

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

WRIT PETITION NO.5150 OF 2022

Manisha Dnyeshwar Kharvade

Age : 46 years, Occu: Household/Sarpanch

R/o Kinhola Tq. Dist. Parbhani.

... **PETITIONER**

VERSUS

1. The State of Maharashtra
through Principal Secretary
Rural Development Department
Mantralaya Mumbai.

2. The District Collector, Parbhani,

3. Additional Divisional Commissioner
Aurangabad, Division Aurangabad.

4. Udhav Dnyanoba Kharvade
Age : 34 years, Occu: Agril.
R/o Kinhola Tq. Dist. Parbhani.

... **RESPONDENTS**

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Advocate for Petitioner : Mr. Mahesh P. Kale

AGP for Respondent Nos.1 to 3: Mr. K.B. Jadhavar

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CORAM : MANGESH S. PATIL, J.

DATE : 14.07.2022

ORDER:

Heard. Rule. The Rule is made returnable forthwith. At the joint request, the matter is heard finally at the stage of admission.

2. Though the respondent No.4 has been arrayed being the original complainant, it appears that during pendency of the matter before the Collector, he had given up saying that he no longer had any interest in

prosecuting the matter. The matter had proceeded in his absence before the Collector as also the Commissioner.

3. The petitioner is questioning legality of the orders passed by the Collector and the Commissioner in a proceedings under Section 16 of the Maharashtra Village Panchayats Act, 1959 holding her to have incurred a disqualification under Section 14 (1)(j-1) of that Act for having a third child after the cut off date i.e. 12.01.2001. The orders passed by the authorities below would indicate that on the basis of a report submitted by the Block Development Officer, Panchayat Samiti, Parbhani the authorities concluded that the petitioner has three children, Nandini born on 01.06.2006, Nikita born on 09.01.2008 and Nakul whose date of birth is 15.09.2009. The orders would further indicate that the Block Development Officer had submitted the report after visiting the office of the Grampanchayat and after going through the birth and death register and the school record as also the birth and death register maintained by Anganwadi Sevika, Kinhola.

4. *Ex facie* it does not appear that the authorities below had personally examined the record relied upon by the Block Development Officer.

5. By the order dated 20.06.2022, a direction was given to the learned AGP to produce the original birth register maintained by Anganwadi Sevika Kinhola relied upon by the authorities below to reach the conclusion.

6. It is to be noted that all throughout the stand of the petitioner is to the effect that only the latter two children Nikita and Nakul are her

children. Nandini is not her daughter. She is the daughter of her brother in law Rameshwar. Though the date of birth is correct, she is Rameshwar's daughter. A school record in the form of extract of the school register has also been produced to indicate that Nandini's entry in the register is Nandini Rameshwar Kharvade. Name of her mother has been shown as Swati. One cannot comprehend as to why the authorities below could not undertake any scrutiny about the record that was being produced by the petitioners.

7. A bare perusal of the original birth and death register produced by the learned AGP of Village Kinhola which according to him is the same register referred to in the orders under challenge as the one maintained by Anganwadi Sevika Kinhola reveals that on the page in respect of the children born in the year 2006 in the months of April, May, June and July, at Serial No.15, against survey No.274 the name has been mentioned as Manisha Dnyeshwar Kharvade stated to be the mother who had delivered the female child in the hospital of Dr. Choudhari on 01.06.2006. However, *ex facie* there is enormous erasures and overwriting and rampant manipulations. The original entries in rest of the columns are in black ink. Only in the column of the mothers name, name of the petitioner has been written in blue ink. Interestingly there is one more entry on the same page mentioning name of Swati Rameshwar Kharvade as the mother's name showing a girl child having been born to her on 01.06.2006. Even this entry appears to be an entry made at latter point of time in as much as it is not entered sequentially. After taking entries in the month of July, again this

entry in the name of Swati Rameshwar Kharvade has been taken showing that she had given birth on 01.06.2006. Again, against the name of the petitioner an arrow has been put up to the date of birth indicated in the earlier entry. Even a common man could with a bare look at these entries would be circumspect about the genuineness of the entries particularly in respect of the petitioner and her sister in law Swati.

8. In spite of the consequences of disqualification being drastic and serious and in spite of the emphatic decision of the Supreme Court in the matter of **Ravi Yashwant Bhoir Vs. District Collector, Raigad and Ors.; (2012) 4 Supreme Court Cases 407** if the officer of the rank of Collector and even the Divisional Commissioner are not serious enough in scrutinizing the record, it is certainly a matter which deserves introspection. I am embolden to state that had the Collector and the Commissioner personally looked into these manipulations in the original register, even they would not have been able to reach to the conclusion which they have reached wholly relying upon the report submitted by the Block Development Officer. When the legislature in its wisdom has conferred upon them drastic powers, in all probability because of the serious consequences, to decide the disputes pertaining to disqualification, it was expected of them to have attended to and decided the present proceeding with equal seriousness. If this was the piece of evidence they were intending to rely upon to disqualify the petitioner, the propriety demanded that they should have reached the conclusion by looking into the record personally without leaving it to be

reported to them after the inspection by the Block Development Officer.

9. Having considered all the aforementioned facts and circumstances, even if I do not intend to issue any certificate to the petitioner right at this juncture so that the doors of the inquiry should be shut once for all, the decisions under challenge, in my considered view, are not based on concrete evidence sufficient enough to reach to a conclusion about she having incurred disqualification under Section 14 (1) (j-1).

10. The Writ Petition is allowed. The impugned orders are quashed and set aside. However, if the authorities think it proper they may continue to hold independent inquiry to reach to some objective conclusion. Rule is made absolute in above terms.

11. The observations made herein above are confined to the decision of the present writ petition.

12. The learned AGP shall place on record an attested coloured photo copy of the relevant page from the birth and death register referred to and discussed herein above which shall be marked 'X' for the purpose of identification and shall form part of this order.

(MANGESH S. PATIL, J.)