

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(C) No. 1173 of 2025

Sanjeev Kumar Dey, aged about 52 years, Son of Nilmoni Kant Dey,
Resident of Kasim Bazar, Rajmahal, P.O. & P.S.- Sahibganj, District-
Sahibganj, Jharkhand-816108 Petitioner

Versus

1. The State of Jharkhand, through its Chief Secretary, Government of Jharkhand, having office at Project Bhawan, P.O. & P.S. Dhurwa, District- Ranchi-834004
2. The Secretary, Department of Urban Development, Government of Jharkhand, having office at Project Bhawan, P.O. & P.S.- Dhurwa, District- Ranchi-834004 Respondents

**CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE RAJESH SHANKAR**

For the Petitioner : Mr. Amritansh Vats, Advocate
For the Respondents: Mr. Sachin Kumar, AAG-II

Reserved on: 16.04.2025

Pronounced on: 24 / 4 /2025

M.S. Ramachandra Rao, C.J.(Oral)

- 1) This Writ petition has been filed by the petitioner challenging the Rule 3.14 of Jharkhand Nagarpalika Nirvachit Pratinidhi Niyamavali, 2020 issued vide Notification No. 386 dt. 27.8.2020.
- 2) Under the said provision, '*an elected public representative of urban local body can be declared ineligible and his membership for the elected post can be terminated, if he has more than two living children*'. There is a proviso to the said provision which states that '*on or after expiry of a period of one year from the coming into force of Jharkhand Nagarpalika Act, 2011, a person shall not be disqualified if he has more than two*

children'. Thus the exemption from the disqualification is given only for a period of one year from the coming into force of the said statute.

3) Petitioner contends that he is a social worker of Sahibganj district and was willing to contest upcoming Municipal election soon to be held by the State Government.

4) According to him, the Jharkhand Municipal Act, 2011 enumerates the disqualification for contesting Municipal election but there was no provision therein, disqualifying a candidate for having more than two children.

5) Petitioner contends that the Notification dt. 27.8.2020 was issued by the State Government invoking the power conferred on it under section 18 of the Jharkhand Municipal Act and the instant disqualification was added.

6) Petitioner contends that he has three children all born before 2020 and because of the Rule 3.14, he would not be able to contest the election as the said Rule introduced under the 2020 notification bars individuals having more than two children, from contesting the municipal election.

7) According to the petitioner, this Rule has retrospective effect since it states that on the date of the Notification i.e. 27.8.2020 if any person has more than two children, he would be declared ineligible for contesting the Municipal election.

8) Petitioner alleges that the Rule is arbitrary, illegal and is *ultra vires* because only the legislature can make retrospective legislation, but without such a power in the Jharkhand Municipal Act, 2011, in exercise of Rule making power, this provision has been made with retrospective effect.

9) He also contends that it violates his fundamental right guaranteed under Article 14 of the Constitution of India. It is contended that disqualification must be part of the statute so that it can be discussed and debated in the Legislature and in exercise of Rule making power, such action cannot be taken.

10) We have noted the contentions of the counsel for the petitioner.

11) Admittedly, under Section 590 of the Jharkhand Municipal Act, 2011, the State Government is empowered to make Rules for carrying out of the purposes of the Act by way of Notification. It appears that in exercise of the power conferred under the said rule making power, the impugned Notification has been issued prescribing disqualification for people having more than two living children.

12) But clause (n) of Section 18 (1) of the Jharkhand Municipal Act, 2011 also disqualifies a person for election or after election for holding the office as Councilor if he has more than two living children. It is identical to Rule 3.14 enacted under the impugned notification.

13) Therefore, the petitioner is not right in contending that there is no such disqualification in the Jharkhand Municipal Act, 2011 and the same has been introduced only by way of Notification issued on 27.8.2020.

14) Moreover, the Supreme Court in the judgment rendered by it in *Javed & Ors V. State of Haryana & Ors*¹ had upheld an identical amendment in section 175 (1) (q) of the Haryana Panchayati Raj Act, 1994. The Supreme Court held in para 4 which reads as under:

¹ (2003) 8 SCC 369

“4. Placed in plain words the provision disqualifies a person having more than two living children from holding the specified offices in Panchayats. The enforcement of disqualification is postponed for a period of one year from the date of the commencement of the Act. A person having more than two children upto the expiry of one year of the commencement of the Act is not disqualified. This postponement for one year takes care of any conception on or around the commencement of the Act, the normal period of gestation being nine months. If a woman has conceived at the commencement of the Act then any one of such couples would not be disqualified. Though not disqualified on the date of election if any person holding any of the said offices incurs a disqualification by giving birth to a child one year after the commencement of the Act he becomes subject to disqualification and is disabled from continuing to hold the office. The disability is incurred by the birth of a child which results in increasing the number of living children, including the additional child born one year after the commencement of the Act, to a figure more than two.”

15) The Supreme Court held that persons having more than two living children are clearly distinguishable from persons having not more than two living children, that the two constitute two different classes, and the classification is founded on an intelligible differentia clearly distinguishing one from the other. According to the Supreme Court, one of the objects sought to be achieved by the legislation is popularizing the family welfare/family planning program, and the disqualification enacted by the provision seeks to achieve the object by creating a disincentive, and therefore, the classification does not suffer from any arbitrariness. It held that the number of children i.e. two is based on legislative wisdom, that it is a policy decision, which is not open to judicial scrutiny.

16) In view of the above settled legal position, we see no merit in this writ petition. It is accordingly dismissed. No costs.

17) Pending Application, if any, stands disposed of.

(M.S. Ramachandra Rao, C.J.)

(Rajesh Shankar, J.)

N.A.F.R.

Sharda/-