

BEFORE THE COLLECTOR, DISTRICT BEED

Applicant: Bhagwanprasad Shivprasad Dube

Vs

Non applicant: Shaikh Mohammad Sharif s/o Shaikh Mohammad Yusuf (sitting councilor of Municipal Council, Dharur .ward no.3A)

This case has come before me for hearing and decision under section 44 of Maharashtra Municipal Council, Nagar Panchayat, Industrial Township Act 1965 (hereinafter referred as The Act for sake of brevity) seeking disqualification of the Non-applicant. The brief facts of the case are as follows:-

1) The Applicant has submitted an application dated 30-12-2011 in this office.

The main contentions raised by the Applicant are as follows

a) The Applicant alleges that the Non-applicant has total five children and the youngest child named Ayesha Parvin was born to the Non applicants wife on 10-10-2001 that is after 12th September 2001 hence incurring disqualification. The applicant has submitted a copy of Admission Register of Millya Primary School, Dharur as an evidence.

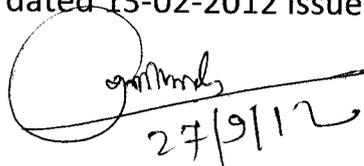
c) The Applicant alleges that the Non applicant has furnished false information while filing the nomination form for Municipal Council election as he has concealed information about the birth date of his fifth child. The Applicant has submitted a copy of nomination form and affidavit filed by the non applicant at the time of election.

The Applicant thus prays to disqualify the Non applicant to hold office.

2) The Non applicant has submitted his written say dated 01-03-2012. The defense taken by the non applicant is as follows:

a) The non applicant's wife underwent a family planning operation on 16-01-2001 at Rural Hospital, Dharur . The non applicant has submitted related certificate issued by the Medical Officer, Rural Hospital , Dharur.

b) The Non applicant claims that his fifth child named Ayesha Parvin was born one and half month before the family planning operation .In support of his claim the Non applicant submitted a letter dated 13-02-2012 issued by the Medical Supdt.,


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Rural Hospital ,Dharur . It is mentioned in that letter that the Non applicant's wife had two sons and two daughters and the last child (female) was one and half month old at the time of family planning operation.

c) The Non applicant claims that birth-date of Ayesha Parvin mentioned in School Admission Register is wrong. The Non applicant also states that birth-date of his son on birth certificate issued by Municipal Council is 10-10-98 whereas Millya Primary School has wrongly mentioned his birth-date as 12-01-99 on Admission Register..

d) The Non applicant has not given any false information while filing nomination form as he has total five children and all of them were born before 12th September 2001

3) The applicant has submitted his additional written say dated 12-03-12.His argument is as follows:

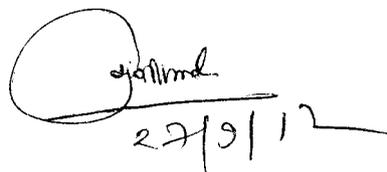
a) Applicant argues that the Non applicant has failed to submit any proof about the exact birth- date of his daughter Ayesha Parvin hence the Admission Register of Millya Primary School, submitted by applicant, is the only official document about her birth-date and should be accepted as legal proof of her birth- date.

b) The applicant argues that it is clearly mentioned in the Medical Supdt's letter dated 13-02-12 that the Non applicant had four children at the time of family planning operation which means that the fifth child was born after 16-01-2001.Even if the non applicant has fifth child born after family planning operation, it violates section 16(k) of The Act. In this regard applicant submits a citation of Hon. Bombay High Court, Nagpur Bench,{2008(4)Mah L R 69}

4) Medical Supdt., Rural Hospital, Dhaur submitted a letter in this regard which clearly mentions that the non applicant's wife had four children at the time of family planning operation.

Now after going through the documents and written arguments submitted by the applicant and non applicant , to decide the application following question is to be answered.

Whether the applicant proves that the non applicant has any child born after 12th September 2001, which led to increase the total number of children of non applicant more than two?

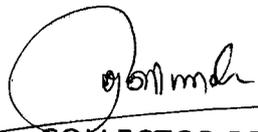
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ORDER

After going through the arguments of advocates of both the sides and documents submitted on record it is very clear that the only document available on record showing birth date of fifth child Ayesha Parvin of the Non applicant is Admission Register of Millya School Dharur. In this document the recorded date of birth of Ayesha Parvin is 10-10-2001. Also there is corroborative evidence of the entries in the register of the Medical Officer, which shows that the Non applicant is having four children on 16-01-2001 and last child was one and half month old. I have sought medical opinion of Civil Surgeon, Beed which clearly says that there is 0.4 % possibility of child-birth even after female family planning operation. Neither the Non applicant has denied Ayesha Parvin as his child. Hence I am inclined to believe with sufficient reason that Ayesha Parvin is the fifth child of the non applicant born on 10-10-2001, which is after the cut off date i.e. 12th September 2001. Hence in exercise of power conferred by section 44(3) of the Act, I disqualify the Non applicant shri Shaikh Mohammad Sharif s/o Shaikh Mohammad Yusuf to hold office and direct the Chief Officer, Municipal Council, Dharur to inform the Hon.State Election Commission regarding the vacancy created by the present disqualification.

DATE: 27/9/2012

PLACE: Beed.


COLLECTOR BEED
27/9/2012