

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.7024 OF 2022**

Anand Ramling Tanavade,
Age: 43 years, Occupation: Agriculturist,
Residing at:
At Post Shirval, Taluka: Akkalkot,
District: Solapur. ..Petitioner

Versus

1. The State of Maharashtra,
Through Principal Secretary of Department of
Rural Development.
2. Additional Divisional Commissioner, Pune Division,
Pune
Having address at:
Vidhan Bhavan, Pune.
3. Sharanbasappa Kalanappa Birajdar,
Age: Adult, Occupation: Not Known,
Residing at:
At Post Shirwal, Taluka: Akkalkot,
District: Solapur. ..Respondents.

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Mr. Abhijit Kulkarni a/w Mr. Rutik A. Kashid, Advocate for Petitioner.
Mr. Sanjay D. Rayrikar, AGP for Respondents/State.
Ms. Sairuchita Chowdhary, Advocate for Respondent No.3.

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**CORAM : S. G. CHAPALGAONKAR, J.
DATED : 15th DECEMBER, 2025.**

JUDGMENT:-

1. Rule. Rule made returnable forthwith. With consent of parties, matter is taken up for final hearing at admission stage.
2. The petitioner impugns order dated 08.04.2022 passed by respondent no.2/Additional Divisional Commissioner, Pune, thereby

disqualifying petitioner under Section 16(1)(n) of Maharashtra Zilla Parishad and Panchayat Samiti Act, 1961 (for short 'Act of 1961').

3. In year 2017, petitioner got elected as Member of Zilla Parishad from Waghdari Constituency. The term of petitioner's election was from 2017-2022. In January 2020, respondent no.3 initiated proceeding under Section 40 r/w. Section 16(1)(n) of Act of 1961 seeking disqualification of petitioner contending that petitioner has more than two children as on date of his election and such children are born after cut off date. The petitioner contested disqualification proceeding filed before respondent no.2. The Additional Divisional Commissioner passed impugned order dated 08.04.2022 declaring petitioner ceased to be Member of Zilla Parishad and disqualified petitioner to contest election for six years.

4. Mr. Abhijit Kulkarni, learned Advocate appearing for petitioner would submit that respondent no.2/Additional Divisional Commissioner has erroneously concluded that petitioner had three children born after 12.09.2001. The child born to petitioner's brother namely Anand Ramling Tanavade has been considered as child of petitioner. He would submit that Birth Certificate issued by Competent Authority under provisions of Registration of Births and Deaths Act, 1969 r/w. Rule 8/13 of Maharashtra Registration of Births and Deaths Rules, 2000 would depict that it was a child born to Jyoti and Vivekanand and not petitioner. Mr. Kulkarni would, therefore, submit

that respondent no.2 had no authority to discard Birth Certificate in summary proceeding and record contrary finding based on peripheral record. According to him, entry in birth register has statutory presumption, which cannot be dislodged on the basis of peripheral documents.

5. Mr. Kulkarni would further submit that petitioner was not given opportunity to cross-examine witnesses, who had taken entries in name of petitioner's wife in “गरोदर माता नोंदवही आर—१५” and “बालक सेवा नोंदवही आर—१६” maintained with Primary Health Centre, Shirval. Mr. Kulkarni would further submit that alleged disqualification pertains to period prior to election of petitioner. Therefore, disqualification under Section 40 of Act of 1961 has restricted operation to disqualifications incurred during term of office after election. The pre-election disqualification cannot be permitted to be raised after expiry of 15 days in terms of Section 27 of Act of 1961, which provides remedy of Election Petition.

6. Per contra, Ms. Sairuchita Chowdhary, learned Advocate appearing for respondent no.3 and Mr. Sanjay Rayrikar, learned AGP appearing for respondent nos.1 and 2 would supports impugned order.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that petitioner alleged to have three children born after 12.09.2001. The particulars of petitioner's children are as under:

Sr. No.	Name	Date of Birth	Remark
1.	Samruddhi	31.07.2007	
2.	Viraj	09.12.2009	Died on 17.08.2010
3.	Siddhi	19.01.2012	
4.	Aryan	30.04.2015	Disputed

8. The petitioner has seriously disputed that Aryan who born on 30.04.2015 is his child. According to petitioner, he is born to his elder brother Vivekanand and sister-in-law Jyoti. The Additional Divisional Commissioner observed that entry regarding birth of Aryan is found in record of Grampanchayat, Jewali, which depicts name of Jyoti Vivekanand Tanavade as Mother and Vivekanand Tanavade as Father. However, Vivekanand has only one child born on 04.01.1996 at Chitale Hospital, Solapur. It is further observed that Jewali is maternal home of petitioner's wife. It is further observed that record of pregnant mothers maintained at Primary Health Centre, Shirval and child service record clearly depicts that child was born to petitioner and his wife Laxmi on 30.04.2015. The petitioner has no explanation as regards to aforesaid entries regarding pregnancy of his wife and entries in relevant record maintained by Primary Health Centre, Shirval. It is apparent that petitioner has recorded birth of his third child in name of his elder brother and obtained Birth Certificate.

9. During hearing of this petition, when petitioner was called upon to show his readiness to undergo DNA Test alongwith child, he filed an affidavit showing his readiness, but submission is advanced that he is not in good terms with his brother Vivekanand, therefore, presence of

child cannot be secured for DNA Test. Apparently, readiness shown for DNA Test on behalf of petitioner is camouflage. The entries in record maintained with Primary Health Centre for corresponding period of birth of Aryan cannot be discarded. Those entries are taken during course of discharge of official duties by concerned officers. This Court has verified contents of entries in relevant register and found no reason to discard same. The petitioner could not bring any evidence to counter aforesaid public record, which take note of pregnancy of petitioner's wife and birth of child.

10. Although Mr. Kulkarni, learned Advocate appearing for petitioner submits that petitioner was not given opportunity to cross-examine those officers, who had taken entries, such submission cannot be countenanced. The petitioner could not bring on record evidence in rebuttal to presumption attached to such entries. It is true that, petitioner is relying upon Birth Certificate issued by Grampanchayat, Jewali. However, presumption attached to same is dislodged in light of entries in record maintained with Primary Health Centre.

11. Lastly Mr. Kulkarni submits that pre-election disqualification cannot be taken up under Section 40 of Act of 1961. However, such submission cannot be countenanced for simple reason that Section 16(1)(n) of Act of 1961 prescribes disqualification if person has more than two children born after cut off date. If such disqualification is noticed after election of petitioner, it cannot be subjected to Election

Petition. It is not case of petitioner that aforesaid disqualification was raised before Returning Officer or his nomination was accepted de-hors such disqualification. Therefore, in such cases Election Petition under Section 27 of Act of 1961 cannot be remedy. Once disqualification is disclosed, it can be definitely raised before Competent Authority under Section 40 of Act of 1961.

12. In result, Writ Petition sans merit, hence, dismissed.

13. Rule stands discharged.

(S. G. CHAPALGAONKAR)
JUDGE