

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA
REDDY**

WRIT PETITION No.141 of 2016

-
05.01.2016

Between:

Kethavath Yadagiri

.. Petitioner

and

The State of Telangana,
represented by its Principal Secretary,
Panchayat Raj and Rural Development Department,
Hyderabad and others

.. Respondents

Counsel for the petitioner: Mr.V.Ravi Kiran Rao

Counsel for respondent Nos.1 and 2: Assistant Government Pleader
for Panchayat Raj and Rural Development (TS)

Counsel for respondent Nos.3 and 4: --

Counsel for respondent No.5:--

The Court made the following:

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ORDER:

This writ petition is filed for a *mandamus* to set aside notice No.A2/103/2015, dated 28.12.2015, of respondent No.4, whereunder he has called upon the petitioner to show cause as to why he shall not be declared as disqualified, for having more than three children, under Section 22 (1) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short 'the Act').

I have heard Mr.V.Ravi Kiran Rao, learned counsel for the petitioner, and Mr.G.Narender Reddy, learned standing counsel for Panchayat Raj Institutions (TS) appearing for respondent Nos.3 and 4, and perused the record.

A perusal of the record shows that respondent No.5 filed W.P.No.31849 of 2015 assailing the inaction of the official respondents against the petitioner in disqualifying him from holding the post of Member of MPTC, Pangra-1 (Akula Kondur) Village, Nizamabad Mandal and District, despite his having three children.

This Court has disposed of the said writ petition on 30.10.2015 with certain observations, which include that a plain reading of Section 22 of the Act would make it clear that no power is vested in the executive authority to undertake adjudication of the claim relating to disqualification and that he is only competent to receive the complaint, look into the *prima facie* merits of such complaint and if he is satisfied *prima facie*, he should intimate the person concerned and thereafter, file a case before the District Court concerned. This Court has accordingly directed respondent No.4 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 provisions of Section 22(1) of the Act. Purporting to act on these directions, respondent No.4 has issued the impugned notice.

Mr.V.Ravi Kiran Rao, learned counsel for the petitioner, submitted that since his client is the President of Mandal Praja Parishad, Nizamabad, under Section 156 (2) of the Act, it is the Chief Executive Officer i.e., respondent No.3, who is competent to initiate proceedings before the District Court concerned and that respondent No.4 has no power or authority to issue any notice, much less a notice for disqualification of the petitioner under Section 22 of the Act.

On a reading of the provisions of Sections 22 and 156(2) of the Act, this Court finds merit in the above submission of the learned counsel for the petitioner. While as held by this Court in W.P.No.31849 of 2015, respondent No.4 has no power of adjudication relating to disqualification, whenever a complaint is received, the same could be intimated to the person against whom such allegation of disqualification is made, so that he can himself move the District Court concerned for adjudication or the competent authority will move the District Court concerned for such adjudication.

As the learned counsel for the petitioner submitted that his client is interested in approaching the District Court concerned seeking adjudication of the allegation of his disqualification as per Section 22 of the Act, the petitioner is permitted to approach the District Court concerned, within a period of two months from today, failing which, respondent No.3 shall refer the issue of disqualification of the petitioner under Section 156(2) of the Act to the District Court concerned, within a period of two weeks after expiry of the period of two months. Respondent No.4 is restrained from taking further action against the petitioner in pursuance of the impugned notice, as such action depends upon the adjudication of the dispute by the District Court concerned.

Subject to the above directions, the Writ Petition is disposed of.

As a sequel to disposal of the writ petition, W.P.M.P.No.187 of 2016 filed by the petitioner for interim relief shall stand disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

05th January, 2016
GHN