

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

WRIT PETITION NO. 4043 OF 2021

Shakeeloddin Islamuddin

-- Petitioner

Vs.

Office of the learned Divisional Commissioner -- Respondents
and others

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Mr. D.P. Bhongade, Advocate for Petitioner
Ms. T.H.Khan, AGP for Respondent Nos.1 and 2
Mr. S.D. Chopde, Advocate for Respondent No.3

CORAM : MANISH PITALE, J.

DATE : 01st JULY, 2022

By this petition, the petitioner i.e. original applicant before the respondent No.2 – Collector has approached this Court by challenging concurrent orders passed by respondent No.2 – Collector and respondent No.1 – Commissioner, whereby the claim of the petitioner that the respondent No.3 had attracted disqualification under Section 41(1)(J)(i) of the Maharashtra Village Panchayat Act, 1959, has been rejected.

2. It was the contention of the petitioner that respondent No.3, who was elected Sarpancha of the Grampanchayat was liable to be held as disqualified to hold such a position because

she has more than two children, thereby attracting disqualification under Section 41(1)(J)(i) of the aforesaid Act.

3. The respondent No.3 contested the aforesaid allegations made against her and before the respondent No.2 – Collector, the parties led extensive evidence in support of their respective stands. On appreciation of the material on record, the respondent No.2 – Collector passed order dated 31/12/2020, holding that the petitioner had failed to make out the case for disqualification of respondent No.3 on the aforesaid ground. On the basis of the material on record, it was held that since the third child of respondent No.3 was an adopted child, the disqualification under the aforesaid provision was not attracted.

4. On an appeal preferred by respondent No.2 before the Divisional Commissioner, the said respondent – Commissioner concurred with the findings of respondent No.2 and by the order dated 02/08/2021, dismissed the appeal filed by the petitioner.

5. The present petition was filed challenging the concurrent orders, wherein notice was issued and respondent appeared through counsel. The learned counsel for the petitioner submitted that the respondent Nos.1 and 2 had concurrently erred in holding in favour of the respondent No.3. The learned counsel for the petitioner sought to rely upon evidence of the Health Worker of the concerned Primary

Health Center (PHC) and the register maintained by said Center to emphasize that the respondent No.3 had indeed given birth to three children. By inviting attention to the evidence of the said Health Worker, it was contended that the respondent No.3 was recorded to have had three pregnancies resulting in three children, thereby attracting disqualification under the said provision.

6. As opposed to this, the learned counsel for the respondent No.3 referred to a birth certificate of the third child placed on record, which demonstrated that the said girl child was not the daughter of respondent No.3.

7. This Court has considered the material on record. The findings rendered by the two authorities below concurrently are passed on a reasonable interpretation of the material on record. The emphasis placed on the evidence of the Health Worker on behalf of the petitioner appears to be misplaced for the reason that in the cross-examination the said Health Worker conceded that she was not working in the PHC at the relevant time when the entries were made in the register. Even a perusal of the register on which much emphasis was placed on behalf of the petitioner shows that there is no cogent evidence that there were three pregnancies of the respondent No.3 and she had indeed given birth to three children, who were alive at the point in time when she contested the election of Sarpancha.

8. On the other hand, the authorities below had concurrently found that the third child of the respondent No.3 was an adopted child. It was found that, therefore, disqualification under Section 14(1)(J)(i) of the said Act was not attracted in view of the explanation 5(ii) appended to Section 14 itself. The said explanation clearly states that “child does not include an adopted child”.

9. In view of the above, this Court is convinced that no error can be attributed to the concurrent orders passed by the respondents No.1 and 2. The writ petition is found to be without any merit and accordingly, it is dismissed.

JUDGE