

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

WRIT PETITION NO. 4018 OF 2022

Nagorao s/o. Rajaram Lahane .. Petitioner
Age. 38 years, Occ. Agri.,
R/o. Wangi, Tq. & Dist. Parbhani.

Versus

1. The Additional Commissioner, Aurangabad .. Respondents
Division Aurangabad.
2. The District Collector,
Parbhani, Tq. & Dist. Parbhani.
3. Limbaji s/o. Bhimrao Gaikwad,
Age. 42 years, Occ. Agri.,
R/o. Wangi, Tq. & Dist. Parbhani.

Mr.A.A. Khande, Advocate for the petitioner.
Mr.K.B. Jadhavar, AGP for the respondent/State.
Mr.V.P. Kadam, Advocate for respondent No.3.

CORAM : KISHORE C. SANT, J.
DATED : 10.08.2023

PC :-

01. Heard learned Advocate for the parties. The petition is taken up
for final disposal by consent of the parties.

02. A challenge in this petition is to an order passed by the learned

Additional Commissioner, Aurangabad dated 02.03.2022 dismissing appeal of the petitioner challenging order passed by the learned Collector, Parbhani dated 27.10.2021 rejecting dispute raised by the petitioner against respondent No.3. Respondent No.3 is elected to the post of Member of village panchayat – Wangi, Taluka and District Parbhani, in the election held in the year 2021. The disqualification is sought on the ground of having more than two children born after 13.09.2000 provided under section 14 (1) (j-1) of the Maharashtra Village Panchayats Act. It is case of the petitioner that respondent No.3 is having three children. To prove that fact, he had produced on record copy of order passed in Cri.M.A. No.121 of 2009 filed by the earlier wife, namely, Malan alias Mala of respondent No.3 in the Court at Jintur. In the said proceeding, respondent No.3 even entered into compromise with said Mala and agreed to pay regular maintenance to her and son Ajit. He is having second wife, namely, Savita, who is presently residing with respondent No.3. From that wife also he has a child. The petitioner during the proceeding before the learned Collector had produced copy of Cr.M.A. The learned Collector, however, has not considered the said judgment stating that there is no finding given by the Court as that Malan alias Mala is wife of respondent No.3. He thus submits that in maintenance proceeding the Court is not

required to decide status of the parties, if that is already accepted by the parties. Therefore, said finding is perverse.

03. The learned Advocate further submits that he had raised this ground in the appeal. There is no specific denial by respondent No.3. Still the learned Additional Commissioner has confirmed the finding of the learned Collector. He, thus, submits that both the judgments are against record and prays for setting aside the judgment and to declare respondent No.3 as disqualified.

04. The learned Advocate for respondent No.3 submits that both the parties below have rightly considered that the petitioner could not prove relationship of respondent No.3 with alleged wife, namely, Malan alias Mala. He submits that it is specific case that name of wife of respondent is Savita and she is staying with him and there are only two children from wife Savita.

05. The learned AGP supports impugned order stating that both the authorities have rightly considered the documents and evidence before them. No illegality is committed by the authorities below.

06. Considering all these submissions, this Court finds that the learned Collector has discarded compromise pursis filed in Misc. Application No.121 of 2009 stating that no point is decided that respondent and Malan are husband and wife. When there was compromise between the parties, there is no question of recording any specific finding about relation between the parties. Entering into compromise is certainly accepting contents of the application, wherein there is statement about relationship between the parties. Acceptance of the compromise also shows that he has accepted or atleast not disputed relationship between Malan and him. The Collector ought to have given thought to this aspect. Considering the above position, this Court finds that it is necessary to quash and set aside both the orders and to direct the Collector to decide the dispute afresh. Hence, following order :-

ORDER

- (i) The writ petition is partly allowed.
- (ii) The matter is remanded back to the learned Collector for giving decision afresh. The parties are at liberty to make submissions on proceedings under section 125 Cr.P.C. The

learned Collector to consider the same along with affidavit of Malan alias Mala and other documents and give specific finding and decide the matter afresh.

- iii) The learned Collector is expected to decide the matter within 8 (eight) weeks from the date of receipt of this order.

[KISHORE C. SANT, J.]