

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

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WRIT PETITION No.225 of 2012

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ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner seeking a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the Memo No.16907/Elec.I/2011-2 dated 18.10.2011 issued by the first respondent rejecting the representation of the petitioner dated 18.10.2010 filed on 26.10.2010 for grant of exemption from disqualification imposed in Section 13-B of the A.P.Municipalities Act, 1965, as illegal, arbitrary, unjust and violative of Article 14 of the Constitution of India.

2. I have heard the submissions of the learned counsel for the writ petitioner, the learned Government Pleader for Municipal Administration and Urban Development appearing for the respondents 1 and 2 and the learned Standing Counsel appearing for the 4th respondent. I have perused the material record.

3. The facts that are necessary for consideration, in brief, are as follows:-

The petitioner is the resident of Shakkarnagar of Bodhan of Nizamabad District. His wife K.Sunitha is working as a Headmistress of Z.P.Girls High School, Varni of Nizamabad District. Out of their lawful wedlock, they were blessed with two children. For availing the incentives announced by the Government to encourage small families like increments to the employees who have two children, the wife of the writ petitioner underwent a Double Punctured Laparoscopy ('DPL', for brevity) in the State Government's Family Health Centre at Varni under the National Family Planning Programme. The said DPL was conducted on 21.02.2002 by Dr.B.Santosh Reddy, Civil Assistant Surgeon of the Area Hospital, Bodhan, Nizamabad District and a certificate to that effect was also furnished to the writ petitioner and his wife. Subsequently, the writ petitioner and his wife had followed the precautionary measures and complied with all the directions given by the doctor after performing

DPL. While so, when the writ petitioner's wife did not have menstrual periods, she had consulted her family doctor and came to know that she became pregnant despite undergoing DPL. Subsequently, she gave birth to a third child. The writ petitioner is a political leader and was elected as councilor of ward number 27 of Bodhan for a period of three years. In the circumstances, he lost his opportunity to contest in the elections in view of the bar for contesting elections contained in the provision of law in Section 13-B of the A.P.Municipalities Act, 1965 ('Act 6 of 1965', for brevity). Therefore, he had submitted a representation dated 18.10.2010 for grant of exemption from disqualification imposed under Section 13-B of the Act 6 of 1965 by *inter alia* stating that because of the failure of the DPL, his wife gave birth to another child on 19.10.2003 and that he intends to contest in the ensuing ordinary elections. When his representation was not considered, he had filed a writ petition in W.P.No.18182 of 2011 before this Court seeking a direction to the respondents to consider his representation for grant of exemption as prayed for. This Court, while disposing of the said writ petition by orders dated 13.07.2011, had directed the respondents to consider the petitioner's representation dated 18.10.2010. Pursuant to the said orders of this Court in the aforementioned writ petition, the Secretary to the Government, Municipal Administration & Urban Development (Elec.1) Department, Government of Andhra Pradesh, having examined the matter, had issued the impugned memo *inter alia* stating that the writ petitioner should have taken precaution when his wife missed her first menstrual cycle and should have avoided continuation of pregnancy and that therefore, the circumstances in which he was placed were not beyond his control and hence, exemption cannot be granted. Feeling aggrieved of the same, this writ petition is filed.

4. The 4th respondent filed a counter affidavit stating the chronology of events which are not in dispute and reiterating the facts that lead to the passing of the impugned order by the Secretary to Government and also the contents of the impugned order.

5. In view of the facts, it is necessary to refer to the relevant provision of law, i.e., Section 13-B of the Act 6 of 1965, which reads as under:-

Section 13-B:- Persons having more than two children to be disqualified:-

A person having more than two children shall be disqualified for election or for continuing as member:

Provided that the birth within one year from the date of commencement of the A.P. Municipal Laws (second amendment) Act, 1994 (hereinafter in this section referred to as the date of such commencement) of an additional child shall not be taken into consideration for the purpose of this section;

Provided further that a person having more than two children (excluding the child if any born within one year from the date of such commencement) shall not be disqualified under this section for so long as the number of children he had on the date of such commencement does not increase;

Provided also that where a person is having one child through first delivery and more than one child are born in the subsequent delivery, such person shall not incur disqualification under this section;

Provided also that the Government may direct that the disqualification in this section shall not apply in respect of person for reasons to be recorded in writing.

A plain reading of the above provision of law would show that the Government are empowered to grant exemption from disqualification for reasons to be recorded in writing. Except mandating that the Government is empowered to grant exemption for reasons to be recorded in writing, no further embargo is placed on the discretionary powers of the Government in the said provision of law.

6. In view of the clear mandate in the above provision of law, the learned counsel for the writ petitioner would contend that the observations in the order impugned to the effect that the exemption could be granted only if the circumstances are such and are beyond the control of the writ petitioner are unwarranted and are not in conformity of law and equity and that the impugned order is passed without proper application of mind and also without considering the facts that the wife of the writ petitioner underwent DPL in the State Government's Family Health Centre and that the failure of DPL is on account of the inefficiency of the doctor who had conducted the DPL; and that, therefore, the exemption as sought for ought not to have been refused as there is no fault on the part of the writ petitioner and his wife.

7. The learned Government Pleader appearing for the 1st respondent had only reiterated the contents of the order which is impugned.

8. At the time of hearing, the learned counsel for the writ petitioner brought to the notice of this Court, the order in G.O.Rt.No.1148, Panchayat Raj and Rural Development (Election & Rules) Department, dated 11.07.2013, wherein, the Government have granted exemption to one T.Ramulu, Ameerpet GP, Maheswaram of Ranga Reddy District to contest in the then ensuing 4th ordinary elections of Panchayat Raj Institutions in terms of the 3rd proviso to sub-section 3 of Section 19 of A.P.Panchayat Raj Act, 1994 and had contended that the present writ petitioner and his wife are similarly placed and that they are also entitled to the similar exemption on par with the said T.Ramulu and that the refusal to grant exemption to the petitioner on extraneous considerations/reasons would amount to discrimination and violation of Article 14 of the Constitution of India. He would further contend that the provisions of 'The Medical Termination of Pregnancy Act, 1971' also do not compel the writ petitioner and his wife to have the wife's pregnancy aborted only for the sake of seeking exemption under the provisions of the Act 6 of 1965.

9. It is trite to note that the petitioner's wife underwent DPL and that she had obtained the certificate in regard to the said operation are not in dispute. Having regard to the facts and the aforesaid submissions, this Court is satisfied that the instant case is a fit case to grant the relief to the writ petitioner and give a direction to the respondent concerned to reconsider the case of the writ petitioner, as in the well considered view of this Court, the impugned order is unsustainable being arbitrary and contrary to the statutory provision and as the power, which is discretionary and which is to be exercised in judicious manner, appears to have been exercised not in conformity with equity and also without taking into consideration the facts and circumstances peculiar to the case of the writ petitioner and as the order impugned appears to have been passed without considering the vital fact that the petitioner and his wife cannot be faulted for giving birth to a third child, as the wife of the petitioner had admittedly undergone DPL in the State Government's Health Centre.

10. Accordingly, the writ petition is allowed and the impugned order is set aside. The respondents are directed to reconsider the representation of the petitioner dated 18.10.2010 in strict accordance with the procedure established by law, however, after providing an opportunity of hearing to the writ petitioner and his wife. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this writ petition shall stand closed.

M.Seetharama Murti, J

04th February, 2016

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