

(2019) 10 BOM CK 0081
In the Bombay High Court
Case No : Writ Petition No. 1646 Of 2019

Santosh Vitthal Awate

APPELLANT

Vs

Nagesh Navnath Awate And Anr

RESPONDENT

Date of Decision : 18-10-2019

Acts Referred:

Maharashtra Village Panchayat Act, 1959 — Section 13(3), 14

Citation : (2019) 10 BOM CK 0081

Hon'ble Judges : S.S. Shinde, J

Bench : Single Bench

Advocate : P.B. Bhargude, Prashant Darandale, A.R. Patil

Final Decision : Disposed Of

Judgement

1. Rule. Rule made returnable forthwith with the consent of the parties and heard finally.
2. This petition takes an exception to the judgment and order dated 29th October, 2018 passed by the learned Addl. Commissioner, Pune in Appeal No. 6 of 2018.
3. The brief facts giving rise for filing the present petition are as under :
4. It is the case of the petitioner that the election for Mouze, Shelgaon, was scheduled between 22nd September 2017 to 17th October 2017. The actual voting took place on 16th October 2017. However, in view of new amendment, which has taken place under the provisions of the Maharashtra Village Panchayat Act, the Sarpanch is directly elected from the said village. The post of Sarpanch of the said Grampanchayat was being contested by the petitioner and Respondent No.1 herein. The said post of Sarpanch was reserved for Other Backward Class. The actual voting took place on 16th October 2017 and the counting of the voting took place on 17th October 2017. At the end of the counting, it was stated that respondent No. 1 got 341 votes whereas the petitioner secured 339 votes. Therefore, respondent No. 1 was declared as

elected by only two votes. The Election Officer thereafter declared respondent No.1 as the winner and therefore, he was appointed as Sarpanch.

5. It is further case of the petitioner that the petitioner subsequently found that while submitting the Nomination Form, respondent No.1 had submitted certain documents. By virtue of the said documents, it was the claim of respondent No.1 that at the time of contesting the Election, he was 21 years of age. However, after making enquiry, the petitioner found that the age of respondent No.1 at the time of contesting the election was 20 and not 21. Respondent No.1 herein did not have a birth certificate. Therefore, under the provisions of registration of birth and death Act, applied to the Judicial Magistrate First Class for the purpose of obtaining birth certificate. The application made by respondent No.1 to Judicial Magistrate First Class for obtaining birth certificate. Perusal of the application would show that the application is made in a very haphazard manner. The application clearly states that the application is made since respondent No.1 wants to obtain the birth certificate, so as to enable his son/daughter for the purpose of enrolling admission in a school. As a matter of fact, the petitioner submits that respondent No.1 is not married at all. Along with the said application, which was made to the Judicial Magistrate First Class, respondent No.1 herein submitted his Pan Card as well as the Aadhar Card. The birth date of respondent No.1 as reflected on the Pan card and Aadhar Card, which is submitted before the Judicial Magistrate First Class, was shown as 8th August 1996.

6. It is further case of the petitioner that respondent No.1 at the time of filing the Nomination Form had not submitted his birth certificate. However, only annexed copy of the Aadhar Card. It was only when the petitioner got knowledge of the documents which respondent No.1 submitted for the purpose of caste scrutiny of his application, which he had submitted, for verifying his caste, at that time the said birth certificate was annexed to the said documents. On the basis of the said birth certificate, the petitioner came to know that he had obtained the said birth certificate recently from the Judicial Magistrate First Class. The petitioner made further enquiry. The petitioner found that there are two sets of Pan Card and Aadhar Card. One showing the birth date as 08.08.1996 while the other Pan Card and Aadhar Card of respondent No.1 showing the birth date 8th August 1997. The copy of the school leaving document of respondent No.1 shows his birth date as 8th August 1997. All these documents were submitted by respondent No.1 himself before the Caste Scrutiny Committee to verify his caste as OBC. Based on the said documents, it is clear that at the time of contesting the election, which took place for the election of Sarpanch of village Shelgaon, Taluka Khed, District Pune, clearly shows that at the said given point of time, respondent No.1 was of the age of 20 and therefore, was disqualified from contesting the said election.

7. It is further case of the petitioner that the petitioner also found the copy of the mortgage deed made in the year 2016 by respondent No.1 in respect of his

property. Perusal of the said mortgage deed and the documents annexed thereto would show that respondent No.1 has produced his Pan Card and the Aadhar Card showing the birth date of 8th August 1997. This clearly shows that respondent No.1 has forged and fabricated the documents to qualify for the said election. After making the enquiry, the petitioner filed an application before the Collector under provisions of Section 14 of the Maharashtra Village Panchayat Act, 1959. The petitioner has produced all the documents before the Collector showing that respondent No. 1 has forged and fabricated his record in order to contest for the election. To the said application, respondent No.1 filed a reply which was made to the Collector. On 5th April 2017, the petitioner filed his written arguments before the Collector. It is pertinent to note that respondent No.1 filed his application dated 20th March 2017 only on the last date when the matter was fixed for decision. Thereafter, the learned Collector by his Judgment and Order dated 13th April 2018 was pleased to allow the application filed by the petitioner.

8. It is further case of the petitioner that being aggrieved by the said order dated 13th April 2018, respondent No.1 preferred an Appeal being Appeal/Gram Panchayat/Pune - 6 / 2018 before the learned Additional Commissioner, Pune Division, Pune. Along with the said appeal, an application for stay was preferred requesting the learned Addl. Commissioner to grant stay to the order of the learned Collector. Accordingly, a stay was granted to the order passed by the learned Collector. To the said application of respondent No.1, the petitioner filed a reply. In the meantime, the petitioner preferred an Appeal against the order passed by the learned Judicial Magistrate First Class before the learned Sessions Court. The learned Sessions Court was pleased to reject the Appeal filed by the petitioner on 14th December 2017. Against the order passed by the learned Sessions Court, the petitioner has preferred a Criminal Writ Petition No. 3558 of 2018 and the said matter is still pending before this Hon'ble Court.

9. It is further case of the petitioner that respondent No. 1 preferred written arguments on 14th September 2018 before the learned Additional Commissioner. The learned Additional Commissioner by its Judgment and Order dated 29th October 2018 was pleased to allow the Appeal filed by respondent No.1 and was pleased to quash and set aside the order passed by the learned Collector in the proceedings in the Gram Panchayat, Dispute Application No. 186 of 2017. Hence, this petition.

10. Learned Counsel appearing for the petitioner submits that the learned Additional Commissioner has no authority and jurisdiction to pass an order on 29th October 2018. The impugned order passed by the learned Additional Commissioner is passed without application of mind and dehorse the evidence which is produced on record. He further submits that the learned Additional Commissioner has not taken into consideration the fact that although the Appeal before the Sessions Court was dismissed, still the Writ Petition against the said order passed by the learned Sessions Court where the order of the Judicial

Magistrate First Class is pending before the Hon'ble High Court and no order has been passed thereupon. He further submits that the learned Additional Commissioner has not taken into consideration the fact that the dehorse the proceedings which are pending before the Hon'ble High Court or before the Sessions Court or as a matter of fact before the Judicial Magistrate First Class, he could have come to a conclusion that, the birth date of respondent No.1 was 8th August 1997. On the perusal of the documents, which were submitted by respondent No.1 himself before the learned Caste Scrutiny Committee. The documents which were submitted by respondent No.1 before the Caste Scrutiny Committee clearly indicates that the birth date of respondent No.1 is 8th August 1997. If it is his own case, before the Caste Scrutiny Committee that his birth date is 8th August 1997, then the learned Additional Commissioner could have very well on the basis of admission which he has given before the learned Caste Scrutiny Committee, could have come to an independent conclusion that the birth date given by respondent No.1 is based upon forged and fabricated record. Moreover, perusal of the Caste Scrutiny Report shows that the place of the birth of respondent No.1 is not one but two i.e. Dattwadi and Shelgaon. He further submits that although these documents were produced before the Additional Commissioner, Additional Commissioner without application of mind has stated that since the revision / Appeal filed by the petitioner against the order of the Sessions Court, has been dismissed therefore, the birth date cannot be challenged. However, the learned Additional Commissioner has not taken into consideration the fact that the learned Additional Commissioner, could have suo moto verified the proceedings and the documents which were submitted by the petitioner, before the Additional Commissioner, and could have come to a different conclusion. Moreover the order which is passed by the Caste Scrutiny Committee, clearly shows that the place of birth of Respondent No.1 is Dattawadi and Shelgaon. Dattawadi is located in Pune. The birth certificate obtained by the Respondent No.1 herein on the said birth certificate, Dattawadi located at Savitribai Phule Vasahat, Dattawadi in Pune, Dattawadi at Shelgaon Village is different place than Dattawadi at Pune and therefore the Respondent No.1 could have by no stretch of imagination be born at the same time at two different places. This error is apparent on the face of record was completely ignored by the learned Additional Commissioner.

11. He further submits that the learned Additional Commissioner has completely ignored the fact that against the order passed by the learned Sessions Court, a Writ Petition has been filed by the petitioner in Hon'ble High Court and the same has been pending here. However, the learned Additional Commissioner ignored the said fact, and only relied upon the order passed by the learned Sessions Court. He further submits that the learned Additional Commissioner has not perused any document on record and without giving any cogent reasons set aside the order of the Additional Collector, and has reversed the order passed by the learned Additional Collector. He further submits that the learned Additional Commissioner has clearly ignored the fact that the Pan Card which is submitted

has been subsequently changed by respondent No.1. He further submits that in the written argument he has noted that the name has been wrongly shown. However, document like Aadhar Card is self declaratory/self attested document which can be edited by merely filing an application to that effect before the authority or by applying on the internet. Therefore, the learned Additional Commissioner has erred in believing respondent No.1. In fact, the Additional Commissioner has not even placed reliance upon the written submissions made by respondent no.1 stating that he has wrongly submitted the said documents. The learned Commissioner has also not taken into consideration the school certificate which is submitted by respondent No.1 which shows the date is 8th August 1997. He further submits that respondent no.1 submitted Pan Card and document of school leaving certificate before the Caste Scrutiny Committee, which is a notarized copy, clearly show that the said documents are genuine documents which have been cross verified by gazetted statutory officer viz. Notary. The Additional Commissioner has erred in ignoring the said documents.

12. On the other hand, learned counsel appearing for Respondent No. 1 relying upon the reasons assigned by the Additional Commissioner in the impugned judgment submits that, the said forum has taken into consideration the birth certificate issued by the Judicial Magistrate under Section 13 (3) of the said Act, and therefore, the Additional Commissioner has rightly allowed the appeal filed by Respondent No.1. Learned counsel invites attention of this Court to the grounds taken in the appeal memo before the Additional Commissioner and submits that, petition may be rejected.

13. Heard learned counsel appearing for the Petitioner, learned counsel appearing for Respondent No. 1 and learned APP for Respondent No. 2 at length. With their able assistance perused pleadings in the petition and grounds taken therein, annexures thereto and order passed by the District Collector, Pune, so also, the order passed by the Additional Commissioner, Pune Region Pune. It appears from the perusal of the findings recorded by the Additional Commissioner that, the contention of the Petitioner has been accepted, however, in view of the fact that, the revision filed by the Petitioner before the Sessions Court, challenging the order of directing an issuance of birth certificate by the Judicial Magistrate in favour of first Respondent, the Appellate Authority i.e. the Additional Commissioner, held that since the said revision filed by the Petitioner before the Sessions Court came to be dismissed, the Petitioner cannot challenge the said order before the Appellate Authority i.e, Additional Commissioner. On careful perusal of the observations made in para 5.3 of the order of the Additional Commissioner, it clearly appears that, the findings recorded by the Additional Commissioner are in consonance with the record produced before him. There is clear finding recorded by the Additional Commissioner that, when the Respondent No. 1 filed nomination for contesting the election as a member of Gram Panchayat, Shelgaon, Tq. Khed, Dist. Pune, at that time, there was no document placed on record by the first Respondent showing his date of birth as 08.08.1996. It would be apt to reproduce herein below the observations made by

the Additional Commissioner in the impugned judgment in paragraph 5.3, which reads as under:-

5-3 अपिलार्थी यांनी अपिल मेमोसोबत सादर केलेला जन्माचा दाखला तसेच जाबदेणार यांनी मुळ विवाद अर्जाविकी जिल्हाधिकारी यांचेकडे सादर केलेले जन्माचे पुराव्याबाबतचे कागदपत्र यांचे अवलोकन केले असता अपिलार्थी यांचे जन्मतारखेबाबत विसंगती दिसून येत आहे. मात्र अपिलार्थी यांनी निवडणूक नामनिर्देशनपत्र दाखल करत असतांना त्यांची जन्मदिनांक ही 08-08-1997 अशी होती. निवडून आल्यानंतर अपिलार्थी यांनी जन्म मृत्यु अधिनियम 1969 मधील तरतुदीचे आधारे आपले जन्माची नोंद करणेबाबत व त्यानुसार जन्मदाखला मिळणेबाबत अर्ज करून त्यांना हवी ती जन्मतारीख नमुद करून जन्माचा दाखला प्राप्त करून घेतला आहे. अपिलार्थी यांनी याबाबत केवळ इतरत्र जन्माची नोंद नाही एवढाच आधार घेवून जन्माची नोंद करून घेतलेली आहे. निवडणूकीचे नामनिर्देशनपत्र दाखल करतांना अपिलार्थी यांचेकडे त्यांची जन्मतारीख 08-08-1996 असल्याबाबत कोणताही ठोस व खात्रीषिर पुरवर उपलब्ध नव्हता ही बाब येथे स्पष्ट होत आहे. अपिलार्थी यांनी त्यांचे जन्मापासून तब्बल 21 वर्षांनी तेही निवडणूकीनंतर त्यांचे वयाबाबत आक्षेप उपस्थित झाल्यानंतर जन्मतारीख दुरुस्त करून घेतलेली आहे. जन्मतारीख दुरुस्ती करणेबाबतचा आदेश प्रथम वर्ग न्यायदंडाधिकारी यांनी 14-12-2017 रोजी जन्म मृत्यु निबंधक यांना दिलेला आहे. व त्याआधारे अपिलार्थी यांची 08-08-1996 ही जन्मदिनांक नोंद करून त्यांना जन्म प्रमाणपत्र दिलेले आहे.

14. Therefore, it is abundantly clear that, Additional Commissioner did expressed his clear opinion about the documents submitted by the Petitioner. However, since after the election were held, Respondent No.1 obtained certificate from the Judicial Magistrate by taking recourse to Section 13 (3) of the said Act, and the said order of the Judicial Magistrate was challenged by the Petitioner before the Sessions Court by way of filing Revision, and said revision was rejected, therefore, merely on the said ground the Additional Commissioner allowed the appeal filed by Respondent No. 1. However, the Additional Commissioner ought to have kept in view the documents which were available before filing nomination and should not have placed reliance upon the documents obtained after election are over and submitted by Respondent No. 1 belatedly after the election results were declared.

In that view of the matter, the impugned order dated 29/10/2018 is quashed and set aside. The appeal filed by Respondent No. 1 is restored to its original file. The Additional Commissioner is directed to decide the said appeal afresh keeping in view an observations made herein above, however, after affording an opportunity of hearing to the Petitioner so also Respondent No. 1 and decide the same as expeditiously as possible, however, within 8 weeks from the receipt of the order passed by this Court. Till such appeal is decided or 12 weeks from today which ever would occur first, there shall be status quo obtaining on today, to the status of the Respondent No.1 i.e. Nagesh Navnath Awate as a member/Sarpanch of the Gram Panchayat, Taluka Khed, Dist. Pune. With the aforesaid directions the writ petition disposed of. Rule is made absolute to the aforesaid extent.

15. It is made clear that, the aforesaid limited protection granted to Respondent No. 1 will not be extended under any circumstances. The Additional Commissioner shall adhere to the aforesaid directions and decide the appeal within stipulated period as mentioned herein above and after disposal of the appeal shall sent the compliance report to the Registry of this court.