

THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

W.P.Nos.8200 and 10037 of 2018

COMMON ORDER :

In these Writ Petitions, the order dt.05.03.2018 in Election O.P.No.1 of 2014 of the Election Tribunal-cum-Principal Senior Civil Judge, at Mahabubnagar (**for short, 'the Election Tribunal'**), is questioned. Therefore, they are being disposed of by this Common Order.

2. The petitioners in both the Writ Petitions and the 1st respondent therein contested for the Office of the Member, Madgul Zilla Praja Parishad, Territorial Constituency (Z.P.T.C.) (**for short, 'the Madgul ZPTC'**) of Madgul Mandal, Mahabubnagar District, which had been notified by the Election Commission after nominations were filed in March, 2014 by all of them.

3. While the 1st respondent contested for the Indian National Congress (INC) Party Ticket, the petitioner in WP.No.8200 of 2018 contested for the Telangana Rashtra Samithi (TRS) Party Ticket, the 1st petitioner in WP.No.10037 of 2018 contested for Bahujan Samaj Party (BSP) Party Ticket and the 2nd petitioner in WP.No.10037 of 2018 contested for the Bharatiya Janata Party (BJP) Party Ticket.

4. Results were declared on 13.05.2014, and the total number of votes for the Madgul ZPTC is 35,214, out of which 29,358 votes were polled; and out of the polled votes, 28,394 ballots were found valid and 964 ballots were found invalid and rejected.

5. The 1st respondent in both the Writ Petitions got 12,263 votes; the petitioner in WP.No.8200 of 2018 got 12,723 votes; and the petitioners in WP.No.10037 of 2018 got 377 and 3031 votes respectively.

6. Since the petitioner in WP.No.8200 of 2018 got a majority of 460 votes, he was declared as elected as Member of the Madgul Z.P.T.C., Mahabubnagar District on 13.05.2014.

THE ELECTION O.P.1/2014

PLEA OF ELECTION PETITIONER / RESPONDENT NO.1

7. The 1st respondent then filed Election O.P.No.1 of 2014 under Section 233 of the Andhra Pradesh Panchayat Raj Act, 1994 R/w Rule 12 of the Andhra Pradesh (Election Tribunal in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 before the Election Tribunal, alleging that the petitioner in WP.No.8200 of 2018 is having four children and two of them, viz., P. Aruna and P. Vennela were born on 02.02.1996 and 07.05.1998, respectively, after the commencement of the Andhra Pradesh Panchayat Raj Act, 1994, and after the cut-off date of 30.05.1995; and that the petitioner in WP.No.8200 of 2018 was disqualified under Section 19(3) of the Andhra Pradesh Panchayat Raj Act, 1994 (**for short, 'the Act'**).

8. The 1st respondent contended in the Election O.P. that petitioner in WP.No.8200 of 2018 is disqualified for the election and for continuing as Z.P.T.C Member and to declare his election as void, being violative and contrary to the mandatory provisions of Section 19(3) of the Act; consequently, to set aside the said election held on 06.04.2014; and to

declare the 1st respondent as duly elected to the Office of the Member of Madgul Z.P.T.C., Madgul Mandal, Mahabubnagar District.

9. In the Election O.P., the 1st respondent/ Election Petitioner contended that the petitioner in WP.No.8200 of 2018 is native of Irvin Village of Madgul Mandal; that his wife's name is Smt. Shivalatha, and she gave birth to P. Aruna on 02.02.1996 and P. Vennela on 07.05.1998; that P. Aruna studied in Triveni High School, Champapet, Hyderabad with Admission bearing No.P0238 and completed S.S.C. with Registered No.1237111403 and the date of birth of P. Aruna is entered in the S.S.C. certificate issued by the Board of Secondary Education as 02.02.1996, and her birth was ordered to be registered in the Births and Deaths Register vide orders in File No.F/4404/2012 dt.10.07.2012 of the R.D.O., Mahabubnagar and was entered in the Records vide File No.C/1638/2012 of Tahsil Madgul as 02.02.1996; that the wife of the petitioner in WP.No.8200 of 2018 gave birth to P. Vennela on 07.05.1998; that the said P. Vennela studied in Triveni High School, Champapet, Hyderabad with Admission bearing No.4590 and completed S.S.C. and her date of birth entered in the S.S.C. certificate is 07.05.1998; that he requested the concerned authorities under the Right to Information Act, 2005 to furnish copies of proceedings issued by the Revenue Divisional Officer directing the registration of births of P. Aruna and the copies of the birth records from the Tashildar Office, Madgul through an application filed under the R.T.I. Act, 2005; that he made an application on 27.05.2014 under the R.T.I. Act, 2005 to furnish details of birth of P. Vennela as was registered in the Nativity, Community and Date of Birth Certificate issued on 06.08.2013 from the Office of Tashildar,

Madgul; that the authorities issued notice to the petitioner in WP.No.8200 of 2018 calling for objections from him since it relates to his personal details, and he objected to issuance of copies, and so the Tahsildar issued endorsement dt.31.05.2014 refusing to issue copies; that thereafter, he preferred an appeal on 05.06.2014 to the Revenue Divisional Officer, Mahabubnagar; that the details of the family members of the petitioner in WP.No.8200 of 2018 are also entered in the Ration Card which shows that he has four children.

10. He contended that as per Section 19(3) of the Act which came into force w.e.f. 30.05.1994, a person having more than two children prior to the commencement of the Act shall be disqualified for the election or for continuing as Member; and a person already having more than two children, if he has more than two children after 30.05.1995, it would operate as a disqualification; and since the daughters of the petitioner in WP.No.8200 of 2018, viz., P. Aruna and P. Vennela, were born on 02.02.1996 and 07.05.1998 respectively after 30.05.1995, he incurred disqualification for continuing as Member of Madgul Z.P.T.C.

11. He further contended that since the 1st respondent secured the second highest number of votes, i.e., 12,263 votes, if the election of the petitioner in WP.No.8200 of 2018 is set aside, he is entitled to be declared as elected candidate to the Office of the Member, Madgul Z.P.T.C.

PLEA OF RETURNED CANDIDATE/ PETITIONER IN W.P.8200 OF 2018

12. The petitioner in WP.No.8200 of 1018 filed a counter-affidavit denying the allegation that he begot children after the commencement of

Andhra Pradesh Panchayat Raj Act, 1994. Though he admitted that he is having four children, he stated that all of them were born before the cut-off date 30.05.1995. He contended that his wife name is Shivaleela and not Shivalatha. He denied that he suppressed the fact that he was having four children and two of them were born after the commencement of the Act, and filed nomination papers.

13. He contended that his first son, viz., P. Devender, was born on 06.11.1989; his first daughter P. Madhavi was born on 09.07.1992; his second daughter P. Aruna was born on 03.10.1993 and his fourth daughter P. Vennela was born on 02.12.1994, all before 30.05.1995.

14. He denied that the 1st respondent had *locus* to file the Election O.P. or to seek relief for declaring himself as elected candidate of the Madgul Z.P.T.C., on the ground that he had secured second highest majority of votes.

15. He stated that he did not indulge in any corrupt practice and induced voters, and therefore, the election petition should be dismissed.

16. He contended that the Head Master of the Triveni High School is not a public servant and his record is not authenticated and is not supported by declaration of himself and his wife Smt. Shivaleela. He contended that the record of the said School is not binding on him and his children as it was a hearsay and was recorded as per will and wish of the school authorities for their convenience for the sake of appearance in S.S.C. Board Examination. He contended that though the S.S.C. Memorandum obtained by P. Aruna through Triveni High School, Hyderabad showed her date of birth as

02.02.1996, it is not true and correct and it was not declared by himself or his wife Smt. Shivaleela before the School authorities at any point of time.

17. He denied that the date of birth of his daughter P. Aruna was ordered to be recorded and registered in the Births and Deaths Register vide File No.L/4404/2012 dt.10.07.2012 and asserted that it is false and fabricated behind his back by his political opponents. He also stated that the alleged entry of P. Aruna's Date of Birth as 02.02.1996 vide File No.C/1638/2012 of Tashdil, Madgul is also false and fabricated behind his back. He denied that the said entry is as per the strict mandatory provisions of the Birth and Death Rules, 1999. He denied that he had given an application and affidavit on 07.05.2012 declaring her date of birth of P. Aruna as 02.02.1996 before any authority at any point of time.

18. He contended that the signatures on the affidavit and on the application dt.17.05.2012 do not belong to him and they were forged. He stated that his political opponents colluded with the e-seva Office Proprietor of Irvin Village along with the then Mandal Revenue Inspector and Mandal Revenue Officer and fabricated false record at the instigation of his political rivals behind his back.

19. He also stated that his wife Smt. Shivaleela underwent Family Planning Operation in 1994 itself.

20. He stated that he never gave any affidavit regarding date of birth of his daughters for the sake of registration of the same in the birth records or for issuance of Caste, Nativity, Community and Birth Certificate of P. Vennela.

21. He stated that he has filed Survey Register and Registration of Entry in Anganwadi Center, Irvin Village by obtaining the said certificate from I.C.D.S., C.D.P.O. Amangal, and also filed delivery certificate dt.15.07.2014 issued by the Civil Surgeon, Community Health Centre, Kalwakurthy pertaining to his wife Smt. Shivaleela's delivery.

22. He stated that he admitted his daughters P. Aruna and P. Vennela in Adarsha Vidyalaya, Charakonda of Vangoor Mandal on 28.06.1999, and their admission record sheet discloses that P. Aruna was born on 03.10.1993 and P. Vennela was born on 02.12.1994.

THE STAND OF THE RETURNING OFFICER

23. The Returning Officer, who was impleaded as 6th respondent in the O.P. as 5th respondent in both the Writ Petitions, also filed counter-affidavit and denied knowledge that the petitioner in WP.No.8200 of 2018 had four children and two of them were born after the commencement of the Act. It was stated in the counter-affidavit that if there is any disqualification incurred by the petitioner in WP.No.8200 of 2018 as per the provisions of the Act, the 1st respondent ought to prove the same.

EVENTS BEFORE THE ELECTION TRIBUNAL

24. The 1st respondent examined himself as PW.1 and got marked Exs.P.1 to P.23. He also summoned and examined the Deputy Tahsildar, Amangal as PW.2 and got marked Exs.X.1 to X.10. He also summoned and examined the Head Mistress of Triveni High School, Champapet, Hyderabad as PW.3 and got marked Exs.X.11 to X.19.

25. The Petitioner in WP.No.8200 of 2018 examined himself as RW.1 and marked Exs.R.1 to R.7. He summoned and examined the Civil Assistant Surgeon, Community Health Center, Kalwakurthy as R.W.2 and got confronted Ex.R.6. He summoned and examined Anganwadi Teacher as RW.3 and got confronted Ex.R.7. He examined Head Master of Adarsha Vidyalaya, Charakonda by summoning him as R.W.4, and got marked Exs.R.8 to R.13.

26. The other respondents in the Election O.P. did not adduce any evidence.

THE DECISION OF THE ELECTION TRIBUNAL

27. After considering the evidence on record, the Election Tribunal passed orders on 05.03.2018 declaring the election of petitioner in WP.No.8200 of 2018 to the post of Madgul Z.P.T.C. as void in view of his disqualification under Section 12(3) of the Act, and after declaring the 1st respondent as duly elected to the post of Madgul, Z.P.T.C. To avoid repetition, the reasoning of the Election tribunal is not mentioned here but will be discussed below.

28. Assailing the same, the petitioners filed these Writ Petitions.

THE PRESENT WRIT PETITIONS

29. The Counsel for petitioner in WP.No.8200 of 2018 attacked the order passed by the Election Tribunal raising the following contentions:

- a) The Election Tribunal failed to consider that the daughters of the petitioner by name P.Aruna and P.Vennela were born on 03-05-1983 and 02-12-1994; these dates of birth were entered

in the school records of Aadarsh Vidya Nilayam, an aided school as per the information furnished by the petitioner; that these dates of birth were changed by the Triveni Public School, Champapet, Hyderabad as per their own calculation;

- b) that there is a typographical error in the counter affidavit filed in the Election O.P. wherein the date of birth of P.Aruna was wrongly typed as 03-10-1993 instead of 03-05-1993;
- c) that the Tribunal failed to consider evidence of R.Ws.1 to 4 and Exs.R-1 to R-13;
- d) that the evidence adduced by the 1st respondent in support of the allegation levelled against the petitioner ought not to have been believed by the Election Tribunal;
- e) that the finding of the Tribunal that P.Aruna and P.Vennela were born on 02-02-1996 and 07-05-1998 is contrary to the relevant material and documents on record;
- f) that petitioner in W.P.No.8200 of 2018 is a poor and illiterate man hailing from a down trodden community and the 1st respondent is related to the local M.L.A. and used his influence to get the petitioner permanently disqualified from participating in Panchayat elections;
- g) that 1st respondent did not discharge the burden to establish that petitioner's two children P.Aruna and P.Vennela were born after the cut off date 30-05-1995;

- h) that without discrediting material filed by the petitioner, the Tribunal relied on material produced by 1st respondent and held against the petitioner; and
- i) that the Tribunal ignored material evidence produced by the petitioner and on preponderance of probabilities, the evidence produced by petitioner should have been believed;

Reliance is placed by the Senior Counsel appearing for petitioner on the decision in **Banda Mahender Goud Vs. State of Andhra Pradesh and others**¹ and it is contended that election process being the lifeline of democracy, setting aside an election should be done by a Tribunal or Court only when the contingencies provided for under the relevant statutes are firmly and clinchingly established; and deprivation of a right of a returned candidate to continue on the basis of Section 19 (3) of the Act ought to be on strong footing and findings, which should be unequivocal and where no second view is possible; and where two views are possible, the one which respects the verdict of the electorate and sustains the rights of the returned candidate, should be preferred to the one, which reverses the mandate of the electorate or deprives the elected person of his office.

30. The petitioners in WP.No.10037 of 2018 supported him and raised a contention that even if the petitioner in WP.No.8200 of 2018 was disqualified under Section 19(3) of the Act, the Election Tribunal could not have declared the 1st respondent as duly elected to the post of Madgul, Z.P.T.C.

¹ 2008 (6) ALD 827

31. The learned counsel for the 1st respondent refuted these contentions. He pointed out that appreciation of evidence by the Election Tribunal cannot be interfered with in exercise of jurisdiction under Article 226 of the Constitution of India since this Court is not acting as a Court of Appeal over the order passed by the Election Tribunal. The scope of interference in judicial review over orders of Tribunal such as Election Tribunal on findings of fact recorded by such Tribunal is extremely limited and in the absence of any perversity in the findings or non-consideration of material evidence by the Tribunal or consideration of irrelevant material by it, no relief can be granted to the petitioner. He contended that the Election Tribunal considered the evidence adduced by both parties and gave cogent reasons for believing the evidence adduced by the 1st respondent and for rejecting the evidence adduced by the petitioner and its finding that the two daughters of the petitioner P.Aruna and P.Vennela were born on 02-02-1996 and 07-05-1998 and consequently petitioner was disqualified under Section 19 (3) of the Act to even contest the post of Member, ZPTC, Madgul, does not warrant any interference by this Court. He also placed reliance on the decision of this Court in **R.Jayalakshamma Vs. Election Tribunal-cum-Senior Civil Judge, Punganur, Chittoor District and others²** and contended that as per Rules 12, 13 and 15 of the A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats Mandal Parishads, and Zilla Parishads) Rules, 1995, when election of returned candidate is set aside on the ground of disqualification, making declaration as duly elected, the election petitioner, the next candidate who secured the second highest votes, is permissible and not illegal.

² 2005 (5) ALT 400

32. Heard Sri P. Sri Raghuram, learned Senior Counsel appearing for Sri P. Sriram, counsel for petitioner in WP.No.8200 of 2018; and Sri N.V. Anantha Krishna, learned Counsel appearing on behalf of Sri P.V.A. Padmanabham, counsel for petitioners in WP.No.10037 of 2018.

33. I have noted the contentions of both sides.

POINTS FOR CONSIDERATION

34. The following points arise for consideration in these Writ Petitions:

- a) *Whether the impugned order of the Election Tribunal warrants interference by this Court under Article 226 of the Constitution of India on any of the grounds raised by the petitioner in W.P.No.8200 of 2018?*
- b) *Whether the Election Tribunal erred in declaring the 1st respondent as having been elected to the post of Member, ZPTC, Madgul, after disqualifying the petitioner in W.P.No.8200 of 2018 under Section 19 (3) of the Act?*

CONSIDERATION BY THE COURT

35. From the respective contentions of the parties, it is clear that the petitioner contends that his two daughters P.Aruna and P.Vennela were born on 03-10-1993 and 02-12-1994 respectively prior to 30-05-1995, while the 1st respondent contends that P.Aruna was born on 02-02-1996 and P.Vennela was born on 07-05-1998 after the said date and consequently incurred disqualification under Section 19 (3) of the Act.

36. Section 19 (3) of the Act states:

“Section 19(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 purpose 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.”

37. The Act came into force on 31-05-1994. As per Section 19 (3) if an individual gives birth to a third or subsequent child, after expiry of one year from the notified date, he shall incur disqualification. The date of expiry of one year period from the notified date is 30-05-1995. Therefore if P.Aruna and P.Vennela are is proved to have been born to petitioner and his wife after the said date, he would be disqualified under Section 19 (3) of the Act.

38. It was held by this Court in **J.Pushpalatha Vs. Election Tribunal, Bhongir**³ that election process being the lifeline of democracy, a Tribunal when it sets aside the election would not only be depriving the elected candidate of his or her elected office, it would also be reversing the mandate of the electorate and the same cannot be resorted to unless the contingencies provided for under the relevant statutes are firmly and clinchingly established. There should be no second view possible and the evidence must be unequivocal. Where two views are possible, the one which respects the verdict of the electorate and sustains the rights of the individual should be preferred to the one, which reverses the mandate of the electorate or deprives the elected person of his office. This principle was reiterated in **Banda Mahender Goud** (1 supra) also.

³ 2003 (1) ALD 488

39. Coming to the scope of judicial review, it is settled law that judicial review is not directed against the decision, but is confined to the decision making process. It cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. It is not an appeal from a decision but a review of the manner in which the decision is made. The Writ Court cannot re-appreciate the evidence and every wrong order cannot be quashed by issuing a Writ of Certiorari. The High Court has no jurisdiction to substitute its own opinion for that of the inferior Tribunal even if it is satisfied that the decision is wrong. A Writ of Certiorari can be issued if it is shown that in recording a finding, the Tribunal erroneously refused to admit admissible and material evidence or had erroneously admitted inadmissible evidence which has influenced the impugned finding. An error of law which is apparent on the face of the record can only be corrected but not an error of fact however grave it may be. 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. A finding of fact recorded by a Tribunal cannot be challenged in proceedings for a Writ of Certiorari on the ground that relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. Adequacy or sufficiency of evidence led on a point, and the inference of fact to be drawn from the said findings, are within the exclusive jurisdiction of the Tribunal and the said points cannot be agitated before a Writ Court. (see **Syed Yakoob Vs. Radhakrishnan**⁴, **H.P.Gandhi Vs. Gopinath**⁵ and **State of U.P. Vs. Johri Mal**⁶).

⁴ AIR 1964 S.C. 477

⁵ (1992) 2 S.C.C. Supl. 312

⁶ (2004) 4 S.C.C. 714

40. Keeping in mind these legal principles, I shall now consider the rival contentions of the parties.

41. In support of his case, the 1st respondent filed before the Election Tribunal, the following documents :

(a) Ex.P.11/ dt.06.08.2013 Community, Nativity and Date of Birth Certificate issued by the Tahsildar, Madgul to P.Vennela mentioning her date of birth as 07.05.1998,

(b) Ex.P.17/dt.31.05.2014 Age Certificate issued by Additional Joint Secretary, Office of Commissioner for Government Examinations, Andhra Pradesh showing the date of birth of P. Aruna as 02.02.1996;

(c) Ex.P.19/dt.31.05.2014-Age Certificate, issued by Additional Joint Secretary, Office of Commissioner for Government Examinations, Andhra Pradesh showing the date of birth of P. Vennela as 07.05.1998;

42. PW.2, the Dy. Tahsildar, Madgul examined by the 1st respondent marked :

(a) Ex.X.5 proceedings dt.10.07.2012 of the Revenue Divisional Officer, Mahabubnagar according permission for recording date of birth of P. Aruna in the Birth Register of Tahsildar, Madgul as per A.P. Registration of Birth and Death Rules, 1999 on the basis of notary affidavit, bona fide certificate, etc. and enquiry report submitted by Tahsildar, Madgul;

(b) Ex.X.6 Birth Certificate dt.24.09.2012, issued by the Tahsildar, Madgul on the basis of Ex.X.5 to P. Aruna recording her date of birth as 02.02.1996;

(c) Ex.X.7 Birth Certificate dt.01.09.2012 issued by Village Secretary, Irvin Village of Madgul Mandal stating that the date of birth of P. Aruna as 02.02.1996;

(d) Ex.X.8 Report dt.04.06.2012 of Tahsildar, Madgul to the R.D.O., Mahabubnagar in regard to the date of birth of P. Aruna stating that local enquiry indicated that her date of birth is 02.02.1996.

43. PW.3, the Principal of Triveni High School, Champapet produced Ex.X.11 and X.12, entries in the Admission Register pertaining to the year 2003-04 to 2004-05 showing at serial No.P30238 P. Aruna, having been admitted in June, 2004 in Class – I with date of birth 02.02.1996 and showing that she completed her schooling in 2012 after completion of S.S.C. She produced Ex.X.12 Duplicate T.C. Book of P. Aruna, Ex.X.13 Identification Certificate of P. Aruna and Ex.X.14, Nominal Roll list of P. Aruna to show that she studied in the said school from Class I to X. She also produced Admission Register of P. Vennela pertaining to the year 2004-05 to 2007-08 showing that she was admitted in Class I and her date of birth was recorded as 07.05.1998; that she completed S.S.C. and left the school in 2013; and marked Ex.X.15, the relevant entry in the Admission Register and Duplicate T.C. Book as Ex.X.15 and X.16, respectively.

44. The Election Tribunal relied on this material to believe the case of the 1st respondent.

45. It considered the oral and documentary evidence produced by the petitioner in WP.No.8200 of 2018 and held that the Civil Assistant Surgeon of Community Health Center, Kalvakurthi examined as RW.2 and who issued Ex.R.6 Delivery Certificate stated that he had no personal acquaintance with Smt. P. Shivaleela and her husband, the petitioner and the births were recorded in the jurisdiction of the Primary Health Center on the information given by A.N.M. and inpatient information is available in their community health center. It also held that husband of Shivaleela made requisition for issuance of Ex.R.6 but not in writing, that he only gave a slip mentioning the date of birth of his child in their community health center and basing on the same, he issued Ex.R.6. The Election Tribunal therefore concluded that RW.2 issued Ex.R.6 at the request of the petitioner mentioning the date of birth of his child as 02.12.1994 and he has not produced any relevant record pertaining to the said entry. It therefore concluded that Ex.R.6 is not proof of date of birth of child. It noted that petitioner did not file authenticated birth certificate of his child who was born on 02.12.1994 as mentioned in Ex.R.6 and it had no evidentiary value.

46. The petitioner had examined an Anganwadi teacher of Irvin Village as R.W.3 and she produced Ex.R.7 Anganwadi Register showing the date of birth of P. Aruna as 03.05.1993, that of P. Vennela as 02.12.1994 and that of elder daughter, viz. Madhavi as 09.03.1992. The Election Tribunal noted that RW.3 stated that there is only one person by name Pagadala Ravi (petitioner) and Shivaleela in Irvin Village, but the petitioner himself admitted as RW.1 in his cross-examination that there were other persons in their village by name Pagadala Ravi. It also took note of the fact that in the

counter filed by petitioner in the O.P. he mentioned the date of birth of Madhavi as 09.07.1992 and that of P. Aruna as 03.10.1993, but Ex.R.7 did not corroborate his case. It also held that there is no legal sanctity to entries made in Anganwadi Register; information was given by the mother of the petitioner by name Jangamma on the basis of which the entries of date of birth were recorded in Ex.R.7; and the petitioner himself got Ex.R.7 extract issued by RW.3 attested through I.C.D.S. authorities. It held that the petitioner being Z.P.T.C. Member had supervisory powers over Anganwadi Centers and so the evidence of R.W.3 cannot be of any help to him.

47. Coming to the evidence of RW.4, the Head Master of Adarsha Vidyalayam, Charakonda stating that date of birth of P. Aruna and P. Vennela as per Exs.R.12 and 13 is 03.05.1993 and 02.12.1994, it held that the admission register against their entries did not mention in which class they got admitted in their school, when they left the school and there was no mention of T.C. number against the entries under Exs.R.12 and 13. It also held that R.W.4 admitted that the signature of the Head Master is not there in Exs.R.12 and R.13, but they were there for other students in the admission register and this creates a doubt about the said entries and the very fact whether the daughters of petitioner studied in the said school. Consequently, it disbelieved Exs.R.2 to R.5, the record sheet, bona fide certificate issued to P. Aruna and P. Vennela.

48. It also referred to the startling statement of petitioner himself as RW.1 in his cross-examination that he did not remember who admitted his daughters in Triveni High School, who furnished their dates of birth to the school and drew adverse inference for non-filing by him of S.S.C. marks

memos of his children and also evidence to show that his wife underwent family planning operation in 1994.

49. These and other circumstances were taken into account by the Election Tribunal to hold against the petitioner.

50. In my considered opinion, all the material evidence adduced by both parties has been considered by the Election Tribunal and its appreciation of the same cannot be said to be perverse. Its findings cannot be said to be arrived at on the basis of inadmissible evidence or ignoring admissible evidence or based on no evidence. Therefore, I hold that the petitioner in WP.No.8200 of 2018 has not made out any case for interference under Article 226 of the Constitution of India with the order dt.05.03.2018 in Election O.P.No.1 of 2014 of the Election Tribunal.

51. Point (a) is accordingly answered against petitioner in WP.No.8200 of 2018.

Point (b) :

52. I shall now consider Point (b) which is as follows:

“Whether the Election Tribunal erred in declaring the 1st respondent as having been elected to the post of Member, ZPTC, Madgul, after disqualifying the petitioner in W.P.No.8200 of 2018 under Section 19 (3) of the Act?”

53. The learned counsel for the petitioners in W.P.No.10037 of 2018 raised the above contention. According to him, votes cast in favour of the petitioner in W.P.No.8200 of 2018 cannot be regarded as thrown away since the voters voted for him were aware of the disqualification and in these

circumstances either the said votes should be transferred to his clients or a fresh poll has to be ordered.

54. This contention was refuted by the learned counsel for 1st respondent who pointed out that Rules 12, 13 and 15 of the A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 permit this to be done.

55. The said Rules state as under:

“12. If in the opinion of the Election Tribunal,

(a) that on the date of his election, a Returned Candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Act, or

(b) that any corrupt practice as laid down under Section 211 of the Act has been committed by a Returned Candidate or his election agent or by any other person with the consent of the Returned Candidate or his election agent, or

(c) that any nomination has been improperly rejected, or

(d) that the result of the election, insofar as it concerns a Returned Candidate has been materially affected,

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice, committed in the interest of the Returned Candidate by an Agent other than his election agent, with the connivance of the Returned Candidate, or

(iii) by any improper reception, refusal, or rejection of any vote, or the reception of any vote which is void,

(iv) by any non-compliance with the provisions of the Act, or any Rules or Orders made under the Act.

(A) The Election Tribunal shall declare the election of the Returned Candidate to be void.

(B) If the Election Tribunal holds the Returned Candidate guilty under Clause (b) and Clause (d) (ii) of this rule, the Election Tribunal shall in addition to declare the Election of the Returned Candidate as void, shall also declare that the Returned Candidate shall be disqualified to contest in any elections under this Act, for a period of six years from the date of the order.

13. If any person who has lodged a petition, as in addition to calling in question, the election of the Returned Candidate, claimed a declaration that he himself, or any other candidate, has been duly elected and the Tribunal is of the opinion--

(a) that in fact, the petitioner or such other candidate, received the majority of the valid votes, or

(b) that, but for the votes obtained by the Returned Candidate, by corrupt practices, the petitioner or such other candidate would have obtained, a majority of the valid votes, the Election Tribunal shall after declaring the election of the Returned Candidate to be void, declare the petitioner or such other candidate, as the case may be, to have been duly elected.

15. (i) At the conclusion of the inquiry, the Election Tribunal shall declare whether the election of the Returned Candidate or Candidates is void under Rules 12 and 13.

(ii) if he declares the election of the Returned Candidate or Candidates void, he shall further pass an order either--

(a) declaring that any other party to the petition who has under these rules claimed the seat has been duly elected; or

(b) order a fresh election,

(iii) The order of the Election Tribunal under Sub-rules (i) and (ii) shall be final;

(iv) A copy of every order under Sub-rule (i) or Sub-rule (ii) shall be communicated to the Executive Authority of the Gram Panchayat, Mandal Parishad and Zilla Parishad, as the case may be, and the Election Authority."

56. As can be seen from Rules 13 and 15, if any person who has lodged a petition, in addition to calling in question, the election of the returned candidate, also claimed a declaration that he himself, or any other candidate, has been duly elected and the Tribunal is of the opinion that in fact the petitioner or such other candidate received the majority of the validity of votes, it can, after declaring the election of the returned candidate void, pass further order either (a) declare that any other party to the petition who has under these Rules claimed the seat has been duly elected or (b) order a fresh election.

57. These provisions have been interpreted in **R.Jayalakshamma** (2 supra) and held that on a true construction of Rules 12, 13 and 15, it becomes clear that when a case falls under Rule 13, the Election Tribunal has no option but has to declare the election petitioner who received the

majority of the valid votes as duly elected. It held that the only condition, as stipulated under Rule 13 (a) of the Rules is that the election petitioner received majority of the valid votes.

58. No decision taking a different view after considering the above Rules has been cited by the petitioners.

59. Therefore, point (b) is also answered against the petitioners and in favour of the 1st respondent.

CONCLUSION

60. For the aforesaid reasons, I hold that the petitioners have not made out any case for interference by this Court under Article 226 of the Constitution of India with the order dt.05-03-2018 in Election O.P.No.1 of 2014 of the Election Tribunal-cum-Principal Senior Civil Judge at Mahaboobnagar.

61. Consequently the Writ Petitions are dismissed and interim order granted on 04-04-2018 in W.P.No.8200 of 2018 which was extended from time to time is vacated. But in the circumstances, without costs.

62. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-07-2018
Ndr/kvr