

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO. 9261 OF 2011

Sow. Girika W/o Badamrao Pandit

Age : 50 Yrs., Occ. Household,

R/o : Sathenagar, Gevrai,

Tq. Gevrai, Dist. Beed.

..... *PETITIONER*

V E R S U S

1. The State of Maharashtra

Through Secretary

Urban Development

Department, Mantralaya,

Mumbai.

2. The Returning Officer

for the Election of

Municipal Council, Gevrai,

Tq. Gevrai, Dist. Beed.

3. Sow. Meena W/o Shantilal Pisal

Age : 30 Yrs., Occ. Household,

R/o : Sathenagar, Gevrai,

Tq. Gevrai, Dist. Beed.

4. Sopan S/o Dnyaneshwar Madke

Age : Major, Occ. Agriculture,

R/o : Ganeshnagar, Gevrai,

Dist. Beed.

5. Appasaheb S/o Vithal Kangude

Age : Major, Occ. Agriculture,

R/o : Santoshnagar, Gevrai,

Dist. Beed.

6. The State Election Commissioner
(Maharashtra) Through
Collector, Beed.

..... **RESPONDENTS**

Mr. N.L.Jadhav, Advocate for the petitioner.
Mr. N.B.Patil, Asstt. Govt. Pleader for State.
Mr. S.T.Shelke, Advocate for Resp.nos. 2 & 6.
Mr. A.M.Gaikwad, Advocate for Resp. No. 3.

CORAM : S.V.GANGAPURWALA, J.

JUDGMENT RESERVED ON : 01/12/2011

JUDGMENT PRONOUNCED ON :20/12/2011

JUDGMENT :

1. The petitioner and respondent nos. 3 to 5 filled in nominations for the election of Councillor of Gevrai Municipal Council from Ward No. 2-B.

2. The objection was taken to the nomination of respondent no. 3 on the count that she is having five (5) children and one child born after the cut off date, as such is disqualified. The Returning Officer rejected the nomination of respondent no. 3. Respondent no. 3 filed

Appeal before the District Court. The District Judge allowed the Appeal of respondent no. 3 and directed the Returning Officer to accept the nomination paper of respondent no. 3. Aggrieved thereby, the present Writ Petition is filed.

3. Mr. N.L.Jadhav, the learned counsel for the petitioner submits that respondent no. 3 is wife of Shantilal Pisal. Shantilal Pisal has four (4) issues from his first wife. After the death of the first wife, Shantilal married with present respondent no. 3 and respondent no. 3 gave birth to a child on 03/08/2004. As such, it will have to be said that the Respondent no. 3 had five (5) children. The learned counsel submits that Section 16 (1) (K) of the Maharashtra Municipal Council and Nagar Panchayat Act [For short, ' said Act '] will have to be given wider interpretation. Explanation to Section 16 (1) (K) of the said Act will have to be read harmoniously. In explanation, the word " couple " is used and though four (4) children are born to Shantilal Pisal from his first wife, still as respondent no. 3 has married with Shanatilal Pisal and has given birth to a child, it will have to be held that the said couple have five (5) children and one child is born after the cut off date. The word " family " would include all the children. As the word " couple " is used in the explanation, that will be concerned with the word " family ". The learned counsel submits that any other interpretation would be contrary to

the aim and object of the Act. The learned counsel to substantiate his contention, relies on the Judgment of the Apex Court in the case of Javed and Ors. V/s State of Haryana & Ors. Reported in [2003] 8 SCC – 369.

4. Relying on the aforesaid Judgment, the learned counsel contends that even in Mohmaddans, four (4) marriages are permissible and even if the husband has one (1) child from each marriage, still that is not permissible in view of the said Judgment. According to the learned counsel, the District Judge has committed an error in directing the Returning Officer to accept the nomination paper of respondent no. 3.

5. Mr. A.M.Gaikwad, the learned counsel for respondent no. 3 supports the order and submits that the petitioner has only one child and the children born to her husband from his first wife, can not be construed as children of the petitioner.

6. Before advertng to the arguments canvassed by the learned counsel for the respective parties, it would be appropriate to refer to the relevant provision, as under :

“ 16 Disqualifications for becoming Councillor – (1) No person shall be qualified to become a Councillor whether by

election, 2 [***] or nomination, who, --

(a-1) to (ii-j) : xxxxxxxxxxxxxxxxxxxxxxxxxxx

(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 purposes of 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 sub-sequent delivery shall be deemed to be one entity;

(ii) “ Child ” does not include an adopted “ child or children ”.

(1) is a member of the State Legislature or of Parliament :

Provided that nothing in this clause shall affect the membership of a sitting councillor till the expiry of his

current term of office as such Councillor;

Provided further that any action, taken by such councillor during the period from the 7th October, 2001 till the 20th October, 2001, being the date of publication of the Maharashtra Municipal Corporation and Municipal Councils (Amendment) Ordinance, 2001, shall be deemed to have been validly taken and shall not be challenged in any court of law only on the ground that during the said period he had incurred disqualification under this clause.

(1 A) A person who at any time during the term of his office is disqualified under (Section 55 B or) the Maharashtra Local Authority Members Disqualification Act, 1986(Mah. XX of 1987) for being a Councillor shall cease to hold office as such councillor).

7. Section 16 (1) (k) of the said Act deals with the circumstances when a person is disqualified to become a councillor. A person having more than two (2) children born after the cut off date, shall be disqualified from contesting the election.

8. In the present case, it is not disputed that respondent no. 3 has only one child born on 03/08/2004 from the wedlock with Shantilal Pisal. Shantilal Pisal has four (4) issues from his earlier wife, who is dead. Section 16 of the said Act uses the term ' no person '. In our case, the word ' person ' would be referable to respondent no. 3. The word

‘ person ’ is referable to an individual. Respondent no. 3 has only one (1) child. Four (4) children born to Shantilal Pisal from his first wife, would be the step children of respondent no. 3. The word ‘ children ’ would not include ‘ step children ’. The Legislature in its wisdom has not included the term ‘ step children ’. We can not import any term which is not incorporated in the provision. That would tantamount to legislating. Even if we consider the explanation, then the couple has only one (1) child born from the wedlock. The four (4) issues to Shantilal Pisal from his first wife, can not said to be the children of the couple constituting of Shantilal Pisal and respondent no. 3. When one interprets the provision dealing with disqualification, the same will have to be strictly interpreted.

9. The golden rule of interpretation is that the provision should be interpreted literally. It is only if the provision leads to multi farious interpretation, then one will have to go to the aims and objects of the legislation. In a case where the meaning of the provision is unambiguous and does not admit of any other interpretation, then literal interpretation is the rule.

10. In a Judgment of Javed and others [supra], the Apex Court was dealing with a case where the person concerned was having more than two (2) children born from different wives. In that context, the

Apex Court held that even if the children are born from other woman, the same would not be safe-guarded. Here, in the present case, if Shantilal Pisal would have been the candidate, then it would have been a different case. Respondent no. 3 has only one (1) child and as such it can not be said that the said couple has two (2) or more children.

11. In light of the above, the Writ Petition being sans merit, is dismissed. No costs.

[S.V. GANGAPURWALA,J.]

KNP/W.P. 9261.2011 - [J]