HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.3034 OF 2015

ORDER:

Heard Mr.V.Subrahmanyam for petitioner, Government Pleader for Panchayat Raj for respondents 1 to 4 and Mr.Ravi Cheemalapati for respondent No.5.

The petitioner prays for the following relief:

> "…..this Hon'ble Court may be pleased to issue a Writ of Mandamus or any other appropriate Writ, Order or direction declaring the action of the respondents 1 to 5 in permitting the 6th respondent to participate in the meetings and sign the resolutions passed by the Thimmapuram Gram Panchayat, in spite of the fact that she has ceased to hold her office and her seat became vacant by virtue of Sec. 252 [2] of the A.P. Panchayat Raj Act, 1994, as illegal, arbitrary, unconstitutional, without jurisdiction and consequently direct the respondents 1 to 5 not to permit her to participate in the meetings of Thimmapuram Gram Panchayat and to hold election in respect of 10th Ward of Thimmapuram Gram Panchayat, Nuzendla Mandal, Guntur District, Andhra Pradesh forthwith and pass such……...".

The circumstances relevant for disposal of the writ petition are as follows:

It is the case of petitioner that on 31.07.2013 election to Thimmapuram Gram Panchayat was held for all the wards, except ward Nos.5 & 10. The petitioner was elected as Sarpanch. On 02.08.2013, the petitioner and the elected members took charge. Election to Ward Nos.5 and 10 was held on 10.01.2014. One Thoomu Eswaramma was elected for Ward No.5 and 6th respondent was elected unanimously for Ward No.10. Thoomu Eswaramma had taken oath whereas the 6th respondent

failed to take oath within 3 months or at one of the first three meetings, as required under Section 252(1) of the A.P. Panchayat Raj Act, 1994 (for short 'the Act').

It is further alleged that the 6th respondent has no right whatsoever to take seat in the meetings of the Gram Panchayat or to do any act as ward member of Gram Panchayat. The 5th respondent deliberately violated to perform his duty of reporting the fact of 6th respondent not taking oath and her consequent cessation as required under Section 252(4) of the Act to Divisional Panchayat Officer. Further, the 5th respondent allowed 6th respondent to participate in the meeting of Gram Panchayat held on 06.09.2015 and also permitted her to sign the resolution passed on that date contrary to the Act. The 6th respondent failed to make application within 30 days from the date of her cessation for grant of further time. The 6th respondent ceases to be a member and her seat becomes vacant.

The 5th respondent filed counter affidavit wherein it is stated that 6th respondent was elected unanimously on 10.01.2014 and to the said effect the 5th respondent had issued certificate. On the same day i.e., 10.01.2014, the 6th respondent took oath in his presence and election officer. The 5th respondent filed copies of relevant documents along with the counter affidavit in support of 6th respondent taking oath as member of a ward.

The 6th respondent filed counter affidavit stating that 6th respondent had taken oath as member on 10.01.2014 itself, on

which date she was elected, before the election officer, continuing as member of Gram Panchayat and attending the meetings. The 6th respondent did not receive notices of general meetings held on 21.01.2014, 20.02.2014 and 20.05.2014. Copies of relevant extracts of the agenda book and attendance register are filed along with the counter. It is stated that since the petitioner deliberately did not provide opportunity to 6th respondent to make oath in the meetings of Gram Panchayat, she submitted an application to the Government of Andhra Pradesh on 30.09.2015 requesting to grant time for taking oath in the next meeting.

The petitioner filed reply affidavit in response to the counter affidavit filed by 5th respondent. The relevant portion in the reply affidavit reads thus:

> "I further submit that the oath taking certificate dt.10.10.2014 which is filed by the 5th respondent is signed by one Sruthi, the Panchayat Secretary, Gram Panchayat, Thimmapuram. As a matter of fact, she was not the Panchayat Secretary on that date and one Veeresetti Sreenivasa Rao was the Panchayat Secretary. On the instructions of the local MLA, the 5th respondent has kept all the records of the Gram Panchayat under his lock and key and thus I am not in a position to produce any document to this effect. Thus, seen from any angle, the 6th respondent has ceased to hold the office of member of 5th Ward of Thimmapuram Gram Panchayat and I pray this Hon'ble Court to allow the writ petition as prayed for."

Before considering the rival contentions, the prayer is restated i.e., the petitioner prays for declaration that permitting petitioner to attend meetings is factually untenable and contrary to Section 252(2) of the Act. The premise or assumptions on which the prayer proceeds is that the 6th respondent has not taken oath as member

of Gram Panchayat. As stated above, this basic circumstance is stoutly contended by respondents and on the contrary, they contend that 6th respondent had taken oath as member of Gram Panchayat. The petitioner by way of reply admits that the record is not with him, but still contends that the 5th respondent at the instance of MLA has been making false averments. From the reply one thing is clear that the petitioner assumes that the 5th respondent is cooperating with 6th respondent to create record in this behalf etc. In my considered view, if the very foundation for the writ petition is not in issue, the writ prayer could be considered. In view of the documents on file and the stand of respondents, this Court is compelled to observe that under Article 226 of the Constitution of India these circumstances are not re-appreciated and a declaration as prayed for can be granted. These circumstances are always matters of verification of record by the Divisional Panchayat Officer etc., and a decision thereafter, as the circumstances, warrant could be taken. Therefore, the writ fails and is liable to be dismissed.

The writ petition is, accordingly, dismissed. However, it is open to petitioner to move the authority under the Panchayat Raj Act for appropriate relief in this behalf. There shall be no order as to costs.

Consequently, miscellaneous petitions, if any pending, also stand disposed of.

S.V.BHATT,J

22nd December, 2016
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