

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.15087 OF 2017

ORDER:

Heard Ms.S.Nanda for petitioner, the Assistant Government Pleader for Panchayat Raj and Mr.L.J.Veera Reddy for respondent No.6.

The petitioner challenges proceedings Roc.No.2351/2016/A2 dated 06.04.2017 of the 2<sup>nd</sup> respondent as illegal and contrary to the requirement of Section 20(aa) of the A.P. Panchayat Raj Act, 1994 (for short 'the Act').

The petitioner is the elected Sarpanch of Nandyalampet Village, Mydukur Mandal, Y.S.R.Kadapa District. The 6<sup>th</sup> respondent has been challenging the social status claimed by petitioner as BC-E and the certificate produced by the petitioner.

The issue on the social status of petitioner and also the certificate are the subject matter of enquiry in Appeal No.2074/F/2016 read with proceedings R.Dis.No.C5/832/M/2013 before the 1<sup>st</sup> and 2<sup>nd</sup> respondents. The petitioner in W.P.No.44429 of 2016 challenged the orders of 1<sup>st</sup> and 2<sup>nd</sup> respondents holding the social status of petitioner as 'OC' but not 'BC-E'. On 23.12.2016, W.P.No.44429 of 2016 was disposed of and the operative portion of the order reads thus:

"The order, dated 09.11.2016, passed by the 2<sup>nd</sup> respondent is set aside and the 2<sup>nd</sup> respondent is directed to pass orders afresh on the representation made by the 6<sup>th</sup> respondent, after giving notice to the petitioner and after hearing both the parties, within a period of three (3) months from the date of receipt of a copy of this order. The petitioner is also directed to approach the

2<sup>nd</sup> respondent and place her grievance during the enquiry to be conducted by the 2<sup>nd</sup> respondent”.

The 2<sup>nd</sup> respondent issued show cause notice dated 30.01.2017 to petitioner calling upon the petitioner to show cause why disqualification under Section 20(aa) of the Act be not declared. According to petitioner, on 13.02.2017, the petitioner has given reply and also brought to the notice of 2<sup>nd</sup> respondent the order passed by this Court in W.P.No.44429 of 2016. The petitioner to point out the *prima facie* infirmity in the procedure followed by 2<sup>nd</sup> respondent draws the attention of the Court to notice dated 03.04.2017 issued in Form VI of the Act fixing the enquiry as 18.04.2017 at 11.00 A.M., in the chambers of Joint Collector, District Collectorate, Kadapa, but the 2<sup>nd</sup> respondent issued proceedings Roc.No.2351/2016/A2 dated 06.04.2017 disqualifying the petitioner as Sarpanch. For appreciating the legal ground urged by the petitioner, the Court finds it convenient to excerpt the relevant portion of impugned proceedings.

“The District Collector, YSR District, issued orders cancelling the BC-E certificate, since it was found on enquiry on the petition sent by Shaik Ramthu Miya, s/o Jamal Miya Saheb of Nandyalampet Village, it was found that Smt.Syed Shamshad Begum got elected as Sarpanch by producing bogus B.C-E certificate though she belongs to OC caste. Therefore orders are hereby issued U/s 20(aa) and Rule 22 of A.P. Panchayat Raj Act, 1994, declaring Smt.Syed Shamshabad Begum, w/o Shaik Bacha Moiddin as disqualified for the post of Sarpanch since she did not give any explanation even after expiry of 51 days to the show cause notice issued calling up her to explain and since BC-E caste certificate produced by her was found on enquiry to be a bogus caste certificate”.

The counsel for petitioner contends that Section 20 of the Act enables the District Collector to pass order of disqualification on a member who has become ineligible to hold the office under specified circumstances. According to her, the circumstance allegedly attracted to the case on hand is the order passed by respondent Nos.1 and 2 under the A.P (Scheduled Caste, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993. The petitioner suffered order declaring him as not belonging to BC-E vide order dated 09.11.2016. This order was confirmed by the Government in Appeal No.2074/F/2016. The writ petition was disposed of by setting aside the order dated 09.11.2016. Therefore, it means, the disqualification which was the genesis for initiating action under Section 20(aa) of the Act does not subsist for passing a final order by 2<sup>nd</sup> respondent. The counsel places strong reliance on Section 20(aa) which reads thus:

**20. Disqualification of members:-** Subject to the provisions of section 22, a member shall cease to hold office as such if he –

(a) xxxxxx

[(aa) is elected as a member to a Ward/Office reserved for Scheduled Castes or Scheduled Tribes or Backward Classes on the basis of a community certificate and subsequently the said community certificate is cancelled under section 5 of the Andhra Pradesh (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of Issue of Community Certificates Act, 1993.]

In the case on hand, the basis for disqualifying the petitioner is that the social status of petitioner is different than what is claimed by petitioner. The basis for such presumption is erased by the order

dated 23.12.2016 in W.P.No.44429 of 2016. Sub-section (aa) is categorical in its terms that the disqualification power is attracted after an order is passed under Section 5 of 1993 Act. In the case on hand, with the remand of case to Collector, it cannot be said that there is an order under the 1993 Act which could be the basis for declaring the petitioner as disqualified under Section 20(aa) of the Act.

The writ petition is, accordingly, ordered and proceedings impugned in the writ petition are set aside. The matter is remitted to the District Collector to consider the representation of petitioner dated 13.02.2017 and dispose of the case pending in file R.Dis.No.C5/832/M/2013 expeditiously, preferably within three months from today. There shall be no order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

22<sup>nd</sup> March, 2018

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S. V. BHATT, J