

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.4987 of 2016

ORDER:

This civil revision petition, under Article 227 of the Constitution of India, by the unsuccessful petitioner, who is the first respondent in Election O.P.No.1 of 2014 (hereinafter, 'E.O.P'), is directed against the orders, dated 17.09.2016, of the learned District Judge, Mahabubnagar, passed in I.A.No.57 of 2016 in E.O.P.No.1 of 2014 filed under Order VII Rule 11 (a) & (d) read with Section 151 of the Code of Civil Procedure, 1908, requesting to reject the E.O.P summarily without proceeding with the enquiry.

2. I have heard the submissions of Sri J. Prabhakar, learned counsel appearing for the revision petitioner, and of Sri G. Rajeshwar Rao, learned counsel appearing for the 1st respondent. I have perused the material record.

3. The parties in this revision shall hereinafter be referred to as the election petitioner and the 1st respondent as arraigned in the E.O.P/ main proceeding.

4. The introductory facts are as follows: - 'The petitioner, who is a voter, brought the E.O.P against the 1st respondent, the successful returned candidate, to declare that the 1st respondent has got disqualification to hold the post of MPTC Makthal-V and continue in the same post for violation of the provision of Section 19(3) of the Panchayat Raj Act, 1994, (hereinafter, 'the Act'), as she was having more than three living children and as she gave birth to two more children in addition to the three children and as she is, in all, having 5 children including the three children who were born before the notification. The

1st respondent is resisting the E.O.P filed by the petitioner. While so, the 1st respondent filed the subject application in the E.O.P for rejection of the E.O.P. The same was resisted by the petitioner. On merits and by the order impugned in this revision, the trial Court dismissed the petition. Therefore, the 1st respondent is before this Court.'

5. Before proceeding further, it is necessary to refer to the pleadings of the parties.

5.1 The case of the 1st respondent in support of her request for rejection of the E.O.P., in brief, is this:

The election petitioner filed the E.O.P to declare the 1st respondent as disqualified to hold the post and continue in the post of MPTC, Makthal-V on the ground that she is having five children and she has incurred disqualification in view of the provision of Section 19(3) of the Act. The election petitioner is contending that the trial Court/ District Court is having jurisdiction to entertain the E.O.P, which was filed by him-voter, under Section 22 of the Act. In support of the said contention, he also relied upon a decision reported in 2005(1) A.L.T page 426. The election petitioner clearly pleaded in his E.O.P that he is a voter in Makthal village and that his house is in Ward No.4 and that his name appears in the Voters' list at S.No.12825 in Makthal village, Mandal and Constituency. The election petitioner-voter has no *locus standi* to seek the relief from the District Court as he is not at all a voter within the Constituency of the 1st respondent. The election petitioner is admitting that he is a voter of Makthal-IV Constituency segment whereas the 1st respondent is elected as MPTC of Makthal-V Constituency segment. Thus, the election petitioner-voter is not at all a voter within the territory of the Constituency of the 1st respondent and hence, he

cannot seek disqualification by filing the election petition. He has no cause of action. There is also a legal bar to entertain the election petition at the instance of the voter. He is not an aggrieved person. Since the election petitioner is not an aggrieved person, he cannot maintain an election petition and the District Court cannot entertain election petition filed by him. Therefore, basing on the contents of the election petition and even without recording any evidence, the election petition is liable to be rejected. The District Court is having ample power to reject the E.O.P. Continuation of E.O.P filed by a person having no *locus standi* and having no cause of action is an abuse of process of Court and is also a waste of valuable time of the Court.

5.2 Per contra, the case of the election petitioner, who is opposing the application filed for rejection of the E.O.P, in brief, is as follows:

The 1st respondent filed her nomination for MPTC-V. She has clearly mentioned that she is a voter in Makthal Gram Panchayat and other details. She is having house in ward number 4 of Makthal village, Mandal and Constituency; therefore, she is also a voter in ward no.4 but not in ward no.5. However, she contested from ward no.5 for MPTC of Makthal constituency. Any voter from any ward can contest to the post; and, there is no bar. The amended provision of Section 22 reflects that a voter of a Gram Panchayat is also entitled to move the District Court for a decision on the question of disqualification or otherwise of an elected member like the 1st respondent. The 1st respondent is having five children is an undisputed fact. Having five children is a disqualification. Therefore, under Section 19(3) of the Act she is disqualified to hold and continue in the post of MPTC. Hence, the E.O.P is filed before the District Court. The allegations that the election

petitioner is not having *locus standi* and cause of action and that he cannot maintain the E.O.P and that the District Court cannot entertain his E.O.P and that he is not an aggrieved person as per the provision of Section 22 of the Act are all false and untenable allegations. The E.O.P can be rejected if only it appears from the statements in the E.O.P that it is barred by any law or if it is established by the 1st respondent that it is barred as per the provision of Section 22 of the Act. There is no bar to file an application by any voter like the election petitioner seeking a decision on the question of disqualification of an elected person like the 1st respondent. The E.O.P is maintainable in view of the decision reported in 2005(1) A.L.T. page 426. The District Court is having jurisdiction to entertain the E.O.P filed by the election petitioner and to decide the issue as to whether the 1st respondent is disqualified to hold and continue in the post of MPTC for having five children. The petition to reject the E.O.P is filed by the 1st respondent only to drag on the proceedings.

6. Now the short question is - whether the E.O.P filed by the election petitioner is liable for rejection on the ground that he being a voter and not being the aggrieved person is not having *locus standi* to file the E.O.P before the District Court and raise the issue of disqualification of the 1st respondent to hold the post or to continue in the said post of MPTC, Makthal-V.

7. Admittedly, the 1st respondent in the E.O.P is the successful returned candidate. The election petitioner is a voter. This Court is now not considering as to in which Ward of the Gram Panchayat the election petitioner was registered as a voter and is further not going into

the aspect of his *locus standi* on the count that he is not a voter in the subject Constituency from which the 1st respondent was elected.

8. The election petitioner, who is a voter, filed the E.O.P under Section 19(3) read with Section 22 of the Act to declare the 1st respondent as disqualified to hold the post and to continue in the post of MPTC in view of the provision of Section 19(3) of the Act as she is having five children.

8.1 In the light of the contentions which are extracted supra and the issue that falls for consideration, it is necessary to refer to Sections 19 (3) and 22 (1) of the Act, which read as under:

Section 19(3): Disqualification of candidates:

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 clause referred to as the date of such commencement, of an additional child shall not be taken into consideration for the purposes of this clause;

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 clause 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 his section shall not apply in respect of a person for reasons to be recorded in writing.

Section 22(1), Authority to decide questions of disqualifications of members:

Where an allegation is made that any person who is elected as a member of a Gram Panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the Gram Panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the (District Court) having jurisdiction over the area in which the office of the Gram Panchayat is situated for decision.

8.2 Section 22 (1) postulates as follows: - 'Any voter or an authority may make an allegation, in writing, to the executive authority that an elected member of a Gram Panchayat is not qualified or has become disqualified as per the provisions of the Act. On receiving such written allegation, the executive authority has to give an intimation of such allegation to the elected member through the District Panchayat Officer. On receiving such intimation, such member may dispute the correctness of the allegation so made. Sometimes, the member himself may entertain a doubt whether or not he has become disqualified under the relevant Sections of the Act. In such a case in which the member himself entertains any such doubt, then such member or any other member may and in all other cases the executive authority at the direction of the Gram Panchayat or the Commissioner shall within a period of two months from the date the doubt is entertained or from the date on which such intimation is given, as the case may be, apply for a decision to the District Court, having jurisdiction over the area in which the office of the Gram Panchayat is situate.' Thus, a plain reading of the Section shows that the power to apply to the District Court is conferred upon the member against whom any allegation is made or any other member and the executive authority, but, no power is conferred directly on the voter to apply to the District Court.

8.3 Nevertheless, in the case on hand, the voter directly applied to the District Court. In the light of the above provision and the admitted facts, learned counsel for the 1st respondent-turned candidate would contend that the E.O.P is liable for rejection as the election petitioner-voter is not competent to directly institute the E.O.P and as he has no *locus standi* to directly file an election petition before the District Court

and as the District Court is not having jurisdiction to entertain such petition directly filed by the election petitioner-voter. However, learned counsel for the election petitioner would submit that the election petitioner-voter filed a complaint, on 27.10.2014, before the District Panchayat Officer and the District Collector, Mahabubnagar, but, they failed to follow the procedure under Section 22 of the Act; and, therefore, the voter-election petitioner is constrained to file the E.O.P and that in the said circumstances the E.O.P filed by the petitioner is maintainable and is not liable for rejection. Be that as it may.

9. At this stage it is necessary to refer to the decisions relied upon by the learned counsel for both the sides.

(i) Mellimi Lakshmikantam v. Election Tribunal-cum-Principal District Judge, West Godavari¹. In this decision, a Division Bench of this Court having analysed Section 19(3) of the Act dealing with disqualification and Section 22(1) and other relevant provisions and rules held at paragraph 7 as follows:

‘An analysis of the above reproduced provisions makes it clear that while the question as to whether a person elected as a member of the Gram Panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19, etc. can be decided under Section 22(1) by the District Court having jurisdiction over the area in which the office of the Gram Panchayat is situated, an election to any post under the Andhra Pradesh Panchayat Raj Act, 1994 can be called in question only by presenting an election petition to the Tribunal specified in Rule 2(2)(a) of the Rules and adjudicated by such Tribunal if it is satisfied about existence of either of the grounds enumerated in Clauses (a) to (d) of Rule 12. Though the provisions of Section 22(1) and Rule 12(a) read with Section 233 appear to be overlapping, the person seeking to challenge the election has the option to avail either of the remedies. In a given case, the aggrieved person (this term

¹ 2008 (1) ALT 388 (DB)

includes 'a voter') for the purpose of Section 22(1) can file a petition to the District Court under Section 22(1) even though an election petition may not have been filed within the prescribed time under Section 233 read with Rules 2(2)(i)(a) and 3.....'

Further, in paragraph 8 it was held as follows: 'In the light of the above, it is to be seen whether respondent No.1 had the jurisdiction to entertain the petition filed by respondent No.2 for setting aside election of the appellant herein and for grant of a declaration for her own election.' The Division Bench eventually held that the District Court is not having jurisdiction to entertain the election petition filed by the 2nd respondent therein. However, the cited decision is distinguishable on facts; in the cited case, the election petition was filed by the unsuccessful candidate and not by a voter; further, the present issue did not fall for consideration in the cited decision as the petitioner therein was not a voter, as in the present case.

(ii) In Chennavelli Narsimulu v. Molgari Narayan Goud,² the facts disclose that the election petition was filed by a defeated candidate on the ground that the successful candidate incurred disqualification under the provision of Section 19(3) of the Act. Having regard to the facts of the cited case, a learned single Judge of this Court while following the above referred decision of the Division Bench of this Court held that in view of the averments in the petition and in the absence of following the procedure contemplated under Section 22 of the Act, the District Judge is not having jurisdiction to decide the said dispute.

(iii) N. Tirupatiah v. District Panchayat Officer³. In this cited case, the election petitioner gave a complaint to the 2nd respondent

² 2016 (3) ALT 541

³ 2005(1) ALT 426

therein alleging that the 3rd respondent incurred disqualification for being elected or for continuing as a Sarpanch on the ground that he was having three children as on the date of election. As no action was taken, the petitioner filed a writ petition and the same was disposed of directing the 2nd respondent to take action. When the order was not complied with, contempt case was filed. Based on an enquiry conducted a memo was issued informing the petitioner that the 3rd respondent did not attract disqualification; and, challenging the same the writ petition was filed. Ultimately, the writ petition was allowed and liberty was given to the petitioner to move the District Court for a decision on the disqualification of the 3rd respondent. However, the issue with regard to maintainability of the case filed by a voter before a District Court did not come up for consideration.

(iv) In none of the cited decisions, the issue that is raised in this revision was raised directly and the said issue, therefore, did not fall for consideration. Hence, in the cited decisions no proposition of law of universal application was laid down after answering the issue which is now raised in the present *lis*.

10. Further, for a correlative and an analogical study, it is apt to refer to Section 17 of the Andhra Pradesh Municipalities Act, 1965. The said Section reads as under:

‘District Judge to decide questions of disqualifications of members:

(1) Where an allegation is made by any voter or authority to the Commissioner in writing that any person who is elected as a member has not qualified or has become disqualified under Section 13, Section 13-A, Section 13-B, Section 14, Section 16 or Section 19 and the Commissioner has given intimation of such allegation to the member and such member disputes the correctness of the allegation so made or

where any member himself entertains any doubt whether or not he has become disqualified under any of those sections,--

(a) Such member or any other member may, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be; and

(b) The Commissioner shall, either on the direction of the Council or with the approval of the Government if no such direction is given within a period of two months from the date of placing of the matter by the Commissioner before the Council apply for a decision to the District Judge of the district in which the municipality is situated.

2. The said Judge, after making such inquiry, as he deems necessary, shall determine whether or not such person disqualified and his decision shall be final.

3. Pending such decision, the member shall be entitled to act, as if he was not disqualified.'

A perusal of the Section makes it evident that the only means by which proceedings can be laid before the Court of District Judge under Section 17 is, therefore, by means of an application made by the Commissioner. The provision does not enable the complainant himself to approach the District Judge for adjudication. In fact, the interpretation of the above Section fell for consideration before this Court in *Sonti Srinivasa Rao v. Boina Lakshmi Narayana and others*⁴ wherein this Court having analysed the Section held as follows: 'From a perusal of the section it is evident that the only way through which proceedings can land before the Court of District Judge under Section 17 is through an application made by the Commissioner. The provision does not enable the complainant himself to approach the District Judge for adjudication. In case, there was any inaction or default on the part of the Commissioner in taking necessary steps contemplated under Section 13-A, the aggrieved party must have recourse to any remedy, to compel the

⁴ 2996(5) ALT 825

Commissioner to discharge his obligation. The default on the part of the Commissioner does not confer right upon the complainant to approach the District Judge.'

11. In the well considered view of this Court, a plain consideration of the provision of Section 22(1) of the Act makes it manifest that if any voter is interested to see that an elected member is disqualified for holding the post or to continue in the post to which the member is elected and wants the legal proceedings to be set in motion, he is required to make an allegation, in writing, to the executive authority that an elected member of a Gram Panchayat is not qualified or has become disqualified to continue in the elected post as per the provisions of the Act; and, on receiving such written allegation, the executive authority has to give an intimation of such allegation to the elected member through the District Panchayat Officer; on receiving such intimation, such member may dispute the correctness of the allegation so made. Sometimes, the member himself may entertain a doubt as to whether or not he has become disqualified under the relevant sections of the Act. In such a case, the member himself or any other member may within two months from the date on which such doubt is entertained apply for a decision to the District Court having jurisdiction over the area in which the Gram Panchayat is situate. However, in all other cases, the executive authority at the direction of the Gram Panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given, apply for a decision to the District Court, having jurisdiction over the area in which the office of the Gram Panchayat is situate. Thus, a plain reading of the Section shows that the power to apply to the District Court is conferred upon the member against whom any allegation is made or any other member, in

case where a doubt is entertained by the member himself; and in all other cases, the power to apply to the District Court is conferred on the executive authority. Further, the power conferred on the said authority is to be exercised by the said authority at the direction of the Gram Panchayat or the Commissioner. But no power is conferred on the voter to directly apply to the District Court.

12. Thus, the provision does not confer a right on a voter or a complainant to directly file an election petition before the District Court. Even in a case where the voter, who made an allegation in writing against the elected member to the executive authority, was aggrieved on account of inaction on the part of that authority, he cannot directly approach the District Court but has to avail a remedy to compel the said authority to act in accordance with the provision of law. In that view of the matter, this Court is of the considered view that the Court below was in error in holding that a voter can maintain an application directly and that the District Court is competent to entertain such an application. As a sequel to the said finding this Court holds that the said impugned order, which is contrary to the plain language of Section 22 of the Act is unsustainable and is liable to be set aside.

13. In the result, the Civil Revision Petition is allowed and the order impugned is set aside. As a sequel, IA.No.57 of 2016 in E.O.P.No.1 of 2014 is allowed and the E.O.P is rejected.

Miscellaneous petitions, if any, pending in this revision petition shall stand closed. There shall be no order as to costs.

M. SEETHARAMA MURTI, J

01.06.2017
Vjl