



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

910 WRIT PETITION NO. 6106 OF 2024

SATISH RAMRAO AMBHORE
VERSUS
THE ADDITIONAL DIVISIONAL COMMISSIONER 2 AND OTHERS

Mr. R. V. Gore, Advocate for the petitioner
Mr. B. A. Shinde, AGP for the respondent/State
Mr. K. J. Ghute, Advocate for respondent No.6
Mr. D. G. Nagode, Advocate for respondent No.7.

CORAM : R. M. JOSHI, J.
DATE : 4th APRIL, 2025

PER COURT :-

1. On the last of date of hearing, respondent No.6 was called upon to file affidavit. Perusal of the affidavit filed by him indicates that he had issued the certificate on basis of available record. Hence, this Court finds no reason to take any action against him. Gramsevak is present. His presence is dispensed with.

2. This petition takes exception to the orders passed by the Collector which is confirmed by the Additional Divisional Commissioner dated 02/11/2023 and 03/04/2024 respectively. By these orders the complaint lodged by the petitioner against respondent No.7 for disqualifying him from the membership of the Grampanchayat for the reason that at the time of contesting election, respondent No.7 was

having three children.

3. The facts which led to filing of this petition can be narrated in brief as under:

(i) Respondent No.7 was elected directly as a Sarpanch of village panchayat Mahalpimpri in the general elections. The petitioner filed Dispute Application bearing No. CR-92/2023 before the Collector under Section 14(1)(j-1) of the Maharashtra Village Panchayats Act (for short 'the Act') for disqualifying of respondent No.7 on the ground that he has more than two children after cut off date. Petitioner specifically states that 3rd child of respondent No.7 was born on 19/06/2002 as per the record of the Municipal Council, Aurangabad. An enquiry was directed into the said allegations. Extension Officer, Panchayat Samiti, Aurangabad and Circle Officer submitted their joint inquiry report dated 13/07/2023. It is a grievance of the petitioner that the said report was submitted without verifying the birth record of 3rd child of respondent No.7. On 21/07/2023, the Tahasildar submitted report to the Collector stating that no person shall be member of panchayat and continue as such who has more than two children on cut off date. It is also stated in the said report that both sides submitted valid proof of date of birth of 3rd child of respondent No.7. In the said report it is observed that as per the record produced by the petitioner a date of birth of the child is

19/06/2002, whereas as per the record relied upon the by the respondent No.7 the said date is 19/06/2001. It was ultimately concluded that the correct date of birth of 3rd child is not established. The Collector by order impugned dated 02/11/2023 rejected the dispute by relying upon the evidence of school record of the 3rd child. This order came to be confirmed by the Additional Divisional Commissioner by order dated 03/04/2024. Hence, this petition.

4. Learned counsel for the petitioner submits that for the purpose of deciding the date of birth, the birth certificate would be the relevant document and only in absence thereof other evidence such as school record etc. can be considered. It is his submission that the both authorities without recording any findings with regard to the birth certificate placed on record proceeded to accept the case of respondent No.7 with regard to the 3rd child being born before the cut off date in the year 2001 on the basis of other evidence than certificate of birth, which is impermissible. It is his submission that in absence of any specific findings recorded by these authorities about genuineness/correctness, or otherwise of birth certificate the order impugned cannot sustain.

5. Learned counsel for respondent No.7 supported the impugned orders. It is his contention that right from the admission of 3rd child of respondent in the school, her date of birth is seen as

19/06/2001. It is his submission that authorities below have taken into consideration the fact that for more than 20 years the date of birth of the child is consistently being claimed as 19/06/2001. He further drew attention of the Court to the order passed by the Additional Divisional Commissioner to indicate that the documents sought to be relied upon by the petitioner were duly considered while passing the said order.

6. There cannot be any dispute about the position of law that the issue of date of birth of this person can be decided primarily on the evidence of birth certificate. Only in absence of availability any such birth certificate on record or where the certificate of her sought to be relied is doubtful, the other evidence could be considered. Admittedly, respondent No.7 has three children. Herein this case the petitioner as well as respondent No. 7 have placed on record birth certificates of the 3rd child of respondent No.7. There is no finding recorded by the any authorities below with regard to the genuineness of the said person nor even *prima facie* findings are recorded about the same being doubtful in order to place reliance on the other evidence on record. In such circumstances, the order passed by Collector which is confirmed by the Additional Divisional Commissioner cannot sustain. Merely referring to the documents in the order passed by the Additional Commissioner would not be construed as a finding recorded by the authority. Hence, petition

deserves to be allowed. The impugned orders are set aside. The proceeding is relegated back to the Collector for deciding the issue afresh, as per law.

7. During the course of hearing it is alleged on behalf of the petitioner and respondent No.7 that bogus documents are created by otherwise in order to justify their respective claim. The Collector to inquire into this aspect too. During the inquiry if it is found that the documents relied by the either side are fabricated, the appropriate criminal proceeding shall be initiated against the concerned.

8. Collector to decide the issue within a period of one month from today. Parties to appear before the Collector on 25th April, 2025. No separate notice issued to the parties.

9. It is clarified that the observations made by this Court in order dated 24th March, 2025 were *prima facie*. No action should be taken against the Gramsevak on the basis of these observations.

(R. M. JOSHI, J.)

ssp