

HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.32182 of 2014

Date:21.01.2016

Between:

Korra Shankar,
S/o Gamsya

..... Petitioner

And:

State of Telangana, repled., by its Principal
Secretary, Panchayat Raj Department,
Hyderabad and five others.

.....Respondents

Counsel for the Petitioner: Mr. K.Maheswara Rao

Counsel for Respondent Nos.1 & 5: AGP for Panchayat Raj
(TS)

Counsel for Respondent No.3: AGP for Revenue (TS)

Counsel for Respondent No.4: Mr. G.Narender Reddy

Counsel for Respondent No.6: Mr. Venkat Raghu Ramulu

The Court made the following:

ORDER:

This Writ Petition is filed for a *Mandamus* to declare the action of respondent Nos.3 to 5 in not initiating appropriate action as per Section-19(3) read with Section-156(2) of the Andhra Pradesh Panchayat Raj Act,

1994 (for short 'the Act') as illegal and arbitrary.

The petitioner averred that he is a member of Mandal Praja Parishad Territorial constituency of Nagilla Village, Madgul Mandal, Mahaboobnagar District; that respondent No.6 was elected as a member of Mandal Praja Parishad Territorial Constituency of Arkapalli Village, Madgul Mandal, Mahaboobnagar District; and that he has made a representation to respondent No.4, wherein he has alleged that respondent No.6 is having three children and therefore, he has incurred disqualification to continue as the member of Mandal Praja Parishad Territorial constituency of Arkapalli. Alleging that no action has been taken by respondent No.4 on the said representation, the petitioner filed this Writ Petition.

Respondent No.4 has filed a counter-affidavit wherein it is *inter alia* stated that it is not within her knowledge whether respondent No.6 has three children, as alleged by the petitioner, and that, at any rate, the only remedy available to the petitioner is to file an Election Petition under Section-233 of the Act.

Section-19 of the Act enumerates various disqualifications for a person to be elected as a member of Gram Panchayat. Under sub-section-(3) of Section-19 of the Act, a person having more than two children shall be disqualified for election or for continuing as a member. Section-22 of the act lays down the procedure for disqualifying the members under Sections-17, 18, 19 or 20 thereof. Sub-section-(1) of Section-22 of the Act which is relevant for the present purpose reads as under: -

“Section-22: Authority to decide questions of disqualifications of members:- (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 to the

executive authority in writing and the executive 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 the office of the Gram Panchayat is situated for decision.”

Section-156 of the Act deals with disqualification of members of Mandal Parishad. Sub-section-(2) of Section-156 made the provisions of Sections-18, 19, 20, 21 and 22 applicable to a member of the Mandal Parishad as they apply to a member of the Gram Panchayat, subject to the variations which *inter alia* include substitution of ‘Mandal Parishad Development Officer’ and ‘Chief Executive Officer’ in place of ‘executive authority’ and ‘District Panchayat Officer’, respectively.

From the provisions of Section-22 of the Act, it is evident that whenever a member has incurred disqualification, a complaint can be given by any voter or authority to the executive authority in writing and thereupon, the executive authority shall give intimation of such allegation to the member concerned through the District Panchayat Officer.

By virtue of Section-156(2) of the Act, the Mandal Parishad Development Officer shall be the executive authority. The Chief Executive Officer shall verify the

reports of the executive authority and intimate the allegations to the Member concerned. On receipt of such intimation the Member himself may approach the District Court, failing which the executive authority on the direction of the Mandal Parishad 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 the office of the Mandal Parishad is situated for decision.

In the instant case, the petitioner has not made any representation to the Mandal Parishad Development Officer. Therefore, no *Mandamus* can be issued to respondent No.4 to initiate action. Ordinarily, the petitioner would have been permitted to make a representation to the Mandal Parishad Development Officer for setting the process in motion as envisaged under Section 22 r/w. Section 156 of the Act. However, such a necessity is obviated for the reason that raising the same question one Kallu Rajavardhan Reddy, the unsuccessful contestant for the office of the Mandal Praja Parishad of Madgul Mandal, filed E.O.P.No.2 of 2014 in the Court of the Principal Senior Civil Judge, Mahabubnagar and the same is pending. Interestingly, while the Senior Civil Judge is the Election Tribunal for deciding the Election Petition, the District Court is conferred with the jurisdiction to render a decision under Section 22 r/w. Section 156(2) of the Act. If the petitioner is permitted to get the dispute referred to the District Court, there is a likelihood of conflict of decisions in the proceedings before the two fora. To avoid such an eventuality, I feel it appropriate to allow the petitioner to get himself impleaded in the said E.O.P.No.2 of 2014 and support the petitioner therein.

Accordingly, the Writ Petition is disposed of by

permitting the petitioner to get himself impleaded in E.O.P.No.2 of 2014 on the file of the Principal Senior Civil Judge-cum-Election Tribunal, Mahabubnagar. If such an implead petition is filed, the learned Principal Senior Civil Judge shall implead the petitioner and allow him to raise the plea of disqualification of respondent No.6.

As a sequel to disposal of the Writ Petition, WPMP.Nos.40237 of 2014 and 30626 of 2015 are disposed of as infructuous.

*JUSTICE C.V.NAGARJUNA
REDDY*

*21st January, 2016
DR/AM*