

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI**

Writ Appeal No.452 of 2018

JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred against the interim order passed by the Learned Single Judge in I.A.No.1 of 2018 in W.P.No.6477 of 2018 dated 05.03.2018. The appellant herein filed the Writ Petition questioning the order passed by the Junior Civil Judge-cum-Election Tribunal, Banswada in O.P.No.1 of 2013 dated 19.02.2018. The 6th respondent herein filed the said petition questioning the election of the appellant-writ petitioner as a Sarpanch contending that she had suffered the disqualification of having more than two children after the cut off date of 30.05.1994.

The dispute, in the present case, relates to the date of birth of the appellant-writ petitioner's 4th child by name Miss.N.Lalitha. The S.S.C pass certificate of Miss.N.Lalitha shows her date of birth as 20.05.1996. While the appellant-writ petitioner placed reliance on an order of this Court, in **Chowdary Kamala Bai v. District Election Authority-cum-District Collector, Adilabad**¹, the Learned Single Judge has, in the order under appeal, observed that the said judgment related to a case where the children were born to two different wives, whereas, in the present case, it was not in dispute that the appellant-writ petitioner had four children; the very fact that the appellant-writ petitioner had not disputed that she had four children would require the matter to be finally heard;

¹ 2010 (3) ALD 276

and until the finding, recorded in O.P.No.1 of 2013 that the appellant-writ petitioner had her fourth child after the cut off date, is set aside, her election could not be upheld.

Even before us, reliance is placed, on behalf of the appellant-writ petitioner, on the judgment of a Learned Single Judge of this Court in **Chowdary Kamala Bai**¹. In that case the petitioner's husband had two wives and two children each were born to the first wife and the petitioner therein. On the ground that the petitioner therein had only two children, the Learned Single Judge set aside the order of the Election Tribunal. While there are certain observations in the said judgment that a bona-fide certificate, issued in respect of the third child, cannot be relied upon, the said judgment has no application to the facts of the present case where the appellant-writ petitioner admits having four children, and only contends that the 4th child was born before the cut-off date. As the Election Tribunal relied on the S.C.C pass certificate of the 4th child to hold that the date of birth of the appellant-writ petitioner's fourth child was 20.05.1996, which is after the cut-off date of 30.05.1994, the Learned Single Judge was justified in refusing to interfere with the order of the Election Tribunal holding that, until and unless this finding of fact was reversed, election of the appellant-writ petitioner could not be upheld, and she could not be permitted to hold office.

In an intra-Court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order under appeal suffers from a patent illegality. We find no such infirmity in the order under appeal.

The Writ Appeal fails and is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

Date: 16th March, 2018.

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