

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

**FRIDAY, THE THIRTIETH DAY OF OCTOBER TWO THOUSAND AND
FIFTEEN**

Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.31849 of 2015

Between:

Sri P. Srinivas, S/o. Istari,
Aged about years,
Occ: Business,
R/o.H.No.1-51-40/A, Bank Colony,
Pangra Village, Nizamabad Mandal,
Nizamabad District.

.. Petitioner

AND

The State of Telangana,
Rep. by Principal Secretary,
Panchayat Raj, Secretariat Building,
Hyderabad & 6 others

.. Respondents

The Court made the following:

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ORDER:

The petitioner is a resident of Pongra Village, Nizamabad Mandal, Nizamabad District. The petitioner claims to be voter of Pongra Village. According to the petitioner, pursuant to the election notification issued by the State Election Commission to elect the member of the Mandal Parishad Territorial Constituency of Pongra-I Village, the 7th respondent contested to the said post and was elected as member of the Mandal Parishad Territorial Constituency. On verification of the details of the 7th respondent, the petitioner found that the 7th respondent is having more than two children and, therefore, earned disqualification to contest and being elected as member of the Mandal Parishad Territorial Constituency. Having come to know that the 7th respondent earned disqualification, representation is submitted by the petitioner to the Mandal Parishad Development Officer, Nizamabad Mandal, Nizamabad District

(6th respondent) on 07.09.2015 requesting the authority to look into his complaint and take steps for disqualifying the 7th respondent. Alleging that no action is taken on the said representation, this writ petition is filed.

2. Sri V. Ravi Kiran Rao, learned counsel entered appearance for the 7th respondent.

3. Heard Sri N. Krishna, learned counsel for the petitioner, learned Government Pleader for Panchayat Raj for respondents 1 to 3, Sri G. Narender Reddy, learned Standing Counsel for respondents 4 to 6 and Sri V. Ravi Kiran Rao, learned counsel for the 7th respondent.

4. Learned counsel for the petitioner contends that the 7th respondent is having more than two children and, therefore, in accordance with the provision contained in Section 19 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, 'the Act'), he is disqualified for being elected as member of the Mandal Parishad Territorial Constituency. Therefore, his continuation in office as member of the Mandal Parishad Territorial Constituency is illegal. While so, no action is taken in spite of making such complaint.

5. Learned counsel for the petitioner further contended that earlier, resident of Bairapur Village of Nizamabad Mandal, Nizamabad District, raised a complaint against the continuation of the 7th respondent as member of Bairapur Village of Nizamabad Mandal, Nizamabad District. The matter was examined on the complaint and the authorities have found that the 7th respondent is having more than two children. In view of the same, appropriate action of disqualification ought to have been taken and deliberately the respondent authorities are not acting upon the representation of the petitioner and no further action is taken.

6. Sri V. Ravi Kiran Rao, learned counsel for the 7th respondent submits

that the procedure as envisaged by Section 22 of the Act is not followed. The respondent authorities have to issue proper notice and in response, if a reply is filed the respondent authorities should take appropriate steps of filing a case before the Election Tribunal within the time prescribed in Section 22 of the Act, but the respondent authorities cannot on their own conduct enquiry and record findings of having more than two children. It is only the Election Tribunal which can adjudicate the complaint against the elected candidate as having more than two children and the executive authority is not competent to undertake such adjudication process. He can only file a case before the Election Tribunal and only after conducting regular trial, the Election Tribunal can decide the dispute.

7. To appreciate the rival contentions, it is necessary to consider the provision contained in Section 22 of the Act. Section 22(1) of the Act reads as under:

“22. Authority to decide questions of disqualification of members:- (1) Where an allegation is made that any person who is elected as a member of gram Panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the gram Panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Court having jurisdiction over the area in which office of the gram Panchayat is situated for decision.”

8. A plain reading of the provision contained in Section 22 of the Act makes clear that a voter or any authority can complain in writing to the executive authority (in this case, the Mandal Parishad Development Officer) that the elected member of the Mandal Parishad Territorial Constituency has earned disqualification on account of having more than two children and, therefore, he ought to have been disqualified. On receipt of such complaint, the executive authority shall give intimation to the elected member and thereafter,

at his discretion he can file a case before the District Court, which is constituted as an Election Tribunal within a period of two (2) months from the date on which such intimation is given or doubt is entertained.

9. A plain reading of the provision contained in Section 22 of the Act would make it clear that no power is vested in the executive authority to undertake adjudication of the claim of earning disqualification or otherwise. He is competent to receive the complaint, look into the *prima facie* merits of the complaint and if the complaint is satisfying the requirements, he should intimate the person concerned and thereafter, file a case before the District Court. Thus, there is merit in the contention urged by the learned counsel for the 7th respondent.

10. Be that as it may, in the instant case, the grievance of the petitioner is that he filed a complaint on 07.09.2015 and as a voter, in accordance with the provision contained in Section 22(1) of the Act he is entitled to file such a complaint and it is mandatory for the executive authority to act upon the said complaint and cannot keep quiet and allow the elected candidate to continue in the office without regard to the serious nature of the complaint made.

11. Having regard to the same, without expressing any opinion on merits of the claim and the counter claim on the eligibility of the 7th respondent, the Writ Petition is disposed of directing the Mandal Parishad Development Officer, Nizamabad Mandal, Nizamabad District (6th respondent) to consider the complaint filed by the petitioner on 07.09.2015 and take further course of action, as warranted by law, strictly in compliance with the provision contained in Section 22(1) of the Act, as expeditiously as possible, preferably within a period of three (3) weeks from the date of receipt of copy of this order. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

P.NAVEEN RAO, J

Date: 30th October, 2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.31849 of 2015

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Date: 30th October, 2015

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