

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.26099 of 2014

ORDER:

This writ petition filed under Article 226 of the Constitution of India challenges the order passed by the District Collector, Nalgonda-2nd respondent vide proceedings No.802/13-B (Panchayat) dated 2.9.2014.

2. Heard the learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj for Respondents 1 to 3 and Smt.J.Vijayalakshmi for Respondent No.4, apart from perusing the material available on record.

3. The short question that arises for consideration of this Court in the present writ petition is_ Whether the District collector is competent to pass an order, disqualifying the Sarpanch of the Gram Panchayat under Section 19(3) of A.P.Panchayat Raj Act, 1994.

4. The petitioner herein is the elected Sarpanch of Garidepally Gram Panchayat, Nalgonda district. On a complaint made by the 4th respondent herein, the District Collector initiated action and directed the Divisional Panchayat Officer, Miryalaguda to submit a report after holding enquiry. Pursuant to the said directions, the Divisional Panchayat Officer, Miryalaguda submitted report. The Panchayat Secretary, Garidepally Gram Panchayat also submitted a report on 22.8.2014. Subsequently, while referring to the above said reports, the 2nd respondent-District Collector passed order vide proceedings dated 2.9.2014, ordering disqualification of the petitioner under Section 19(3) of the A.P. Panchayat Raj Act, 1994. According to the learned counsel for the petitioner, the order impugned is totally one without jurisdiction and section 22 of A.P. Panchayat Raj Act, 1994, does not authorise the District Collector to disqualify the petitioner and the competent authority is the Tribunal having jurisdiction over the area.

5. On the contrary, it is submitted by the learned Government Pleader and the learned counsel appearing for 4th respondent that there is no illegality in the impugned action. It is also brought to the notice of this Court that the 4th respondent also filed O.P.No.4 of 2013 before the Election Tribunal-cum-Junior Civil Judge, Huzurnagar, Nalgonda district, questioning the election of petitioner and the said O.P. is pending consideration.

6. According to Sub-section (3) of Section 19 of A.P. Panchayat Raj Act, 1994, a person having more than two children suffers disqualification for election or for continuing as member. The first proviso to said sub-section stipulates that birth within one year from the date of commencement of A.P. Panchayat Raj Act, 1994, of an additional child shall not be taken into consideration for the purpose of this section. Second proviso to sub-section (3) of Section 19 stipulates 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 so long as the number of children he had on the date of such commencement does not increase.

7. Section 22 of A.P. Panchayat Raj Act, 1994 reads as under:

“Section 22 - Authority to decide questions of dis-qualifications 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 ¹[District Court] having jurisdiction over the area in which the office of the gram panchayat is situated for decision.

(2) Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.

(3) Where a person ceases to be the Sarpanch or Upa-Sarpanch of a gram panchayat as a consequence of his ceasing to be a member of the gram panchayat under clause (b) of Section 20 and is restored later to his membership of the gram panchayat under sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa-Sarpanch, as the case may be."

7. It is very much clear from the above provision of law that the District Collector is not authorised to disqualify a Sarpanch under Section 19(3) of the Act, therefore on this ground alone, the impugned order is liable to be set aside. It is submitted by the learned counsel for the petitioner that O.P.No.4 of 2013 filed before the Election Tribunal-cum-Court of Junior Civil Judge, Huzurnagar is pending consideration and a request is made by the learned counsel for the petitioner that the Tribunal may be directed to expedite the disposal of the said O.P.No.4 of 2013.

8. For the aforesaid reasons, the writ petition is allowed, setting aside the proceedings of the District Collector, Nalgonda-2nd respondent in No.802/13-B (Panchayat) dated 2.9.2014 and the Election Tribunal-cum-Court of Junior Civil Judge, Huzurnagar, Nalgonda district shall make an endeavour to dispose of O.P.No.4 of 2013 as expeditiously as possible, preferably within a period of six months from the date of receipt of this order. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 5.12.2016

Note:

Office to communicate the order to the
Court of Junior Civil Judge, Huzurnagar,
Nalgonda district.

(B/o)
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5.12.2016