of the Act and the observations made in the Judgment are in the context of that issue. On the contrary, in the case relied upon by Mr Savale in **Popat s/o Bajirao Gaikwad** (supra), this Court, after considering the Judgment in **Tulsabai Maroti Shelke** (supra) has held as under :-

12. In the case of Tulsabai (supra) relied upon by the learned counsel for the petitioner the question before the learned Single Judge as quoted in para No. 4 of the judgment was as follows :-

“4. The question is whether the Collector is empowered under section 16 to declare that the vacancy has occurred in a case where it is found that a person who is contesting election as a member for the Gram Panchayat has not completed the age of 21 years.”

In that case, it was an admitted position that there was no order of any authority disqualifying the candidate. It is in that context, it was held that the Collector has no power to decide the vacancy under section 16 in absence of a disqualification order. In the present case, the order impugned is order of disqualification itself therefore, that decision would have no application to the facts of the present case. The decision in Sau Manisha's case (supra) also nowhere deals with the interpretation of the word “attained” as appearing in the proviso to section 14(1)(a-1).

8. Thus, the Judgment in ***Tulsabai Maroti Shelke*** (supra) cited by the petitioner is clearly distinguishable. I therefore find that the petition filed by the petitioner is devoid of merits. She has indulged in deplorable act of submission of forged certificate for which the Collector has already directed initiation of appropriate criminal proceedings. I hope and trust that such proceedings would be taken to its logical end. For having filed present petition to further buttress the claim based on the forged certificate, the petitioner is required to be saddled with costs. I deem it appropriate to impose costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) on the petitioner.

9. The petition is accordingly dismissed with costs of Rs.25,000/- (Rupees Twenty Five Thousand Only) to be paid to the High Court Legal Services Sub Committee, Aurangabad within a period of four weeks from today.

[**SANDEEP V. MARNE, J.**]

mta