

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

989 WRIT PETITION NO.8629 OF 2022

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| 1. Vaishali Chaburao Katore,
Age: 40, Occu.: Agri.,
R/o.: Nimgaon Khalu,
Tal.: Shrigonda,
Dist.: Ahmednagar | .. Petitioner
(Ori. Respondent) |
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Versus

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| 1. State of Maharashtra,
Through its Principal Secretary,
Rural Development and Water
Conservation Department,
Mantralaya, Mumbai-32

2. The Assistant Commissioner,
Nasik Division, Nasik

3. The Additional Collector,
Ahmednagar

4. Shankar Ramdas Shinde,
Age: Major, Occ.: Agri.,
R/o.: Nimgaon Khalu,
Tal.: Shrirgonda,
Dist.: Ahmednagar | .. Respondents
(Ori. Applicant) |
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Advocate for Petitioner: Ms. Zaware Suvarna M.
 AGP for Respondent/State: Mr. N. T. Bhagat
 Advocate for Respondent No.4:
 Mr. Nangare Prashant R.

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CORAM: ARUN R. PEDNEKER, J.

DATE: 31st JANUARY, 2023

ORAL JUDGMENT:

1. **Rule.** Rule made returnable forthwith.

With consent of parties, matter is taken up for
 final hearing.

2. Heard. Ms. Zaware Suvarna M., learned counsel for the petitioner, Mr. N. T. Bhagat, learned AGP for Respondent / State and Mr. Prashant R. Nangare, learned counsel for respondent no.4.

3. The election of Grampanchayat Nimgaon Khalu was declared in the month of January 2021 and the Petitioner was declared elected unopposed as member of the Grampanchayat. Respondent No.4 filed a complaint before Respondent No.3, under Section 14 (1) (j-1) of the Maharashtra Village Panchayats Act, 1959 submitting therein that the petitioner has more than two children and one of the child being born after the cut off date of 12.09.2001 and, as such, has incurred disqualification.

4. Respondent No.3 by order dated 01.12.2021, disqualified the petitioner for having a child born on 12.02.2002 i.e. after the cut-off date and the total number of children of the petitioner being more than two. It was the

contention of the petitioner that the child born on 12.02.2002 was a pre-mature child and that the child expired thereafter on 02.04.2002. However, the petitioner was disqualified since the child was born after the cut off date of 12.09.2001 and the total children being more than two.

5. The order passed by the authority was upheld by the appellate authority on the ground that a child was born to the petitioner after cut off date of 12.09.2001 and that her total children being more than 2, the petitioner was disqualified.

6. The learned Advocate for petitioner Mrs. Suvarna M. Zaware contends before this court that the child born on 12.02.2002 being a pre-mature child, passed away shortly on 02.04.2002 and that the Full Bench of this court in the case of Subhash Sajesingh Gavit Vs. Returning Officer, Zilla Parishad, Nandurbar and others, Writ Petition No.6993 of 2008 with connected Writ

Petition, dated 17.10.2019, at paragraph nos.52

and 53 has observed and held as under:-

"52. In our view, a provision should be interpreted in a way, which could be given an appropriate meaning and without creating an exclusion or disqualification by inference or implication. So also, a sentence conveying 'present' and 'present continuous' tense cannot be converted into a past tense. As such, the words 'has' and 'having' lend a 'present' and 'present continuous' meaning and cannot be interpreted to include even a dead child or a still born child. If a dead child is to be included, the words, 'has__children' will have to be read as 'had__children'

53. We, therefore, hold that the demise of a child can be excluded while computing the number of living children in these three Acts and the number of children that a candidate has on the date of the filing of the nomination paper, would be reckoned. We answer issue Nos.2 and 3 accordingly."

7. It is held in the case of Subhash Sajesingh Gavit (*supra*), that the number of children has to be considered as on the date of nomination. Thus a child, born after the cut-off date and has passed away before the nomination is not to be counted for the purpose of disqualification. A candidate having more than two

children before the cut-off date is protected by the proviso to Section 14 (1) (j-1) of the Maharashtra Village Panchayats Act, 1959 provided the number of children does not increase after the cut-off date. Since the child born after the cut-off date being dead and more than two children born prior to the cut-off date being protected under the proviso to Section 14 (1) (j-1) of the Maharashtra Village Panchayats Act, 1959, the petitioner would not incur disqualification. However, the factum of death of the child born on 12.02.2002 is yet to be established before the authority.

8. Mr. Prashant R. Nangare, learned counsel appearing for respondent no.4, submits that the 4th child Manish Chhaburao Katore was born on 10.06.2001 and the birth was registered on 20.06.2007 and he disputes the said birth certificate of Manish Chhaburao Katore and submits that Manish Chhaburao Katore is the same person, who is born on 12.02.2002 and that it is not physically possible to have a next child

within the period of around eight months of the birth of earlier child.

9. In view of the submissions made, I requested Dr. Sanjay B. Warade (MBBS, MD), High Court Dispensary to enlighten the court on this subject matter. On accepting the Court's request, he submitted that, it is medically possible to have a pre-mature child born within this time frame and a child born pre-mature in this situation would be a very weak child. So the contention of the petitioner that a pre-matured child born has expired is also a possible contention.

10. The learned counsel for Respondent No.4 further submits that the birth certificate of Manish Chhaburao Katore ought not to have been registered after 5 years of birth without following the process, in view of Section 13(3) of the Birth and Death Registration Act, 1969.

11. The petitioner has shown the Aadhaar Card of Manish Chhaburao Katore to the authorities so

also this court having the birth date as 10.06.2001.

12. What is pertinent to note is all the above arguments canvassed before me by Respondent No.4 are not relevant, as both the authorities i.e. the Collector as well as the appellate authority – the Additional Commissioner has proceeded on the basis that if the candidate has more than 2 children and one of them being born beyond the cut off date of 12.09.2001 the candidate incurs disqualification. However, the authorities have not taken into account the law laid down by this court in the case of Subhash Sajesingh Gavit (supra), that the number of children as on the date of nomination is the relevant factor in determining the disqualification.

13. In the instant case, since the authorities below have proceeded on the basis that, whether the child born after the cut-off date is dead as on the date of nomination is a

immaterial fact, that the authorities have committed error in law in passing the impugned orders. In view of the same, both these impugned orders dated 01.12.2021, passed by the Collector, Ahmednagar and dated 09.05.2022, passed by the Additional Commissioner, Nashik Division, Nashik are set aside.

14. Since the authorities have proceeded on the basis that it is immaterial that the factum of the child born after the cut-off date being dead, it has not considered the evidence as regards the demise of the child. There is also a dispute as regards the child born on 12.02.2002 being alive or passed away. Thus, the parties are permitted to lead the evidence before the authority – Collector, Ahmednagar as to whether the child has passed away.

15. The learned Advocate for the Petitioner submits that proceeding is pending before the JMFC Shrigonda for seeking permission to register the death of child born on 12.02.2002. It would be

advisable that the application filed bearing no.377 of 2021, pending before JMFC, Shrigonda be decided by the concerned Magistrate as expeditiously as possible as it will have a direct bearing on the present proceedings.

16. The matter is remanded back to the Collector, Ahmednagar for fresh decision with above clarification.

17. Rule is made absolute in above terms.

18. The Writ Petition stands disposed of.

[ARUN R. PEDNEKER, J.]

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