

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION No.23680 of 2016

ORDER :

The petitioner, by name P. Narasimha Rao, who was respondent No.1, among 5 respondents, in Election Petition being O.P.No.4 of 2013 on the file of Junior Civil Judge-cum-Election Tribunal at Pargi, Ranga Reddy District (for brevity "the Tribunal"), maintained the present writ petition impugning the order and decree therein dated 21.06.2016 allowing the said Election Petition filed by the 2nd respondent herein by showing the State of Telangana, represented by the Principal Secretary, Panchayat Raj and Rural Development Department, Hyderabad, as respondent No.1; Smt. Bantu Satyamma, Election Petitioner in O.P.No.4 of 2013 as respondent No.2; and Election Petition respondent Nos.2 to 5 viz., Bokka Ramulu (another contested candidate); the Election Authority for Gram Panchayat Elections-cum-the District Collector, Ranga Reddy District; The Stage-I Returning Officer for Gram Panchayat Elections (by name Sri Mallaiah, Head Master of ZPHS, Sulthanpur Village), Pedda Warwal Gram Panchayat, Gandeed Mandal, Ranga Reddy District; and the Mandal Election Officer-cum-Mandal Parishad Development Officer, Gandeed Mandal, Ranga Reddy District, as respondent Nos.3 to 6, respectively.

2. The relief sought for in the writ petition reads as follows:

"..... Writ of Certiorari calling for the records relating to the impugned order and decree dated 21.06.2016 passed in O.P.No.4 of

2013 on the file of Junior Civil Judge-cum-Election Tribunal at Pargi, Ranga Reddy District, and quash the same by declaring the impugned order and decree as illegal, null and void as being contrary to Rules 11 and 13 of A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayat, Mandal Parishads and Zilla Parishads) Rules, 1995, apart from being violative of Articles 14 and 19 of the Constitution of India and as well as principles of natural justice and pass such other or further order or orders

3. The averments in the supporting affidavit of the writ petitioner read that the writ petitioner/respondent No.1 of Election Petition contested for the post of Sarpanch of the Gram Panchayat, Pedda Warwal Village, Gandeed Mandal, Ranga Reddy District, which was reserved for the candidates belonging to Backward Class (BC) Community, as per the Election Notification, in the elections held on 27.07.2013 and was declared as duly elected, being belongs to BC-A Group of Joshinandivala Caste at Sl.No.36 in the List of Socially and Economically Backward Classes, vide G.O.Ms.No.1793, Education Department, dated 23.09.1970, and at Sl.No.12 under Group-A of Backward Classes, as per G.O.Ms.No.838, G.A. (Services-D) Department, dated 15.12.1977, and also based on the Community Certificate issued by the Tahsildar, Pargi Mandal, vide proceedings L.Dis.No.01/5227/82, dated 13.08.1982, and by also another proceedings in Dis.No.C1/7082/83, dated 07.12.1983, and also by another proceedings in RDS.No.C/1773/93, dated 28.05.1993. It is his case that earlier in 1988, he contested and was unanimously elected as Sarpanch of Pedda Warwal Gram Panchayat and later

successfully contested in the elections held during 1995 under BC-A Group and completed his tenure of five years as duly elected Sarpanch and again he was duly elected during the elections held in 2001 and again successfully contested and elected as Member of Ward No.7 of Pedda Warwal Gram Panchayat in the elections held in 2006 for the period 2006-2011, in all under BC-A Group, being belonging to Joshinandiwala Community. Even there was no dispute about the writ petitioner belongs to BC-A Community, leave about the earlier period. Further, in the elections held on 27.07.2013, he contested as Sarpanch and was polled a maximum 666 valid votes as against Smt. Bantu Satyamma, respondent No.2/Election Petitioner, who secured only 544 votes and another contested candidate – Bokka Ramulu was polled only 92 votes, for the other 44 votes were declared as invalid, out of the total 1,356 valid votes.

4. It is further averred by the writ petitioner that the Transfer Certificate dated 29.04.1989 issued by Sardar Patel College, where he studied and discontinued B.A. Final Year also mentions that he belongs to BC-A Group at Sl.No.36, apart from his wife Smt. K. Vakula was certified as BC-A of Joshinandiwala Community by the Mandal Revenue Officer, Gandeed Mandal, on 28.05.1993 and the Community Certificate dated 02.07.1985 issued by the Mandal Revenue Officer, Gandeed Mandal, of his younger brother – Sri P. Digamber Rao as belonging to BC-A Group, since belongs to Joshinandiwala Caste at Sl.No.12 of the

List under G.O.Ms.No.1793, Education Department, dated 23.09.1970, also substantiates that he belongs to BC-A Group of Joshinandivala Caste. However, respondent No.2/Election Petitioner filed Election Petition being O.P.No.4 of 2013 supra under Section 233 of the Panchayat Raj Act, 1994 (for brevity “the Act”) stating that the nomination of writ petitioner was improperly and illegally accepted as if he belongs to B.C. Community, though he does not, unable to digest the factum of he is duly elected, and the Tribunal by the impugned order and decree dated 21.06.2016 set aside his election as Sarpanch of the Gram Panchayat, holding that he does not belong to BC Community and wrongly declared respondent No.2/Election Petitioner – Smt. Bantu Satyamma as duly elected Sarpanch, even in the absence of any pleading in the Election Petition of she secured majority valid votes polled in the election and entitled to be declared as such. It is further averred that the petitioner in an Election Petition has to succeed only on the strength of his/her case, but not on the weakness of his defence, as held in *SIMMITI ARJUNA Vs. PAPPALA NARASIAH & ANOTHER*¹ wherein it was held that where the Election Petitioner seeks declaration as duly elected must specifically plead under Rule 13 of the A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for brevity “the 1995 Rules”) that

¹ 2005 (1) ALD 396

he/she be declared as elected and prove that he or/she received majority of the valid votes as per Rule 11 of the said Rules and in an Election Petition, after declaration of election of a particular candidate as invalid, in every case it is not a ground as an incidental relief in further declaration of the Election Petitioner or another candidate as duly elected.

5. Thereby also it is averred that the impugned order and decree dated 21.06.2016 of the Tribunal in O.P.No.4 of 2013 supra is unsustainable, not only in holding the writ petitioner does not belong to BC-A Community, but also in holding respondent No.2/Election Petitioner as if duly elected and the said finding is contrary to Rules 11 and 13 of the Rules supra, for no even any averment in the Election Petition or in her chief affidavit evidence as PW.1. The complaint of improper acceptance of nomination of the writ petitioner for the post of Sarpanch of the Gram Panchayat on the alleged ground of he does not belong to BC-A Community is unjust and there is no other allegation much less of any corrupt practice alleged against him to allow the said Election Petition and the impugned order and decree dated 21.06.2016 in O.P.No.4 of 2013 passed by the Tribunal is thereby unsustainable and without jurisdiction and as the same suffers from serious legal infirmity, the same is liable to be set aside.

6. It is further averred that the Tribunal also went wrong in relying upon Ex.P.1 – Certified copy of Community, Nativity and

Date of Birth Certificate dated 20.08.2013 obtained from Mee-Seva allegedly in respect of the writ petitioner that was issued by the Tahsildar, Gandeed Mandal, on the request of the husband of respondent No.2/Election Petitioner without conducting any local enquiry, wherein the said Tahsildar wrongly declared him as belonging to Forward Community i.e., Brahmin, though he belongs to BC-A Group of Joshinandivala Caste, which is recognised as a socially and economically Backward Class. It is also his submission that he filed an appeal on 03.02.2014 against Ex.P.1 – Certificate dated 20.08.2013 before the Joint Collector, Ranga Reddy District, and the said appeal is still pending and thereby based on Ex.P.1 Certificate, the Tribunal should not have come to the conclusion that the writ petitioner does not belong to BC-A Community.

7. It is further averred that through letter No.C2/1131/2016, dated 07.05.2016, the Collector and District Magistrate, Ranga Reddy District, directed the Tahsildar, Gandeed Mandal, to enquire into the verification of Caste Certificate of the writ petitioner and file a factual Report within five days and even the Revenue Inspector enquired in the Village and submitted his report, the Tahsildar has not submitted any report as called for by the Joint Collector, in this regard.

8. It is further averred that as held in ANDUGULA VIJAYALAKSHMI Vs. DISTRICT COLLECTOR, KRISHNA², the Election Tribunal under Panchayat Raj Act cannot decide the validity of Community Certificate issued under 1993 Act and the Junior Civil Judge-cum-Election Tribunal at Pargi ought not to have relied upon Ex.P.1 Certificate, which is also the subject matter of appeal filed by him before the Joint Collector supra, thereby the impugned order and decree dated 21.06.2016 of the Tribunal is unjust and illegal and is liable to be set aside or quashed, as setting aside his election as Sarpanch on the ground that he does not belong to BC-A Group by relying upon Ex.P.1 Certificate supra, which is subject matter of appeal, and in holding improper acceptance of his nomination is contrary to law and illegal and unsustainable. It is also averred that the Tribunal also went wrong in not appreciating the evidence of PW.16 (respondent No.5 herein), who is the Returning Officer, by name Mallaiah, Head Master of ZPHS, Sulthanpur, who categorically deposed that the nomination of the writ petitioner as well as respondent No.2/Election Petitioner and respondent No.3 – Bokka Ramulu were scrutinised and found to be correct, in its acceptance after verification of the Caste Certificates, which revealed that the writ petitioner belongs to BC Community and he did not receive any objections to the nomination and there is no irregularity in his acceptance of the

² 2003 (2) ALD 284

nomination of the writ petitioner as belonging to BC Community and nothing elicited from his cross-examination evidence before the Tribunal, except for the statement that he received objection after stipulated time for scrutiny of nominations.

9. It is further averred by the writ petitioner that earlier he filed W.P.No.27778 of 1996 aggrieved by the proceedings No.E1/763/96, dated 07.11.1996 of the District Collector, Panchayat Wing, Ranga Reddy District, wherein the Hon'ble High Court granted interim suspension of the said proceedings of the District Collector, by order dated 27.12.1996 in WPMP.No.34341 of 1996 in W.P.No.27778 of 1996 and under ill-influence of the political enemies, a show cause notice vide proceedings No.E1/763/96, dated 15.01.1997 was issued against him for removal from the office of Sarpanch in gross violation of interim suspension order dated 27.12.1996 passed by the Hon'ble High Court suspending the proceedings dated 07.11.1996 of the District Collector, for which a Contempt Case was filed to punish the District Collector, Panchayat Wing, Ranga Reddy District and consequently the District Collector, vide proceedings bearing Roc.No.E1/763/96, dated 04.02.1997 ordered him to continue as Sarpanch until disposal of W.P.No.27778 of 1996, and subsequently the said writ petition was disposed of as infructuous after the elected tenure was over and the Tribunal ought to have considered these facts also before coming to a conclusion, instead of allowing O.P.No.4 of 2013 filed by respondent No.2/Election Petitioner by the

impugned order and decree dated 21.06.2016, by holding that the writ petitioner does not belong to BC Community by simply relying upon Ex.P.1 Certificate dated 20.08.2013, which is a *post liti* document after filing of Election Petition in O.P.No.4 of 2013, that was obtained by the husband of respondent No.2/Election Petitioner at the instance and influence of local MLA of the political rival Party, ignoring Ex.R.3 Caste Declaration Certificate issued by the Mandal Revenue Officer, wherein it is certified that the writ petitioner belongs to BC-A Group of Joshinandivala Caste and thereby the impugned order and decree dated 21.06.2016 in O.P.No.4 of 2013 passed by the Tribunal is liable to be set aside.

10. It is also averred that the impugned order and decree dated 21.06.2016, is otherwise also violative of Articles 14 and 19 of the Constitution of India and contrary to the principles of natural justice, besides being violative of Rules 11 and 13 of the 1995 Rules and the writ petitioner has no other alternate remedy, for the impugned order and decree dated 21.06.2016 in O.P.No.4 of 2013 passed by the Tribunal is final with no appeal remedy, therefore, he is constrained to file the present writ petition in seeking the relief, more particularly in the nature of Writ of Certiorari in calling for the records and to set aside the impugned order and decree dated 21.06.2016.

11. When the matter came up for admission on 21.07.2016, after hearing both the parties, while ordering notice before

admission to the respondents and granting time to file counter by the contestant respondent No.2/Election Petitioner, this Court granted interim suspension of the impugned order and decree dated 21.06.2016 in O.P.No.4 of 2013 passed by the Tribunal, upto 30.08.2016. The said interim order has been extended from time to time and on 05.07.2017 the matter was heard and reserved for orders, while extending the said interim order until further orders. To say, the impugned order and decree dated 21.06.2016 in O.P.No.4 of 2013 passed by the Tribunal, allowing the Election Petition holding the writ petitioner does not belong to BC Community, but belongs to OC Community and in declaring respondent No.2/Election Petitioner as duly elected Sarpanch, is suspended by continuing the writ petitioner as Sarpanch consequent to the acceptance of his nomination as belonging to BC-A Group, to which Community the post of Sarpanch is reserved.

12. In this back-ground, during the pendency of writ petition, respondent No.2/Election Petitioner filed counter affidavit along with vacate petition in WVMP.No.3350 of 2016 in W.P.No.23680 of 2016 seeking vacation of the aforesaid interim order dated 21.07.2016, suspending the impugned order and decree dated 21.06.2016 in O.P.No.4 of 2013 passed by the Tribunal, by dismissing the writ petition.

13. The counter affidavit filed by respondent No.2/Election Petitioner, while denying writ petition averments, in nutshell, is

with the contest that the writ petitioner does not belong to BC Community nor he belongs to Joshinandivala Caste and there is no person belonging to Joshinandivala Caste in the area and that the writ petitioner belongs to OC Brahmin Community and hails from a rich 'Karanam' family and his father was a Ex-Karanam of the village. It is further averred that all the witnesses in O.P.No.4 of 2013 deposed that the writ petitioner is an agriculturist, whereas the profession of Joshinandivala Caste is begging and the writ petitioner also deposed in his cross-examination that begging was never his profession, that the writ petitioner managed to obtain bogus Caste Certificate from the then Tahsildar and contested for the post of Sarpanch of Gram Panchayat in 1995 Elections as belonging to BC Community and the then President of Mandal Praja Parishad, among others lodged a complaint before the District Collector, Ranga Reddy District, against him and the District Collector, being the Appellate Authority under the Act 1993, made discrete enquiry on the status of the writ petitioner and came to a conclusion that he obtained bogus Certificate as if he belongs to BC Community and accordingly cancelled the same vide proceedings No.C5/5703/95, dated 11.03.1996, since he cheated the officials to avail the benefit of bogus BC Caste Certificate as elected Sarpanch and the order of the District Collector supra cancelling his BC Community Certificate was not challenged and the writ petitioner also admitted the said

cancellation of Caste Certificate by the District Collector, Ranga Reddy District.

14. It is also averred in the counter affidavit that consequently, the District Collector, Ranga Reddy District, vide proceedings dated 07.11.1996 suspended the writ petitioner from continuing as Panchayat Sarpanch and the same was challenged in W.P.No.27778 of 1996 wherein the writ petitioner obtained stay order and the said order continued till completion of 5 years of his tenure of elected Sarpanch and later the said writ petition was dismissed as infructuous and not decided the said issue on merits much less holding that the writ petitioner belongs to BC Joshinandivala Caste. It is further averred in the counter affidavit that in 2001 Elections, the post of Sarpanch of Pedda Warwal Village was not reserved for BC Community and the writ petitioner contested and elected as Member of 7th Ward. Once the Talsildar, Gandeed Mandal, who is the appropriate authority under the Act, 1993, after due enquiry, issued Caste Certificate in the year 2013 saying that the writ petitioner belongs to Brahmin Community, which is a Forward Class, and when the District Collector, Ranga Reddy District, in 1996 cancelled the writ petitioner's Caste Certificate issued by the Tahsildar as belonging to BC-A Community by holding not so, the contention of the writ petitioner getting majority votes in 2013 elections is not at all criteria, for the issue is whether the writ petitioner belongs to BC Community or Forward Community. Even the writ petitioner studied Intermediate in Government Junior

College, Kosgi, and under Right to Information Act, the Certificate issued by the College authorities shows as per the School records, the writ petitioner belongs to Forward Community and if so, how he can be considered as BC Community after completion of Academics to contest for the post of Sarpanch, which was reserved for the candidates belonging to BC Community. The alleged College record of Sardar Patel College and Caste Certificate dated 28.05.1993 of his wife Smt. K. Vakula of she belongs to BC-A Group also fabricated one and if really she belongs to Joshinandivala Caste, nothing prevented her from coming to the witness box and to so depose and that what the Tahsildar, Gandeed Mandal, issued Caste Certificate to the writ petitioner's brother, by name P. Digamber Rao is that he belongs to Brahmin Community and that Certificate also filed along with the Vacate Stay petition. The vacate petitioner (respondent No.2/Election Petitioner) having secured next highest votes was duly declared as elected Sarpanch by the Tribunal vide order and decree dated 21.06.2016 in O.P.No.4 of 2013, after holding that the writ petitioner does not belong to BC-A Group. It is further averred that the facts and circumstances of the case on hand are different from the facts in SIMMITI ARJUNA's Case (supra 1) referred by the writ petitioner. Further, the Lecturer of Kosgi Government Junior College, who attested the declaration of the writ petitioner's nomination, is not a Gazetted Officer. Here, the corrupt practices are not the issue, but for the writ petitioner's

nomination should have been rejected, for the writ petitioner does not belong to BC Community and his declaration was not attested by a Gazetted Officer and the Tribunal rightly decided improper reception of the nomination of the writ petitioner even he does not belong to BC Community, as if BC, and consequently set aside his election as Sarpanch and declared the vacate petitioner (respondent No.2/Election Petitioner) as duly elected and PW.16 also deposed with reference to Ex.P.2 of received objections impugning the nomination of the writ petitioner as he does not belong to BC Community.

15. The Writ affidavit averments of the local MLA influencing the vacate petitioner in getting Certificate through her husband from the Tahsildar, after filing of the Election Petition, that the elected candidate is not BC, is not fully correct, for no such inference in granting the certificate through Mee-Seva by the Tahsildar, the authority concerned under 1993 Act to issue Caste Certificate. The writ petitioner belongs to Karanam Caste of OC Community and not of BC Community and thereby the writ petition is liable to be dismissed by vacating the interim order dated 21.07.2016.

16. The reply affidavit filed by the writ petitioner to the counter affidavit of respondent No.2/Election Petitioner, save the facts covered by the pleadings supra, no way requires repetition, but for any other averments to mention to the extent of relevancy

are, that the contention of profession of Joshinandivala Caste is begging is baseless, but for if at all Joshinandivala Caste people are economically and socially backward among Brahmin Community, they do not perform any priesthood as was done by other Brahmin Caste people and thereby Joshinandivala Caste is declared as BC under BC-A Group for being socially and economically backward. The allegation that the writ petitioner's wife Smt. Vakula was shown as Joshinandivala Caste of BC Community is a fabricated Certificate, is untrue. The said Certificate issued by Sardar Patel College authorities is genuine. The order dated 11.03.1996 of the District Collector cancelling the Certificate issued by the Mandal Revenue Officer, Gandeed Mandal, was challenged in W.P.No.27778 of 1996 and the said writ petition was dismissed as infructuous after expiry of the tenure of the writ petitioner as elected Sarpanch and there was no decision against the writ petitioner approving the impugned order of the District Collector and Ex.P.1 Certificate dated 28.05.1993 issued by the Tahsildar, Gandeed Mandal, is without enquiry and reported that it was issued at the political influence of local MLA due to political rivalry, in respondent No.2/Election Petitioner's husband cause obtained the same after filing of O.P.No.4 of 2013 and the same is not genuine and the contention of respondent No.2/Election Petitioner in the vacate petition that the writ petitioner's brother P. Digamber Rao also is a Brahmin and does not belong to Joshinandivala Caste is not correct. It is further stated that merely because

respondent No.2/Election Petitioner secured second highest votes after he got majority votes, she could have been declared as elected without there being any pleading to that effect, for such declaration is contrary to Rules 11 and 13 of the 1995 Rules. The authorities of Kosgi Junior College, where he studied during 1981-82, issued Caste Certificate dated 13.08.1982 to the effect that he belongs to Joshinandivala Caste and the contra contention of respondent No.2/Election Petitioner that in the College records the writ petitioner is shown as belonging to OC Community is not correct and any such certificate obtained is not genuine. It is also denied that the writ petition is filed only to drag the matter and hence sought for dismissal of the vacate petition by allowing the writ petition as prayed for by making the interim order absolute. It is also contended that the tribunal gravely erred in relying upon Ex.P.1(A.1) as not attained finality vide appellate authority-cum-Joint Collector, Ranga Reddy district, has to decide the appeal filed by the writ petitioner. However, the Divisional Panchayat Officers say of the writ petitioner belongs to O.C. concerned, this Court in Writ Petition No.4530 of 2014 filed by the petitioner against the Government rep. by Panchayat Raj Secretary, DPO, Tahasildar, one B.Sailu- the writ petition 2nd respondent B.Satyavathy (election petitioner), on merits by order dated 18.02.2014 setting aside the impugned order dated 30.01.2014 with a direction to the DPO to decide under Section 22 of the Panchayat Raj Act afresh within timebound and thereby it cannot be relied with no

finality. It is nothing but contest in the said election petition affidavit of 2nd respondent to the writ petition of P.W.16 deposed as if received objections impugning nomination of the petitioner, for the fact that what P.W.16 deposed is that none among the 5 contesting candidates whose nominations received filed any objections and it does not reveal objection alleged to have been submitted by the husband of the 2nd respondent herein much less within time to have a cause in this regard.

17. Along with the vacate petition, some documents, which do not form part of the documents exhibited in O.P.No.4 of 2013, were filed by respondent No.2/Election Petitioner, however, without there being any application to receive such documents and exhibit the same as an additional evidence on behalf of vacate stay petitioner, viz.,

(1) Copy of proceedings No.E1/763/96, dated 07.11.1996, issued by the District Collector, Panchayat Wing, Ranga Reddy District. That proceedings is, in fact, in saying the writ petitioner elected as Sarpanch by filing nomination as BC Community during 1995 and was declared as duly elected on 21/22.10.1995 and continuing as such, saying on 11.03.1996 the Caste Certificate of him issued by the Mandal Revenue Officer as belonging to BC-A Community was cancelled and in asking the Assistant Public Prosecutor to launch prosecution against the said Sarpanch.

(2) Copy of proceedings in Rc.No.463/RTI/2013, dated 02.07.2013, issued by Government Junior College, Kosgi, Mahabubnagar, under Right to Information Act, regarding information of the students, who studied Intermediate (MPC) during the Academic Year 1980-81. At Sl.No.20 one P. Narasimha Rao, s/o. P. Chandrakanth Rao, with date of birth 03.08.1964 shown as F.C. with residence at Warwal, studied in the college. It is not even the College Study Certificate with full particulars of the date of admission and the year of study.

18. As referred supra, even to receive the above two documents, there is no application, since the writ petition is filed practically to sit against the correctness of the impugned order and decree dated 21.06.2016 in O.P.No.4 of 2013 and not a fresh matter.

19. The writ petitioner filed WPMP.No.12597 of 2017 in W.P.No.23680 of 2016 to receive four documents as an additional evidence viz.,

(1) Copy of Duplicate Transfer Certificate issued by the Principal, Sardar Patel College, Secunderabad, showing the writ petitioner as belonging to BC-A Group at Sl.No.36 and studied B.A. during 1983-86;

(2) Copy of letter No.C2/CV/2525/2013, dated 07.08.2013, addressed by the Collector and District Magistrate, Medak at Sangareddy, to the Director, Backward Classes Welfare, A.P., Hyderabad. The said letter

speaks that Smt. Ramadevi whether belongs to BC Joshinandivala Caste or Brahmin to state, as sought by the addressee of the said letter. It further speaks that the Revenue Divisional Officer, Sangareddy and the Sub-Collector, Medak, were asked to conduct discrete enquiries and to submit report, and the Sub-Collector, Medak, submitted report stating that his predecessor enquired into the case on 03.06.1987, which reveals that Kum. Ramadevi, D/o. Chandramouleshwar Rao belongs to Brahmin Caste, which is 'OC' as alleged, and on the receipt of the above report, the Sub-Collector, Medak, appointed an Enquiry Officer, who conducted enquiry under Rule 2 of the A.P.C.S. (CC&A) Rules, 1963, and the Revenue Divisional Officer, Medak, by letter dated 22.12.1989 submitted his report stating that his predecessor enquired that Sri Rama Rao, who is the brother of Ramadevi and he also made local enquiry, which revealed that Smt. Ramadevi belongs to Joshinandivala Caste(BC-A). In the meantime, the Government vide Memo Nos. 67684/ Ser. IV.2/2000-1, dated 01.12.2000, and 75485/ Ser.IV.2/ 2000-1, dated 10.01.2000, requested not to open the case again where the case was already enquired against the individual regarding genuineness of the Caste Certificate and to take action as per the A.P. (SC, ST and BC) Regulation of Issue of Community Certificates Act, 1993 has viewed that enquiry was conducted already on several occasions into the caste certificate in respect of Smt. S. Ramadevi, Senior Assistant, and as such no enquiry is needed again. In view of the above instructions issued from time to time, the District Level Scrutiny Committee decided to sought for clarification from the Government whether to stop further enquiry as per the instructions of the Principal Secretary to Government and the Government again vide Memo No. 47500/ Ser. III.2/ 2001-1, dated 20.08.2001, clarified to follow the instructions

already issued. The Government, once again in its Memo No.21297/Ser.III.2/2002-1, dated 12.04.2002, instructed to stop further enquiry forthwith in the matter as the Government is of the view that no enquiry is needed time and again. Hence, a decision to be taken since the Memo was issued in 2002. Now the complaint is filed when she got promoted as Superintendent. The copies of Memo and Enquiry Report of the Sub-Collector are sent for information and necessary action.

(3) The further letter dated 22.08.2013 of the Collector and District Magistrate, Medak at Sangareddy, which is document No.3, having referred above, says that one Sri G. Ramulu made a complaint to the Hon'ble Chief Minister on 23.03.2000 that was referred to the Principal Secretary, BC Welfare Department, vide Government Memo. No.781, dated 24.05.2000, to get examined by the District Collector on the said representation to take action as per Rules and the District Collector by letter dated 19.03.2001 addressed the Principal Secretary to Government, whether to **stop** further enquiry as per earlier instructions of the Principal Secretary to Government or to conduct enquiry and the District Collector sent a letter dated 29.06.2001 in seeking clarification and while replying to it, the Government by referring Memos dated 01.12.2000 and 10.01.2001, issued Memo No. 47500/Ser.III.2/2001-1, dated 20.08.2001, in requesting to follow the instructions given earlier regarding the enquiry and thereafter by another Memo No.21297/Ser.III.2/2002-1, dated 12.04.2002, requested to stop forthwith further enquiry into the matter, as the Government is of the view that no enquiry is needed time and again. Therefore, the Caste Certificate submitted by Smt. S. Ramadevi as belonging to Joshinandivala Caste, BC-A Group found genuine during earlier enquiry conducted through Revenue

Divisional Officer, Medak, while following the instructions of Government issued in Memo dated 10.01.2001 and subsequent Memo dated 12.04.2002 and no further enquiry into the genuineness of the caste of Smt. S. Ramadevi, Senior Assistant, O/o. DDA (SC) RVP, Hyderabad, now working as Superintendent in the Department, is called for and the matter is treated as closed.

(4) Document No.4, which is filed to receive the same as additional evidence is, the original Caste Certificate dated 28.05.1993 issued by the Mandal Revenue Officer, Gandeed Mandal, of Smt. K. Vakula, w/o. Narasimha Rao(writ petitioner), belongs to BC-A Community. The said certificate shows that after the report submitted by the Village Assistant and the Mandal Revenue Officer, respectively, and from the material evidence available on record, Smt. K. Vakula, w/o. P. Narasimha Rao, Pedda Warwal Village, Gandeed Mandal, Ranga Reddy District, is Joshinandivala Caste of BC Community and she belongs to BC-A as per Government proceedings No.1793, Education Department, dated 23.10.1979, at Sl.No.34.

20. The writ petitioner also filed earlier to the filing of WPMP No.12597 of 2017 supra, WPMP No.51326 of 2016 to permit him to file additional material papers/documents viz;(1). copy of G.O.Ms.No.1793 of the Education Department, dated 23.09.1970 (list of socially and educationally backward Classes amended time to time and as on 31.12.2008 among BC-A group mentioning at Sl.No.36 the caste of Joshinandavalas as BC-A; 2) Review petition of the writ petitioner dated 08.04.1996 to the District Collector, Ranga Reddy District, seeking to set aside a

reference No.1 proceedings to the Collector, dated 11.03.1996, cancelling the petitioner's caste certificate as BC-A issued by the Mandal Revenue Officer; 3) certified Photostat copy of proceedings dated 07.08.2013 of the Collector addressed to Director of Backward Classes Welfare, A.P. that S. Ramadevi D/o Chandra Mouleeshwara Rao belongs to Joshinandavala so also from the earlier proceedings of RDO, dt.22.12.1989 including after enquiry with her brother and family members and Government issued proceedings not to reopen the issue and it is already enquired and no further enquiry is required and same also dated 22.08.2013 and 4) copy of transfer certificate of petitioner, issued by the Sardar Patel college showing during 1983-86, the petitioner studied B.A. degree and he belongs to BC-A group of Sl.No.36.

21. From the above, importantly, there are two issues involved in the writ petition, which is filed impugning the correctness of the impugned order and decree dated 21.06.2016 in O.P.No.4 of 2013 passed by the Tribunal viz., (1) correctness of the declaration of respondent No.2/Election Petitioner as duly elected; and (2) the basis for coming to the conclusion that the writ petitioner/respondent No.1 of Election Petition does not belong to BC-A Community, though he contested as belonging to BC Community and was duly elected from BC community even by his securing highest votes.

22. Coming to the first issue, whether respondent No.2/Election Petitioner can be declared as duly elected, if at all in the event of the dispute on the elected candidate's result is unsustainable.

23. In this regard, as per Rules 3 and 5 of the 1995 Rules, which are to be read along with Order VI Rules 2 and 4 of CPC, lay down distinction between the material facts and material particulars. The material facts must be pleaded and the material particulars, wherever necessary, must be furnished, including to show cause of action for the *lis* and its basis to survive.

24. In the case on hand, the main contest of respondent No.2/Election Petitioner (defeated candidate) from the averments of Election Petition in O.P.No.4 of 2013, particularly from para-13 in page-3, is that respondent No.4 of the said petition (Returning Officer) declared totally 1,356 votes polled and, out of which Sri Bokka Ramulu (Respondent No.2 of Election Petition) got 92 votes; Smt. Bantu Sathyamma (Election Petitioner) got 554 votes; and Sri P. Narasimha Rao (writ petitioner/respondent No.1 of Election Petition) got 666 votes, and the remaining 44 were declared as invalid votes. The election results for the post of Sarpanch of Pedda Warwal Gram Panchayat were accordingly announced on 27.07.2013. Her main contest is that the said P. Narasimha Rao, who got highest votes and duly declared as elected Sarpanch, is not a BC candidate, but for OC and contested falsely as a BC candidate and thereby the finalisation

of his nomination itself is not correct and he cannot be declared as duly elected Sarpanch under BC reserved seat of Sarpanch and thereby sought to set aside his election by declaring the acceptance of his nomination as improper, illegal and void and also to declare the Election Petitioner (defeated candidate), who secured second highest votes, as duly elected to the post of Sarpanch of Pedda Warwal Village Gram Panchayat, Gandeed Mandal, Ranga Reddy District.

25. The chief affidavit of the Election Petitioner as PW.1 also speaks the same. Thus, the material particulars necessary are, only on the ground of election of the duly elected candidate as not duly elected (Returning candidate), for he does not belong to BC Community and the other is consequently to declare the Election Petitioner as duly elected. In the factual scenario, it can be said that the facts suffice to the requirement of material facts and material particulars to the extent wherever necessary, as the prayer of the Election Petitioner's declaration as duly elected is only consequential to the first prayer i.e., the nomination of writ petitioner/respondent No.1 of Election Petition is liable to be rejected and to be declared as not entitled to continue, being belonging to OC Community, in the seat reserved for BC Community.

26. Further, as per Rules 11 and 12 of the 1995 Rules, for declaration of duly elected contestants among the parties, facts are there showing only 3 contestants and the Election Petitioner

secured the second highest votes than the writ petitioner/respondent No.1 of Election Petition 'electant'.

27. The expression of this Court in SIMMITI ARJUNA's case (1 supra), which followed the judgment rendered by a Division Bench of this Court in K. SUNDAR RAO Vs. V. RAGAVA RAO³, no doubt speaks with reference to the provisions supra, of the pleadings must be there as a foundation with evidence to grant the relief or not and without pleading, the question of granting relief does not arise. In fact, in R. JAYALAKSHMAMMA V. ELECTION TRIBUNAL-CUM-SENIOR CIVIL JUDGE⁴, this Court held that in a dispute as to the disqualification of contest for the post of Member of ZPTC by the elected candidate for having more than 2 children for so declaring and consequently to declare the Election Petitioner, being the next candidate, who secured second highest votes, as duly elected, can be ordered, in saying Rules 12, 13 and 15 of the 1995 Rules, being procedural in nature, and once the candidate, who was elected, his case falls under Rule 13 of the 1995 Rules and the Tribunal has no option but to declare the Election Petitioner, who received the next majority of valid votes, as duly elected and for that conclusion, it referred various decisions.

28. Coming to the issue of attestation of the nomination, the attessor to the Nomination Form containing declaration, of a

³ 1983 (2) AnWR 412

⁴ 2004 (5) ALT 400

Gazetted Rank to attest, is concerned, the person, who attested, was a Government College Lecturer is not in dispute. What the A.P.Panchayat Raj (Conduct of Election) Rules 2006, particularly speaks from Rule-8(2)© is unless the nomination paper contains a declaration specifying the particular tribe or caste or class of which he is a Member and the area in relation to which that Tribe or Caste is a Schedule Tribe or as the case may be, a Scheduled Caste or Backward Class of the State. The declaration shall be made before any Gazetted Officer of the Government or before any Officer of the Revenue Department not below the rank of Mandal Revenue Officer. Undisputedly, the declaration is made by the elected candidate duly and his nomination was validly accepted and the attestation of the declaration is since not before the Mandal Revenue Officer or other officer above the cadre of Revenue Department, a person must be a Gazetted Officer. The Government college Lecturer is not a Gazette Officer is not in dispute. It is not shown of not a Gazetted Officer and he attested as Gazetted Officer and the nomination was duly accepted as validly filed also gives a presumption of all official acts are duly performed and it is for the person who maintained election petition and disputing the nomination impugning the attestation is not done by the Gazetted Officer to show the same of the Government lecturer is not the Gazetted Officer. Here there is no such record filed. There is nothing as such to show *prima-facie* of he was not a Government College Lecturer. In fact, the presumption of official acts duly performed under Section

114 of the Evidence Act, once that applies as referred supra of he claimed as a Gazetted Officer and attested, in the absence of showing that the Government College Lecturer is not a Gazetted Officer. What RW.1 in his cross-examination deposed is that he does not know whether he is a Gazetted Officer or not. However, that makes no difference much less suffice to rebut the presumption, including from any oral say by PW.1, in the absence of showing that he is not a Gazetted Officer by any cogent evidence including to rebut the presumption that can be drawn supra. Apart from it, instead of commenting that the person attested was not examined to prove that he is a Gazetted Officer, also from Three Judges Bench expression of the Apex Court in GOPAL KRISHNAJI KETKAR Vs. MOHAMMED HAJI LATIF⁵, that the burden lies on the Election Petitioner, if at all to dispute that person attested is not a Gazetted Officer, to establish the fact, at least by asking the Court to examine as a Court Witness, if not produced, any *prima-facie* record by securing from the college of his status, whether Gazetted Officer or not. Thereby it can safely be said that nothing could be proved of the person attested is not a Gazetted Officer and the nomination is invalid. Thereby the Tribunal gravely erred in considering and appreciating the said aspect in a proper perspective and thus, said finding of the Tribunal is unsustainable and accordingly, to that extent it is set aside.

⁵ AIR 1968 SC 1413

29. Now coming to the core issue of the correctness of the impugned proceedings of the tribunal in holding the Writ Petitioner belongs to OC community and not of BC community and not entitled to continue the post reserved for BC category (for not duly elected from B.C. community, even he secured highest votes) concerned, merely because the election petition 2nd respondent as writ petitioner contested and deposed of the caste profession of Joshinandivala is begging and the writ petitioner to the election petition as D.W.1 though deposed that begging is not his avocation; when that cannot be taken as criteria but for to see he belongs to Joshinandivala or not, as Joshinandivala caste is not a OC community but BC-A community as per the Government Gazette notifications and modified circulars time to time right from G.O.Ms.No.1793, dt.23.09.1970 and G.O. Ms. No.1880,dt.29.07.1966.

30. Even the contest of the election petitioner (writ petition 2nd respondent) of the writ petitioner belongs to Karanam caste of O.C. community and not thereby B.C. community as sought even in the stay vacate petition of the writ petition concerned, there is no karanam caste as such in the caste classifications but for karanam is a post and otherwise known in Telangana area as patwari; for patels and patwaris are the Village Revenue Officers but for at best those were considering from any qualification in the family to the descendants for appointment to hold the posts. As such said contest is untenable including

from any factum of any of the petitioner or his family members ever either temporarily or permanently served as village karanams. It is for the reason that the village officers served also hails from different castes and religions to say either from OC or from BC or SC or as the case may be, prior to the abolition of the said post of patel and Patwari, karanam and Munsif in or around 1983-84 by regularization of those eligible with qualifications prescribed as Village Revenue Officers or village Secretaries as the case may be.

31. Now remained to decide is whether the writ petitioner P.Narasimha Rao, who secured undisputedly, the highest votes declared as elected eligible, had he been BC-A community as claimed, but for the dispute on his community as not of BC-A in the election petition by saying, he belongs to O.C., how far proved and the finding of the tribunal as O.C. and not B.C.-A is however correct concerned, undisputedly, the petitioner earlier contested and served as elected Sarpanch from 1988 onwards as belongs to BC-A community based on the BC-A community certificate issued by the competent authority dated 13.08.1982, dt.07.12.1983 and dt.28.05.1993 and even in the elections held during 1995 and completely served for the entire 5 years tenure thereafter and even in 2001 successfully contested and elected apart from later only as a Ward Member of the Ward No.7 of the said panchayat Pedda Warwal village in 2006 and served till 2011. There was in fact after 1995 elections where he successfully contested and elected as sarpanch, his caste was

questioned as not belongs to BC-A and the Collector suspended the caste certificate of him issued by the Mandal Revenue Officer as BC-A, by holding that he does not belong to BC-A but OC and a review petition dated 08.04.1996 filed by said Narasimha Rao which did not see light of the day from the records including from his contentions to say there is no finality to the Collector's order cancelling caste certificate issued by the Mandal Revenue Officer as review petition is pending with the Collector and not yet disposed of or communicated any result of it. In fact, he also filed a writ petition undisputedly against the said suspension order of the Collector of the BC-A caste certificate of him issued by the Tahasildar, and as his election tenure was expired in 2001, that writ petition was admittedly dismissed as infructuous and not even withdrawn by him. It is to say there was no finality to the order of the Collector because that order was suspended in the writ petition however, his application for review claim is pending from said contest and facts referred from the material supra. Even taken for argument sake any such application for review is deemed rejected from non disposal apart from such contention cannot stand, there is no resjudicata from the writ petition dismissed by the Court as infructuous by not deciding the matter on merits and the interim order in support of his contention of he belongs to BC-A was there even it was co-terminus with the final writ petition dismissal as relief became infructuous for no finding in the writ petition holding that he does not belong to BC-A. Even later he did not file any separate

writ petition challenging the order of the Collector, once he filed review petition before the Collector and same is pending from the review application vis-à-vis writ petition though not those were decided on merits therefrom can be safely said the issue is still open for undecided and with no finality.

32. It is in the background he filed the nomination with BC-A certificate issued by the Mandal Revenue Officer, and secured the highest votes in the elections held on 27.07.2013 from the nomination was undisputedly duly accepted. There is nothing to show the election petitioner filed any objection to the nomination to raise the issue. Even taken for arguments sake, from objection whatever corner filed, it is not well within time of the scrutiny of the finality of the nomination for the nomination was duly accepted as validly filed. From this, coming to the election O.P.No.4 of 2013 filed by the writ petition-2nd respondent against the writ petitioner as the 1st respondent questioning his election from the contest as BC-A and does not belong to BC-A but OC. So far as the Ex.P.1 certificate copy of community, nativity and date of birth certificate obtained through Mee Seva not by the election petitioner but by her husband concerned, there is nothing to show his nomination to the post as BC-A was cancelled. Even from that Ex.P.1, the proceedings of the D.P.O.(District Panchayat Officer) were subject matter of Writ Petition No.4530 of 2014. Further there is an appeal against Ex.P.1 certificate dated 20.08.2013 before the Joint Collector shown pending and not a case of the same was decided much

less against him by confirming the said certificate Ex.P.1 which even runs counter to his nomination as BC-A based on certificate as BC-A. In this regard even in the appeal there was a direction of the District Collector, dt. 07.05.2016 to the Tahasildar to enquire into and verify the caste certificate of the petitioner and submit report, the Tahasildar has not submitted any report. Thereby it is insufficient for the election tribunal to simply rely on Ex.P.1 and on oral evidence of P.W.1 to hold that the petitioner does not belong to BC-A and he belongs to OC, leave about what observed supra of with the counter affidavit-cum-stay vacate petition filed by the writ petition 2nd respondent, documents filed not with any petition to receive. There are two sets of documents with petitions filed by the writ petitioner to receive as additional evidence which in fact as observed supra not in a fresh writ petition where to consider as part of evidence but the writ petition itself is to sit in revision against the election tribunal order which was based on oral evidence adducing on disputed questions of fact, it requires further adjudication with reference to the documents relied by both sides to adduce in evidence to prove and to be tested by cross-examination. Here, the additional evidence documents are wanted to be placed by both sides thus requires opportunity for adducing of further evidence based on the documents by further enquiry. In fact, the petitioner's wife belongs to Joshinandavala and belongs to BC-A community. Even with the case of

S.Ramadevi, the Government made the issue final saying she is Joshinandavala and belongs to BC-A community.

33. Thereby the conclusions arrived by the tribunal in holding the writ petitioner-cum-election petition-R.1 is OC and not BC-A community is liable to be set aside and the matter requires to be remanded to the election tribunal with a direction to permit both the parties to adduce further evidence with reference to the additional documents filed in the writ petition and to give finding afresh on the issue as to the election petitioner belongs to BC community or not as the case may be also for the reason that the stay vacate petition rises a contention regarding non-examination of the wife of the writ petitioner as witness from she is declared as BC-A Joshinandavala caste so to prove and in fact for that though there is no bounden duty from the writ petitioner as 1st respondent to the election petition to cause her examine, it is to sub-serve the ends of justice, just to direct the tribunal also to cause examine her as a Court witness and appreciate her evidence also with reference to other material including the additional evidence to adduce to give an independent finding uninfluenced by the earlier findings since set aside. Needless to say if at all the attesting officer to the nomination form of the writ petitioner non-examination to show that he is a gazette Officer not fatal and irrespective of the finding recorded supra of nothing shown of he is not a gazetted officer, the tribunal if it feels necessary can also examine him as a Court witness by virtue of this remand order to avoid any sort

of cloud in the mind of the Court for better appreciation of evidence. The tribunal shall pursuant to the remand order give such disposal of the matter preferably within four (4) months from the date of receipt of the order, no doubt subject to other priorities of the already identified matters and those matters where already directed for early disposal pending before the learned trial Court.

34. Accordingly and in the result, the Writ Petition is partly allowed as follows:-

i) By setting aside the election tribunal's finding of the writ petitioner does not belong to BC community but for OC community and consequent to that declaring the election petitioner therein who is the 2nd respondent to the writ petition as duly elected, by remanding the matter and with a direction to give fresh disposal of the election petition by receiving additional evidence and give the findings afresh uninfluenced by the findings earlier, with reference to the additional evidence also on own merits and within the scope of the observations supra of the order, remand and preferably within four (4) months from date of receipt of the remand order by the trial Court.

ii) Registry is directed to return the documents filed with the writ petition by the writ petitioner in W.P.M.P.No.51326 of 2016 and 12597 of 2017 and also the documents filed with stay vacate petition to the concerned counsel for their cause filing writ petitions before the tribunal pursuant to the remand order

for receiving as additional evidence subject to proof, relevancy and admissibility, as the case may be.

iii). Consequently, pending miscellaneous petitions shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:22.08.2017

Note: Issue Copy forthwith.

b/ o.
Msr/ vvr

