

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE A V SESA SAI

WRIT APPEAL No. 1026 OF 2015

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03.02.2016

Between:

Ravula Shankar,
Karimnagar District.

... Appellant

And

Bangoni Kumar,
Keshavapatnam Village,
Shankarapatnam Mandal,
Karimnagar District, and others.

... Respondents

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HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE
AND
HON'BLE SRI JUSTICE A V SESA SAI

WRIT APPEAL No. 1026 OF 2015

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PC: (per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

This writ appeal is directed against an interlocutory order dated 16.09.2015 passed by learned Single Judge in W.P.M.P.No.39008 of 2015 in W.P.No.30153 of 2015. By this order, interim prayer seeking suspension of the order dated 20.08.2015 passed in O.P.No.1 of 2013, pending hearing and final disposal of the writ petition, has been rejected.

The order passed by learned Single Judge reads thus:

“The petitioner was elected as ward member of the 2nd Ward of Gram Panchayat of Kesavapatnam Village, Shankarapatnam Mandal, Karimnagar District. The election of the petitioner was challenged by the 1st respondent in O.P.No.1 of 2013, on the file of the Principal Junior Civil Judge, Election Tribunal, Huzurabad. The challenge to the election of the petitioner was on the ground that the petitioner was having three children at the time of contesting election and on account of the provision contained in Section 19(3) of the A.P. Panchayat Raj Act, 1994 (for short, ‘the Act’), he earned disqualification even to contest in the election and, therefore, the petitioner should be disqualified. As against the contention that the petitioner was having three children born to him, the petitioner’s stand before the Election Tribunal was that only two children were born to him and a child born to his brother was taken on adoption by the petitioner and the adopted son cannot be counted against the strength of the children in accordance with the provision contained in Section 19(3) of the Act. Rejecting the said contention and relying on the

statement of the petitioner that he was having three children, one being adopted by him, the election of the petitioner was set aside.

The petitioner challenges order in O.P.No.1 of 2013 on several grounds in this writ petition. The primary ground of challenge is when the petitioner was having only two children born to him and third child being an adopted child, he cannot be treated as a third child for the purpose of applying the provision in Section 19(3) of the Act and the embargo in Section 19(3) of the Act is attracted only in case more than two children are born to the petitioner and does not take its component of adopted Child.

Prima facie on a plain reading of sub-section 3 of Section 19 of the Act, it makes no discretion between children born to a person or adopted. However, it imposes a ceiling of having two children and if a person, who has more than two children, such person invites wrath of disqualification. Admittedly, the petitioner has three children, though according to the petitioner one of them is adopted by him, and therefore, the petitioner earns disqualification. Thus, the balance of convenience is not in favour of the petitioner.

Hence, the W.P.M.P.No.39008 of 2015 is dismissed.”

Sri K.N.Jwala, learned Senior Counsel for the appellant, at the outset, invited our attention to sub-Section (3) of Section 19 of the A.P. Panchayat Raj Act, 1994 (for short ‘the Act’) to submit that the provisions contained in this sub-Section shall not apply to an adopted child and it is clear from the language employed in the first two provisos to sub-Section (3) of Section 19 of the Act. In other words, he submitted that this provision would apply only if the children are natural children of a candidate and an adopted child cannot be treated as a child of the candidate for disqualifying him from contesting elections.

We have perused sub-Section (3) of Section 19 of the Act and as has already been observed by learned Single Judge, it does not make any distinction between natural children and adopted children.

To our specific query to learned Senior Counsel whether, in law,

any distinction can be made between adopted child and natural children, his answer was in the negative.

In the circumstances, we find no merit in writ appeal.

Writ Appeal is disposed of. Learned Single Judge is requested to decide the writ petition expeditiously.

Miscellaneous petitions, if any, also stand disposed of.

DILIP B. BHOSALE, ACJ

A V SESA SAI, J

Date: 03.02.2016
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