

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.3494 of 2017

ORDER:

Heard Mr.Salmon Raju for petitioner, learned Government Pleader for Panchayat Raj and Mr.Giridhar Rao for 6th respondent.

The petitioner was elected as Sarpanch of Mudireddypally village, Balanagar Mandal, Mahabubnagar District. The 6th respondent has grievance against the petitioner for the petitioner suffers disqualification from contesting in the election because the petitioner has more than two children and, therefore, the petitioner is required to be disqualified. The 3rd respondent through Order No.A5-1/572/2016, dated 18.01.2017 communicated the petitioner on the prima facie view the 3rd respondent holds on the complaint given by 6th respondent. The petitioner challenges intimation in this writ petition.

On 02.02.2017, this Court granted interim suspension of intimation dated 18.01.2017. However, it is clarified that the interim order will not preclude the respondents from proceeding in accordance with Section 22 of the A.P.Panchayat Raj Act, 1994 (for short 'the Act').

Respondents 3 and 6 filed counter affidavits and also vacate stay petitions to vacate the interim order dated 02.02.2017.

Heard learned counsel appearing for parties at great length.

Though the point is squarely covered by the decision of this Court in *CHAVA ROSAIAH Vs. CHINTALA VENKATESWARLU AND ANOTHER*¹ learned counsel appearing for respondents do not dispute the binding precedent and also the Scheme of Section 22 of the Act.

The substantial grievance against the writ prayer is that filing of writ petition without working out remedies before the District Court is illegal and unsustainable.

Section 22 of the Act reads as follows:-

22. Authority to decide questions of disqualification of members:- (1) 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 office of the Gram Panchayat is situated for decision.

(2) Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.

¹ 2004 (1) ALD 54 (DB)

(3) Where a person ceases to be the Sarpanch or Upa-Sarpanch of a gram panchayat as a consequence of his ceasing to be a member of the gram panchayat under clause (b) of Section 20 and is restored later to his membership of the gram panchayat under sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa-Sarpanch, as the case may be."

The proceeding impugned in the writ petition though is styled as order still it is in the nature of intimation. Assuming the intimation is issued to petitioner, the petitioner is not precluded from discharging his functions as Sarpanch of the Village under Section 22 (2) of the Act. At the same time, the Scheme of Section 22 of the Act leaves open legal remedy to petitioner as well as 6th respondent.

By leaving it open to both parties, the remedies available under Section 22 of the Act, the writ petition is disposed of accordingly. No order as to costs.

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

S. V. BHATT, J

Dt: 19.03.2018
Prv

HON'BLE SRI JUSTICE S.V.BHATT



19-03-2018

Prv