

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

W.P.No.10541 of 2017

ORDER:

In the present Writ Petition, challenge is to the notification bearing No.45/SEC-B1/2016-24 dated 21.3.2017 issued by the State Election Commission to the extent of proposal to hold election to the office of the President, Mandal Praja Parishad, Peravali, West Godavari District.

2. Heard Sri C.B.Rammohan Reddy, learned counsel for the petitioner and Sri V.V.Prabhakar Rao, learned Standing Counsel for the State Election Commission, apart from perusing the material available on record.

3. According to the petitioner, she is a resident of Teeparru village, Peravali Mandal, West Godavari District and belongs to Scheduled Caste. Elections to the Mandal Praja Parishad, Peravali, West Godavari District were held on 11.4.2014, wherein one Smt.Nalli Jhansi, who was elected as MPTC from Teeparru village, got elected as President, Mandal Praja Parishad, Peravali, which is reserved for Scheduled Caste community. The said elected President of Mandal Praja Parishad (MPP), Smt.Nalli Jhansi passed away on 30.9.2015. Due to the death of the said Nalli Jhansi, the post of MPTC, Teeparru and the office of the President, MPP, Peravali fell vacant. Now by virtue of the notification under challenge, the Respondent authorities have proposed to hold elections for the office of President, MPP, Peravali.

4. It is the submission of the learned counsel for the petitioner that the impugned action of holding elections to the President, MPP, Peravali without filling up the post of MPTC, Teeparru is highly arbitrary, illegal and contrary to the provisions of A.P. Panchayat Raj Act, 1994 and A.P. Panchayat Raj (Conduct of Elections) Rules, 2006 (for short 'the Rules') notified vide

G.O.Ms.No.142 Panchayat Raj and Rural Development (Elec. & Rules) dated 3.5.2006. It is further submitted that the impugned action is opposed to the very spirit and object of the provisions of Section 153(6) of A.P. Panchayat Raj Act and Rule 98 of the Rules. In support of his submissions/contentions, the learned counsel for the petitioner placed reliance on the following judgments:

- (1) K.Hemalatha v. State of A.P., Municipal Administration & UD Department and others¹.
- (2) Lingala Pullayya v. State of A.P., Panchayat Raj Department².

5. On the other hand, it is vehemently contended by the learned Standing Counsel Sri V.V.Prabhakara Rao, appearing for State Election Commission that since the election process has already commenced, the present Writ Petition is not maintainable and there is no compulsion on the part of the Respondents in filling up the casual vacancy of MPTC before holding the election to the post of President, MPP. In support of his submissions/contentions, the learned Standing Counsel placed reliance on the following judgments:

- (1) Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharashtra and others³.
- (3) Samanthapudi Aratharam Raju v. Government of Andhra Pradesh, rep. by its Secretary, Panchayat Raj and Rural Development⁴.

6. In order to adjudicate the issues in the present Writ Petition, it may be appropriate to refer to the provisions of A.P. Panchayat Raj Act and the Rules framed thereunder. Section 153 of the Act deals with election, reservation

¹ W.A.No.1416 of 2016 dated 3.3.2017

² W.P.No.36498 of 2016 dated 16.11.2016

³ (2001) 8 SCC 509

⁴ LAWS (APH) 2011-1-21

and term of office of President and Vice-President and sub-section (6) of Section 153 reads as under:

“Any casual vacancy in the office of the President or Vice-President shall be filled within a period of six months from the date of occurrence of the vacancy by a fresh election under sub-section (3) and a person elected as President or Vice-President in any such vacancy shall hold office only so long as the person in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.”.

7. In exercise of the powers conferred under Section 268 read with Sections 8, 11, 12, 13, 14, 19-B, 151, 156, 179, 201A, 230A and 230B, State Government framed the Rules called A.P. Panchayat Raj (Conduct of Elections), 2006. Rule 98 of the said Rules stipulates that any casual vacancy of Member and Sarpanch and Sarpanch of Gram Panchayat and Members of Mandal Parishad/Zilla Parishad shall be filled up within a period of one hundred and twenty (120) days from the date of occurrence of such vacancy in accordance with the provisions of these rules and orders made thereunder.

8. Therefore, it is very much clear that it is obligatory on the part of the Respondents to fill up the casual vacancy in the office of President within a period of six months from the date of occurrence of vacancy. Rule 98 of the Rules referred to supra, mandates the authorities to fill up the casual vacancy of MPTC within a period of 120 days from the date of occurrence of such vacancy.

9. In the present case, the office of MPTC and the President, Mandal Praja Parishad fell vacant on 30.9.2015 consequent upon the death of the elected candidate. Though the rule mandates that casual vacancy of MPTC is required to be filled up within a period of 120 days, i.e. four months, admittedly, the Respondents did not take any action for filling up the said

vacancy. The annexures attached to the impugned notification also show that there have never been any impediment for holding the elections for MPTC. While referring to the above provisions of law, it is the submission of the learned counsel for the petitioner that unless the authorities fill up the casual vacancy of MPTC, the Respondents cannot proceed with the process of filling up the post of President, MPP as per sub-section 6 of Section 153 of the Act.

10. In fact, when similar question came up for consideration before this Court with regard to similar rules under the Municipal Corporations Act, the Division Bench of this Court in W.A.No.1416 of 2016, while setting aside the order passed by the learned Single Judge, directed to complete holding of elections to the office of Mayor and Members of the Chittoor Municipal Corporation before a particulate date. In the said matter, the learned Single Judge directed the State Election Commission to hold election to the post of Mayor, Chittoor Municipal Corporation without linking up holding of such election to the election of vacant Ward members of Chittoor Municipal Corporation. In the above Writ Appeal, the Division Bench did set aside the order to the said extent. In Writ Petition No.36498 of 2016, when similar question came up before this Court, the learned Single Judge of this Court directed the Respondents therein to initiate steps for conducting election to casual vacancy of MPTC and complete the same and thereafter, take up election for President, Mandal Praja Parishad.

11. In *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra* (1 supra), the Hon'ble Apex Court at paragraph 4 held as under:

“On the arguments raised by the learned counsel for the parties the questions that arise for consideration are : (1) whether the

preparation of the electoral roll for electing members to the managing committee of a specified society under the provisions of the Act and rules framed thereunder is an intermediate stage in the process of election; and (2) If the answer to the first question is in the affirmative, whether the High Court should interfere with the preparation of an electoral roll in a petition under Art. 226 of the Constitution or decline to interfere in the matter leaving the parties to get the matter adjudicated by the tribunal by filing an election petition after declaration of result of the election.”

12. While referring to the above said judgment, it is submitted by the learned Standing Counsel appearing for State Election Commission that the petitioner herein is required to have her claim adjudicated before the Election Tribunal, but not before this Court under Article 226 of the Constitution of India. In this connection, it may be appropriate to refer to Rule 2(1) of Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995, which reads as follows:

“Save as otherwise provided no election held under the Act, whether of a member, Sarpanch or Upa-Sarpanch of Gram Panchayat, President and Vice-President of Mandal Parishad and Member of Mandal Parishad Territorial Constituency and Chairperson of Zilla Parishad and Member of Zilla Parishad and Member of Zilla Parishad Territorial Constituency thereof, shall be called in question except by an election petition presented in accordance with these Rules to the Election Tribunal as defined in sub-rule (2) by any candidate or elector against the candidate who has been declared to have been duly elected (hereinafter called the returned candidate) or if there are two or more returned candidates against all or any such candidates”.

13. A reading of the above rule, in clear and unequivocal terms, discloses that the benefit and right to avail the remedy by way of election petition is available only to the persons who contested in the elections, but not to

others. Therefore, the contention as regards the availability of alternative remedy, as advocated by the learned Standing Counsel is required to be rejected. Yet another decision cited by the learned Standing Counsel in the case of *Samanthapudi Aratharam Raju v. Government of Andhra Pradesh, rep. by its Secretary, Panchayat Raj and Rural Development* (4 supra). In the said case, this Court at paragraph 3 held as under:

“At the hearing, the learned Counsel for the Petitioner has not brought to the notice of this Court any statutory provision, which bars holding of election to the Office of the President without filling up the vacancies in the office of the Members of MPTC. On the contrary, the learned Counsel is fair in bringing to this Court's notice Rule 98 of the A.P. Panchayat Raj (Conduct of Elections) Rules, 2006, framed under G.O.Ms. No. 142, Panchayat Raj and Rural Development (Elec. & Rules), dated 03.05.2006, under which, any casual vacancy of Member and Sarpanch of Gram Panchayat and Members of Mandal Parishad/Zilla Parishad shall be filled up within a period of one hundred and twenty days from the date of occurrence of such vacancy in accordance with the provisions of the Rules and orders made thereunder. In the absence of any stipulation that the election to the office of the President shall not be held without filling up of the casual vacancies coupled with Rule 98, which provides for a period of one hundred and twenty days for filling up casual vacancies, I do not find any merit in the plea of the Petitioner that the proposal to hold election to the Office of the President of the Mandal Praja Parishad without filling up the casual vacancy is illegal.

14. The said judgment, in the considered opinion of this Court would not render any assistance to the Respondents herein in view of the Division Bench judgment of this Court in W.A.No.1416 of 2016, wherein identical provisions were considered by the Division Bench. No reasons are also forthcoming as to why the Respondents have not proposed to hold the election of MPTC, Teeparu, which simultaneously fell vacant.

15. In view of the above reasons and the principles laid down in the above referred judgments cited by the learned counsel for the petitioner, this Court is of the considered opinion that the impugned notification issued by the State Election Commission to the extent of proposing to hold election to the office of President, Mandal Praja Parishad, Peravali cannot stand for judicial scrutiny.

16. For the aforesaid reasons, the Writ Petition is allowed, setting aside the notification bearing No.45/SEC-B1/2016-24 dated 21.3.2017 issued by the State Election Commission only to the extent of proposal to hold election to the office of the President, Mandal Praja Parishad, Peravali, West Godavari District. However, it is open for the Respondents to hold election to the post of President, Mandal Praja Parishad, Peravali, West Godavari district after filling up the casual vacancy of MPTC, Teeparu, West Godavari district. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.



A.V. SETHA SAI, J

Date: 27.3.2017

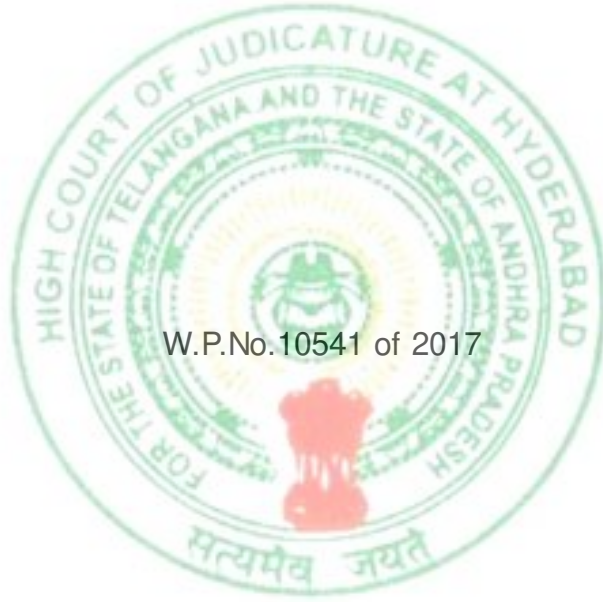
Note:

Office to despatch the order forthwith.

(B/o)

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



27.3.2017