
(2014) 03 BOM CK 0112

In the Bombay High Court

Case No : Writ Petition No. 7253 of 2011

Padmakar Pandurang Kale

APPELLANT

Vs

Santosh, The Grampanchayat and The Additional Divisional

RESPONDENT

Date of Decision : 04-03-2014

Acts Referred:

Bombay Village Panchayats Act, 1958 — Section 14(1)(j-1)

Citation : (2014) 5 ABR 48 : (2014) 5 ALLMR 638 : (2014) 4 BomCR 695

Hon'ble Judges : Ravindra V. Ghuge, J

Bench : Single Bench

Advocate : S.S. Choudhary, for the Appellant; D.R. Kale, A.G.P. for Respondent Nos. 3 and 4 and Mr. M.V.B. Ghatge, Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Ravindra V. Ghuge, J.—Heard the learned Advocates for the respective sides. By an order dated 15/11/2011, this petition was admitted and was thereafter posted for final hearing.

2. The petitioner has been elected as a Member of the Gram Panchayat, Maradga, Tal. Hadgaon, Dist. Nanded in the election that was held on 24/10/2010. He is an agriculturist by occupation. He is the Chairman of the Mahatma Gandhi Tantamukti Committee of village Maradga.

3. Respondent No. 1 Santosh Kale made an application before the Additional Collector, challenging the election of the petitioner as a Member of the Gram Panchayat, Maradga on 30/10/2010. The Additional Collector, Nanded made an enquiry and arrived at a conclusion that the petitioner could not be continued as the Member of the Gram Panchayat, Maradga since he has 4 biological children. In view of the said fact, the Additional Collector passed his impugned order dated 27/06/2011.

4. The petitioner's first biological daughter namely Yogita is born on 21/06/1995. The second biological daughter namely Yogashree is born on 01/06/1998. The

third biological son namely Shashikant was born on 07/10/2000 and the fourth child was said to have been born on 30/07/2002.

5. The petitioner contends that the date of birth of his 4th child Shrikant is in fact 30/08/2001 and has wrongly been entered in the school record as 30/07/2002. The petitioner, therefore, made an application to the Education Officer (Primary), Zilla Parishad, Nanded for seeking a correction in the said birth date. The enquiry conducted by the Education Officer brought him to a conclusion that the 4th child Shrikant was born on 30/08/2001. It is further contended that the Executive Magistrate and Tahsildar, Hadgaon has also issued orders on 21/09/2010 stating that the birth date of the 4th child Shrikant was 30/08/2001. Certificate to that effect was issued by the Taluka Executive Magistrate on 21/09/2010.

6. The petitioner, therefore, contends that when the 4th child was born before 12/09/2001, he could not have been held to be disqualified in light of 2nd proviso to Section 14(1)(j-1) of The Bombay Village Panchayats Act, 1958.

7. The petitioner states that he received a notice dated 04/11/2010 from the Office of the Additional Collector, Nanded, directing him to remain present on 01/12/2010 at 2.00 p.m. in his office for a hearing on the said issue concerning the birth of the 4th child.

8. The petitioner submitted a detailed representation through his Advocate and denied all contentions and allegations adverse to him. The necessary documents were also produced. The Additional Collector, Nanded delivered his judgment and order on 27/06/2011, which is at page No. 43 of the petition paper book. The said judgment is impugned in this petition and was subjected to an appeal before the Additional Divisional Commissioner, Aurangabad. By judgment and order dated 27/08/2011, the appeal of the petitioner was rejected by the Additional Divisional Commissioner, Aurangabad, which is at page No. 64 of the petition paper book. The said judgment has also been impugned in this petition.

9. Learned Advocate Mr. S.S. Chaudhary for the petitioner has strenuously and vehemently contended that page No. 29 is the birth certificate issued on 15/06/2010, clearly indicating that the 4th child was born on 30/08/2001. He has also drawn my attention to Page No. 30, which is an order passed by the Tahsildar dated 21/09/2010, in which it is mentioned that since birth of the 4th child Shrikant was not recorded in the Birth/Death Register at Maradga and since an application was made beyond one year of the birth of the child, he has exercised his powers to pass the said order concluding that Shrikant was born on 30/08/2001 at Maradga, Tal. Hadgaon.

10. Page No. 31 is the birth certificate issued by the Gramsevak, Gram Panchayat, Maradga holding that the 4th child Shrikant was born on 30/08/2001. The said certificate was issued on 29/11/2010. Mr. Chaudhary, therefore, strenuously contends that this material record was disbelieved by the Additional Collector while passing the impugned order and disqualifying the petitioner as the Member of the Gram Panchayat, Maradga.

11. Mr. Chaudhary has, therefore, drawn my attention to Section 14(1)(j-1) of the Bombay Village Panchayats Act, 1958 and submits that the 2nd proviso to s/s j-1 was squarely applicable to the case. The said proviso reads as under:

1st Proviso: "Provided that, a person having more than two children on the date of commencement of the Bombay Village Panchayats and the Maharashtra Zilla Parishads and Panchayat Samitis (Amendment) Act, 1995 (hereinafter in this clause referred to as "the date of such commencement"), shall not be disqualified under this clause so long as the number of children he had on the date of such commencement does not increase:

2nd Proviso: Provided further that, a child or more than one child born in single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purpose of disqualification mentioned in this clause; or]

12. He, therefore submits that both the Lower Authorities have grossly erred in not considering the material documents and have proceeded on assumptions and presumptions, which has led to passing of the impugned judgments. He, therefore states that both the impugned judgments deserve to be quashed and set aside.

13. Mr. Ghatge, learned Advocate appearing on behalf of respondent No. 1 submits that it was respondent No. 1 who took up this issue before the concerned Authorities and he was therefore the complainant. An affidavit in reply has been filed, which is from page No. 69 of the petition paper book.

14. Mr. Ghatge contends that all the documents produced by the petitioner to indicate the birth of the 4th child on 30/08/2001 are post the election. Each of those documents have been issued in the year 2010. He submits that these documents were got prepared only with oblique motives and to achieve the purpose of saving the petitioner's election.

15. He has drawn my attention to the contention of the petitioner on page No. 6 of the petition memo. He submits that the 3rd child namely Shashikant is born from an independent delivery on 07/10/2000. Even if it is presumed that the 4th child was born again through an independent delivery on 30/08/2001, the petitioner is trapped in the ambit of the 2nd proviso.

16. According to him, the 3rd child is born from a single delivery after the commencement of the Act and the 4th child is born within one year from the cut of date. For the sake of clarity, he submits that the commencement of the 2nd proviso as well as clause j-1 is 13/09/2000. The 3rd child was born on 07/10/2000 i.e. after the commencement of sub clause j-1 and its proviso. Even if it is presumed that the 4th child was born on 30/08/2001, the case of the petitioner is hit by the 2nd proviso to sub-clause j-1 because it would establish that 2 children are born to the petitioner in two independent deliveries within one year from the date of commencement. He, therefore, has drawn my attention to

the observations in the impugned order passed by the Additional Collector at page No. 47.

17. Having gone through the said conclusions on page No. 47, it is clear that the said Authority, even going by the version of the petitioner, has held that the 3rd child Shashikant was born on 07/10/2000 and even if it is presumed that the 4th child Shrikant was born on 30/08/2001, the petitioner's stood disqualified owing to the commencement of Clause j-1 and its 2nd proviso.

18. Mr. Ghatge has then drawn my attention to page No. 29, which is the birth certificate issued on 15/06/2010. With reference to the said document, he has drawn my attention to page No. 75 of the petition paper book, whereby the Registrar In-charge of Birth/Death/Marriage Registration Office, Gram Panchayat, Balapur, Tal. Kalamnuri, by certificate dated 20/08/2010, has cancelled the birth certificate issued by him on 15/06/2000. Mr. Ghatge further indicates that in the said certificate at page No. 29 issued on 15/06/2010, the birth place of the 4th child of the petitioner is shown as Balapur. In the birth certificate issued on 29/11/2010, the birth place is mentioned as Maradga and the birth (4th child of the petitioner) is recorded as late as on 23/09/2010.

19. After having heard the learned Advocates for the respective sides at length alongwith learned A.G.P. and after having gone through the entire petition paper book, it clearly emerges that the petitioner has left no stone unturned for manipulating the date of birth of his 4th child. Documents of the year 2010 recording the birth of the 4th child have been pressed into service. If it is presumed that the 4th child is born on 30/08/2001, the case of the petitioner is not rescued by the 2nd proviso to section 14(1)(j-1) of the Bombay Village Panchayats Act, 1958. Nevertheless, both the Authorities below have found the conduct of the petitioner to be mischievous. The conclusions drawn by both the Lower Authorities in the impugned judgments are precise and deserve to be sustained. The conduct of the petitioner stood exposed.

20. The disturbing feature of the case is the extra-ordinary role of the then Tahsildar, Taluka Hadgaon, District Nanded in the issuance of the Birth Certificate dated 21/09/2010, which is at page No. 30 of the petition paper book. The date of registration is 31/08/2001. It has been the case of the petitioner as well as the respondents that the birth of the fourth child of the petitioner, namely, Shrikant was not recorded anywhere earlier. The said Tahsildar has exercised his powers to grant such certificate nine years after the birth of the said child Shrikant. It has been conclusively proved that the school record of the said child Shrikant indicates the date of birth as 20/07/2002. The judgments of the Additional Collector dated 27/06/2011 and the judgment of the Additional Divisional Commissioner, dated 27/08/2001 have negated the contention of the petitioner as regards the date of birth of his fourth child.

21. I therefore direct the District Collector, Nanded to carry out an investigation as regards the certificate dated 21/09/2010 at page No. 30 of the petition paper

book issued by the then Tahsildar, Hadgaon, Tal. Hadgaon, Dist. Nanded. The District Collector shall carry out all necessary investigation which he may deem fit and proper to test the veracity of the said document. In the event, the said document is found to have been surreptitiously issued, the District Collector, Nanded shall proceed to cause an enquiry against the then Tahsildar, Hadgaon to investigate whether he has played any role beyond the scope of Law and in violation of the procedure in issuing that certificate. In the event, it is so revealed that the said Tahsildar has acted in a manner un-befitting his Office and his powers and duties, the District Collector shall proceed to initiate appropriate disciplinary action against the said Tahsildar. A report of this investigation and action taken shall be submitted to the Registrar (Judicial) of this Bench within 12 (twelve) weeks from today. In the light of the above, this writ petition, being devoid of merit, is dismissed. No order as to costs. Rule is discharged. Registry is directed to transmit a copy of this judgment to the District Collector, Nanded forthwith.