

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIRCUIT BENCH AT KOLHAPUR
WRIT PETITION NO.10953 OF 2018**

Sanjay Pandurang Bhosale,
Age: 42 yrs., Occ.: Agri.,
R/o. Dongaon, Taluka North Solapur,
District Solapur.

..Petitioner
(Orig. Appellant)

Versus

1. Sou Lata Nanasaheb Javir,
Age: Adult,
R/o. Dongaon, Taluka North Solapur,
District Solapur.
2. The Gramsevak,
Dongaon Grampanchayat,
Taluka North Solapur, District Solapur.
3. The Collector, Solapur.
4. The Divisional Commissioner,
Pune Division, Pune.

5. The State of Maharashtra.

..Respondents

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Mr. I. M. Khairdi, Advocate for Petitioner.

Mr. J. P. Patil, AGP for Respondents/State.

Mr. Abhijit Kulkarni a/w Ms. Sampada S. Patil, Advocate for Respondent No.1.

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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 judgment and order dated 21.09.2018 passed by Additional Divisional Commissioner, Pune in Appeal No.2/2018, thereby upholding judgment and order dated 12.03.2018 passed by Collector, Solapur in Grampanchayat Dispute Application

No.36/2017, whereby petitioner has been disqualified in terms of Section 14(1)(J-1) r/w. Section 16 of Maharashtra Village Panchayat Act, 1959 (for short 'MVP Act').

3. The elections of Grampanchayat Dongaon were held on 16.10.2017. The petitioner was elected as Member. The respondent no.1 filed dispute contending that petitioner has three children born after 12.09.2001, thus he incurred disqualification in terms of Section 14(1)(J-1) of MVP Act.

4. The petitioner refuted claim made in dispute contending that although three children were born to him, second child died in motor vehicular accident on 31.12.2006. Third child is born on 16.07.2007. Thus, as on date of election, he had only two living children. However, he has been wrongly disqualified.

5. Mr. I. M. Khairdi, learned Advocate appearing for petitioner relying upon Full Bench decision of this Court in case of ***Subhash Sajesingh Gavit Vs. The Returning Officer ZP Nandurbar and Ors.***¹ submits that demise of child can be excluded while computing number of living children and number of children that a candidate has on date of filing of nomination paper, would be reckoned. He would, therefore, urge that impugned order disqualifying petitioner is liable to be quashed and set aside.

¹ 2019 Supreme (Bom) 180.

6. Per contra, Mr. Abhijit Kulkarni, learned Advocate appearing for respondent no.1 would submit that legislative intent discernible from Act clearly connotes that disqualification is attached to birth of more than two children after cut off date rather than living children as on date of commencement of Act. According to him, statutory phrase ‘has more than two children’ is intrinsically linked to event of procreation and birth, not to subsequent events such as survival, mortality, or post-birth contingencies. He would bring to notice of this Court difference in language in “*Haryana Panchayati Raj Act*” and “*Maharashtra Village Panchayat Act*” to contend that word ‘two living children’ appearing in Haryana Act does not find place in Maharashtra Act. He would, therefore, rely on observations of Supreme Court in cases of ***Javed and Others Vs. State of Haryana and Others***² and ***Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others***³. Mr. Kulkarni would further submit that Full Bench of this Court has not considered aforesaid aspects of matter. He would, therefore, urge to follow procedure in terms of Chapter I Rule 8 of Bombay High Court Appellate Side Rules, 1960 and make reference to the Honourable the Chief Justice of Bombay High Court.

7. Having considered submissions advanced by learned Advocates appearing for respective parties, it can be observed that the Honourable the Chief Justice had made reference under Chapter I Rule

² (2003) 8 SCC 369.

³ (1953) 1 SCC 167.

8 of Bombay High Court Appellate Side Rule for considering issue by Larger Bench in case of ***Subhash Sajesingh Gavit*** (supra). The following issues were taken up for consideration before Full Bench:

“(1) Whether, the disqualification clause, introduced in the Maharashtra Zilla Parishad and Panchayat Samities Act, Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and the Maharashtra Village Panchayats Act, and the proviso thereunder, would be applicable from 13.9.2000?”

“(2) Whether the clause of disqualification can be attracted, considering the number of birth of the children irrespective of whether any of the children have died or whether a child who has died and is not in existence on the date of the filing of the nomination papers, will have to be excluded from the number of children procreated by the candidate?”

“(3) Whether such demise of the child can be excluded by interpreting the word 'had' appearing in the proviso so as to be read as 'has' appearing in Section 16(1)(k)?”

8. In paragraph no.47 of judgment delivered by Full Bench difference between Haryana Panchayati Raj Act and Maharashtra Village Panchayat Act providing for disqualification of more than two children has been duly considered and it has been observed in paragraph nos.52 and 53 as under:

“52. In our view, a provision should be interpreted in a way, which could be given an appropriate meaning and without creating an exclusion or disqualification by inference or implication. So also, a sentence conveying 'present' and 'present continuous' tense cannot be converted into a past tense. As such, the words 'has' and 'having' lend a 'present' and 'present continuous' meaning and cannot be interpreted to include even a dead child or a still born child. If a dead child is to be included, the words, 'has_children' will have to be read as 'had_children'”

53. We, therefore, hold that the demise of a child can be excluded while computing the number of living children in

these three Acts and the number of children that a candidate has on the date of the filing of the nomination paper, would be reckoned. We answer issue Nos.2 and 3 accordingly.”

9. In that view of matter, this Court do not find any reason to adopt procedure under Chapter I Rule 8 of Bombay High Court Appellate Side Rules, 1960. No infirmity can be noticed in judgment of Full Bench of this Court as sought to be canvassed on behalf of respondents. In that view of matter, this Court holds that orders of disqualification passed against petitioner under Section 14(1)(J-1) of MVP Act cannot be sustained in law as, on date of nomination or declaration of election, petitioner had only two living children. The child, who died in year 2007 cannot be counted for disqualifying petitioner.

10. In result, Writ Petition is allowed in terms of prayer Clause (b).

11. Rule is made absolute in above terms.

(S. G. CHAPALGAONKAR)
JUDGE