IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 14440 OF 2017

Gulabrao Tuljaram Mandge
Age : 56 years, occ : agri.,
R/o Rehkuri, Taluka Karjat,
District Ahmednagar. **Petitioner.**

Versus

1. The Additional Commissioner,
Nashik Division, Nashik.

2. The Additional Collector,
Ahmednagar.

3. Sanjana Sunil Mandge
Age : 42 years, occ : agri.,
R/o Rehkuri, Taluka Karjat,
District Ahmednagar. **Respondents**

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Mr. Abhijit S. More, Advocate for the petitioner.
Mr. S.B. Pulkundwar, A.G.P. for respondent Nos.1 and 2.
Mr. V.V. Tarde, Advocate for respondent No.3.

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CORAM : N.J. JAMADAR, J.

Reserved on : 10th March 2021.
Pronounced on : 6th April 2021.

JUDGMENT.

Rule. Rule made returnable forthwith and, with the consent of the Counsels for the parties, heard finally at the stage of admission.

2. This petition calls in question the legality, propriety and correctness of the order passed by the Collector, Ahmednagar in Village Panchayat Dispute No. 101/2015, dated

8th March 2016, whereby the dispute raised by the petitioner alleging that respondent No. 3 had incurred disqualification under Section 14 (1) (j-1) of the Maharashtra Village Panchayat Act, 1959 (the Act 1959), as she had more than two children, was dismissed and the order dated 3rd July 2017 passed by the Additional Commissioner, Nashik Division, Nashik in Appeal No. 43/2016, whereby the appeal thereagainst also came to be dismissed.

3. The background facts leading to this petition can be stated, in brief, as under :

a) The petitioner is a resident of village Rehkuri, Taluka Karjat. He is a registered voter. Respondent No. 3 contested election to the post of the member of Village Panchayat, from Ward No. 3, reserved for woman (General), and was declared elected. While submitting the nomination form, the petitioner alleged, the respondent No. 3 had furnished false declaration. Respondent No. 3 had three children. The third and youngest son Akash was born to her on 1st October 2001 i.e. after the cut-off date of 13th September 2001 and, thus, she was disqualified under Clause (j-1) of sub-section (1) of Section 14 of the Act 1959.

b) The petitioner, thus, lodged a dispute with the Collector. The petitioner annexed the copies of birth certificate issued by the Village Officer and the *bona fide* certificate issued by the Headmaster, Shri Amarnath Vidyalaya, Karjat, wherein 1st

October 2001 was mentioned as the date of birth of Akash. Thereupon, the Collector, Ahmednagar conducted an enquiry under Section 16 of the Act 1959.

c) Respondent No. 3 contended that the third child Akash was born to her on 21st May 2001. There were documents in the nature of the entries in the register of mothers' and new born children, maintained by the health officials, which clearly indicated that Akash was born on 21st May 2001. The documents relied upon by the petitioner namely the birth certificate and *bona fide* certificate in support of his claim that Akash was born on 1st October 2001, had no evidentiary value. The petitioner had preferred application seeking disqualification of respondent No. 3 to wreck personal vengeance.

d) After appraisal of the rival contentions and material on record, the Collector was of the view that since the husband of respondent No. 3 had instituted a suit, bearing R.C.S. No. 269/2015 for declaration that Akash was born on 21st May 2001, the issue of date of birth of Akash was sub-judice. Secondly, the entries made in the registers of mothers' and integrated child development scheme, indicated the date of birth of the third child of respondent No. 3 was 21st May 2001. *Prima facie*, those documents also appeared to be valid. Thus, till the dispute about the date of birth of Akash was adjudicated by the Civil Court in R.C.S. No. 269/2015, the documents filed on behalf of respondent No.3 in support of her claim that Akash was born on

21st May 2001, could not be discarded. Holding thus, reserving the liberty to the petitioner – disputant to raise the dispute after adjudication by the Civil Court, the dispute came to be rejected.

e) The petitioner assailed the order of the Collector before the Commissioner under Section 16 (2) of the Act 1959. In appeal No. 43/2016, by the impugned judgment and order dated 3rd July 2017, the Additional Commissioner was persuaded to dismiss the appeal concurring with the view of the Collector that the matter of date of birth of Akash was sub-judice before the Civil Court in R.C.S. No. 269/2015 and there was material in the form of the entries in the register R-15 and R-16 maintained by the health officials to indicate that Akash was born on 21st May 2001.

f) Being aggrieved by and dissatisfied with the aforesaid orders passed by the Collector and Appellate Authority, the petitioner has invoked writ jurisdiction of this Court.

4. An affidavit-in-reply is filed by respondent No. 3. An endeavour is made to support the impugned orders. It is contended that the entries made in the registers maintained by the health officials at Primary Health Centre have presumptive value and, thus, respondent No. 3 has sanguine hope to succeed in R.C.S. No. 269/2015.

5. As the controversy revolved around the exact date of birth of the third child and the petitioner's claim rested on the birth certificate issued by the Village Officer, this Court had called

upon the respondent Nos.1 and 2 to produce original birth and death register for the year 2001. The original register for the relevant period has been produced by respondent Nos.1 and 2. An affidavit sworn by Manoj Ghalme, Gramsevak, Rehkuri Grampanchayat is also filed to vouch for the proper custody and genuineness of the said register.

6. In the backdrop of the aforesaid pleadings, I have heard Mr.More the learned Counsel for the petitioner, Mr. Pulkundwar, the learned A.G.P. for respondent No.1 and 2 and Mr. Tarde, the learned Counsel for respondent No. 3 at some length.

7. Mr. More, the learned Counsel for the petitioner submitted that the authorities have approached the issue from a wrong perspective. In the face of the birth certificate, which was issued on the basis of the entries in the birth and death register, lawfully made by the Competent Authority, the Collector as well as the Additional Commissioner misdirected themselves in placing reliance upon the entries made in the registers maintained by the health officials, which are of doubtful character. Conversely, the authorities have not recorded a categorical finding that the birth certificate, or for that matter the entries made in the birth and death register, are unworthy of reliance. The endeavour of respondent No. 3 to take advantage of the institution of the suit for declaration by her husband, bearing R.C.S. No. 269/2015, which found favour with the

authorities below, also turned out to be a subterfuge as the said suit was eventually dismissed on 11th February 2019 for want of prosecution. The authorities below, thus, fell in an error in abdicating their statutory responsibility to adjudicate the issue of disqualification on the basis of the material on record on a specious premise that the matter was subjudice before the Civil Court, urged the learned Counsel for the petitioner.

8. As against this, it was urged on behalf of respondent No. 3 that the entries made in the birth register and *bona fide* certificate do not command implicit reliance, especially in the face of contra material, which indicates with sufficient clarity that Akash was born on 21st May 2001. In any event, the term of Village Panchayat has expired. The petition is, thus, rendered infructuous.

9. The learned A.G.P., in the context of the original birth register tendered on the record of this Court, urged that there is no justifiable reason to doubt the genuineness and authenticity of the entry made in the birth register to the effect that Akash was born on 1st October 2001.

10. In the light of the aforesaid submissions, it becomes evident that the fate of the question as to whether the respondent No. 3 has incurred disqualification under Section 14 (1) (j-1) of the Act 1959, for having more than two children on the cut-off date, hinges upon the date on which Akash was born. The authorities have proceeded on the premise that the record

maintained by the health officials, in the nature of the entries made in the mothers' register and integrated child development plan register, indicate that Akash was born on 21st May 2001 and *prima facie* there was no reason to doubt the genuineness of the entries so made. The authorities below were of the view that though the birth certificate records that Akash was born on 1st October 2001, yet it was not decisive, as a challenge to the date of birth recorded in the births and deaths Register, at the instance of the husband of respondent No. 3, was sub-judice before the Civil Court in R.C.S. No. 269/2015 and till the said issue was adjudicated upon, it cannot be said that respondent No. 3 had incurred the disqualification. Thus, reserving liberty to the petitioner to re-agitate the issue of disqualification, depending upon the outcome of the said suit, the challenge came to be negatived.

11. Whether the aforesaid approach of the authorities is justifiable? Could the authorities below have lawfully declined to grant primacy to the entries made in the Births and Deaths Register by the Competent Authority on the premise that the matter was sub-judice? Does it manifest a patent error in law which would justify the exercise of writ jurisdiction by this Court? These are the questions which crop up for consideration in the case at hand.

12. Mr. More, the learned Counsel for the petitioner would urge that the authorities fell in a grave error in brushing

aside the birth certificate lightly. In the absence of any justifiable reason, the birth certificate ought to have received the evidentiary value it commands, urged Mr. More. To lend support this submission, Mr. More placed reliance on the judgment of the Supreme Court in the case of ***CIDCO vs Vasudha Gorakhnath Mandevlekar, 2009 (7) SCC 283*** wherein it was observed that the Deaths and Births register maintained by statutory authorities raises a presumption of correctness. Such entries made in the statutory registers are admissible in evidence in terms of Section 35 of the Indian Evidence Act. It would prevail over an entry made in the school register, particularly, in absence of any proof that the same was recorded at the instance of the guardian of the student.

13. Reliance was also placed on a judgment of a learned Single Judge of this Court in the case of ***Hanumant Sahebrao Patil Vs The Additional Commissioner, Nashik 2017 (3) ALL MR 209***, wherein this Court placing reliance on the entry in the birth register had recorded a finding that the respondent member therein had incurred disqualification under Section 14 (1) (j-1) of the Act 1959.

14. A brief recourse to the statutory framework, which governs the registration of births and deaths and issue of certificates would be advantageous. Section 7 of the Registration of Births and Deaths Act, 1969 (the Act 1969) casts duty on the Registrar to make entries in the register maintained

for the purpose of registration of births and deaths. Section 8 of the Act 1969 enlists the persons who are enjoined to give information of births and death. Duty is also cast on certain persons under Section 10 of the Act 1969 to notify the births and deaths and to certify cause of death. Section 11 of the Act 1969 makes it obligatory upon a person who has verbally given information to the Registrar to sign the register. Under Section 12 of the said Act, the Registrar is required to issue extracts of registration entries.

15. If the Registrar is satisfied that any entry of birth or death in any register kept by him under this Act, is erroneous in form or substance, or has been fraudulently or improperly made, he may, subject to the rules, correct the error or cancel the entry, under Section 15 of the Act 1959. Section 30 of the Act 1969 empowers the State Government to make rules to carry out the purposes of the said Act. In exercise of the said power, the Government of Maharashtra has framed the Rules entitled the Maharashtra Registration of Births and Deaths Rules, 2000 (Rules 2000). In the context of the question in controversy at hand, it would be imperative to note that Rule 11 (4) of the Rules 2000 provides that if any person asserts that any entry in the register of births and deaths is erroneous in substance, the Registrar may correct the entry in the manner prescribed under section 15 upon production by that person of a declaration setting forth the nature of the error and true facts of the case

made by two credible persons having knowledge of the facts of the case.

16. In the light of the aforesaid statutory provisions, reverting to the facts of the case, indisputably, the births and deaths register is maintained by the Competent Authority. From the perusal of the original register, it becomes evident that the entries therein are made in seriatum. The entry in question, in respect of Akash, seems to have been made on 1st October 2001. The husband of respondent No. 3 and father of Akash is reported to have given the intimation. His name finds mention therein. The relevant entry in the register is also signed by the husband of respondent No.3. Thus, the register seems to have been maintained in the prescribed manner and the entries therein qua the birth of Akash, are made in conformity with the provisions of Act 1969 and Rules 2000.

17. Section 35 of the Indian Evidence Act provides that an entry in any public or other official book, register or record, stating a fact in issue or relevant fact, and made by a public servant in the discharge of his official duty, or by any other person in performance of a duty specially enjoined by the law of the country in which such book, register, is kept, is itself a relevant fact. In the backdrop of the aforesaid provision, the entries in the births and deaths register and even in school admission register have been considered as relevant and admissible. However, the question of weight to be attached to

the entries made therein often turns on the supporting material on the basis of which those entries were made.

18. A profitable reference, in this context, can be made to a judgment of the Supreme Court in the case of ***Birad Mal Singhvi vs Anand Purohit, AIR 1988 SC 1797***, wherein the election petition arose on account of alleged improper rejection of the nomination papers to the election of the Legislative Assembly as the candidates were held to be below 25 years of age. The entries made in the school register were pressed into service to demonstrate the improper rejection of the nomination papers.

19. In the backdrop of the aforesaid fact situation, the Supreme Court enunciated the legal position in the following words :

> *"15……..Section 35 of the Indian Evidence Act lays down that entry in any public, official book, register, record stating a fact in issue or relevant fact and made by a public servant in the discharge of his official duty specially enjoined by the law of the country is itself the relevant fact. To render a document admissible under Section 35, three conditions must be satisfied, firstly, entry that is relied on must be one in a public or other official book, register or record, secondly, it must be an entry stating a fact in issue or relevant fact; and thirdly, it must be made by a public servant in discharge of his official duty, or any other person in performance of a duty specially enjoined by law. An entry relating to date of birth made in the school register is relevant and admissible under Section 35 of the Act but the entry regarding to the age of a person in a school register is of not much evidentiary value to prove the age of the person in the absence of the material on which the age was recorded.*
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> *17……..The entries regarding dates of birth contained in the scholar's register and the secondary school examination have no probative value, as no person on whose information the dates of birth of the aforesaid*

candidates was mentioned in the school record was examined. In the absence of the connecting evidence the documents produced by the respondent, to prove the age of the aforesaid two candidates have no evidentiary value.

20. A useful reference can also be made to a judgment of Supreme Court in the case of ***Madan Mohan Singh vs Rajni Kant, (2010) 9 SCC 209*** wherein the Supreme Court underscored the proposition that the authenticity of the entries would depend upon whose information such entries stood recorded. The Supreme Court held as under :

"20. So far as the entries made in the official record by an official or person authorised in performance of official duties are concerned, they may be admissible under Section 35 of the Evidence Act but the court has a right to examine their probative value. The authenticity of the entries would depend on whose information such entries stood recorded and what was his source of information. The entry in School Register/School Leaving Certificate require to be proved in accordance with law and the standard of proof required in such cases remained the same as in any other civil or criminal cases.

21. For determining the age of a person, the best evidence is of his/her parents, if it is supported by un-impeachable documents. In case the date of birth depicted in the school register/certificate stands belied by the un-impeachcable evidence of reliable persons and on temporaneous documents like the date of birth register of the Municipal Corporation, Government Hospital/Nursing Home etc, the entry in the school register is to be discarded. (Vide: Brij Mohan Singh Vs. Priya Brat Narain Sinha & Ors. AIR 1965 SC 282; Birad Mal Singhvi Vs. Anand Purohit AIR 1988 SC 1796; Vishnu Vs. State of Maharashtra (2006) 1 SCC 283; and Satpal Singh Vs. State of Haryana JT 2010 (7) SC 500).

22. If a person wants to rely on a particular date of birth and wants to press a document in service, he has to prove its authenticity in terms of Section 32(5) or Sections 50, 51, 59, 60 & 61 etc. of the Evidence Act by examining the person having special means of knowledge, authenticity of date, time etc. mentioned therein".

(emphasis supplied)

21. In view of the aforesaid enunciation of the legal position, re-adverting to the facts of the case, as indicated above, the entries in the births register were made by the Competent Authority, who is statutorily enjoined to make those entries in the public record, and they have been made in conformity with the governing provisions of the Act 1969 and Rules 2000. The conditions for admissibility and reliability of the said birth certificate must be held to have been satisfied.

22. A reference to the judgment of a Division Bench of this Court in the case of *Gangadhar Gonduram Tadme vs Trimbak Govindrao Akingire and others, 2005 (1) Mh.L.J. 94*, wherein this Court was confronted with a converse situation, would be apposite. In the said case, evidence was led to show that the candidate therein had given birth to third child much after the date which was recorded in the birth register. This Court found that the entry in the birth register, in the said case, was made on the basis of the information given by "Chaprasi" (peon). The name of the person was not disclosed. In that backdrop, with reference to the provisions of Birth, Death and Marriages Registration Act, 1886, the Division Bench held that such entry would not carry presumptive value under Section 114 of the Evidence Act and observed as under :

> "8. Sub-section (2) of Section 22 very clearly states that "Until the entry has been so signed or the conditions specified in the proviso to Sub-section (1) have been complied with, the birth or death shall not be deemed to be registered under this Act".

> Apparently therefore, in order to give the presumptive value to the entries made in the register of birth, the condition specified under Sub-section (1) of Section 22 has necessarily to be satisfied. It is a mandatory provision and non-compliance thereof will result in the registration to be treated as not the one done under the said Act. If the registration ceases to be the one under the said Act, any certificate issued in relation to such entries cannot have legal sanctity. The entries which are made without compliance of the conditions specified in the proviso to Sub-section (1) or in the absence of signature of the person giving notice, would not carry any presumptive value under Section 114 of the Evidence Act. In other words, any certificate issued without compliance of the mandatory requirement under Section 22(1) of the said Act, cannot be considered as a certificate issued under the provisions of the said Act and any such certificate, therefore, will not carry presumptive value under Section 114 of the Evidence Act".

23. In the case at hand, the authorities below have not recorded a finding that the entry made in the births and deaths register does not command reliance on account of non-compliance with the statutory requirement. Nor the non-compliance with the statutory requirement is evident from the entries made in the births and deaths register. Instead, the respondent No. 3 banked upon certain entries made in the registers maintained by the health officials to show that Akash was born on 21st May 2001. The authorities below recorded a finding that those documents also appeared *prima facie* valid and since the issue of the exact date of birth was sub-judice before the Civil Court, the question of disqualification was made to rest upon the adjudication by the Civil Court.

24. In my considered view, the authorities below have committed an error in law. Once it was found that the admissibility and reliability of the birth certificate issued by the Competent Authority, on the basis of the entries made in the births and deaths register in conformity with the provisions of the Act and the Rules, was not in doubt, then the authorities could not have lightly brushed aside the said birth certificate. It is imperative to note that no dispute was lodged by respondent No. 3 or her husband questioning the correctness of the date of birth under Section 15 of the Act 1969, till the question of disqualification was raised by the petitioner. The entry in the births and deaths register qua Akash, indicates that it was made on the basis of the information furnished by the husband of respondent No. 3 and he had put signature in token thereof. For almost 15 years the respondent No. 3 and her husband relied upon the said entry in the birth register, at least for the schooling of Akash. R.C.S. No. 269/2015 was instituted in the wake of controversy. Respondent No. 3, thus, could not have been permitted to wriggle out of the situation taking refuse in the institution of the suit by her husband, which eventually came to be dismissed.

25. The situation which thus obtains is that the entry in the birth register qua Akash is intact. The suit instituted by the husband of respondent No. 3 to seek a declaration that the date of birth recorded therein is not correct, came to be dismissed.

Moreover, in the declaration made by respondent No. 3 while furnishing the nomination form, she had claimed that the third child Akash was born to her on 10th July 2001 and not on 21st May 2001. In the face of this material, the authorities below could not have placed reliance on the entries made in the registers maintained by health officials which were principally maintained for recording health parameters and administrative purposes. Such entry may not command primacy over the entry made in the statutorily mandated Birth Register, unless the latter is shown to be incorrect by cogent evidence. The risk involved in placing such registers on a higher pedestal is demonstrable. From bare perusal of the mothers' register (R-15), it becomes abundantly clear that the child is shown to have been born to respondent No. 3 on 21st May 2001, yet immediately succeeding entries reveal that the respective mothers had delivered child in the months of October and September. Such a gap of almost 6 months tells its own tale.

26. An endeavour was made on behalf of respondent No.3 to urge that since the term of respondent No. 3 is over, the petition has been rendered infructuous. I find it rather difficult to accede to this submission. The object of incorporating the disqualification cannot be lost sight of. The object is to propagate and ensure population control by incorporating a disincentive for having more than two children for those who aspire to be peoples representatives. In a sense, the

disqualification on the ground of having more than two children operates in *rem*. Identical provisions have been made in the enactments which govern the other Local Self Governing Bodies. Thus, despite the fact that the term of respondent No. 3 is over, a declaration that she has incurred the disqualification for having more than two children is required to be made.

27. The conspectus of the aforesaid consideration is that the impugned orders deserve to be quashed and set aside. Hence, the following order.

ORDER

(i) The petition stands allowed.

(ii) The impugned order passed by the Collector in Dispute No. 101/2015, dated 8th March 2016 and by the Additional Commissioner, Nashik Division, Nashik in Appeal No. 43/2016 dated 3rd July 2017 stand quashed and set aside.

(iii) It is declared that the respondent No. 3 Sanjana Sunil Mandge has incurred disqualification under the provisions of Section 14 (1) (j-1) of the Maharashtra Village Panchayat Act, 1959.

(iii) Rule made absolute in aforesaid terms.

(iv) No costs.

(N.J. JAMADAR, J.)

VD_Dhirde