

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

**MONDAY, THE FIFTH DAY OF OCTOBER TWO
THOUSAND AND FIFTEEN**

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Present

HON'BLE SRI JUSTICE P.NAVEEN RAO

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WRIT PETITION No.32386 of 2015

Between:

Ittimalla Jyothi, W/o. Venkateswarlu,
Aged about 35 years, Occ:House wife,
R/o.Door No.19-94/1, Govindapuram,
Huzurnagar, Nalgonda District.

.. Petitioner

AND

The State of Telangana,
Rep. by its Principal Secretary,
Department of Municipal Administration,
Secretariat Buildings, Hyderabad & 4 others

.. Respondents

The Court made the following:

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ORDER:

The petitioner claims that she has contested to the election of Counsellor of Huzurnagar Nagara Panchayathi, Ward No.5. The 5th respondent was elected as Ward Member and the petitioner is the second candidate in the said election. According to the petitioner, the 5th respondent earned disqualification since he had three children at the time of contesting of elections and the person who is having three children is ineligible to contest election to the post of Counsellor in accordance with the provisions contained in Clause 13B of the A.P. Municipalities Act, 1965 (for short, 'the Act'). Having come to know about the ineligibility of the 5th respondent, the petitioner filed representations before the District Collector, Nalgonda District (3rd respondent) and the Secretary, State Election Commission, Telangana State, Hyderabad (4th respondent). But so far, the said representations are not disposed of and aggrieved thereby, this writ petition is filed.

2. When the matter is taken up for consideration, learned Standing Counsel for the State Election Commission, Sri V.V. Prabhakar Rao, contends that in terms of the provisions contained in Section 17 of the Act, the competent authority is the Commissioner of the Municipality and the

complaint has to be made to the Commissioner for initiation of proceedings under Section 17 of the Act, whereas no such complaint is filed before the Commissioner, Nagara Panchayathi, Huzurnagar, Nalgonda District (2nd respondent) in terms of the provision contained in Section 17 of the Act. The District Collector as well as the State Election Commission have no role and, therefore, no action could have been initiated by them.

3. As seen from the provision contained in Section 17 of the Act, whenever it is alleged that an elected candidate earned disqualification in terms of various provisions contained in the A.P. Municipalities Act, 1965, including Section 13B of the Act, a complaint can be lodged in writing with the Commissioner of the Municipality and on receipt of such complaint, the Commissioner can initiate enquiry and take appropriate course as required by the provision under Section 17 of the Act. The Commissioner as referred to in Section 17 of the Act means the Commissioner of the Municipality, who is executive authority of the Municipality in accordance with Section 29(1) of the Act. Thus, in terms of the provision contained in Section 17 of the Act, a complaint has to be filed before the Commissioner, whereas in the instant case the complaint was filed before the District Collector and the State Election Commission. Since Section 17 of the Act specifically authorizes the Commissioner to initiate proceedings and the District Collector as well as the State Election Commission are not empowered to initiate such proceedings as required by Section 17 of the Act, there

is no merit in the contention of the petitioner that the competent authority is keeping quiet and not initiating action as required by law.

4. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to file a complaint as required by Section 17 of the Act, if he so desires and dismissal of the writ petition do not come in the way of the petitioner availing the remedy as available in law. 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: 5th October, 2015

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HON'BLE SRI JUSTICE P.NAVEEN RAO

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Date: 5th October, 2015

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