

HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.17820 OF 2017

ORDER:

Heard learned counsel for petitioner, learned Government Pleader for respondents 1 and 2, learned standing counsel for respondents 3 and 4 and learned counsel for respondents 6 and 7.

The petitioner was elected as Member of Mandal Parishad Territorial Constituency, Jharasangam, in the elections held on 06.04.2014. Thereafter, she was elected as President of Mandal Praja Parishad, Jharasangam Mandal. It appears that the wife of the seventh respondent also contested for the same post of Member, Mandal Parishad Territorial Constituency, Jharasangam and she lost. The seventh respondent lodged a complaint on 06.11.2015 before the respondents 2 to 4 alleging that the petitioner was disqualified under Section 19(3) of the Andhra Pradesh Panchayat Raj Act, 1994 (the Act, for brevity), on the ground that she was having four children as on the date of election and sought action under the provisions of the Act. After receipt of the representation from the seventh respondent dated 06.11.2015, the second respondent addressed a letter to the fourth respondent on 15.11.2015 asking him to submit a report on the representation. He also addressed a letter on 19.11.2015 directing the third respondent to take appropriate action in accordance with law. The fourth respondent submitted a report on 01.12.2015 and on receipt of the same, the third respondent issued a letter on 20.01.2016 calling upon the petitioner to appear before him on 23.01.2016 along with necessary documents pertaining to the age of her children. The petitioner appeared before the third respondent and submitted her written statement. The second respondent addressed a letter on 15.02.2016 to the fifth respondent asking him to submit a report and the fifth respondent issued notice on 05.03.2016 asking the petitioner

to appear before him on 29.03.2016. She appeared before him and also submitted a written statement. She sought the enquiry be kept in abeyance till a final decision of the competent Civil Court in O.S.Nos.14, 15, 16 and 17 of 2016, which were filed for correction of date of birth of her children is decided. The fifth respondent submitted a report on 16.01.2017 stating that the petitioner failed to give any satisfactory answer and proof against the documentary evidence in support of her claim and the dates mentioned in the *bonafide* certificates were modified with *malafide* intention. However, when the second respondent passed an order on 18.02.2017 disqualifying the petitioner from the post of Member of Mandal Parishad Territorial Constituency, Jharasangam, and also the President of Mandal Praja Parishad, Jharasangam Mandal, on the ground that she is having more than two children and ineligible to the said posts and directing the sixth respondent to discharge the duties of the President until further orders, the present writ petition is filed.

It appears that the petitioner also filed O.P.No.101 of 2017 before the Principal District Judge, Medak at Sangareddy, challenging the present proceedings and withdrew the same on 24.08.2017.

This Court by order, dated 06.06.2017, granted interim suspension of the order passed by the second respondent, dated 18.02.2017 and now a counter affidavit is filed by the seventh respondent.

The above facts are not in dispute except to the extent of incurring disqualification by the petitioner.

Section 22 of the Act reads as follows.

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.

(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.

In view of the above provision, the competent authority has to follow the said procedure and in view of non-admission of the allegation by the petitioner, the matter should have been referred to the District Court for proper enquiry and thereafter only, action should have been taken by the competent authority. In the instant case, the second respondent passed an order without complying with the provisions of Section 22 of the Act. This position is not disputed by any of the counsel before this Court.

In view of the same, this Court has no option except to set aside the impugned order passed by the second respondent on 18.02.2017. However, allowing of the writ petition does not mean that the competent authority cannot take appropriate action. It is open to the competent authority to take appropriate action on the allegations levelled against the petitioner.

The writ petition is accordingly allowed. Consequently, miscellaneous petitions, if any, pending in these writ petitions shall stand closed. There shall be no order as to costs.

A.RAMALINGESWARA RAO, J

29.08.2017
pln

