



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 5432 OF 2024

SHAIKH HUSEN RAJJAKSAB
VERSUS
THE STATE OF MAHARASHTRA AND OTHERS

Mr. V. P. Golewar, Advocate for the petitioner
Mrs. M. N. Ghanekar, AGP for the respondent/State
Mr. S. V. Gundre, Advocate for respondent No.5.

CORAM : R. M. JOSHI, J.
DATE : 24th APRIL, 2025

PER COURT :-

1. This petition takes exception to the order dated 19/10/2022 passed by the District Collector, Latur rejecting application filed under Section 44 read with 16(k) of the Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 seeking disqualification of Respondent No.5 and confirmation of the said order by the Minister for Urban Development Department on 14/03/2024.

2. It is the case of the petitioner that in the year 2021 elections were held of Nagar Panachyat Chakur. Respondent No.5 filed nomination with declaration that she has not more than two children. Petitioner came to know about Respondent No.5 having more than two children born after the cut off date and hence, collected the documents in this regard. Petitioner filed application under Section 44 read with Section

16(k) of the Act. It is the grievance of the petitioner that the Collector without considering the legally admissible evidence has rejected the application by order dated 19/10/2022. This order came to be challenged under Section 44(4) of the Act before the Minister unsuccessfully. Hence, this petition.

3. Learned counsel for the petitioner submits that there is prohibition for holding the post as a member of Nagar Panchayat in case such member has more than two children. It is his submission by referring to the documents on record that these documents more particularly the documents pertaining to the record maintained by hospital as well as under Ekatmik Bal Vikas Seva Yojana clearly show that the Respondent No.5 is having three children. It is submitted that once documentary evidence is placed on record before the Collector the burden shifts upon Respondent No.5 to prove that she has only two children which she has failed to discharge. It is his submission that the authorities below have committed serious error in not passing order of disqualification of Respondent No.5.

4. Respondent No.5 supported the impugned orders. According to him, order of disqualification has consequences of the Respondent No.5 being not been able to represent the people who have elected her and hence unless there is positive case made out for causing

disqualification, no such order could have been passed. It is submitted that the order of the Collector clearly indicates that there is no concrete evidence in order to show that Respondent No.5 has three children. By referring to the documents which are sought to be relied upon by the Petitioner it is submitted that these documents are doubtful in nature as the entries therein are apparently manipulated and there is overwriting also therein. It is his submission by referring to the ration card that on the date of issuance of ration card i.e. on 10/06/2016 there were only two children of Respondent No.5 shown therein. It is his submission that for want of conclusive evidence, there is no reason or justification to cause interference in the impugned order.

5. Learned AGP also supported the impugned orders.

6. There cannot be any dispute with regard to the fact that embargo has been created with addition of clause (k) to Section 16, by Maharashtra Act 43 of 2005. Proviso thereto indicates that person on the date of commencement of Maharashtra Municipal Corporation and Municipal Council Nagar Panchayat Act, 1995, having more than two children, would not be disqualified under this clause, so long as number children is not increased on such date. In view of the said provision, while contesting the election the candidate is required to submit self declaration in this regard. In the instant case Respondent No.5 has

submitted undertaking indicating that she has two children born on 30/12/2010 and 13/05/2012. Respondent No.5 can not be called upon to prove negative, that she has no third child. The burden would solely casts upon the person who alleges so.

7. The Petitioner is seeking to place reliance on the entries in birth register which according to him indicate that Respondent No.5 is having three children. In this regard perusal of the record shows that in respect of the birth certificate at serial number 88, the name of the mother of the child is Farman. Similarly, as pointed out by the learned counsel for Respondent No.5 that there is overwriting in the record produced on behalf of the Petitioner. The evidence sought to be relied upon by Petitioner to seek disqualification is not free from doubt.

8. Thus, there is no conclusive evidence to hold that the Petitioner has three children and that the third child is born after the cut off date. Apart from this, learned counsel for the Respondent No.5 has placed on record ration card issued on 10/06/2016 indicating only two children of Respondent No.5. There is no dispute about genuineness of this document. This document has come into existence much prior to the date of election. It does not stand to any reason why name of third child if born in 2014, is not included in ration card. In any case in absence of any reliable evidence about the third child of Respondent No.5, there

would no justification to cause interference in the impugned orders.

9. Hence, petition stands dismissed.

(R. M. JOSHI, J.)

ssp