

HON'BLE SRI JUSTICE S.V. BHATT

W.P.No.17647 OF 2016

ORDER:

Fourth respondent in E.O.P.No.80 of 2016 in the Court of the Principal District Judge-cum-Election Tribunal, Kurnool is the writ petitioner.

The writ petition is directed against the order dated 13.04.2016 in I.A.No.1000 of 2016 in E.O.P.No.80 of 2016 and for setting aside the consequential proceedings of the 2nd respondent in Rc.No.1616/Pts.A2/2015 dated 24.05.2016 as arbitrary, without jurisdiction and illegal.

The 5th respondent was declared elected as Sarpanch of Chudi Village, Kowthalam Mandal, Kurnool District. The petitioner was elected as ward member and also Upa Sarpanch of the Gram Panchayat. On 08.12.2015, the petitioner represented to the 2nd respondent herein complaining that the 5th respondent on the date of election was having more than two children and, therefore, disqualified. The 5th respondent thus suffers disqualification under Section 19(3) of the Panchayat Raj Act, 1994 (for short 'the Act'). The 2nd respondent on the report submitted by the District Panchayat Officer, Kurnool/3rd respondent issued proceedings Rc.No.2056/Pts/A2/2015 dated 10.03.2016.

To appreciate the rival contentions of both parties, the proceeding Rc.No.2056/Pts/A2/2015 dated 10.03.2016 is excerpted hereunder:

“PROCEEDINGS OF THE DISTRICT COLLECTOR
(P.WING): KURNOOL
PRESENT SRI C.H.Vijaya Mohan, I.A.S

Rc.No.2056/Pts.A2/2015

10.3.2016

Sub: Elections -4th Ordinary Elections to P.R.I's
– Smt.Sharanamma – Disqualified for
Sarpanch post of Chudi Gram Panchayat –
Kowthalam Mandal – under Section 19(3)
of A.P.P.R Act– 1994 – Upa Sarpanch kept
incharge – Orders – Issued.

- Read: 1. Petition filed by Sri Eeranna and others of
Chudi Gram Panchayat, Kowthalam Mandal
2. Enquiry Report of the Extension Officer (P.R
& R.D) Kowthalam
3. Show cause notice Rc.No.2056/Pts/A2.2015
dt.19.2.2016 issued to the Sarpanch Chudi
G.P. of Kowthalam Mandal.

ORDER:

Whereas Smt.Sharanamma was elected for the office
of the Sarpanch Chudi Gram Panchayat of Kowthalam Mandal
during the 4th ordinary elections to P.R.I's held in the years
2013.

And whereas Sri Eeranna and others of Chudi Gram
Panchayat have filed a petition before the District Collector
Kurnool alleging that the Sarpanch Chudi Gram Panchayat
have given birth to third child and hence she deserves
disqualification under Section 19(3) of APPR Code – 1994.

And whereas after conducting an enquiry by the
Extension Officer (P.R & R.D), Kowthalam has reported that
the allegation leveled against the Sarpanch is proved and
accordingly she has been issued a show cause notice to
submit her explanation why action shall not be initiated against
her under Section 19(3) of APPR code – 1994 and even
though acknowledged the receipt of notice, no reply is
received as on this date.

Therefore in pursuance of the provisions laid down
under Section 19(3) of APPR code – 1994 Smt.Sharanamma
is hereby disqualified for the post of Sarpanch, Chudi Gram
Panchayat of Kowthalam Mandal with immediate effect.

As per the provision laid down under Section 26(2) of
A.P.P.R Act, the Upa Sarpanch of Chudi Gram Panchayat is

hereby kept in charge for the post of Sarpanch of same Gram Panchayat until further orders.

The Assistant Treasury Officer, Adoni is directed to honour the cheques presented by the Upa – Sarpanch, Gram Panchayat, Chudi Gram Panchayat with the second signature of the Extension Officer (P.R & R.D) Kowthalam for drawal of all the funds.

(Under note orders of the District Collector, Kurnool dt: 4.3.2016)

Sd/- M.Shobhaswaroop Rani
for Collector (P.W),
Kurnool"

On 11.04.2016, the 5th respondent filed E.O.P.No.80 of 2016 and I.A.No.1000 of 2016 praying for continuing the 5th respondent as Sarpanch, Chudi Village by granting stay of proceedings Rc.No.2056/Pts/A2/2015 dated 10.03.2016.

On 13.04.2016, the following order was passed in I.A.No.1000 of 2016:

"Heard the learned counsel for the petitioner. In the result, the proceedings of the District Collector (P.Wing), Kurnool in Rc.No.2056/Pts.A2/2015 dated 10.03.2016 are stayed and consequently, the petitioner is allowed to continue in the post of Sarpanch of Chudi Village Gram Panchayat, till the disposal of the O.P.

However, this Court orders that if at any time, it is observed that the petitioner is intentionally making efforts to drag on the proceedings in the O.P and if adjournments in the O.P. are sought more than thrice in the entire O.P proceedings at any stage whatsoever, the operation of the stay shall cease.

Issue urgent notice to R1 to R4. Call on 28.04.2016."

The petitioner herein challenges the order dated 13.04.2016 as illegal, arbitrary, without jurisdiction and prays for setting aside the proceedings.

On 07.06.2016, this Court granted interim suspension of order dated 13.04.2016 in I.A.No.1000 of 2016 in EO.P.No.80 of 2016. The 5th respondent filed W.V.M.P.No.2851 of 2016 to vacate the order dated 07.06.2016.

Heard Mr. Challa Dhanamjay for the petitioner, learned Government Pleader for Panchayat Raj for respondents 1 to 4 and Mr. V.D.Goud for the 5th respondent.

Mr.Dhanamjay for petitioner contends that the EO.P filed by 5th respondent is not maintainable against proceedings dated 10.03.2016 and consequently the order in I.A.No.1000 of 2016 is completely without jurisdiction and liable to be set aside. He places reliance upon Sections 19 and 22 of the Act. He elaborates his submission by contending that the District Collector/2nd respondent has passed order of disqualification against 5th respondent, the remedy before the learned District Judge, Kurnool is not available and, therefore, the EOP pending before the Principal District Judge is without jurisdiction and by adopting the same analogy, the interim order granted in I.A.No.1000 of 2016 dated 13.04.2016 is completely arbitrary and without jurisdiction and prays for setting aside the same. The learned counsel, having regard to the view taken by this Court in the decisions on which the 5th respondent is relying upon, alternatively contends that the 5th respondent, if advised, ought to have approached this Court or the Government for appropriate remedy against proceedings dated 10.03.2016.

The counsel for 5th respondent draws the attention of the Court to Section 22 of the Act and contends that Section 22 deals with considering questions of disqualification under Sections 17 to 20 of the Act of members elected to Gram Panchayat. Under section 20, once intimation of one or the other disqualification is received by the authority, the executive authority is under obligation to intimate the member against whom disqualification is complained and the member if disputes the allegations of disqualification alleged against him or alternatively the member entertains a genuine doubt on the disqualification or whether he has become disqualified or not, either the member against whom disqualification is alleged or any other member and the executive authority at the direction of the Gram Panchayat/ Commissioner within two months from receipt of such intimation apply to the District Court having jurisdiction for decision i.e., on the disqualification alleged against a member. In other words, according to him, the disqualification is finally considered by the District Court and the 2nd respondent has no jurisdiction whatsoever to issue proceedings dated 10.03.2016. The learned counsel further expands the same contention by drawing parallel with the procedure directed to be followed by this Court in N. THIRUPATHAIAH v. DISTRICT PANCHAYAT OFFICER, NELLORE¹ and contends that if a challenge to such order is made, the proceedings of executive authority was directed to be treated as intimation and the aggrieved party was directed to work out remedy before the District Court. Therefore, he contends that the 5th respondent treated the communication dated 10.03.2016 as

¹ 2005(1) ALT426

intimation for all purposes. Further, having regard to the principle laid down by this Court in *G.JANAKI RAMUDU v. STATE OF ANDHRA PRADESH AND ANOTHER*², there is no need to ask for suspension of the communication dated 10.03.2016 of 2nd respondent. He relies upon *CHAVA ROSAIAH v. CHINTALA VENKATESWARLU AND OTHER*³ and prays for dismissing the writ petition.

He places strong reliance upon the following paragraphs in the reported decisions:

In *N.THIRUPATHAIAH*'s case (1 supra), this Court held thus:

“An analysis of above provision would show that (i) any voter or authority may make allegation in writing that a member or a sarpanch of Gram Panchayat is not qualified under Sections 17 to 20 of the Act; (ii) such an allegation in writing has to be made to the executive authority, which according to Section 2(12) means the Panchayat Secretary appointed to each Gram Panchayat; (iii) on receipt of such complaint in writing, the executive authority has to inform the District Panchayat Officer, who in turn will send an intimation to the member of sarpanch, who allegedly incurred the disqualification; (iv) on receipt of such intimation, if there is any dispute as to disqualification alleged, such member or any other member of the Gram Panchayat, or Panchayat Secretary or the Commissioner, are entitled to apply to the District Court for a decision as to whether a member or sarpanch incurred disqualification and (v) such application to the District Court has to be made within a period of two months from the date on which such intimation is given or doubt is entertained.

A plain reading would suggest that the complainant is not given any liberty to move an application to the District Court. Only four categories of persons or agencies, namely, (a) the member, who received the intimation; (b) any other member; (c) the panchayat

² 2011(1) ALT227

³ 2004(1) ALT327 (D.B)

secretary (executive authority) on a direction of the Gram Panchayat, are entitled to apply to the District Court for a decision. When the whole exercise is initiated at the instance of a 'person' i.e., any resident of Panchayat, can it be said that the legislature purportedly intended to deny an opportunity to complainant to approach the District Court when none (sic.any) of the four categories of persons fails to initiate action before the Court? Strict implementation of the text of the legislation compels one to answer the question whether the opportunity given to any person to complain about the disqualification incurred by a member or sarpanch, an empty formality if such a person is not given an opportunity to go to the Court and seek a decision as to whether the elected person against whom the complaint is made incurred disqualification....."

In CHAVA ROSAIAH's case (3 supra), this Court held as under:

"Section 22 of the Act is an enabling provision insofar as member or Sarpanch or any other member is concerned. It enables them to approach the District Court for a decision after receipt of the intimation of allegations by the member or Sarpanch against whom the allegations are made. It casts no obligation on the member or Sarpanch to compulsorily approach the District Court for a decision on mere receipt of intimation of allegation from the executive authority. A member or Sarpanch may or may not approach the District Court even if he disputes the correctness of the allegation. Allegations are mere allegations and no action can be taken thereupon unless there is adjudication and decision rendered by District Court on such allegations holding that a member or Sarpanch is disqualified or has become disqualified under any of the provisions contained under Sections 17 to 20 of the Act. Legislature has deliberately used the words "such member or any other member" may within a period of two months apply to District Judge for decision". But, the same provision casts an obligation on the executive authority to apply to District Court for adjudication by District Court when Gram Panchayat or Commissioner so directs. There may be a case in which a member may himself entertain a doubt that whether or not he has become disqualified

under any of the provisions contained under Sections 17 to 20 of the Act. Even in that case, Section 22 enables him to apply to District Judge for a decision within a period of two months from the date of entertaining such doubt. In case the submissions made on behalf of Respondent No. 2 are to be accepted, it would result in absurdity. Suppose a member or Sarpanch himself entertains a doubt about his qualification or having incurred disqualification and within a period of two months from the date of entertaining such doubt, he fails to seek any decision from District Judge, the result in such a case would be that he would cease to be a member or Sarpanch. In our considered opinion, such an absurd result could not be the legislative intent. Entertaining a doubt is a state of mind, not known to any other person. How such state of mind of a person would lead to such disastrous result on his failure to seek adjudication? Thus, on literal interpretation, it must be held that Section 22 being only an enabling provision conferring right on such member or Sarpanch who receives an intimation of allegations of his not being qualified or having become disqualified that within two months he can approach the District Court for a decision. It is only on decision being rendered by the District Court holding that a member or Sarpanch is not qualified or has become disqualified then consequential action can be taken. Section 20 operates automatically that a person or member subject to any disqualification specified in Section 19 and subject to Section 22 such member or Sarpanch shall cease to hold office. Opening words of Section 20 "Subject to the provisions of Section 22 a member shall cease to hold Office" would rather support the view which we are taking that the disqualifications as specified in Section 19 would operate as a bar against a member or Sarpanch to hold the Office only when there is a decision rendered by District Court as envisaged in Section 22 and not otherwise. Section 19(2)(i) is the disqualification on which the petitioner was held to have incurred disqualification alleging that there is surcharge amounts not cleared by the petitioner or there are amounts due and payable by him for the previous period of office. Whether a member or Sarpanch is in arrears of any dues or not is a question of fact. In case it is alleged that after a member or

Sarpanch has been duly re-elected he is still in arrears and such member or Sarpanch would dispute such allegation, it cannot be said that having failed to apply to District Court for adjudication, the member or Sarpanch would automatically cease to continue as member or Sarpanch after expiry of period of two months from the date of receiving of intimation by him. Unless there is a decision on the allegations so made against the member or Sarpanch by an adjudicatory authority, which in this case is District Judge, such allegations cannot be used against the member or Sarpanch and he would continue to hold the office of member or Sarpanch unless removed in accordance with law. The answer to the question posed obviously is in negative.

In the instant case, admittedly there had been no adjudication and the petitioner also did not seek any decision. Even the Gram Panchayat or the Commissioner did not direct the executive authority to seek decision from the District Judge on the allegations so made. In such an event, action impugned could not have been taken against the petitioner. The District Panchayat Officer thus exceeded his jurisdiction in issuing proceedings dated 7.8.2003 holding that petitioner had incurred disqualification under Section 19(2)(i) read with Section 14 of the Act or that he had ceased to hold that office of Sarpanch. The said order being void and without jurisdiction, the District Panchayat Officer had also no authority or jurisdiction to issue the consequential order dated 30.8.2003 calling upon the 2nd respondent to act as Sarpanch”.

In G.JANAKI RAMUDU's case (2 supra), this Court held as follows:

“In N.Tirupataiah (1 supra) this Court held that neither the executive authority nor the District Panchayat Officer is conferred with any power to determine the truth or validity of the complaint and straight away disqualify the elected member. Keeping in view this dictum, this Court permitted the petitioner to approach the District Court by treating order dated 10.03.2010 purporting to disqualify him as a notice for a decision by the District Court. Once a dispute is raised before the District Court by the elected

member of the Gram Panchayat, he is entitled to continue as such as if he has not incurred any disqualification, till the dispute is adjudicated by the District Court. In my opinion, there was no need for the petitioner to file I.A.No.652 of 2010 at all because his right to continue as Sarpanch flows from the statutory mandate under the abovementioned provision and there is no need for a direction to be given by the Court before which the dispute is pending for his continuance.

Be that as it may, when the petitioner has filed the said I.A., the District Court ought to have considered the same under the provisions of Section 22(2) and permitted the petitioner to continue as Sarpanch till a decision is taken by it. Unfortunately, the District Court failed to consider either the order of this Court in Writ Petition No.7040 of 2010 or the provisions of Section 22 from proper perspective. Instead, it has embarked on the merits of the petition and declined the relief”.

Now the point for consideration is - whether the challenge to order dated 13.04.2016 in I.A.No.1000 of 2016 is tenable, valid and if so the petitioner is entitled to any relief?

To appreciate the ground of jurisdiction raised by the petitioner, this Court finds it convenient to excerpt Section 22 of the Act.

22(1) Authority to decide questions of disqualifications of members :--Where an allegation is made that any person who is elected as a member of 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 Panchayact 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”.

- (2) Pending such decision, the members 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”.

While considering the scope and object of Section 22 of the Act, a Division Bench of this Court in CHAVA ROSAIAH's case (3 supra) treated Section 22 as an enabling provision to deal with disqualifications which come to notice against the elected member of a Gram Panchayat. To set in motion, a complaint of disqualification against an elected member, the executive authority is empowered to give intimation of disqualification alleged against him and thereafter the disqualification alleged against a member is taken up for decision before the District Court having jurisdiction of the Gram Panchayat. For brevity, I am not proposing to reiterate the dicta referred above and in the peculiar fact situation of the case, I am of the view that the communication

dated 10.03.2016 though suits petitioner to call the same an order, there is no legal authority or sanctity to accept it as an order for challenging either before Government or this Court under Article 226 of the Constitution of India. For an order to be legal and binding must draw its authority and source from the enactment under which such order is passed. When the enabling provision provides for setting in motion, a complaint of disqualification of a member for decision, even if the executive authority decides and communicates to a member on complained disqualification, this Court is of the view that it need not be treated as a decision, but shall be treated as a communication enabling decision on the disqualification alleged against a member. Therefore, the procedure followed by this Court in THIRUPATHAIAH and G.JANAKI RAMUDU's cases (1 & 2 supra) is kept in view and I am also persuaded to hold that the 5th respondent is right in treating the communication dated 10.03.2016 as an intimation and rightly filed E.O.P.No.80 of 2016 before the District Court. As per the scope and object of Section 22, one of the three categories of person(s)/authority is required to proceed to invite a decision on the disqualification. In other words, Section 22 to avoid delay or inaction facilitates for moving the Court for decision by one or the other person(s)/authority. I am of the view that the ground of lack of jurisdiction raised by the petitioner is untenable and rejected.

I am in the fact situation of this case persuaded to follow the principles laid by this Court in THIRUPATHAIAH and G.JANAKI RAMUDU's cases (1 & 2 supra) while interpreting Section 22 of the Act and

dismiss the writ petition. The learned Principal District Judge is directed to decide E.O.P.No.80 of 2016 within three months from the date of receipt of a copy of this order. Interim order granted on 07.06.2016 is vacated. There shall be no order as to costs.

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

S.V.BHATT, J

21st December, 2016

Lrkm

