

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE T.RAJANI**

Writ Appeal No.413 of 2017

JUDGMENT: (Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan)

The appellant-3rd respondent's counsel did not even appear before the Learned Single Judge nor was any counter-affidavit filed by him in the writ petition before the order under appeal was passed. The question, which fell for consideration before the Learned Single Judge, was whether the appellant (3rd respondent in the writ petition) suffered disqualification under Section 18(1) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short "the Act") which prohibits an officer or servant of the Government of India or any State Government or of a local authority or an employee of any institution receiving aid from the funds of the Government, and an office bearer of any body constituted under a law made by the Legislature of the State or of Parliament, to be qualified for being chosen as, or for being, a member of a gram panchayat.

The appellant herein was admittedly the Vice-President of the 4th respondent-society. The Learned Single Judge has, in the order under appeal, observed that it was evident from the proceedings of the Deputy Registrar/Divisional Cooperative Officer, Nagarkurnool dated 16.06.2014 that the appellant had resigned from the said post on 16.06.2014 after being elected as a Member of the Mandal Praja Parishad Territorial Constituency. Consequently, the election of the appellant was quashed by the Learned Single Judge holding that he suffered a disqualification under Section 18(1) of the Act.

Before us Sri T.P.Sharma, learned counsel for the appellant, would contend that, while the appellant (3rd respondent in the writ petition) was no doubt the Vice-President of the 4th respondent-society, he would not fall within the ambit of Section 18(1) of the Act, as the Vice-President does not receive any remuneration from the Society.

These are all questions of fact which the appellant ought to have put forth, by way of a counter-affidavit, before the Learned Single Judge. As has been noted in the order under appeal itself, the appellant's counsel did not choose to appear before the Learned Single Judge, despite an opportunity being afforded to him to do so. We see no reason, therefore, to entertain and examine factual disputes in an intra-court appeal under Clause 15 of the Letters patent.

Sri T.P.Sharma, learned counsel for the appellant, would submit that there is a bar for exercise of jurisdiction under Section 22-A of the Act, and the remedy available to the respondent-writ petitioner is to file an election petition under Section 233 of the said Act. Section 22-A of the Act stipulates that no order passed, or the provisions of the Act, shall be called in question in any court, in any suit, or application; and no injunction shall be granted by any Court except the District Court in respect of any action taken, or about to be taken, in pursuance of any power conferred by or under the Act.

The bar under Section 22-A of the Act applies to any Court, other than the District Court, to grant injunction. The power of judicial review, under Article 226 of the Constitution of India, forms part of the basic structure of the Constitution of India (**L.Chandra Kumar vs. Union of India**¹). Such a power cannot be negated or circumscribed even by a constitutional amendment, much less by legislation-plenary or subordinate. Section 22-A of the Act cannot, therefore, be construed as a bar for exercise of the power of judicial review under Article 226 of the Constitution of India. While, ordinarily, the remedy available to the respondent-writ petitioner would be to file an election petition, it is not as if this Court cannot, in exceptional circumstances, entertain a Writ

¹ AIR 1997 SC 1125

Petition where the election of an MPTC member is subjected to challenge on the ground that he suffers a disqualification under the Act.

We see no reason, therefore, to entertain this plea of bar of jurisdiction, or to relegate the respondent-writ petitioner to the remedy of filing of election petition, in an intra-Court appeal under Clause 15 of the Letters Patent, preferred by the appellant-3rd respondent, who did not chose even to appear and contest the matter before the Learned Single Judge.

The Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(T.RAJANI, J)

27th July, 2017
JSU



**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE T.RAJANI**



Writ Appeal No.413 of 2017

Date: 27.07.2017

JSU