

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.569 OF 2017

JUDGMENT: *(Per Hon'ble Dr. Justice Shameem Akther)*

This Appeal, under clause 15 of Letters Patent, is preferred against the order dated 12.04.2017 passed by the learned Single Judge in W.P.M.P. No.15537 of 2017 in W.P. No.12502 of 2017.

2. The parties hereinafter are referred to as arrayed in the Writ Petition.

3. The Writ Petition was filed under Article 226 of the Constitution of India challenging the order dated 27.03.2017 passed in Election O.P. No.56 of 2014 on the file of the Election Tribunal-cum-Senior Civil Judge, Jagtial (for short, 'the Election Tribunal'), wherein the Election Tribunal allowed the said O.P., declaring the election of the writ petitioner as null and void and consequently, declared respondent No.6 as duly elected President of Mandal Parishad, Medipalli Mandal of Karimnagar District.

4. The case of the writ petitioner is that she contested elections of Mandal Parishad Territorial Constituencies (for short, 'MPTC'), Bheemaram village and Medipalli Mandal held on 06.04.2014; results were declared on 13.05.2014; she was elected as MPTC, Bheemaram; respondent No.6 was elected as MPTC from Medipally-I, Medipally village and Mandal; both the writ petitioner and respondent No.6 contested to the post of President, Mandal Praja Parishad, Medipally, which is reserved for BC Women and the election was scheduled to be held on 04.07.2014; the petitioner was elected as

President, Mandal Praja Parishad, Medipally, by securing eight (8) votes out of fifteen (15) votes, whereas respondent No.6 could secure only seven (7) votes; thereafter, respondent No.6 filed an election petition before the Election Tribunal in O.P. No.56 of 2014, stating that the petitioner is having more than two children after the commencement of the A.P. Panchayat Raj Act, 1994 (for short, 'the Act') as on the date of filing of her nomination and she has given false declaration in her nomination for the election regarding her children and prayed for disqualification under Section 19(3) of the Act; as per the provisions of Rule (3) of the A.P.Panchayat Raj (Election Tribunal in respect of Gram Panchayat, Mandal Parishad and Zilla Parishad) Rules 1995) (for short, 'the Rules 1995'), the election petition ought to be filed within 30 days from the date of declaration of the results; though the said election petition was filed after 77 days of declaration of the results, the Election Tribunal allowed the said election petition, by the order dated 27.03.2017, declaring the election of the writ petitioner as null and void under Rules 12 and 13 of the Rules 1995 and, it is further declared that respondent No.6 in the writ petition is duly elected as President, Mandal Parishad, Medipally Mandal of Karimnagar District.

5. Questioning the said order of the Election Tribunal dated 27.03.2017, the writ petitioner filed the present writ petition along with W.P.M.P. No.15537 of 2017 seeking a direction to respondent Nos.1 to 5 to stay all further proceedings in view of the orders dated 27.03.2017 passed in the election petition. The learned Single Judge, vide the order dated 12.04.2017, granted interim stay of all further proceedings, holding that the balance of convenience is in favour of the writ petitioner, who has been functioning since July, 2014 as President of Mandal Parishad. Challenging

the said order of the learned Single Judge, the present appeal is preferred by respondent No.6 in the writ petition.

6. Heard Sri L.Ravichander, learned senior counsel appearing on behalf of Sri C.Hari Preeth, learned counsel for respondent No.6 (appellant herein); Sri C.V.Mohan Reddy, learned senior counsel appearing on behalf of Dr.J.Vijaya Lakshmi, learned counsel for the writ petitioner (respondent No.1 herein); and the learned Government Pleader for Panchayat Raj and Rural Development.

7. Learned senior counsel for respondent No.6-appellant herein would submit that the impugned order is erroneous, contrary to law and facts; the Election Tribunal after considering the evidence on record, declared the election of the writ petitioner/respondent No.1 herein as null and void; the learned Single Judge ought not have passed the impugned order staying the operation of order of the Election Tribunal; the Election Tribunal having evaluated the evidence of writ petitioner, based on her admissions, held that the writ petitioner had acquired disqualification under Section 19(3) of the Act; the learned Single Judge ought to have seen that respondent No.6-appellant has discharged the burden of proof in all probabilities basing on the evidence and the documents placed on record; there is no balance of convenience in favour of the writ petitioner to stay the impugned order; the learned Single Judge ought not have sat in appeal over the judgment of the Election Tribunal; no reasons are assigned in the impugned order; the learned Single Judge, having stayed the impugned order, allowed the writ petitioner to continue in the post of President; and ultimately, prayed to set aside the order under appeal.

8. On the other hand, the learned senior counsel appearing on behalf of the writ petitioner-respondent No.1 herein would submit that the learned Single Judge has given elaborate reasons in the order under appeal; the finding of the Election Tribunal is contrary to material placed on record; respondent No.6-appellant had failed to prove that the writ petitioner gave birth to her third child after the cut-off date, i.e., 30.05.1994; the Election Tribunal erred in not considering the evidence of R.W.2-Head Master of the school who has given correct date of birth of her three children as per the school records and further failed to consider Exs.X.1 to X.4, which show that the third child was born before the cut-off date; and the writ petitioner has not attracted in disqualification under Section 19(3) of the Act. The learned senior counsel would further submit that the third child was born on 20.08.1998; the writ petitioner filed nomination on 19.03.2014, no objection was raised for having more than two children nor a written complaint was made; the order passed by the Election Tribunal is not supported by the evidence; respondent No.6-appellant failed to discharge the burden as required; the learned Single Judge has given elaborate reasons; a detailed hearing is necessitated under the writ petition before a final order is passed; balance of convenience is in favour of the writ petitioner; the learned Single Judge has rightly stayed the impugned order; there are no grounds to interfere with the order under appeal; and ultimately, prayed to dismiss the appeal.

9. In view of the contentions putforth by both sides, the only point for determination is, whether the impugned order dated 12.04.2017 passed in W.P.M.P. No.15537 of 2017 in W.P. No.12502 of 2017 is sustainable?

10. The specific case of respondent No.6-appellant is that the writ petitioner, having more than two children, furnished wrong information pertaining to her children and got elected as President of Mandal Praja Parishad, Medipally. The writ petitioner and respondent No.6-appellant have contested for the post of President, MPTC, Medipally, which is reserved for BC Women. The election was held on 04.07.2014. The total number of votes were fifteen (15), out of which, the writ petitioner has got eight (8) votes and respondent No.6-appellant got seven (7) votes. Therefore, the returning officer had declared the writ petitioner as President, Mandal Praja Parishad, Medipally. The writ petitioner filed two sets of nominations for the post of MPTC, Bheemaram village, wherein she declared that she is having only two children in one nomination set dated 19.03.2014 and further declared that she is having three children in another nomination set dated 20.03.2014. The writ petitioner gave false declaration in both the nominations filed by her. So, she is liable to be punished under Section 228 of the Act. The writ petitioner, having three children, namely, (1) Palli Vamshi Krishna, born on 14.09.1994, (2) Palli Hari Krishna, born on 27.07.1997, and (3) Palli Sushma, born on 20.08.1998. Their school record fortifies the same. Respondent No.6 stated that the second and third child of the writ petitioner were born after notified date and as per Section 19(3) of the Act, the writ petitioner is not eligible to contest the election as MPTC and also as President of Mandal Praja Parishad. To substantiate the same, respondent No.6-appellant has deposed as P.W.1, through her evidence, Exs.P.1 to P.5 were marked. The contention of the writ petitioner is that all her children are born before the cut-off date, i.e., 30.05.1994, she is eligible to contest as MPTC and also seek election as a President of Mandal Praja Parishad. To substantiate her contention, she herself deposed as R.W.1 and also examined R.Ws.2 to 5 and also exhibited

Exs.R.1 to R.4. During the course of trial, Exs.X.1 to X.4 were marked through third parties. The writ petitioner has filed counter affidavit in the election petition, wherein she has denied that she has given false declaration with regard to her number of children in the nominations filed by her. Even she did not give the names and date of births of the children in the counter and, simply she has denied the entire case of respondent No.6-appellant and contended that respondent No.6-appellant did not challenge her election as MPTC, twisting the matter making false allegations disputes her election as a President of Mandal Praja Parishad.

11. Now there is no dispute that Palli Vamsi Krishna, Palli Hari Krishna and Palli Sushma are not the children of the writ petitioner. The writ petitioner has also not given the date of birth of her children in the counter filed before the Election Tribunal, simply stated that there are no such columns to furnish the information. Nomination forms marked as Exs.P.4 and P.5 reveals that she has given two children at first instance and three children in the second instance. In the second nomination form-Ex.P.5 filed on 20.03.2014, she has given the names of her children as given by respondent No.6-appellant. As per the record, the returning officer did not enquire with regard to Ex.P.5-second nomination, though there is mention of the writ petitioner having three children. In this regard, the Election Tribunal has observed that the returning officer was negligent in ignoring the information furnished in Ex.P.5-second nomination. A perusal of Exs.P.1 to P.3 supports the case of respondent No.6-appellant, which clearly demonstrates that the second and third children were born after the cut-off date, i.e., 30.05.1994. The Election Tribunal, while dealing with the evidence of R.Ws.1 to 5 and the documents marked as Exs.R.1 to R.4, wherein the details of the children and

date of births are given, had elaborately analysed the above evidence and the documents and disbelieved the same giving number of reasons and also held that there are material alterations and interpolation in the documents marked on behalf of the writ petitioner. The oral evidence and the documents placed before the Election Tribunal exhibits that the second and third children were born after the cut-off date. Section 19(3) of the Act only creates a legal disability on the part of any person who has procreated more than two children as on the relevant date to seek an elected office under the Act. It disqualifies any person to hold the office of President of Mandal Praja Parishad. The very purpose of this legislation is to abstain/prevent the persons having three children after the cut-off date, or making such person disqualify to hold office of President of Mandal Praja Parishad. Learned Single Judge held that there is balance of convenience in favour of the writ petitioner. But no such balance of convenience is found in favour of the writ petitioner. There is a *prima facie* case to hold that the writ petitioner has more than three children and her second and third children are born after the cut-off date and she is ineligible to contest the election to the office of the President of Mandal Praja Parishad, Medipally or continuation in the said post. The finding of the learned Single Judge is not in consonance with the evidence and material on record. All submissions made on behalf of the writ petitioner/respondent No.1 herein do fail. The well reasoned order of the Tribunal ought not have been disturbed. Generally, in intra-Court appeal, filed under Clause 15 of Letters Patent, the appellate court will not interfere with the findings of the learned Single Judge unless there is infirmity or irregularity in the order under appeal. The learned Single Judge erred in staying the operation of the order dated 27.03.2017 passed by the Election Tribunal in Election O.P. No.56 of 2014 and the order under appeal passed by the learned Single

Judge in W.P.M.P. No.15537 of 2017 in W.P. No.12502 of 2017 dated 12.04.2017 is liable to be set aside. The point is answered accordingly.

12. In the result, the writ appeal is allowed and the impugned order under appeal dated 12.04.2017 passed in W.P.M.P. No.15537 of 2017 in W.P. No.12502 of 2017 is set aside.

13. As a sequel, pending miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

**(RAMESH RANGANATHAN, ACJ)**

(Dr. SHAMEEM AKTHER, J.)

Date: 28-04-2017

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