



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

906 WRIT PETITION NO. 8336 OF 2024

SAYYED ANWAR NISAR MUJAWAR

VERSUS

THE STATE OF MAHARASHTRA THROUGH ITS SECRETARY AND OTHERS

Mr. Mukul Kulkarni h/f Mr. U. P. Giri, Advocate for the petitioner
Mr. B. A. Shinde, AGP for the respondent/State
Mr. Amol G. Vasmatkar, Advocate for respondent No.4
Mr. R. N. Dhorde, Senior Advocate a/w Mr. P. S. Dighe i/b Mr. r. D.
Kawade, Advocate for respondent No.5

CORAM : R. M. JOSHI, J.

DATE : 27th MARCH, 2025

PER COURT :-

1. This petition takes exception to the orders dated 01/08/2024 passed by Additional Divisional Commissioner, Aurangabad in File No. 2024/Grampanchayat/Appeal/CR-28, whereby the order passed by the Collector dated 27th June, 2024 of disqualifying the petitioner in the File No. 2023/GB/DESK-2 Grampanchayat Appeal-KAVI Petition No.372/2023 was confirmed.

2. The facts as they appear from the record can be narrated in brief as under:-

(i) The petitioner contested general elections of the Gram Panchayat Shirsala which was conducted in December, 2022. In November, 2022 nomination form was submitted along with relevant

documents. The nomination was accepted. He came to be elected as a member of Gram Panchayat and later on was also elected to the post of Sarpanch from the category of Other Backward Class (OBC). Respondent No. 5 made complaint on 26/04/2023 to the District Collector, Beed under Section 14 r/w 16 of the Maharashtra Village Panchayats Act (for short 'the Act') claiming that petitioner has contested the election though he had not completed age 21 years. Declaration therefore was sought that the petitioner is disqualified to be a member of Grampanchayat and consequently to hold post as Sarpanch. In response to the said complaint petitioner filed detailed say and relied upon the documentary evidence to substantiate his claim about his date of birth being 10/02/2001. Along with other documents he placed reliance on the birth certificates issued by local Authority indicating the said date of birth. The Collector, however, did not accept the case of the petitioner and by passing order dated 27/06/2024 disqualified the petitioner from the membership of Gram Panchayat so also from the post of Sarpanch. This order was taken exception before the Additional Divisional Commissioner by filing appeal. The Additional Divisional Commissioner refused to cause interference in the impugned order. Hence this petition.

3. Learned counsel for the petitioner submits that the petitioner has placed on record the birth certificate which is the basic document on

the basis of which the date of birth of the petitioner could be determined. According to him when birth certificate is there, no other document indicating contrary could be considered. To support his submission he has placed reliance on the judgment of Division Bench of this Court in case of *Smt. Vasudha Gorakhnath Mandvilkar Versus The City and Industrial Development Corporation of Maharashtra Ltd, 2008(5) ALL MR 358*. He further drew attention of the Court to the complaint lodged by the contesting respondent against the petitioner wherein according to him there is no specific challenge to the birth certificate produced by the petitioner at the time of filing nomination. It is his submission that without their being specific challenge to the said birth certificate, it was not open for the Collector to enter in to the said issue and record any findings. In any case it is his submission that since there was no specific allegation to that effect, the petitioner has not been given an opportunity to meet with the said issue. Apart from this, by drawing attention of the Court to the order impugned passed by the Collector it is his submission that the Collector has in fact accepted the fact that the both certificates filed on record belong to the petitioner. It is his submission that once birth certificates are accepted and they show year of birth of petitioner to be 2001, it was not open for the Collector to take into consideration the other documents. According to him, Collector could not have been allowed to say that the petitioner has failed to prove that he was given in

adoption. Thus, it is his submission that the disqualification as the member of the Gram Panchayat cannot be effected unless a specific finding is recorded by the Collector about the age of the petitioner. He has also taken this Court through the various document such as the election card, aadhar card etc., to indicate his birth of date being 10/02/2001.

4. Learned senior counsel for the contesting respondent supported the impugned order. According to him there is specific allegation made in the complaint with regard to the petitioner having fabricated the documents at the time of filing of the nomination. It is specifically alleged that at the time of the filing of the nomination petitioner had not completed age of 21 years. It is further argued that in response to the said allegation the petitioner has placed on record the birth certificates and other documents. Thus it is his contention that it cannot be said that the petitioner was not given any opportunity in absence of specific allegation in the complaint in this regard. He has drawn attention of the Court to the order passed by the Collector, wherein according to him the Collector has recorded finding about false document being prepared for the purpose of contesting the Gram Panchayat election. It is his submission by referring to the various documents placed on record including the record of the school so also

applications made by the present petitioner himself before the Caste Validity Committee indicating his age to be 21 years on 15/09/2022. With regard to the corrections made in the school register it is his contention that the Headmaster had no authority to effect such correction and it ought to have been done by the Education Officer. It is further argued that the the birth register entry No. 302 indicates that the son was born to Shaikh Julfu which was subsequently corrected to be Sayed Julfekhar. It is his submission that Shaik and Sayed belong to different caste and as such the said correction which has been carried out that too in the year 2022 is of no consequence. Finally it is submitted that the the burden on the petitioner to substantiate that his age was 21 years at the time of filing of the nomination and since he has failed to substantiate the same, the finding of the fact recorded by the authorities below need not be interfered with for want of perversity.

5. Record indicates that, the contesting respondent file specific application before the Collector taking exception to the age of petitioner. There is specific allegation that as on the date of filing of the nomination, the petitioner had not completed 21 years of age. In the said complaint reference is made to the various other documents including the school record indicating date of birth of the petitioner to be 10/02/2002. It is in this backdrop the petitioner who has placed before the authorities two

different birth certificates. Though in both certificates date of birth of child is indicated as 10/02/2001, the name of the father of the petitioner is shown as Sayed Julfekhar, whereas the birth register indicates that the birth register entry No. 312 indicates that the father of the said child was Shaikh Julfu. There is no disputes made by petitioner to the submissions of learned counsel for contesting respondent that both surnames belong to different castes.

6. It is a case of the petitioner that he was given in to adoption immediately on his birth to the adoptive parents. If it is so, there was no question for he is biological father making any application in the year 2022 for correcting the name in the birth register. Apart from this the document placed on record by the petitioner himself about the birth certificate issued by the Hospital indicates that the child was born to Shamim Shaikh Julfu and not Sayed. It is pertinent to note that the petitioner himself had made application showing his date of birth to be 10/02/2002 while applying for caste certificate. Not only this the certificate of nationality also indicates his date of birth to be the same. The aadhar card originally issued to the petitioner also shows his year of birth as 2002. The aadhar card now placed on record indicates his date of birth of 2001, however this document has been obtained just before the election. All the documents on the basis of which the petitioner

claims his birth to be 10/02/2001 are procured just before election. Thus this Court does not find any reservations to accept the contentions of learned counsel for respondent that these documents are produced by petitioner to suit his convenience to contest election.

7. It is pertinent to note that all these documents are duly considered by the Collector and a categorical finding are recorded in the impugned order by holding that the petitioner has deliberately prepared false documents with regard to the date of birth and contested the Gram Panchayat election. Consequently finding is recorded that he had not completed age of 21 years as on the date of filing nomination. The findings of fact as recorded by the Collector are in consonance with the material evidence on record and hence the same cannot be termed as perverse.

8. Dealing with the judgment cited supra, there cannot not be any dispute with regard to the proposition that the birth certificate shall be given preference for determination of the date of birth over any other document provided that the birth certificate is free from doubt. In this case there is serious doubt in respect of the genuineness of the birth certificate. It is also material to take note of the fact that the offence has been registered against the concerned for preparation of the record. Having regard to the afore stated fact this Court finds no reason or

justification to cause interference in the impugned order. Hence, petition is dismissed.

9. At this stage, learned counsel for the petitioner to seeks extension of the order dated 08/08/2024 for a period of eight weeks in order to enable the petitioner to take exception to this order before the Hon'ble Supreme Court. Learned senior counsel for the contesting respondent opposes the request.

10. Since, there is a relief in favour of the petitioner from 08/08/2024, this Court finds no justification not to extend the said order for a reasonable period.

11. In the facts of the case, the order stands extended for a period of six weeks from today.

(R. M. JOSHI, J.)

ssp