

HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE Dr. JUSTICE SHAMEEM AKTHER

WRIT APPEAL No.266 OF 2017

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

1. Aggrieved by the order dated 21.02.2017, passed in Writ Petition No.42819 of 2016 by a learned Single Judge of this Court, the unsuccessful writ petitioner therein preferred this Writ Appeal, under clause 15 of Letter Patent.

2. The parties hereinafter will be referred as arrayed in the Writ Petition.

3. The case of the appellant-writ petitioner, in brief, is that in an election held on 23.07.2013 she was elected as Sarpanch of Gram Panchayat, Ghanpur (Mulug) village, Warangal District. Subsequently, 1st respondent herein, questioning the election of the writ petitioner as Sarpanch, filed Original Petition No.3 of 2013, under Section 22 read with Sections 19(3) and 233 of the A.P. Panchayat Raj Act, 1994 (for short, 'the Act'), before the Election Tribunal (Junior Civil Judge), Mulug, to declare the writ petitioner as disqualified under Section 19(3) of the Act and to set-aside the election, *i.e.*, to declare as *null and void* and to declare her as Sarpanch elected.

4. The appellant-writ petitioner herein opposed the petition by filing a counter-affidavit denying the allegations and averments in the writ petition.

5. The Tribunal after framing issues and considering the pleadings and evidence of P.Ws.1 to 3, R.Ws.1 and 2 and the documents Exs.P-1 to

P-21, Exs.R-1 to R-7 and Exs.X-1 to X-11, allowed the election petition declaring the election of writ petitioner as Sarpanch of Gram Panchayat Ghanpur (Mulug) Village and Mandal, Warangal District as *null and void* and consequently declared the 1st respondent herein as Sarpanch elected.

6. In pursuance of the order of the Election Tribunal, the District Collector, Warangal, passed an order *vide* proceedings No.111/2016/A, dated 09.12.2016. In the above background, questioning the order of the Election Tribunal dated 01.12.2016 and the order of the District Collector, Warangal dated 09.12.2016, the writ petitioner preferred the writ petition, for the aforesaid relief; wherein the learned Single Judge, after hearing the arguments of both the counsel and perusing the material available on record, dismissed the writ petition observing that there is no perversity or lack of inherent jurisdiction, warranting interference with the impugned order of the Election Tribunal.

7. Aggrieved by the impugned order, the appellant-writ petitioner preferred this writ appeal.

8. Heard the arguments of Mr. O. Manohar Reddy, learned counsel for the appellant-writ petitioner, and Mr. S. Satyam Reddy, learned senior counsel for the 1st respondent.

9. Learned counsel appearing on behalf of the appellant-writ petitioner would submit that the order of the Election Tribunal is erroneous and opposed to law; the Tribunal failed to assign any valid reasons for declaring the 1st respondent herein as Sarpanch elected; the 1st respondent has not raised any objection before the Scrutiny Officer; the Election Tribunal grossly erred in relying on the evidence of P.Ws.2 and 3 and, finally, prayed to allow the Appeal setting-aside the order under Appeal.

10. On the other hand, learned senior counsel appearing on behalf of the 1st respondent herein would contend that the order of the Election Tribunal suffers neither from any illegality nor perversity; it is based on record; the Election Tribunal had elaborately dealt with the entire material on record and, ultimately, set-aside the election of the writ petitioner; consequently, declared the 1st respondent herein as elected Sarpanch of Gram Panchayat, Ghanpur (Mulug) village, as she stood second in respect of the votes polled in the Election in question and there is no infirmity in the order of the Election Tribunal and as such this Court needs no interference with the impugned order, under Article 226 of the Constitution, and prayed to dismiss the Appeal.

11. In view of the rival contentions put forth, the following points have come up for determination:

1. Whether the Election Tribunal is justified in setting-aside the election of the appellant-writ petitioner?
2. Whether the Tribunal also justified in declaring the 1st respondent herein as elected Sarpanch of Gram Panchayat, Ghanpur (Mulug) village?
3. To what result?

12. **POINT No.1:** It is the specific case of the 1st respondent herein that as on the date of filing of nominations for election to the post of Sarpanch, the writ petitioner was having four issues *i.e.*, two daughters and two sons and their births are 11.02.1989, 12.12.1991, 20.04.1993 and 23.03.1999, respectively, as per their school records. Whereas, the case of the writ petitioner is that she has four issues, whose date of births are 04.10.1988, 18.10.1990, 20.04.1994 and 23.03.1995, respectively. Admittedly, the Act came into force on 21.04.1994 and the stipulated cut off date is beyond

one year from the date of commencement of the Act *i.e.*, 21.04.1995. The 1st respondent herein specifically contended that the 4th issue of the writ petitioner, as per his school record, was born after the cut off date *i.e.*, on 23.03.1999, entitling her to be disqualified either to be elected or to continue in the office as per Section 19(3) of the Act. While dealing with the alleged disqualification of the writ petitioner, under Section 19(3) of the Act, the Election Tribunal had framed the following points:

- 1) Whether Respondent No.1 suffered disqualification for the post of Sarpanch, as per Section 19(3) of A.P. Panchayat Raj Act, 1994?
- 2) Whether Mani Sharma, the fourth issue of the Respondent No.1, is born on 23.03.1995 as claimed by Respondent No.1?
- 3) Whether date of birth of Mani Sharma is tampered in the school records?
- 4) Whether the petitioner is entitled for the relief, as prayed for?
- 5) Whether the election of Respondent No.1 as Sarpanch, Gram Panchayat, Ghanpur (M) village is liable to be declared as illegal, null and void?
- 6) To what relief?

13. During course of trial before the Tribunal, the 1st respondent herein deposed as P.W.1 and also examined P.W.2, K. Krishna Murthy, Deputy Educational Officer, Mulug and P.W.3, Lygalla Krishna, Head Master, Froebel Model High School Ghanpur (Mulug), where the 4th issue of the writ petitioner namely Mani Sharma studied. Exs.P-1 to P-21 were marked through the evidence of P.W.1; Exs.X-1 to X-5 were marked through the evidence of P.W.2 and Exs.X-6 to X-11 were marked through the

evidence of P.W.3. The writ petitioner was examined as R.W.1 and her husband was examined as R.W.2 and marked Exs.R-1 to R-7 through their evidence.

14. To substantiate their contentions, the writ petitioner did not examine any independent person, particularly, any of her relative to substantiate the date of birth of their 4th issue in question; whereas, the 1st respondent herein had examined P.W.2, Deputy Educational Officer, and P.W.3, Head Master of the school, where the 4th issue of the writ petitioner studied. P.Ws.2 and 3 have no interest either in the writ petitioner or in 1st respondent. There is a clear evidence of P.W.2 in vivid terms that, on 12.08.2013, on the instructions of the District Educational Officer, he proceeded to Froebel High School, Ghanpur (M) village and verified the admission register and found the date of birth of K. Mani Sharma was tampered therein as 23.03.1995 from 23.03.1999. Later, he collected the records and submitted Ex.X-4 enquiry report to the District Educational Officer.

15. The evidence of P.W.3, Head Master of the school, reveals that the original date of birth of 4th issue (K.Manisharma) of the writ petitioner was entered in the register as 23.03.1999. Subsequently, basing on the ration card, produced by the parents (the writ petitioner), about five years back, the then Vice-Principal might had changed the date of birth as 23.03.1995. Thus, it is evident from the evidence of P.Ws.2 and 3 that the date of birth of 4th issue (K.Manisharma) of the writ petitioner is tampered from 23.03.1999 to 23.03.1995. Exs.P-1 to P-21 marked on behalf of the 1st respondent herein also reveals the tampering of the date of birth of the 4th issue from 23.03.1999 to 23.03.1995. Exs.X-1 to X-11 marked also reveals the correspondence and tampering of the date of birth, as contended by the 1st respondent herein.

16. The evidence of R.Ws.1 and 2 and the documents marked on their behalf *i.e.*, Ex.R-1 – original date of birth certificate of Katla Priyanka; Ex.R-2 – original date of birth certificate of Katla Pranayanka; Ex.R-3 original date of birth certificate of K. Mani Sharma; Ex.R-4 – original S.S.C Memo of Katla Priyanka; Ex.R-5 – original S.S.C. Memo of Katla Pranayanka; Ex.R-6 – original S.S.C. Memo of Katla Mani Sharma, all issued by Head Master Froebel High School and Ex.R-7 is the original memorandum of marks of K. Shankar Varma. In so far as the date of births of the other three issues of the writ petitioner is concerned, they are not in dispute, who are both before the cut-off date, except the date of birth of the 4th issue of the writ petitioner. However, in the light of the evidence of P.Ws.2 and 3 and the documents marked on behalf of the 1st respondent herein falsifies the date of birth of the 4th issue (K.Manisharma) recorded in Exs.R-3 and R-6 as 23.03.1995. There is no reason to disbelieve the evidence of P.Ws.2 and 3, who are independent persons. So, the Tribunal, while dealing with this aspect, had clearly discussed the entire oral and documentary evidence and held that the original date of birth of the 4th issue of writ petitioner is after the cut-off date, *i.e.*, 21.04.1995, which makes the writ petitioner disqualified for the post, she is elected and holding, under Section 19(3) of the Act. The same is the finding of the Tribunal and do not suffer from any perversity. It is recorded on the basis of the evidence on record and no other finding can be substituted. The learned Single Judge, while dealing with this issue, had elaborately dealt with and upheld the findings of the Tribunal. Under these circumstances, there is nothing to take a different view and the findings recorded by the Tribunal and the learned Single Judge are confirmed. Point No.1 is answered accordingly.

17. **POINT No.2:** The Tribunal had framed fourth point as to whether the petitioner is entitled for the relief, as prayed for? While determining this point along with fifth point, the Tribunal passed an order as mentioned hereunder:

"POINT Nos.4 AND 5: In view of points 1 to 3 answered against the respondent no.1, these points are answered in favour of the petitioner against the respondent no.1 holding that, the election of respondent no.1 as Sarpanch, Gram Panchayat, Ghanpur (Mulug) declared as null and void and thereby the petitioner is declared to be elected as Sarpanch of Gram Panchayat, Ghanpur (Mulug). Accordingly, these points are answered."

18. Learned counsel, appearing on behalf of the writ petitioner, would also submit that the declaration of the 1st respondent herein as elected Sarpanch is not based on record, while dealing with this issue, the Tribunal has not examined the oral and documentary evidence, no reasons are assigned, the finding is not based on record and further contended that even if the matter is remanded, the Tribunal is precluded from receiving additional oral evidence and documents, the finding is perverse, the learned Single Judge has also not dealt with this matter and the finding is liable to be set aside.

19. On the other hand, learned Senior Counsel appearing on behalf of the 1st respondent herein, contended that the 1st respondent herein secured second highest votes, the Tribunal, after dealing with the evidence and material on record, had given a finding, which is based on record, the learned Single Judge has also taken a right view and did not disturb the finding, no interference is warranted in intra-Court appeal and prayed to negate the submissions made by the learned counsel for the appellant-writ petitioner.

20. As seen from the order passed by the Tribunal, the Tribunal had nowhere stated that the 1st respondent herein has received the second highest votes and eligible to be declared as elected in view of the setting aside the election of writ petitioner. The Tribunal has to discuss the evidence, assign reasons and a finding is required to be recorded under law, the finding is not supported by the discussion and reasons, simply the Tribunal had declared the 1st respondent herein as elected Sarpanch of Gram Panchayat, Ghanpur (M) village, the finding is not in accordance with law. The learned Single Judge did not deal with this aspect and confirmed the order of the Tribunal *in toto*, i.e., ignoring votes polled in favour of the 1st respondent herein and other contentions, and held the declaration of 1st respondent as elected Sarpanch to the Gram Panchayat, Ghanpur (M) village. Since this finding is not based on reasons, there is infirmity. This Court, under Clause 15 of the Letter Patent, has power to remedy the defect and, as such, the said finding is only liable to be set aside and the matter is required to be remanded on this score to a limited extent. Leaving it open to the Tribunal to decide whether the 1st respondent herein secured next highest votes and be declared as Sarpanch of Gram Panchayat, Ghunpur (M) village, in accordance with law, accordingly, point No.2 is answered.

21. **POINT No.3:** In view of the above discussion, it is appropriate to set-aside the order passed by the Tribunal O.P. No.3 of 2013 to a limited extent, i.e., with regard to the declaration of the 1st respondent herein-Smt. Dudapaka Shoba as elected Sarpanch of Gram Panchayat, Ghanpur (M) village.

22. In the result, the Writ Appeal is partly allowed setting aside the order under appeal, dated 21.02.2017, passed by the learned Single

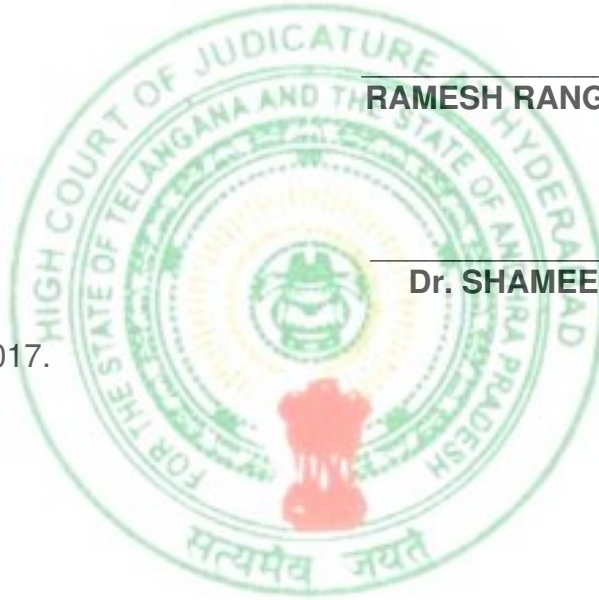
Judge, as well as the order, dated 09.12.2016, passed by the Tribunal in O.P. No.3 of 2013 to a limited extent, *i.e.*, the declaration of the 1st respondent herein-Smt. Dudapaka Shoba as Sarpanch of Gram Panchayat, Ghanpur (M) village, and the case is remanded to the Tribunal to decide only the said declaration as Sarpanch, in accordance with law, with a period of one (1) month from the date of receipt of a copy of this order.

23. As a sequel, pending miscellaneous petitions, if any, in this appeal, shall stand closed. No order as to costs.

RAMESH RANGANATHAN, ACJ

Dr. SHAMEEM AKTHER, J

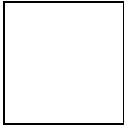
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WRIT APPEAL No.266 OF 2017

(Judgment of the Division Bench delivered
by Hon'ble Dr. Justice Shameem Akther)

Date.14.03.2017

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