



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

WRIT PETITION NO. 2482 OF 2023

Khairunisa w/o Sheikh Chand, : **PETITIONER**
Aged about 39 years, Occ. Agriculturist,
Resident of Wadegaon,
Post Wadegaon-02, Tah. : Balapur,
District : Akola 444 502

VERSUS

- 1 Chandrashekhar Daulatrao Chincholkar, : **RESPONDENTS**
Aged about 55 years, Occ. Member of
Zilla Parishad, Resident of Wadegaon,
Post : Wadegaon, Tah : Balapur,
District : Akola 444 502
- 2 Gram Vikas Adhikari,
Gram Panchayat, Wadegaon,
Post : Wadegaon, Tah : Balapur,
District : Akola 444 502
- 3 The Divisional Commissioner,
Amravati Division, Amravati
- 4 The District Collector, Akola

Mr. S.S. Sohoni, Advocate for Petitioner
Mr. Ram Karode, Advocate for Respondent No.1
Mrs. S.S. Jachak, Addl. G.P. for Respondent Nos.3 & 4

CORAM : BHARAT P. DESHPANDE, J.

DATE : 5th MARCH, 2024

ORAL JUDGMENT :**CIVIL APPLICATION (CAW) NO. 405/2023**

The learned counsel for the applicant is praying for withdrawal of the application. The application stands disposed of as withdrawn.

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Rule. Rule is made returnable forthwith. Heard both the parties.

2. By an order of this Court dated 20/04/2023, reference was made to the learned Division Bench for deciding the question framed in para 11, which reads thus :

“Question : Whether the expression “two children” as used in clause (j-1) of Section 14(1) of the MVP Act, is used in the generic sense so as to include all children from the present or the previous spouse, or is used in the restricted sense to mean only children born from the present spouse ?

3. The learned Division Bench of this Court vide its order dated 19/08/2023, answered the said question in para 13, which reads thus :

“The expression ‘two children’ used in Section 14(1)(j-1) of the Maharashtra Village Panchayats Act, 1959 in the context of a male ‘member’ would include all his children for whose birth he is responsible, irrespective of the fact that they were born from his previous and/or present wedlock. In the context of a female

‘member’, it would include all children whom she has given birth to, irrespective of the fact that they were born from her previous and/or present wedlock. The expression ‘two children’ has direct nexus with the word ‘member’ as used in Section 14(1)(j-1) of the Act of 1959.”

4. The learned counsel for the petitioner would submit that the petitioner is having only two living children and, therefore, the impugned order passed by the authorities below is required to be interfered with. He would submit that another wife of the husband of the petitioner having similar name i.e. Khairunisa delivered a child on 10/02/2009 and the said child has been considered third child of the petitioner for considering her disqualification.

5. The learned counsel for the petitioner would submit that the petitioner has taken a specific plea before the Divisional Commissioner, Amravati that the petitioner is having only two sons and another wife of her husband by name Khairunisa Sheikh Chand (father’s name Abdul Gaffar) delivered a child, which is considered as child of the petitioner. However, said Khairunisa D/o Abdul Gaffar is a separate person and, therefore, the matter needs to be remanded before the Divisional

Commissioner, Amravati.

6. The learned counsel for the respondent No.1 would submit that birth certificates of the children are produced on record, wherein the name of the mother is shown as Khairunisa Sheikh Chand. According to him, the authorities on the basis of the birth certificates arrived at proper conclusion and thus no interference is required.

7. A report placed before this Court and more specifically identity card of Khairunisa Abdul Gaffar, her marriage certificate, divorce document, would clearly go to show that the said lady by name Khairunisa appears to be a different person and not the petitioner though both married to Sheikh Chand. The said Khairunisa daughter of Abdul Gaffar is the second wife of Sheikh Chand, who delivered a child in the year 2009.

8. PAN Card of the petitioner produced on record show her father's name Mohd Hatam Shaikh Hasan. The photographs of the petitioner and the lady by name Khairunisa D/o Abdul Gaffar would further show that the said persons are different and, therefore, there is no confusion with the concerned Authority

which needs to be clarified.

9. Besides, the stand taken by the petitioner before the Divisional Commissioner and more specifically found in para 1 of page 58 of the paper book is not addressed at all. There is no discussion about such plea taken by the petitioner and reliance is only placed on the birth certificates. The Additional Collector, Amravati even did not consider that the petitioner and the lady by name Khairunisa Sheikh Chand, daughter of Abdul Gaffar are two different persons. Accordingly the impugned order passed by the Divisional Commissioner, Amravati, needs to be quashed and set aside and the matter needs to be remanded to such Authority for deciding the said appeal afresh and by considering the above observations. Similarly, the said authority has to take into account the decision passed by the learned Division Bench of this Court as well as the documents produced by the petitioner.

10. It is needless to mention that the Divisional Commissioner, Amravati, shall decide such appeal within a period of three months from the date of the receipt of the order of this Court.

11. Having said so, the impugned order, is hereby quashed and

set aside. The matter is remanded to the Divisional Commissioner, Amravati for deciding the matter afresh and by giving opportunity to the parties to argue the matter. The petition is allowed in the above terms. No costs. The petitioner is permitted to file the copy of the PAN card before the Additional Commissioner, Amravati. Accordingly, Rule is made absolute in the above terms and the parties to act on the authenticated copy of this order.

12. The parties shall appear before the Divisional Commissioner, Amravati on 27/03/2024 at around 11:00 AM and produce the copy of the order of this Court.

13. Results of the bye-election held on 18/05/2023, which were considered as subject to the decision of the present petition, shall continue till the disposal of the appeal by the Divisional Commissioner, Amravati. Such declaration shall be subject to the decision of the Divisional Commissioner, Amravati.

(BHARAT P. DESHPANDE, J.)

MP Deshpande