

**(2019) 02 BOM CK 0100**

**In the Bombay High Court**

**Case No : Writ Petition No. 6993, 6994 Of 2008**

Subhash Sajesingh Gavit

APPELLANT

Vs

Returning Officer Zp Nandurbar And Ors

RESPONDENT

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**Date of Decision : 28-02-2019**

**Acts Referred:**

Bombay Village Panchayats Act, 1958 — Section 14, 14(1)(J1)  
Maharashtra Zilla Parishads And Panchayat Samitis Act, 1961 — Section 16, 16(1)(n),  
16(2)(e), 16(1)(k)  
Bombay High Court Appellate Side Rules, 1960 — Rule 8

**Citation : (2019) 02 BOM CK 0100**

**Hon'ble Judges : Ravindra V.Ghuge, J**

**Bench : Single Bench**

**Advocate : Sapkal V.D, Yenegure A.P, Shelke S.T, Bachate P.D**

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**Judgement**

1. In both these petitions, the petitioners are husband and wife inter se and are aggrieved on account of their disqualification.

2. The petitioner / husband has submitted certain details as regards his personal life, birth of his children and the developments leading to the disqualification of the couple, which are as follows:-

(a) The petitioner Subhash was first married to Asha, who gave birth to three children, namely, Nisha (born on 30.3.1984), Priyanka (born on 22.9.1985) and Ankush (born on 20.10.1990).

(b) Asha died on 6.8.1994.

(c) Subhash married the second petitioner / Savita in 1996 and Savita gave birth to three children, namely, Mohini on 30.12.1997, Tanmay on 1.8.2000 and Chetan on 17.7.2002.

(d) Chetan passed away on 5.11.2003 leaving Savita with two children.

(e) Both Subhash and Savita have contested the elections for the Zilla Parishad,

Nandurbar by filling in their nomination papers on 14.11.2008.

(f) Their nomination papers were rejected on 17.11.2008 on the ground that the third child was born on 17.7.2002.

(g) The appeal preferred by both the petitioners was rejected by the learned District Judge and hence, both filed these two petitions.

3. The submissions of the petitioners were considered by this Court on 27.11.2008 and placing reliance upon the provisions under the Haryana Panchayat Raj Act and the judgment delivered in Javed and others Vs. State of Haryana and others [2004 (1) M.L.J. 237], interim relief was refused to these petitioners on the ground that the word 'living' with reference to the children born, as found in the Haryana Panchayat Raj Act, was missing from the Maharashtra Zilla Parishad and Panchayat Samities Act, in so far as Section 16 is concerned.

4. Having heard the learned Advocates for the respective sides at length on 1.2.2019, 21.2.2019, 25.2.2019, 26.2.2019 and today, I find that two basic issues need to be dealt with in these two petitions. Firstly, as to what is the actual date of the commencement of the disqualification clause, introduced in the Maharashtra Zilla Parishad and Panchayat Samities Act, Maharashtra Municipal Councils, Nagar Panchayats and Industrial Townships Act, 1965 and Maharashtra Village Panchayats Act. Secondly, whether the clause of disqualification can be attracted, considering the number of birth of the children irrespective of the death of any of the children 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.

5. The learned Advocates for the respective sides have prepared a list of the judgments being cited and the conclusions drawn in the said judgments as regards the date of the commencement of the Act introducing the disqualification clause and the effect of the death of a child on the number of children procreated by a contesting candidate.

6. Section 16(1)(n) and 16(2)(e) pursuant to the amendment introduced on 13.9.2000, which is the date of the commencement of the Act, under the Zilla Parishad Act, read as under:-

"Section 16 - Disqualifications :

(1) Subject to the provisions of sub-section (2), a person shall be disqualified for being chosen as, and for being, a Councillor --

.....

(n) if he has more than two children.

.....

(2) Notwithstanding anything contained in sub-section (1) --

.....

(e) a person shall not be disqualified under clause (n) of sub-section (1) for being chosen as, or for being, a Councillor, if he is 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"), so long as the number of children he had on the date of such commencement dose not increase;

Provided that, a child or more than one child born in a single delivery within the period of one year from the date of such commencement shall not be taken into consideration for the purposes of disqualification mentioned in clause (n) of sub-section (1).

Explanation.-- For the purpose of clause (n) of sub-section (1) and clause (e) of this sub-section --

(i) where a couple has only one child on or after the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity :

(ii) "child" does not include an adopted child or children.

....."

7. Similar disqualification clause was introduced on the same date 13.9.2000 in the Village Panchayat Act, under Section 14(1)(j- 1), which reads as under:-

"14. No person shall be a member of a panchayat or continue as such, who- .....

(j-1) has more than two children :

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 :

Provided further that, a child or more than one child born in a 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....."

8. An identical disqualification clause was introduced in the Nagar Panchayats Act under Section 16(1)(k), which reads as under:-

"Section 16 - Disqualifications for becoming a Councillor .

(1) No person shall be qualified to become a Councillor whether by election, 1[\* \* \*] or nomination, who -

.....

(k) has more than two children :

Provided that, a person having more than two children on the date of commencement of the Maharashtra Municipal Corporations and Municipal Councils, Nagar Panchayats and Industrial Townships (Second 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 :

Provided further that, a child or more than one child born in a 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.

Explanation.- For the purposes of this clause, -

(i) where a couple has only one child on or after the date of such commencement, any number of children born out of a single subsequent delivery shall be deemed to be one entity;

(ii) "child" does not include an adopted child or children."

9. There is no dispute that the intent and object of introducing the disqualification clause was aimed at controlling the growth of population in this country. The legislature intended to discourage unnecessary growth in population and to popularize methods of family planning so as to control the ever growing population in this Country. I had an occasion to deal with a similar issue in the matter of Gautam Rama Latke Vs. The State of Maharashtra and others - Writ Petition No.1097 of 2018, delivered on 26.2.2018. I had observed in paragraph Nos.14 to 17 as regards the unnecessary growth of population, as under:-

"14. The statement of objects with regard to the amendment brought into effect by the Act of XLIV of 2000 on 13/09/2000, has been placed before me. It requires no debate that this amendment was introduced in the Bombay Village Panchayats Act and the Maharashtra Zilla Parishads and Panchayat Samitis Act respectively, by the said Act of 2000. The intent and object was to discourage unnecessary growth in population and to popularize methods of family planning so as to control the growth in population. As has been said by the late Justice V.R.Krishna Iyer in one of his landmark judgments Jolly George Varghese and another Vs. The Bank of Cochin [(1980) 2 SCC 360] that 'to be poor, in this land of Daridra Narayana', excessive growth of population would be a heavy burden on this nation.

15. It cannot be ignored that worldwide and especially in several Asian countries

and countries from Europe, America and Scandinavia, steps are taken for encouraging family planning and birth control along with the use of contraceptives for controlling the growth of population. The term "family planning" is more than often used as a synonym for birth control. Family planning is as important from the point of view of the mothers' health, as well as, keeping in view the financial and economic condition of a particular family. The uncontrolled growth of population is one of the most important reason, which creates economic problems in India. Unemployment, poverty, illiteracy and growing cost of living are intricately connected with the unnecessary growth in population. It is seen all around and in all walks of life that cities, temples, markets, educational institutions, railway stations, bus stands etc., are over crowded. The Government of India has also formed a Family Planning Commission to control the increasing growth of population. Laws are introduced to curb child marriages which are said to be one of the main causes for such a growth.

16. India has a total area of 3287263 Sq.Kms out of which only 2973193 Sq.Kms constitutes land. China has a total area of 9596960 Sq.Kms out of which 9326410 Sq.Kms is the land area. It is projected that if effective steps are not taken for population control, India would cross the 1.5 billion mark by 2030. The population growth of India is 1.2% as in 2012-2013 and in China it is 0.5%. The population density of India is 367 persons per Sq.Km. as against 142 persons per Sq.Km in China. India is 2.58 times more dense than China. It is estimated as in July 2017 that the population of India is 1281935911 and China is 1379302771. As such, the necessity for population control, therefore, requires no debate.

17. Needless to state, the amendment to these two Acts in the State of Maharashtra was apparently introduced to ensure that importance of family planning is brought to the notice of every individual and the citizens are educated to have lesser children considering population explosion. Since the arena of politics appears to be very attractive to a large chunk of the population, the legislature, in its wisdom, thought it fit to restrict the political aspirations of those candidates who have more children, as a measure of ensuring population control and to popularize family planning from the doorstep of the peoples' representative. With this object, the disqualification was introduced under the 1958 Act and the 1961 Act. The fact situation in this case will therefore have to be visualized from the object of the State to control the growth of population."

10. Though the learned Advocates appearing on behalf of the respective sides in these two petitions are united in submitting that the date of commencement of the Disqualification Act under Section 16 in the Nagar Panchayat and Zilla Parishad Act and Section 14 of the Village Panchayat Act, is 13.9.2000, it appears from some of the judgments cited by them that two learned Division Benches of this Court have taken different views. In Baliram Vithal Deokate Vs. Naviladas Narayan Bhagat and others [2008 (5) BCR 83], a passing reference is made to the date of commencement of Section 16(1)(n) as being 12.9.2001. It

does appear that none of the appearing parties ever brought it to the notice of the learned Division Bench that the cut off date, as is commonly stated, for disqualifying a candidate for having more than two children, was not 12.9.2001, since the language used in all the disqualification provisions under these three Acts is, 'Date of commencement of the Act'. However, in *Anand Babasaheb Jadhav Vs. Shivbhushan Laxman Jadhav* [2014 (5) All MR 638], the learned Division Bench referred to the cut off date as being the date of the commencement of the disqualification clause as being 13.9.2000. The learned Division Bench dealt with the birth of the third child after the commencement of the Act and the date of commencement of the Act introducing the disqualification was 13.9.2000.

I, therefore, find that the views of two learned Division Benches of this Court are conflicting.

11. In *Girika Badamrao Pandit Vs. State of Maharashtra* [2012(6) Bom.C.R.587], the learned Single Judge dealt with the birth of the child after the cut off date. Though a specific view as regards the cut off date was not expressed, it was held that after the commencement of the Act, number of children had on the date of the commencement (which is 13.9.2000), even if they are more than two, would not disqualify a candidate as long as there is no increase in the number of children after the commencement of the Act.

12. In *Dnyaneshwar Patiram @ Ratiraj Shirbhiye Vs. The Divisional Commissioner, Nagpur and others* [2012 (3) Mah.L.J. 253], the learned Single Judge at Nagpur held that the date of the commencement of the Act is shown as 12.9.2001 and extension of the period of one year would expire on 12.9.2002. In my view, this conclusion would amount to over looking the proviso under Section 14(1)(j-1), since the disqualification clause mandates that a person, having more than two children on the date of the commencement of the Act, would not be disqualified even if he has more children already born, provided the number of the children as existing on the date of the commencement, would not increase. The first proviso, therefore, is with a clear intent of the Legislature that even if a candidate is having more than two children on the date of the commencement of the disqualification clause, he would not be disqualified, provided that, there is no increase in the number of children.

13. The learned Advocates for the respective sides are united in their submissions in so far as the Village Panchayat Act is concerned that the first proviso under sub-clause (j-1) is completely distinct and different from the second proviso as both these proviso were introduced together by Maharashtra Act 44 of 2000, with effect from 13.9.2000. I find that the disqualification clause and the proviso takes care of three things. Firstly, that after the commencement of the Act on 13.9.2000, any candidate having more than two children would be disqualified. Secondly, that if a candidate has more than two children on the date of such commencement, the first proviso protects such a candidate only on the condition that the number of children does not grow beyond that number as

existing on the date of such commencement. Thirdly, that the second proviso is a distinct and stand alone proviso, dealing with birth of children in a single delivery, within one year from the date of such commencement, notwithstanding whether twins or triplets are born in such a single delivery. Since, both the proviso were introduced together, both will have to be interpreted in harmony with each other and not in such a manner as would render either of them ineffective or nugatory. The intent of the Legislature to introduce both the proviso, together, on 13.9.2000 would indicate it's intention that both have to co-exist.

14. Shri Sapkal submits by way of an illustration that if a candidate has three children on the date of the commencement of the Act which is 13.9.2000 and on such date, a candidate wife may have already conceived (pregnant), then the child born to such a lady would not lead to a disqualification under the second proviso since the child was already conceived when the disqualification clause was introduced on 13.9.2000.

15. Shri Sapkal offers a second illustration that a candidate or his wife may have only one child on the date of the commencement of the Act. Law would not prohibit such a couple from having one more child. If such a delivery, after the date of the commencement, leads to the birth of twins or triplets, then though the total number of children would be three or four owing to multiple children born in a single delivery, the couple would still not incur a disqualification in view of the second proviso.

16. In a similar situation under the Zilla Parishad Act, that I dealt with in the case of Gautam (supra), I had observed in the said judgment in paragraph Nos.19 to 23, after taking into account the proviso and the explanation, as under:-

"19. There is no dispute that on the date of the introduction of clause (n) u/s. 16(1) and clause (e) u/s. 16(2), which is 13/09/2000, the petitioner did not have a single child as the first delivery of his wife is said to have occurred on 01/11/2000. In my view, naturally, the delivery of twins on 01/11/2000 as is stated by the petitioner, in itself would not incur the disqualification under clause (n) of Section 16(1). In my view, keeping the intent and object of the introduction of the amendment in focus and the language used in the proviso, it would indicate that the birth of more than 1 child either as twins or triplets or quadruplets in a single delivery within a period of 1 year from the date of the commencement of Section 16(1)(n) and section 16(2)(e), would not be considered as a disqualification under 16(1)(n). Even if the petitioner had 1 child prior to the date of commencement, the birth of twins or triplets in a single delivery in the period of 1 year would not have attracted the disqualification under clause (n).

20. The petitioner having fathered twins on 01/11/2000, presupposes that he knew that he had two children in that one year from the commencement of the

amendment ending with the cut off date 12/09/2001. For all purposes, he was aware that he has two daughters. The issue, therefore, would be as to whether the birth of his son on 05/04/2005 would still entitle the petitioner to the protection of the proviso on the premises that the two children born in one delivery would mean 1 child. Strenuous contention is that he would be entitled to the exception under the proviso and hence his two daughters would be termed as a single child.

21. In my view, this argument is put to rest for reasons more than one.

Firstly, that the proviso does not prescribe that the birth of more than one child in a single delivery would mean that all those children born in that single delivery would be treated as one child and hence the birth of Gaurav would technically render the petitioner a biological father of only two children. This is because the language of the proviso indicates that the children born in a single delivery, would not be taken into consideration for the purpose of disqualification under clause (n) which is in an eventuality aimed at protecting those candidates who already have one child prior to the amendment. The proviso is not meant for insulating candidates who have given birth to two children in a single delivery in that period of one year and further become a parent of more children on the ground that the proviso would render birth of twins as a single child. The proviso is intended to protect those candidates who already have a child and would incur disqualification under fortuitous circumstances as twins are born in the second delivery which fell within the said period of one year. As has been held by the Hon'ble Apex Court in *S. Sundaram Pillai* case (*supra*) in paragraph No. 43 that the proviso would be aimed at fulfilling the intention of the main enactment and for explaining the real intendment of the statutory provision.

Secondly, the explanation reproduced above protects candidates who have one child on or after the date of commencement and a subsequent delivery, after the commencement of the amendment leads to the birth of twins or triplets. Such a couple having only one child on or after the commencement would be insulated from the birth of twins or triplets in a subsequent delivery after that period of one year since it would purely be an act of God to bless the couple with more than one child and for which the couple cannot be held liable as biologically it would be beyond their control to restrict the delivery to only one child. It is in this context that the explanation (i) for the purposes of clause (n) under 16(1) and clause (e) u/s. 16(2) was introduced.

22. As such, the proviso would be of no assistance to the petitioner for the reasons set out above. In this backdrop, the birth of twins to the petitioner in a single delivery after the commencement of the amendment obviously makes the couple aware that they have parented two children. Once they are aware that the twins were born to them in a single delivery, it mandates that they cannot have further children by treating the two daughters to be deemed to be one child. In this backdrop, explanation (i) will, therefore, not rescue the petitioner since considering the intent and object of the Act, the said explanation is aimed at

saving those couples who have only one child on or after the commencement. When the petitioner knew that he had two children after the commencement, he cannot fall back upon the exception carved out in explanation (i).

23. The argument that the birth of the third child of the petitioner can be a ground for rescuing him from the disqualification by interpreting the second part of explanation (i) to mean that all couples who have twins or triplets in that one year after commencement, shall be deemed to have only one child and thereafter again bear one more child. This would defeat the very purpose for which the enactment of 2000 was introduced. The view taken by the Hon'ble Apex Court in paragraph No. 53 in S. Sundaram Pillai case (supra) with regard to the object of an 'explanation' would clearly indicate that such an explanation has to be interpreted to explain the meaning and intendment of the Act itself and to subserve the dominant object of the act. Such an explanation cannot interfere with or change the enactment and would be aimed at suppressing mischief and to advance the object of the Act. "

17. In the matter of Anita Arun Rahangadale Vs. The State Election Commission and others, -Writ Petition No.6547 of 2017, the learned Single Judge at Nagpur delivered a judgment on 30.11.2017. The learned Single Judge was dealing with the effect of a death of a child and whether such a death would amount to reduction in the number of children. The State Election Commission informed the learned Single Judge and as is recorded in paragraph No. 12 therein, that the State Election Commission has issued guidelines in 2015 that only if a third child or more children are born after 12.9.2001, that such a birth would incur disqualification for the parent candidate.

Beyond such recording of a statement, the learned Single Judge was not called upon to decide whether the cut off date is the date of the commencement of the Act or whether it would be 12.9.2001. I disapprove such guideline of the State Election Commission, as it is opposed to the disqualification clause introduced in these three Acts.

18. In a judgment delivered by me in the matter of Padmakar Pandurang Kale Vs. Santosh Ganesh Kale [2014 (4) BCR 695 = 2014 (5) All M.R. 638], I had observed in paragraph Nos. 15 to 18 as under:-

"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. Though, I was not specifically called upon to decide as to what would be the cut off date in Padmakar (supra), I had recorded that the commencement date of the first proviso as well as the second proviso to clause (j-1) was 13.9.2000. This reported judgment was not cited in the Anita Rahgandale case (supra).

20. Nevertheless, I, therefore, find contrary views as regards the commencement date of the disqualification clause in the judgments of the learned Division Benches in the matter of Baliram Deokate (supra) and Anand Jadhav (supra). I also find that I have taken a different view in Padmakar Kale (supra) and Gautam Latke (supra), than the view taken by the learned Single Judge in Dnyaneshwar Shirbhiye (supra).

21. Considering this position, I find that a Larger Bench could resolve the said issue. I am, therefore, framing the following issue for reference to the Honourable the Chief Justice of the Bombay High Court, so as to be referred to a Larger Bench:-

(A1) 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?

22. The second limb of the litigation in the two petitions in hand is as regards, what would be effect of the death of a child, on the number of children 'had' by a

candidate. I find that the word 'has' is used in all the three disqualification clauses introduced by the State of Maharashtra on 13.9.2000. So also, I find the word 'had' appearing in the proviso below such disqualification clause.

23. Shri Sapkal contends that when the number of children of a candidate are to be computed, either under the Hindu Succession Act or any such Personal Law as well as under the disqualification clauses with regard to the elections concerned, it would always be the number of children that a person has so as to incur disqualification, if they are more than two or as the case may be under the said disqualification clauses. He offers an illustration by saying that if a couple has three pregnancies and deliveries occurring on account of such pregnancies led to the birth of 'still born' children or if these children die before the date of the filing of the nomination papers, can such candidate, being childless, be disqualified on a ground that three children were born notwithstanding that each of them have died. He, therefore, raises an issue that such a couple would be issueless under the personal law or the Succession law and yet would be disqualified under the Election Laws merely because there were three deliveries notwithstanding that all the three children have died.

24. On the above stated issue as well, I find that there are divergent views taken by two learned Division Benches of this Court. In Papalal Suklal Sarone Vs. State of Maharashtra and others - Writ Petition No.4684 of 2005, decided at Aurangabad on 29.11.2005, it was concluded that whether a child remains alive or passes away before the elections, would be immaterial. This view, however, was not the result of a contested issue, since the said child had expired on 10.5.2002 and a third child was said to have been born on 17.11.2002, by which, the learned Division Bench applied the disqualification law.

25. In Sayeed Abdul Rashid Shaikh Vs. The Returning Officer and others - Writ Petition No.13475 of 2017, heard at the Principal Seat on 6.12.2017, the learned Division Bench passed an order on 6.12.2017, permitting the candidate to contest the election by considering the law laid down in Mangesh Chikhale Vs. The State of Maharashtra and Sau. Bharati Sunil Wadal Vs. Subhash Bhagwan Mukunde and others decided by the learned Single Judge in Writ Petition No.3077 of 2012, dated 4.10.2012 and allowed the candidate to contest the election.

26. The learned Single Judge in Bharati Wadal (supra), concluded that though a child was born after the cut off date, which date is not specifically adverted to, it had passed away before the candidate could enter her nomination papers. It was concluded that the demise of the child would lead to the exclusion of the said child while computing the number of children born after the commencement of the disqualification clause. As such, I find that the learned Single Judge in Bharati Wadal (supra) and the learned Division Bench in Sayeed Abdul (supra) had taken a view which is contrary to the view taken by the learned Division Bench in Papalal Sarone (supra).

27. In this backdrop, I find that a reference needs to be made to the Honourable the Chief Justice of the Bombay High Court for forming a larger bench for deciding the following issues:-

(B1) 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?

(B2) 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)?

28. Since I had disclosed to the learned Advocates that I would be referring this matter to a Larger Bench, the learned Advocate for the petitioners relies upon the recent view taken by the learned Single Judge in Bharati Wadal (supra) and prays for liberty to contest elections since a child born after the date of the commencement of the Act has passed away and if such death leads to the exclusion of a child from the number of children born after the commencement date, he would be entitled to an exclusion from such disqualification. He relies upon the order passed by the learned Division Bench in Sayeed Abdul (supra) dated 6.12.2017 and submits that in identical set of facts, the candidate was permitted to contest the elections subject to the result of the petition. The learned counsel for the individual respondents and on behalf of the Election Commission, have opposed the said request.

29. Since, I find that the view taken in Bharati Wadal (supra) appears to be correct and keeping in mind that such an issue was not specifically posed for adjudication in Papalal (supra), these petitioners need not be kept away from elections. They have already been precluded from contesting elections in the last about 11 years. Therefore, in the event of any elections, which may be contested by either of these petitioners, the result of the said election would be subject to the outcome of these two petitions based upon the law as may be laid down by a Larger Bench. On this condition, I am permitting these petitioners to contest any future election.

30. As such, the following issues are referred to the Honourable the Chief Justice of the Bombay High Court for considering their reference to a Larger 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)?

31. The learned Registrar (Judicial) shall, therefore, place this matter, under Chapter I Rule 8 of the Bombay High Court Appellate Side Rules, 1960, before the Honourable the Chief Justice of the Bombay High Court.