

***HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.19970 OF 2016

%24.06.2016

Gandla Narasiah

..... Petitioner

And

State of Telangana, rep. by its Prl. Secretary, Telangana Secretariat,
Hyderabad and 4 others.

.....Respondents

! Counsel for the petitioner: Sri V. Ravi Kiran Rao

^ Counsel for respondent No.1 & 2:

Government Pleader for Panchayat Raj

^ Counsel for the respondents 3 & 4:

Sri G. Narender Reddy, Standing Counsel

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> Head Note:

? Cases referred:

[1] 2005(1) ALD 181

2.2010 (5) ALD 589

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.19970 OF 2016

ORDER:

The writ is filed questioning the letter No.A1/59/2015 dated 27.2.2016, issued by the 4th respondent-Mandal Praja Parishad communicating the decision taken on the representation dated 23.09.2015 of the petitioner with respect to disqualification of the 5th respondent under Section 19 (3) of the A.P. Panchayat Raj Act, 1994 (for short "the Act").

The facts are not in dispute. It is the case of the petitioner that that

5th respondent was found to have had three children and thereby the disqualification attached to her under Section 19(3) of the Act making her ineligible to continue as Member of the Mandal Praja Parishad. Bringing the disqualification earned by the 5th respondent, petitioner made a representation to 4th respondent and as no action was taken against the 5th respondent, petitioner moved this Court by filing W.P.No.36235 of 2015 and this Court by an order dated 06.11.2015, directed the 4th respondent to consider the representation of the petitioner and to initiate appropriate action against the 5th respondent under the Act. Thereafter, the 4th respondent disposed of the representation of the petitioner by rejecting the same and thus exceeded the jurisdiction conferred on him under Section 22 of the Act.

Sri V. Ravi Kiran Rao, learned counsel for the petitioner by placing reliance on the judgments of this Court reported in **N. Tirupataiah v. District Panchayat Officer, Nellore and others**^[1] and **G. Janaki Ramudu v. State of Andhra Pradesh and another**^[2] submits that the 4th respondent exceeded the jurisdiction conferred on him under Section 22 of the Act in rejecting the complaint. Elaborating on this aspect, learned counsel submits that it is only the District Court which can determine the truth or otherwise of the allegations and validity or otherwise of Members disqualification in an Election Petition. Contrary to the same, the 4th respondent after taking into consideration of the material alleged to have been filed by the 5th respondent to the notice dated 20.02.2016 made an elaborate enquiry and declared 5th respondent has not earned the disqualification which is otherwise not empowered to under Section 22 of the Act.

Heard the Learned Government Pleader for Panchayat Raj (TS) as well as the G. Narendra Reddy learned standing counsel for the respondents 3 and 4.

Having perused the material documents placed before this Court and

having heard the learned counsel for both sides, the question which falls for consideration in the present writ petition is whether the elaborate reasoned order by the 4th respondent suffers from any arbitrariness or illegality.

On earlier occasion, the petitioner approached this Court by filing a W.P.No.36235 of 2015 complaining the inaction on the part of the 4th respondent on the complaint made by the petitioner on 23.9.2015 with respect to the alleged disqualification of the 5th respondent's election as a Member of the Mandal Praja Parishad on account of having three children. This Court at the admission stage disposed of the said writ petition by order dated 6.11.2015 directing the 4th respondent to consider the petitioner's representation and based on the prima facie material that may be produced by the petitioner initiate appropriate action under Section 22 of the Act and make a reasoned order if the 4th respondent is not concurring with the allegations of the petitioners. Pursuant to the said order of this Court the impugned communication was sent to the petitioner by the 4th respondent stating that after perusing the material placed before him and after considering the explanation submitted by the 5th respondent, the 4th respondent had found that the 5th respondent has only two children and not three children as alleged and thus the complaint was rejected.

The grievance of the petitioner is that the 4th respondent exceeded the jurisdiction in giving a finding about the merits of the matter and rejecting the complaint of the petitioner as according to the petitioner's counsel it is only the District Court who is empowered to give such declaration.

In the facts of the present case, the impugned communication cannot be found fault as firstly the communication is made to the petitioner strictly in terms of the orders of this Court dated 06.11.2015 in W.P.No.36235 of 2015, wherein this Court specifically directed to make a reasoned order and the 4th respondent strictly complied with the orders of this Court. However, the 4th respondent had also left it open to the respective parties

to approach the appropriate Court to sort out the issue. Thereby not giving any finality to the findings recorded by him. Further, though this Court in the judgments relied on by the learned counsel for the petitioner had opined that it is the District Court alone which is competent to decide the disqualification of an elected person under Section 19 of the Act, the same cannot be construed as prohibiting from expressing its opinion and recording a prima facie finding with respect to the complaint/allegations against an elected Member.

Section 22 (1) of the Act reads as under:

“(1) Where an allegation is made that any person who is elected as a member of a gram panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the gram panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the (District Court) having jurisdiction over the area in which office of the gram panchayat is situated for decision.”

As in the present case, it is the election of the member of the Mandal Parishads, Section 156(2) of the Act would be required to read along with Section 22 of the Act.

Section 156(2) of the Act reads as under:

“(2) The provisions of (Sections 18, 19, 19A, 19B, 20 21 and 22) shall apply to a member of the Mandal Parishad as they apply to a member of the gram panchayat subject to the variations that for the expression “gram panchayat”, “executive authority”, “Sarpanch”, “Upa Sarpanch” and District Panchayat Officer”, the expressions “Mandal Parishad”, “Mandal Parishad Development Officer”, “President”, “Vice President” and “Chief Executive Office” shall respectively be substituted:

Provided that nothing in clause (b) of Section 20 shall apply to a member of the Mandal Parishad specified in clause (ii), clause (iii) and clause (iv) of sub-section (1) of Section 149.”

To discharge the functions under Section 22 of the Act, the Executive Officer on receipt of a complaint/intimation about the disqualification of an elected member is required to put on notice the concerned Member about the complaint and on receiving the response he is required to take further steps to enable the Mandal Parishads or the Commissioner to take appropriate decision; whether to initiate proceedings by filing an Election O.P before the District Court or not. The act of recording a prima facie opinion to enable the respective authorities to take action cannot by itself be termed as deciding the complaint about the very disqualification. In that view of the matter, the mere recording of prima facie opinion in the impugned order cannot be found fault.

In the circumstances, the writ petition is disposed of with a clarification that the communication dated 27.02.2016 of the 4th respondent intimating the rejection of the claim of the petitioner that the 5th respondent had not incurred disqualification after examining the material placed before the 5th respondent shall be construed only as a prima facie opinion expressed and they shall not be treated as a determination of the merits of the complaint made by the petitioner or the issue. The reasons set out by the 4th respondent with respect to merits of the matter shall only be treated as a prima facie opinion for the purpose of examining as to whether the matter is required to be placed before the Mandal Praja Parishad or before the Commissioner so to as to enable the said authority to take further action by approaching the Civil Courts. The expression of the opinion is for limited purpose and it shall not be construed as the conclusion of the decision on the merits of the matter. To allay the fears of the petitioner, that the prima facie opinion expressed by the 4th respondent may be construed as a declaration as to the 5th respondent not earning disqualification under Section 19(3) of the Act, it is made clear that the petitioner would be entitled to approach the competent District Court seeking adjudication of the disqualification of the 5th respondent.

Subject to the above observations, the writ petition is disposed of.
No order as to costs.

The Miscellaneous Petitions pending, if any, shall also stand dismissed.

CHALLA KODANDA RAM,J

Date:24.06.2016.

Note:

L.R. copy to be marked.

B/o.

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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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