

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

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CIVIL REVISION PETITION NO. 1721 OF 2015

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ORDER:

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The present Revision is filed under Article 227 of the Constitution of India questioning the very numbering of the Election Petition presented before the II Additional District Judge, Karimnagar at Jagtial, against the petitioners herein.

The facts, which led to filing the present Civil Revision Petition are as under :

The respondent herein has been working as Commissioner, Municipality, Korutla, was a Election Officer for the municipal elections held in the year 2014. In the said elections, the petitioners herein were declared elected from the 23 and 22 wards respectively of Korutla Municipal Council. One Induri Satyam who is resident of Korutla and a voter of the municipal council, Korutla, made an application, on 10.06.2014 alleging that as the petitioners are having more than two children as on the date of commencement of A.P. Municipal Laws (Second Amendment) Act, 1994, their election as Members of the Wards stand invalidated. On receipt of the said application, the Commissioner gave an intimation of such allegation to the petitioners herein on 16.06.2014, to which the petitioners submitted a joint explanation on 16.07.2014 disputing the correctness of the allegation made. In view of the above, the matter was placed before the council for an appropriate direction. The Municipal Council, Korutla, passed a resolution bearing No.65, dated 21.10.2014, authorizing the Commissioner (respondent herein) to file an Election Petition before the District Judge, Karimnagar, to decide the disqualification of the members. Basing on the said resolution, the Commissioner filed an Election O.P., in the Court of District Judge,

Karimnagar, in the month of December, 2014. Challenging the numbering of the O.P., the petitioners herein preferred the present Revision.

The learned counsel for the petitioners mainly submit that in view of sub rule (2) of Rule (1) of Andhra Pradesh (Decision of Election Disputes) Rules, 1967 (hereinafter called as “the Rules”), the District Judge has no jurisdiction to entertain the present application. He further submits that under sub rule (1) of Rule 2 of the Rules, taking cognizance of the above election petition is beyond the period of limitation.

Per contra, the learned counsel for the respondent would submit that provisions of Andhra Pradesh (Decision of Election Disputes) Rules, 1967 would not apply to a case where an O.P., has been instituted by a Commissioner pursuant to a resolution passed by the council. He submits that in view of Sections 13 to 17 of the Andhra Pradesh Municipalities Act, 1965 (hereinafter called as “the Act”), the Commissioner is the competent authority to initiate proceedings before the District Judge within a period of two months from the date of placing the matter, by the Commissioner, before the Council.

In exercise of the powers conferred by clause (b) of sub-section (1) of Section 326 of Andhra Pradesh Municipalities Act, 1965, the Government framed Rules prescribing the procedure for adjudication of election disputes in relation to members of the Municipal Council. The Rules constitute a self-contained code with regard to the manner in which the petition must be presented, the Forum which can adjudicate the dispute and the grounds provided to the returned candidate.

In order to appreciate the rival contentions, it would be appropriate to refer to the Rules and also the provisions of the Act, which are as under:

Rule 1(1) reads as under :

Save as otherwise provided, no election held under the Andhra Pradesh

Municipalities Act, 1965 whether of a Councilor, Chairman or Vice-Chairman, shall be called in question except by an election petition presented in accordance with these rules to an Election Tribunal as defined by sub-rule (2) by any candidate or elector against the candidate who has been declared to have been duly elected (hereinafter called the returned candidate) or if there are two or more returned candidates against all to any of such candidates.

Rule 1(2)(a) reads as under :

The Election Tribunal shall be-

- a. The Subordinate Judge having territorial jurisdiction over the Municipal area or if there is more than one such Subordinate Judge, the Principal Subordinate Judge, or

Rule 2(1) reads as under :

The petition shall be presented within fifteen days of the date of the declaration of the results of the election.

Section 13 of the Act mandates that every person, whose name figures in the electoral roll of the Municipality, shall be entitled to be elected as a member, if he is not less than 21 years of age. As many as six sections are devoted to enumerate the circumstances that would bring about the disqualification to candidates, not only from being elected, but even to be discontinued from the elected office. Section 13-A mandates that if a person is disqualified from being elected to the Legislature of the State, the same would extend to the election to the Municipal Council also. Section 13-B provides that a candidate, who has more children than two, shall be disqualified to be elected and would be liable to be discontinued from the office, as and when he incurs disqualification. The persons holding the office of profit in the Municipality, Central or State Governments are disqualified under Section 14. Section 15 contains a list of instances, such as, persons being of unsound mind, having been adjudicated as an insolvent, having an interest in contracts or works undertaken by the Municipality, etc., resulting in disqualification. Section 16 deals exclusively with cessation of members from the office, if any of the circumstances enumerated thereunder exists. The persons who were convicted of election offences are disqualified from being elected, as per Section 19. Section 17 prescribes the procedure for adjudication of the questions, touching on disqualifications.

From a perusal of the provisions referred to above, it is clear that election of Councilor, Chairman or Vice Chairman shall not be called in question except by an election petition filed in accordance with the Rules to an Election Tribunal as defined by sub-rule (2)(a) of Rule 1, by any candidate or elector against the candidate who has been

declared to have been duly elected. Section 1(1) clearly refers to raising of an election petition by any candidate or an elector. If any candidate or elector files or raises an election dispute, the same should be done before a Subordinate Judge having territorial jurisdiction over the Municipal area or if there is more than one such Subordinate Judge, the Principal Subordinate Judge, or if there is no Subordinate Judge, the District Judge having such jurisdiction. Further, the said election petition should be presented within a period of fifteen (15) days from the date of declaration of the results of the election. Therefore, the provisions referred to above apply to cases instituted by a voter or by any candidate or an electorate. Situation on hand is quite different. The case on hand deal with a situation where the Commissioner of Korutla Municipality lodged the Election Petition after getting approval from the council.

Section 17 of the Act prescribes the procedure for adjudication of questions touching the disqualification. Any voter or authority of the Municipality, is empowered to complain to the Commissioner of Municipality in writing alleging that a person, who has been elected as a member, either did not possess the qualifications or had incurred the disqualification, as mentioned in Sections 13, 13-A, 13-B, 14, 16 or 19. Thereupon, it would be obligatory on the part of the Commissioner, to place the matter before the Council. Depending on the nature of directions issued by the council or in the absence of such directions, with the approval of the Government, the Commissioner is required to apply for a decision by the District Judge, on such allegations, as to the disqualification, or in the absence of such direction he has to proceed further for approval of the Government. From a perusal of Section 17 it is evident that the only way by which proceedings can be initiated before the Court of District Judge is through the Commissioner.

In view of the above, it is clear that the manner of initiation of proceedings, the parameters of adjudication and the outcome thereof in the proceedings instituted under Section 17 of the Act on one hand and the Rules on the other hand are totally different from each other.

As held by this Court in **Sonti Srinivasa Rao v. Boina Lakshmi Narayana and others** there does not exist any scope for taking the one for the other. In fact, the judgment of this Court referred to above and relied upon by the learned counsel for the petitioner may not be of any help to him, as it was a case where the voter filed an O.P., before the District Judge, which was held to be contrary to the provisions of the Act.

For the aforesaid reasons, the argument of the learned counsel for the petitioners that the District Judge has no jurisdiction and the election petition is barred by limitation, cannot be accepted.

Accordingly, the Civil Revision Petition is dismissed, holding that the II Additional District Judge, Karimnagar at Jagtial, is competent to try the matter. There shall be no order as to costs. Miscellaneous petitions pending, if any, in this Petition shall stand dismissed.

C. PRAVEEN KUMAR, J

Date: 25.08.2015

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