



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 1921 OF 2024

Rakesh Baban Nannavare

VERSUS

The State Of Maharashtra Through Its Principal
Secretary And Others

- Mr. J. V. Patil, Advocate for the Petitioner
- Mr. R. K. Ingole, AGP for the Respondent Nos. 1 to 3/State
- Mr. R. D. Gaikwad, Advocate for Respondent No. 4
- Mr. V. P. Patil, Advocate for respondent No. 5

CORAM : KISHORE C. SANT, J
DATE : SEPTEMBER 04, 2024

PER COURT :

1. Heard parties.
2. A short issue involved in the Petition is in respect of order of remand passed by the learned Additional Commissioner, Nashik Division, Nashik in Grampanchayat Appeal No. 05/2022 dated 08.09.2022. Learned Commissioner has remanded the Dispute application no. 45/2022 filed by the present Petitioner before the Collector, Jalgaon.
3. It is the case of the Petitioner that

Respondent No. 4 has incurred disqualification under Section 14(j-1) of the Maharashtra Village Panchayat Act, 1958 (for short '**the Act**') as he is having more than 2 children on the date of filing of the nomination to the post of Member Grampanchayat, village Bambhori, Tq. Dharangaon, Dist. Jalgaon. Collector has dismissed the dispute stating that the document i.e., birth certificate of third child was produced before the Collector after application was closed for order and thus, Respondent No. 4 could not get proper opportunity to counter the said document.

4. The said order of Collector came to be challenged by the Petitioner before the Commissioner. Learned Commissioner also considered that there is report of Block Development Officer stating that Respondent No. 4 is having three living children and one died and thus, total four children. However, considering the reasoning of the Collector so far as birth certificate that was produced after the matter was closed for hearing, it is held that in view of the fresh evidence it was necessary to give hearing to the

parties by the Collector and remanded the matter.

5. Learned Advocate for the Petitioner vehemently argued that the document is only birth certificate of daughter of Respondent No. 4, namely, Komal. Looking to the nature of proceeding being summary proceedings, no evidence as such is required in the nature of retrial. The document can be considered even by the Commissioner by applying principal under Section 27 of the Act. No evidence in the nature of oral evidence is required but it is only a birth certificate which can be considered by the Commissioner himself. He relied upon the judgment in case of Arvind Kumar Jaiswal (D) thr. LR vs. Devendra Prasad Jaiswal Varun, 2023 Live Law (SC) 112.

6. Learned Counsels for respective Respondents vehemently opposed the Petition.

7. The Hon'ble Supreme Court in the judgment of Arvind Kumar has held that the order of remand prolongs and delays the litigation. It is held that the Appellate Court should not pass order of remand unless

it is found that retrial is required or the material on record is not sufficient to dispose of the matter for reasons like lack of adequate opportunity of leading evidence to a party. In the present case, this Court find that the document which is produced by the Petitioner can be considered even by the Commissioner and for that purpose no retrial is required and no evidence is required to be taken of any of the parties since the evidence is in the nature of document. The Respondent can object and file any other document to deny the fact of the birth certificate which is brought on record. Thus, this Court finds that this Petition can be disposed of by directing the learned Commissioner to decide the Appeal on merits without remanding the same to the Collector.

8. In the result, the Writ Petition is disposed of with a direction to learned Commissioner to decide the Grampanchayat Appeal No. 05/2022 on merits as early as possible and in any case before 31.12.2024.

(KISHORE C. SANT, J.)