

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.36574 of 2015

% 09.11.2015

Between:

Shaik Azeem Uddin,

S/o Shaik Zainuddin

..... Petitioner

And:

\$ The State of Telangana,

reptd by its Principal Secretary,

Municipal Administration & Urban

Development Department,

Hyderabad and two others.

.....Respondents

< Gist:

> Head Note:

! Counsel for the Petitioner: Mr. A.Sudershan Reddy

Senior Counsel

for Mr. M.Rajender Reddy

^ Counsel for Respondent No.1:AGP for Municipal

Administration (TN)

? Cases Referred:

NIL

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
*FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH*

WRIT PETITION No.36574 of 2015

Between:

Shaik Azeem Uddin,

S/o Shaik Zainuddin

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The State of Telangana,

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... Respondent

JUDGMENT PRONOUNCED ON 09.11.2015

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

1. Whether Reporters of Local newspapers : Yes/No

may be allowed to see the Judgment? Yes/No

2. Whether the copies of judgment may be

marked to Law Reporters/Journals? : Yes/No

3. Whether Their Ladyship/Lordship wish to

see the fair copy of the Judgment? : Yes/No

C.V.NAGARJUNA REDDY, J
HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

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.....Respondents

Counsel for the Petitioner: Mr. A.Sudershan Reddy
For Mr. M.Rajender Reddy

Counsel for Respondent No.1:AGP for Municipal Administration (TN)

The Court made the following:

ORDER:

This Writ Petition is filed for a *Mandamus* to set aside order, dated 15.10.2015, in I.A.No.633 of 2015 in O.P.No.234 of 2014 on the file of the Family Court-cum-Additional District Judge, Nizamabad.

I have heard Mr. A.Sudershan Reddy, learned senior counsel for Mr. M.Rajender Reddy, learned counsel for the petitioner and perused the record.

The petitioner was elected as Corporator of Ward No.39 of Nizamabad Municipal Corporation. Respondent No.3, who is a voter, filed the above-mentioned O.P. for setting aside the said election of the petitioner. In the said O.P., the petitioner filed I.A.No.633 of 2015 for dismissing the said O.P. only on the ground that respondent No.3 has already availed the remedy of approaching the Commissioner of Nizamabad Municipal Corporation for disqualifying him under Section-23-D of the Greater Hyderabad Municipal Corporation Act, 1955 (for short 'the Act') and that therefore, having availed such a remedy, he is not entitled to file the O.P. The lower Court has dismissed, and in my view correctly, the said I.A.

Under Section-23-D of the Act, if an elected member has not qualified or has become disqualified under Sections-21, 21-A, 21-B, 22 or 23 of the Act, any voter or authority may move the Commissioner for deciding the said dispute. Under Section-71 of the Act, a person aggrieved by the election of any candidate is entitled to call in question such election.

A reading of both these provisions would show that they are not mutually exclusive and that they operate independently. Therefore, availing both the remedies by an aggrieved person is very much permissible under the Act and in the absence of any specific bar under Section-71 of the Act to the effect that a person who has availed the remedy under Section-23-D of the Act cannot institute proceedings under Section-71 thereof, the O.P. filed by respondent No.3 is not liable to be dismissed only on the ground that he has moved the Commissioner under Section-23-D of the Act.

In the above view of the matter, I do not find any illegality in the order of the Family Court-cum-Additional District Judge, Nizamabad in dismissing the I.A. filed by the petitioner for rejecting the above-mentioned O.P.

Accordingly, the Writ Petition is dismissed.

As a sequel to dismissal of the Writ Petition, W.P.M.P.No.47110 of 2015 filed by the petitioner for interim relief shall stand dismissed as infructuous.

JUSTICE C.V.NAGARJUNA REDDY

09th November, 2015

Note:

LR copies to be marked.

B/o

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