

* THE HON'BLE SRI JUSTICE A.V.SESHA SAI

+ W.P.No.42819 of 2016

% Dated 21-02-2017

Katla Prashanthi w/o. Shanker @ Shankaiah..

Petitioner

Vs.

\$ Dudapaka Shoba, w/o Shanker and 9 others.

Respondents

! Counsel for the Petitioner: Sri O.Manohar Reddy

^ Counsel for the 1st Respondent: Sri S.Satyam Reddy

<GIST:

> HEAD NOTE:

? Cases referred

¹ 2013 (6) ALD 592

² 2005 (5) ALD 742

³ 2005 (2) ALD 174 (DB)

⁴ 2004 (5) ALD 525

⁵ 2017 (1)ALD 655 (DB)



THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.42819 of 2016

ORDER:

In the present writ petition, challenge is to the order dated 01.12.2016 passed by the Election Tribunal (Junior civil Judge), Mulug and the order of the District Collector, Warangal District passed vide proceedings No.111/2016/A, dated 09.12.2016.

2. The facts and circumstances, leading to the filing of the present writ petition are as under:

2.1. In the election held on 23.07.2013, petitioner herein got elected as Sarpanch of Ghanpur (Mulug) Gram Panchayat, Warangal District. Respondent No.1 filed O.P.No.3 of 2013 under Section 22 read with sections 19 (3) and 233 of the A.P. Panchayat Raj Act, 1994 to declare the petitioner as disqualified under Section 19 (3) of the Act, to set aside the election as null and void and to declare her as Sarpanch elected. The petitioner herein filed a counter, denying the allegations and averments in the said election O.P. The learned Junior Civil Judge, by way of an order dated 01.12.2016 declared the election of the petitioner as null and void and further declared the first petitioner herein as Sarpanch of the Grampanchayat. In pursuance of the said order of the Election Tribunal, the District Collector passed an order vide proceedings No.111/2016/A dated 09.12.2016.

2.2. In the above background, assailing the validity and the legal sustainability of the said order, the present writ petition came to be filed.

3. Heard Sri O.Manohar Reddy, learned counsel for the petitioner, Sri S. Satyam Reddy, learned Senior Counsel appearing for Smt.K.V.Rajashree, learned counsel for the first respondent apart from perusing the material available before the Court.

4. Submissions/contentions of Sri O.Manohar Reddy, learned counsel for the petitioner:

4.1. The order of the Election Tribunal is erroneous, contrary to law and opposed to the very spirit and object of the provisions of the Panchayat Raj Act, 1994 and the Rules framed there-under.

4.2. The questioned order passed by the Election Tribunal is contrary to the material available on record.

4.3. The Tribunal did not assign any reasons, much less valid reasons for declaring the first respondent elected as Sarpanch.

4.4. The first respondent did not raise any objection with regard to alleged disqualification of the writ petitioner at the time of scrutiny of nominations before the Scrutiny Officer, as such, it would not be open for the first respondent to raise objection under Sub-section (3) of Section 19 of the Panchayat Raj Act, 1994.

4.5. The Election Tribunal grossly erred in relying on the evidence of PWs.2 and 3 and no copy of the enquiry report was furnished to the petitioner.

4.6. In support of his submissions and contentions, learned counsel for the petitioner placed reliance on the judgment of this Court in the

case of *YELLAPRAGADA PRABHAKARA RAO v. SOUTHERN POWER DISTRIBUTION CO., OF A.P. LTD., TIRUPATHI*¹.

5. Submissions/contentions of Sri S.Satyam Reddy, learned Senior counsel appearing for the first respondent:

5.1. The order of the Election Tribunal does suffer neither from any illegality nor perversity and in the absence of the same the impugned order is not amenable for any judicial review under Article 226 of the Constitution of India.

5.2. Since the Election Tribunal thoroughly and elaborately considered the entire material on record, the impugned order does not warrant any interference of this Court under Article 226 of the Constitution of India.

5.3. By adducing oral and documentary evidence, the first respondent could successfully prove that the writ petitioner suffered disqualification as per section 19 (3) of the Panchayat Raj Act, 1994.

5.4. Since the first respondent got next highest number of votes, the Tribunal is perfectly justified in declaring R.1 as the candidate elected as Sarpanch of Grampanchayat.

5.5. The S.S.C certificate which is of the year 2016 i.e., a certificate issued after elections after tampering of the school records, cannot be looked into.

5.6. The Tribunal, after elaborately analyzing the evidence, came to the conclusion that the date of birth of the writ petitioner's fourth

¹ 2013 (6) ALD 592

child was manipulated as 23.03.1995 as such the said findings supported by reasons cannot be faulted.

6. In the above background, now the issues that emerge for consideration of this Court are:

1. Whether the orders of the Election Tribunal and the orders of the District Collector are in accordance with law or whether the same warrant any interference of this Court under Article 226 of the Constitution of India?

2. Whether Writ of Certiorari can be issued in the facts and circumstances?

7. Issue No.1:

The case of the election petitioner/first respondent herein is that as on the date of filing of nominations for election to the office of the Sarpanch, the writ petitioner was having 4 children i.e., two daughters and two sons and their date of births being 11.02.1989, 12.12.1991, 20.04.1993 and 23.03.1999 as per school records. On the other hand, the case of the first respondent in O.P.No.3/2013, who is the petitioner herein, in her counter, is that the four issues were born on 04.10.1988, 18.10.1990, 20.04.1994 and 23.03.1995. The sum and substance of the case of the election petitioner is that since the fourth issue of the writ petitioner herein was born after the cutoff date, the writ petitioner suffered disqualification as per Section 19 (3) of the A.P. Panchayat Raj Act, 1994. In this context it may be appropriate and apposite to refer to the said provision of law. Section 19 (3) of the Act, reads as under:

“19. Disqualification of candidates: (3) A person having more than two children shall be disqualified for election or for continuing as member:

Provided that the birth within one year from the date of commencement of the Andhra Pradesh Panchayat Raj Act, 1994 hereinafter in this section referred to as the date of such commencement, of an additional child shall not be taken into consideration for the purposes of this section:

Provided further that a person having more than two children (excluding the child if any born within one year from the date of such commencement) shall not be disqualified under this section for so long as the number of children he had on the date of such commencement does not increase: Provided also that the Government may direct that the disqualification in this section shall not apply in respect of a person for reasons to be recorded in writing.”

8. Now, it is required to be examined as to whether the material available on record shows that the writ petitioner suffered disqualification as per Section 19 (3) of the A.P. Panchayat Raj Act, 1994. On the basis of the pleadings available, the learned Junior Civil Judge framed the following issues for trial:

1. Whether the respondent No.1 suffered disqualification for the post of Sarpanch as per Section 19 (3) of the A.P. Panchayt Raj Act, 1994?
2. Whether Mani Sharma, the fourth issue of the respondent No.1 is born on 23.03.1995 as claimed by the respondent No.1?
3. Whether the 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 the respondent No.1 as Sarpanch, Grampanchayat, Ghanpur (v) is liable to be declared as illegal, null and void?
6. To what relief?

9. During the course of trial, election petitioner/first respondent herein examined himself as PW.1 and also examined one Mr.M.Krishna Murthy, Deputy Educational Officer, Mulugu as PW.2 and Sri Lyagalla Krishna, Head Master of Froebel Model High School, Ghanpur (M), wherein the fourth issue of the writ petitioner herein studied, as PW.3 and on behalf of the Election Petitioner, Exs.P.1 to P.21 and X.1 to X11 were filed and the writ petitioner herein examined herself as RW.1 and examined her husband as RW.2 and filed Exs.R.1 to R.7 on her behalf to substantiate her case.

10. It is to be noted that except examining herself as RW.1 and examining her husband as RW.2, the respondent No.1 in the election O.P, who is the writ petitioner herein did not examine any uninterested witnesses to substantiate her case. On the other hand, the election petitioner apart from examining herself as PW.1, as stated supra also examined the Deputy Educational Officer, Mulugu and Head Master of Froebel Model High School wherein the fourth issue of the writ petitioner prosecuted the studies as PW.2 and PW.3. Both PW.2 and PW.3 are uninterested witnesses and the reality remains that the writ petitioner herein did not attribute any malafides against them.

11. The Election Tribunal, took into consideration the evidence of PW.2 who deposed, in clear and vivid terms, that on being instructed by the District Educational Officer pursuant to the directions of the District Collector, he proceeded to Froebel High School where the fourth issue of the petitioner studied on 12.08.2013 and verified the Admission Register and found the date of birth tampered in the Admission Register as 23.03.1995 from 23.03.1999 and collected the said Admission Register from the school and shown the same to the District Educational Officer while submitting Ex.X4 enquiry report. He also categorically stated that subsequently he handed

over the said records to the School. PW.2 also stated about the statement of the Head Master of the School that he himself changed the date of birth in the Admission Register. It is also evident from the impugned order that the Election Tribunal had considered the evidence of PW.3, Head Master of the School who categorically stated that the original date of birth was registered as 23.03.1999 and about five years back basing on the ration card produced by the parents, the then vice principal changed the said date of birth as 23.03.1995. It is crystal clear from the evidence of PW.3 and as per Exs.X.6 to X.10 attendance registers for the classes 2 to 6 that the date of birth is only 23.03.1999. The Tribunal also considered Ex.X.11, altered date of birth of Katla Manisharma for the year 2005-2006. The Tribunal while dealing with evidentiary value of the S.S.C certificate produced by the writ petitioner herein found that Ex.R.6 S.S.C certificate is obtained basing on the tampered record and the same cannot be taken into consideration. The said finding in the considered opinion of this Court, having regard to the facts and circumstances of the case and voluminous evidence available on record by any stretch of imagination cannot be faulted.

12. Another significant aspect which needs mention in this context is that the years of birth of various students who prosecuted the studies along with the fourth issue of the writ petitioner were shown as 1999 or 2000, as such, the finding of the Court below cannot be faulted. In view of the categorical findings of the Tribunal the Judgment of this Court reported in *YELLAPRAGADA PRABHAKARA RAO (supra 1)* would not render any assistance to the petitioner herein. In the case of *B.KANTHA REDDY v. MANDAL DEVELOPMENT OFFICER-CUM-ADDITIONAL DISTRICT ELECTIONN AUTHORITY, MANOPAD MANDAL, MAHABUBNAGAR*²,

² 2005 (5) ALD 742

this Court categorically found that it is for the person against whom the allegation is made as per Section 19 (3) to disprove the same.

13. Another significant aspect which needs mention in this connection is that the petitioner herein is praying for a Writ in the nature of Certiorari. While dealing with the para-meters of Writ of Certiorari, the Hon'ble Apex Court in the case of *SYED YAKOOB v. K.S.RADHAKRISHNAN AND OTHERS*, at paragraph 7 held as under:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be

corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmed Ishaque*), *Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam* ([1958] S.C.R. 1240.), and *Kaushalya Devi v. Bachittar Singh*.”

14. In the case of *BURADA KANAKA RATNAM v. SENIOR SUPERINTENDENT OF POSTS, BHIMAVARAM DIVISION*³, the Division Bench of this Court at paragraph 12, held as under:

“12. On the settled principles relating to exercise of certiorari jurisdiction the decisions are two numerous and the well settled principles need no repetition at the hands of this Court. The fact that the writ petitioner had been staying with one K. Satyanarayana, is not in controversy. The fact that the writ petitioner also was nominated at a particular point of time by the said K. Satyanarayana for Provident Fund benefits also is not in controversy. No doubt it is stated that subsequent thereto it had been withdrawn. The fact that the writ petitioner begot a child through K. Satyanarayana also is not in controversy. It is also pertinent to note that when the writ petitioner was directed to produce the educational certificate of her child through the said Satyanarayana, the same was not produced before this Court. Clear findings had been recorded on the strength of the respective pleadings and also on the material available on record which are findings relating to fact to the effect that there was re-marriage. The principles of burden of proof relating to proof of factum of marriage which had been referred to supra by

³ 2005 (2) ALD 174 (DB)

the decided cases in relation to the other maintenance claims or in proof of the findings of bigamy cannot be imported in toto in appreciating such questions in relation to employment matters under service jurisprudence. Be that as it may, the fact remains that a finding had been recorded in this regard and even if the said finding is based on insufficient evidence it cannot be a ground for disturbing such a finding while exercising certiorari jurisdiction.”

15. In the case of *R.JAYALAKSHMAMMA v. ELECTION TRIBUNAL-CUM-SENIOR CIVIL JUDGE, PUNGANUR, CHITTOOR AND OTHERS*⁴, this Court at paragraphs 13, 14 held thus:

“13. At the outset the principles and the scope of power of judicial review to quash a decision of statutory Tribunal may briefly be reiterated. It is well settled that while judicially reviewing the decision of a statutory Tribunal, High Court ordinarily does not substitute its opinion for the opinion or finding recorded by the Tribunal on appreciation of oral and documentary evidence. Merely because other view is also possible from such reappreciation of same evidence, it cannot be a ground for High Court to deviate from the finding of the fact recorded by the Tribunal, re-appreciate the evidence on record and give its own finding which is different from the finding recorded by the Tribunal. It is axiomatic that the Court of judicial review is not an Appellate Court and the Court essentially reviews the decision making process rather than decision itself. Nonetheless, it is also settled that when the question is raised that the Tribunal has committed jurisdictional error or committed grave error apparent on the face of the record while appreciating the evidence, recording findings of fact and applying law to such findings on fact, the Court of judicial review can always; curiously though, - look into the evidence to see whether the finding of fact is perverse and whether the proper principles of appreciation of evidence have been applied to the facts. Even after such exercise, if the Court finds that the findings are grounded on substantially acceptable evidence, the findings cannot be upset and

⁴ 2004 (5) ALD 525

reappreciation of evidence as an Appellate Court is not within the purview of judicial review.

14. Yet another well settled principle is that it is not every error can be corrected in judicial review. Only grave error apparent on the face of the record would be amenable for judicial scrutiny. A reference may be made to a Constitution Bench judgment of the Supreme Court in *Syed Yakooob v. Radhakrishnan*, , HB, *Gandhi v. Gopi Nath*, (1992) 2 SCC Supp. 312, and a Division Bench judgment of this Court in *The Depot Manager, A.P.S.R.T.C. v. P. Gangarajulu*, 1995 (3) ALD 1054= 1996 (1) ALT 32 (DB).”

16. In the case of *DR.K.L.NARAYANA v. SPECIAL TRIBUNAL U/A.P. LAND GRABBING PROHIBITION ACT*⁵, this Court at paragraph 13 of the Judgment, held as under:

“13..... What emerges from the settled legal position is that the jurisdiction of the High Court to issue writ of certiorari is supervisory in nature, that while exercising this jurisdiction the Court is not entitled to act as an appellate court, and that the findings of fact arrived at by inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. However, having regard to the finding of fact recorded by the Tribunal, writ of certiorari can be issued, if it is shown that in recording such finding the Tribunal/Court had erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Writ of certiorari can be issued for correcting jurisdictional errors of the inferior Courts/Tribunals, where they exercise jurisdiction not vested in them or acted in excess of their jurisdiction or have failed to exercise jurisdiction. Similarly, if a finding of fact is based on no evidence that would be treated as an error of law which can be corrected by writ of certiorari.”

⁵ 2017 (1)ALD 655 (DB)

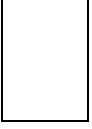
17. In the present case also, this Court does not find any perversity and inherent lack of jurisdiction in the order impugned. Since the Election Tribunal considered the entire material available on record meticulously and in an elaborate manner and arrived at the conclusions, this Court does not find any valid reasons to meddle with the impugned order in exercise of the jurisdiction conferred under Article 226 of the Constitution of India.

18. For the aforesaid reasons, writ petition is dismissed. As a sequel, miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date:21.02.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.42819 of 2016

Dated: 21ST February, 2017

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