

1. **Rule.** Rule returnable forthwith. With the consent of parties, matter is taken up for hearing.

2. Heard Mrs. Vaishali Kalyankar holding for Mr. Sushant Baburao Choudhari, learned counsel for the petitioner, Mr. G. O. Wattamwar, learned AGP for the Respondent/State and Mr. B. A. Dhengle, learned counsel for Respondent No.3.

3. The petitioner is an elected member of the village Vijora, Taluka – Washi, District – Osmanabad in the elections from Ward No.2 of the village panchayat for the year 2020-2021 in the SC category. After succeeding in the election a petition was filed seeking to disqualify the petitioner on the ground that he has more than 2 children after the cut off date i.e. 12.09.2001 and, as such, he has incurred disqualification under Section 14(1)(j-i) of the Maharashtra Village Panchayats Act, 1959.

4. Respondent No.3 / Complainant along with the complaint filed 2 documents, which are annexed at page nos.16 and 17 of the present petition, first document being the BPL beneficiary list, where the name of the petitioner is shown

alongwith his two children namely Dhanshri Anil Bansode and Omkar Anil Bansode. The complainant also filed a list prepared by the Zilla Parishad Primary School, Bangarwadi, Taluka – Washi, District – Osmanabad, wherein in that list there are two different children's names shown Viz. Bansode Om Anil and Bansode Anuja Anil, and their birth dates are also mentioned as 11.03.2013 and 17.11.2010.

5. The complainant claim that Anil Raghunath Bansode, the elected member has total 4 children two of which are after cut-off date. The petitioner through an advocate appeared before the Collector in the proceedings, however did not file his written statement nor did remain present at the time, when the final order was passed. The Collector based on the aforesaid 2 documents has held that the petitioner is the father of 4 children and the 3rd and 4th child being born beyond the cut off date is disqualified from being a member of Village Panchayat under the provisions of the Maharashtra Village Panchayats Act, 1959.

6. Perused these two documents, i.e. the BPL beneficiary list of petitioner's family and the list of 28 children taking treatment for Covid-19 and also the affidavit filed by the petitioner that he has only 2 children namely Dhanshri Anil Bansode and Omkar Anil Bansode. Names of Dhanshri and Omkar (supra) are mentioned in the BPL beneficiary list, however the 2 names mentioned of Om Anil Bansode and Anuja Anil Bansode are not reflected in the BPL beneficiary and there is no further evidence produced before the Collector that the list which consists of 28 children, which were taking treatment for Covid-19, 2 names mentioned therein are the children of Anil Raghunath Bansode. There is no independent proof produced in the form of school certificates or birth certificates or any other record. Therefore, the Collector has on a very scanty evidence concluded by the impugned order dated 09.06.2022, that Bansode Om Anil and Bansode Anuja Anil mentioned in the list of children seeking

treatment for Covid-19 are the children of the petitioner.

7. Mr. G. O. Wattamwar, learned AGP for respondent nos.1 and 2 submits that the record of Covid-19 treatment itself is created on the basis of valid Aadhaar Certificates or some other documents indicating that the above mentioned children are of the petitioner.

8. Mr. B. A. Dhengle, learned counsel for respondent no.3 submits that the list prepared of Covid-19 treatment beneficiaries is prepared on the basis of Aadhaar records or other official records, however the same has not been produced before the Collector.

9. In view of the same, I deem it appropriate to set aside the impugned orders of the Additional Divisional Commissioner dated 27.10.2022 and the Collector dated 09.06.2022 and remand the matter back to the Collector.

10. The respondent / complainant to produce if available the necessary record to establish that Om and Anuja are also children of the petitioner. The State is also permitted to produce the record, if available with it in relation to Bansode Om Anil and Bansode Anuja Anil.

11. For the disqualification to be incurred the Collector will have to render a finding that Om and Anuja are also children of Anil Raghunath Bansode and that they are born after the cut-off date.

12. In view of the same, the matter is remanded back to the Collector / Respondent no.2 for a fresh decision in the proceeding no.2021/SaPra/G.P./Ka-01/KaVi-437. The parties to appear before the Collector on 02.01.2023, at 02:30 pm. There would be no frivolous adjournments and the authority is directed to decide the same within 45 days from the receipt of this order.

13. Rule is accordingly made absolute in above terms.

14. The Writ Petition stands disposed of.

[ARUN R. PEDNEKER, J.]

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