

(2013) 03 BOM CK 0247

Bombay High Court (Aurangabad Bench)

Case No: Writ Petition No. 3919 of 2012

Sau. Meerabai

APPELLANT

Vs

The State of Maharashtra, The
Additional Collector, The Chief
Executive Officer and The Gram
Sevak

RESPONDENT

Date of Decision: March 21, 2013

Citation: (2013) 4 ABR 683 : (2013) 3 ALLMR 569 : (2013) 4 BomCR 840 : (2013) 4 MhLj 446

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

Bench: Single Bench

Judgement

S.S. Shinde, J.

Rule, returnable forthwith. By consent of the parties, taken up for final hearing. This petition takes exception to the order dated 10.4.2012 passed by the Divisional Commissioner, Nashik Division, Nashik in Gram Panchayat Appeal No. 184/2011 thereby confirming the order dated 31.10.2011 passed by the Collector, Jalgaon, thereby disqualifying the petitioner for being a member of Gram Panchayat u/s 14(j)(1) of the Bombay Village Panchayat Act, 1958 on the ground of third issue after cutoff date.

2. The learned Counsel for the petitioner submitted that on 5.9.2010 the petitioner contested the election for the village Savkheda, tq. Amalner, Dist. Jalgaon on a seat reserved for Scheduled Tribe Women Reserved Category and has been elected as a member. On 14.9.2010 one Magan Pandurang Sonwane who is also a member of same Gram Panchayat, but from opposite side, filed a complaint to the Collector, Jalgaon stating therein that the petitioner is having third son after year, 2003 and therefore, petitioner be declared as disqualified for being a member of Gram Panchayat.

3. It is further submitted that the Collector, Jalgaon directed inquiry through Chief Executive Officer who, in turn submitted his report dated 12.5.2011, which states

that there is no entry in the Gram Panchayat record about the birth of fourth child of petitioner. The competent authority namely Block Development Officer, Panchayat Samiti, Amalner, as well as Gram Sevak of the said Gram Panchayat issued certificates that the petitioner is having only three child and out of three two are before the year, 2001 and one is after year, 2001 and there is no entry of fourth child in the birth record of Gram Panchayat as well as Panchayat Samiti.

4. The learned Counsel for the petitioner submitted that in spite of report of Block Development Officer and certificate of Gram Sevak, the Collector relied on the certificate issued by Anganwadi Sevika, who is not competent to issue certificate of birth as per Government Resolution dated 10.11.2004, the Gram Sevak of village is competent to issue certificate of birth by verifying the birth record of Gram Panchayat, and disqualified the petitioner for being member of Gram Panchayat.

5. The learned Counsel for the petitioner submitted that the authorities below have not considered the report as well as certificate issued by the Block Development Officer and the Gram Sevak stating that there is no record of birth of fourth child of petitioner. It is further submitted that the certificate issued by Anganwadi Sevika is not authentic since she is not competent to issue such certificate as the Government Resolution dated 10th November, 2004. The learned Counsel further invited my attention to the pleadings in the petition, grounds therein and also the provisions of the Bombay Village Panchayat Act and submitted that the report of the Block Development Officer dated 27.12.2010 clearly states that there is no entry in the record of Gram Panchayat as well as Panchayat Samiti regarding birth of "Chhoti Suresh Bhil" and as per Government Resolution dated 10th November, 2004, the responsible authority to take entry in the Gram Panchayat record is Gram Sevak and the Gram Sevak has issued certificate dated 3rd December, 2010 stating that the petitioner is having only three children, all three were born before the cutoff date. Therefore, relying upon the grounds taken in the petition, the Counsel for the petitioner submits that the petition deserves to be allowed.

6. On the other hand, learned Counsel for Respondent No. 5 - original complainant submits that there are concurrent findings recorded by the authorities below. Therefore, this Court may not interfere with the same. He submitted that the certificate issued by Anganwadi Sevika is genuine and authentic one. Learned Counsel invited my attention to the judgment of this Court in case of [Ravikiran Deshmukh and Dattatraya Kachgunde Vs. The Additional Commissioner, Aurangabad Division and Others](#), and submitted that this Court, in para 4 of the said judgment, held that the inquiry contemplated under the provisions of Section 14 r.w. 16 of the Bombay Village Panchayat Act is not likewise that of adversarial trial. It is only a summary enquiry. The enquiry contemplated under the relevant provisions is of inquisitorial nature. The Collector is required to observe the principles of natural justice. However, the enquiry cannot be likewise that of a trial of civil suit or criminal case. It is further submitted that in para 5 of the said judgment, this Court

observed that under the integrated child development service scheme, local survey is contemplated. Necessary entries are required to be taken by the public authority in the survey register. Thus, if the entry is taken in such survey, and document is prepared, the said document is a public document. Therefore, the Counsel for respondent No. 5 would submit that the certificate issued by the Anganwadi Sevika is on the basis of survey carried out under the scheme called "Integrated Child Development Service Scheme" and, therefore, said certificate is authentic and genuine. The learned Counsel for respondent No. 5 invited my attention to the affidavit-in-reply filed by respondent No. 5 and submitted that the petition is devoid of any merits and may be rejected.

7. The learned AGP appearing for State invited my attention to the affidavit-in-reply and submitted that both the authorities below have held that fourth child is born after the cutoff date. The certificate issued by Anganwadi Sevika is genuine one. Fourth child namely Chhoti Suresh Bhill was born on 1st February, 2003 and certificate dated 3rd December, 2012 to that effect has been issued by Anganwadi Sevika and, therefore, the petitioner has been rightly held to be disqualified to continue as a member of Gram Panchayat. He, therefore, prays that the petition may be rejected.

8. I have given careful consideration to the rival submissions of the learned Counsel for the parties, perused the grounds taken in the petition, annexures thereto, replies filed by the respondents and upon careful perusal of Exh.A at page 18 of the compilation of the writ petition, it appears that on 14th September, 2010 one Magan Pandurang Sonwane, r/o Savkheda, Tq. Amalner made complaint to the Collector, Jalgaon stating therein that Sau. Meerabai Suresh Bhill r/o Savkheda, Tq. Amalner, who got elected from ward No. 3 of the said village is having three children and, therefore, she may be declared as disqualified to continue as a member of the Gram Panchayat. Upon careful perusal of the contents of the said application, it is stated that Sau. Meerabai Suresh Bhill got elected from ward No. 3 as a gram panchayat member of village Savkheda on 5th September, 2010 on a seat reserved for Scheduled Tribe women. It is further stated that her third child was born in the year, 2003. The details regarding three children are stated in the application. The dates of birth of these three children are stated, thus: (1) Ku. Surekha Suresh Bhill - 5.6.1999, (2) Chi. Pravin Suresh Bhill - 1.6.2001 and (3) Ku. Chhoti Suresh Bhill - 1.2.2003. It is further stated that a person having three children is not entitled to contest election and therefore, Sau. Meerabai Suresh Bhill should be disqualified as a member of the Gram Panchayat.

Therefore, upon careful perusal of the application, it appears that it was never the case of the original complainant that there are four children to Sau Meerabai Suresh Bhill. However, it appears that relying upon the report received from the C.E.O., Zilla Parishad, the Additional Collector, Jalgaon while entertaining Gram Panchayat Dispute No. 28/2011 filed by the original complainant, held that the petitioner is

having four children. The said findings are confirmed by the Additional Commissioner. It is held that fourth child of the petitioner was born on 1st February, 2003 i.e. after the cutoff date and, therefore, the petitioner is not entitled to be continued as member of the Gram Panchayat. In fact, the findings recorded by the authorities below are beyond the contentions raised in the application by the complainant. The complainant in his original complaint has never stated that there are four children to the petitioner. Apart from above, there is statement of the Gram Sevak and also report of the C.E.O., which unequivocally indicate that though the certificate was issued by the Anganwadi Sevika that the petitioner is having fourth child namely Chhoti Suresh Bhill, record of said child is not traceable either in the Gram Panchayat or in Panchayat Samiti. Therefore, if the entire material placed on record is taken into consideration, the findings recorded by the Additional Collector, which are confirmed by the Additional Commissioner, appear to be on the basis of the certificate issued by the Anganwadi Sevika dated 3rd December, 2010 stating therein that Ku. Chhoti Suresh Bhill was born on 1st February, 2003. The submission of the learned Counsel for respondent No. 5 that such certificate issued by the Anganwadi Sevika is a public document and therefore, it is admissible in evidence and enquiry contemplated u/s 14 r.w. section 16 of the Bombay Village Panchayat Act is summary enquiry and, therefore, the findings recorded by the Additional Collector and confirmed by Additional Commissioner needs no interference, is devoid of any merits. As stated earlier, even it was not the case of the complainant in his original application that there are four children to the petitioner. This aspect has not been considered either by Additional Collector or Additional Commissioner in their judgments. Another important aspect of the matter is that the certificate issued by the Anganwadi Sevika has no corroboration either from Gram Panchayat or Panchayat Samiti. Therefore, the facts of the case in hand are different than the facts which were involved in case of Ravikiran s/o Abasaheb Deshmukh & Anr. (supra). In the facts of said case, the entries in the birth register had corroboration from the Municipal record. Therefore, in the facts of that case, in para 5, this Court held that the entries in the survey register for the years 2005-06 and 2006-07 were verified by the competent public authority and there is corroboration to said entries from the municipal record. Therefore, in the facts of that case, there was municipal record to suggest that third child born to the respondent No. 3 therein was after the cutoff date. However, in the present case, as stated earlier, there is no any record available either in Gram Panchayat or in Panchayat Samiti so as to have corroboration to the certificate issued by Anganwadi Sevika. In the present case, Gram Sevak has give certificate that three children born to the petitioner were before the cutoff date. The report of Block Development Officer dated 27.12.2010 also states that the information in the certificate issued by Anganwadi Sevika that there is fourth child namely Chhoti Suresh Bhill born on 1st February, 2003 cannot be verified since there is no record available in the Gram Panchayat or Panchayat Samiti. All these aspects have not been properly considered either by the Additional Collector or the Additional Commissioner. Apart from above, the judgment of the

Division Bench of this Court in case of [Gangadhar Tadme Vs. Trimbak Akingire and Others](#), has considered the provisions of Births, Deaths and Marriages Registration Act (1886) and also the provisions of Section 114 of the Evidence Act (1872) and held that before evidentiary value of the certificate is considered, the same is required to be considered invoking the provisions of Births, Deaths and Marriage Registration Act. However, in the facts of the present case, it appears that both the authorities below have not considered the provisions of the Births, Deaths and Marriages Registration Act and also the provisions of Section 114 of the Evidence Act and, the judgment of this Court in case of Gangadhar s/o Gonduram Tadme (supra).

Therefore, in my considered opinion, the judgment of the Additional Collector, which has been confirmed by the Additional Commissioner, cannot sustain and the same is quashed and set aside. The Election Dispute No. 28/2011 is restored to its original file and the Additional Collector, Jalgaon is directed to hear the same afresh in the light of the provisions of the Births, Deaths and Marriages Registration Act and also the provisions of the Evidence Act and considering the contents of the application dated 14th September, 2010 made by Magan Pandurang Sonwane to the District Collector, Jalgaon and in the light of the observations made herein before, decide the dispute afresh, in accordance with law. The Additional Collector, Jalgaon is directed to decide the said dispute, as expeditiously as possible, preferably within four months from today. The petition is partly allowed. Rule is made absolute, accordingly with no order as to costs.