

(2004) 04 BOM CK 0110
In the Bombay High Court
Case No : Writ Petition No. 2381 of 2004

Gangadhar Tadme

APPELLANT

Vs

Trimbak Akingire and Others

RESPONDENT

Date of Decision : 12-04-2004

Acts Referred:

Births, Deaths and Marriages Registration Act, 1886 — Section 19, 20, 22(1), 22(2)
Evidence Act, 1872 — Section 114

Citation : (2005) 1 ALLMR 749 : (2005) 1 MhLj 94

Hon'ble Judges : V.G. Munshi, J; R.M.S. Khandeparkar, J

Bench : Division Bench

Advocate : S.V. Gangapurwala, for the Appellant; P.R. Patil and V.D. Gunale for Respondent Nos. 2 and 4 and K.S. Patil, AGP for Respondent Nos. 7 and 8, for the Respondent

Judgement

1. Heard the learned Advocates for the petitioner and the respondent Nos. 2, 4, 7 and 8.

2. The petitioner challenges the orders passed by the authorities declaring that the third child of the petitioner was born on 18-3-2002 and not on 1-9-2001, as was sought to be contended by the petitioner and consequently declaring the petitioner to have been disqualified to be a member of the Gram Panchayat, Sayedpur on the basis that a person getting a third child after the appointed date cannot continue to be a member of the village panchayat.

3. The contention of the petitioners is that the authorities below did not give sufficient weightage to the birth certificate of the third child of the petitioner, issued by the Gram Sevak, who is given the powers of the Registrar under the Births, Deaths and Marriages Registration Act, 1886, hereinafter referred to as "the said Act." In other words, it is the contention of the petitioner that the presumptive value which is available to the contents of the birth certificate in terms of the provisions of the said Act read with Section 114 of the Evidence Act, 1872 has been totally ignored by the authorities below while rejecting the claim

of the petitioner in relation to the date of birth of his third child.

3A. It is not in dispute that the petitioner had produced certificate in relation to the birth of his third child and it discloses the date of birth to be 1-9- 2001. The authorities below, however, relying upon the other evidence, oral as well as documentary, and more particularly the testimony of one Smt. Mangala Dashrath Ranadive has held that the petitioner's wife was carrying on till 14-12- 2001 when she was examined by the said nurse Smt. Ranadive, and it was her 28th week of pregnancy. Though the said witness was cross-examined, it appears that the petitioner could not make any dent in the testimony of Smt. Ranadive.

4. As regards the certificate of birth, undoubtedly, any such certificate issued, based on the records maintained by the Gram Sevak who has been given the powers of the Registrar under the said Act, will carry presumptive value in relation to the correctness of the entries in such certificates. It is primarily so because such certificates are issued based on the records which are maintained in the normal course of the duties of the concerned officer under the statutory provisions of law. Obviously therefore, whenever any record is maintained in accordance with the provisions of law, any certificate issued based on such records will carry presumptive value in terms of Section 114 of the Evidence Act.

5. Section 19 of the said Act speaks of the duty of Registrar to register births and deaths of which notice is given. It provides that every Registrar of Births and Deaths, on receipt of notice of a birth within the local area for which he is appointed, shall, if the notice is given within the prescribed time and in the prescribed mode by a person authorised by the said Act to give the notice, forthwith make an entry of the birth or death in the proper register book. It further provides that if the Registrar has reason to believe that the notice given is false in any respect, he may refuse to register the birth until he receives an order from the Judge of the District Court directing him to make the entry and prescribing the manner in which the entry is to be made and he shall not enter in the register the name of any person as father of an illegitimate child, unless at the request of the mother and of the person acknowledging himself to be the father of the child.

6. The term "person authorised" is not defined under the said Act. However, Section 20 enumerates the persons who can be said to be authorised to give the notice of birth. It enlists that the following person to be the authorised one to give notice of birth:-

- a. the father or mother of the child;
- b. any person present at the birth;
- c. any person occupying, at the time of the birth, any part of the house wherein the child was born and having knowledge of the child having been born in the house;
- d. any medical practitioner in attendance after the birth and having personal

knowledge of the birth having occurred;

e. any person having charge of the child.

Obviously the person authorised to give notice of birth is the one who can have the direct knowledge about the birth of the child. It does not include a person who might have mere information of the birth of a child. On the contrary, the provision of law contained in Section 20 of the said Act abundantly makes it clear that such power is given to a person who has got sufficient knowledge about the birth of the child. Undoubtedly, Clause (e) also speaks of "any person having charge of the child" and perhaps it may include a person who comes in possession of an abandoned child. It is, however, not necessary to deal with the said issue here as it is nobody's case that the child whose birth date was in dispute was an abandoned child but on the contrary it is the specific case of the petitioner as well as that of the respondents that the concerned child was delivered by the petitioner's wife.

7. Section 22 of the said Act deals with the provisions regarding the entry of birth in the register to be maintained u/s 19 of the said Act. Sub-section (1) thereof provides that when an entry of a birth has been made by the Registrar of Births u/s 19, the person giving notice of the birth must sign the entry in the register in the presence of the Registrar, provided that it shall not be necessary for the person giving notice to attend before the Registrar or to sign the entry in the register if he has given such notice in writing and has furnished to the satisfaction of the Registrar such evidence of his identity as may be required by any rules made by the State Government in that behalf. It is not the case of the authorities that there are any specific rules framed by the Government of Maharashtra in relation to the evidence pertaining to the identity of the authorised person to be furnished to the Registrar. However, plain reading of Sections 19, 20 and 22(1) of the said Act would reveal that the register maintained in relation to births by the registrar under the said Act has to disclose the identity of the person giving the notice of birth. In fact, a person giving such notice has primarily to sign the register in the presence of the Registrar. Exemption is granted only to those persons who give notice in writing disclosing sufficient identity of such person and establishes the same to the satisfaction of the Registrar. Obviously therefore, the records before the Registrar must be clear as regards the identity of the person giving the notice of birth. Undisputedly, the certificate to be issued in relation to the birth should also disclose the name and the address of the person giving the notice of birth. The certificate also should disclose the identity of the person who had attended and witnessed the delivery. Evidently, this information is necessary to give the required authenticity to the records and which carry presumptive value to the correctness of such entries.

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 u/s 114 of the Evidence Act. In other words, any certificate issued without compliance of the mandatory requirement u/s 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 u/s 114 of the Evidence Act.

9. Bare perusal of the certificate in respect of the third child produced by the petitioner would disclose that the column in relation to the person who might have attended the wife of the petitioner at the time of delivery has been left without being filled-in. As regards the name and address of the person who had given the notice of birth, it only discloses the expression "Chaprasi" (peon). Neither the name of the person is disclosed nor his address or identity. Being so, the certificate cannot have presumptive value u/s 114 of the Evidence Act, nor it can be said to be a certificate issued under the said Act bearing in mind the provisions of Section 22(2) of the said Act.

10. Considering the provisions of law relevant and applicable to the matter in issue, therefore, no fault can be found with the authorities below in having not given presumptive value to the entries in the alleged certificate of birth of the third child of the petitioner. At the same time, the orders passed by the authorities below cannot be found fault with as the same have been passed after analysing the entire evidence on record in proper perspective. Evidently, the testimony of Smt. Ranadive discloses that the wife of the petitioner was pregnant much after the alleged date of birth of child claimed by the petitioner and that she was in the 28th week of her pregnancy till 14-12-2001. No material was produced before the authorities nor the petitioner could establish the said finding to be not borne out from the records or either to be perverse.

11. The learned Advocate for the petitioner, however, is justified in contending that the authorities below could not have relied upon the certificate regarding absence of entries alleged to have been produced in the name of Gram Sevak, Sayedpur, dated 16-11-2002 as the same was produced before the authorities much after the conclusion of the arguments. However, mere reference to the said certificate or even reliance placed thereon would not vitiate the orders passed by the authorities below as the findings arrived at are supported by other materials on record and the authorities below have in fact taken into consideration all the materials on record and being so, there is no case for interference in the impugned orders in writ jurisdiction.

12. For the reasons stated above, the petition fails and is hereby dismissed.