



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

995 WRIT PETITION NO. 335 OF 2023

Maske Alka Gopal And Another

VERSUS

The State Of Maharashtra Through The Secretary And Another

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Dr. R. R. Deshpande h/f. Ms. Priyanka R. Deshpande, Advocate for the
Petitioners

Mr. S. J. Salgare, AGP for Respondents/State

Mr. Uttam B. Bondar, Advocate for Respondent Nos.3 and 4.

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CORAM : R. G. AVACHAT AND
ABASAHEB D. SHINDE, JJ.

DATED : DECEMBER 04, 2025

P.C.:

1. Heard.

2. The petitioners are the spouses of each other. The Petitioner No.1/wife of the Petitioner No.2 underwent family planning/sterilization operation on 26.05.2015. While she underwent such operation, the petitioner had already been blessed with two children.

3. Rule 3 of the Maharashtra Civil Services (Declaration of Small Family) Rules, 2005 (hereinafter referred to as "the Rules of 2005") reads as under :-

"3. Necessity of declaration of Small Family – Notwithstanding anything contained in any rules or orders or instruments made in that behalf, regulating recruitment to Group A, B, C or D post in Government Service or any other order or instruments made in that behalf, the declaration of Small Family shall be an additional essential requirement for an appointment to Group A, Group B, Group C or Group D post in any Government service :

Provided that, a person having more than two children on the

date of commencement of these rules shall not be disqualified for appointment under these clause so long as the number of children he had on the date of such commencement does not increase :

Provided further that a child or more than one child born in a single delivery within the period of one year from the date of such a commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause.”

4. The first and the second child of the petitioners were born on 14.12.2012 and 19.04.2014 respectively. The Petitioner No.1 claims to have been a post graduate and aspiring for public services and even to contest election.

5. Petition No.1 underwent the family planning/sterilization operation on 26.05.2015. She however, conceived and even delivered third child on 06.01.2016. As such, Rule 3 of the Rules of 2005 comes in her way either to secure a public employment or contest local body elections.

6. According to the learned Advocate for the petitioners, the petitioner never intended to have a third child and with the very intent Petitioner No.1 underwent family planing operation on 26.05.2015. The said operation failed, she conceived. They did not go for medical termination of pregnancy, as according to the learned Counsel for the petitioner it would have been against the petitioner No.1's fundamental right of child to be born. According to him, it was an exceptional case when the petitioner themselves did not intent to have a third child and birth of such a child is accidental. The legislative prohibition in terms of Rule 3 of the Rules of 2005 ought not to have therefore come in their way. The petitioners have therefore prayed for following main reliefs :-

“B] By issuing the of Mandamus or any other appropriate writ or order it may kindly be declared that in view of the peculiar contingency in which the birth of the third child took place of the petitioner has taken place the petitioners are not disqualified under the provisions of Maharashtra Civil Service (Declaration of Small Family) Rules, 2005.

C] By issuing the writ of Mandamus or any other appropriate writ or order it may kindly be declared that in view of the peculiar contingency in which the birth of the third child took place of the petitioner has taken place the petitioners are not disqualified and are eligible to file the nomination and to contest the election/s under the provisions of different Maharashtra Local Acts for the seats on Village Panchayat, Panchayat Samiti, Zilla Parishad, Nagar Panchayat, Municipal Council, Municipal Corporations etc.”

7. The learned AGP on the other hand submits that the third child of the petitioner was born in 8th month of the petitioner No.1 underwent the family planning operation. He meant to say that the petitioner was pregnant while the operation was performed. The documents executed by petitioner no.1 before going for operation have also been relied on. In terms of those documents she undertook to inform the concerned medical center, if her menstrual cycle is missed post operation. According to the learned AGP the moment the petitioner no.1 realized to have conceived, she ought to have reported the concerned medical center and Medical Termination of Pregnancy could have been performed. According to the learned AGP therefore the petition is liable to be dismissed.

8. We have considered the submissions advanced. Almost all the facts are not in dispute. The petitioners were blessed with two children as on 19.04.2014. The rules of 2005 already were in the field. Admittedly the petitioner no.1 underwent family planning operation on 26.05.2015.

9. Our attention has been adverted to Rule 6 of the Rules of 2005, whereunder the government has been empowered to relax operation of Rule 3 in a particular case. For better appreciation, we proposed to reproduce Rule 6 as below :-

***“6. Power to Relax the provisions of these rules –
Notwithstanding anything contained in these rules, Government may***

relax the provisions of any of these rules, under such circumstances in such manner as shall appear it to be just and reasonable and shall record the reasons for any such relaxation.”

10. Since, the facts of this case are peculiar one that is when the petitioners did not intend to have third child and with the very intent, petitioner no.1 underwent family planning operation which ultimately failed, in the fitness of things the State Government may exercise its power under Rule 6 to do the needful. The Court should not be misconceived to have made any observations on merits of the case. The State Authority shall take the decision on its own merits.

11. The petitioners undertake to make an application in this regard to the Principal Secretary, Women and Child Development, State of Maharashtra. If such application is received, we expect the State to decide the same within a period of four (4) months from the date of receipt thereof.

12. Writ Petition stands disposed of accordingly.

[ABASAHEB D. SHINDE, J.]

[R. G. AVACHAT, J.]