

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

WRIT PETITION No.17092 OF 2007

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the unsuccessful 2nd respondent assailing the order, dated 31.07.2007, of the learned Election Tribunal – cum - Senior Civil Judge, Wanaparthy, passed in Election OP No.19 of 2006.

2. I have heard the submissions of learned counsel appearing for the petitioner/returned candidate and of the learned counsel for the 2nd respondent/petitioner in the afore-stated Election OP. I have perused the material record.

3. The parties in this Writ Petition shall hereinafter be referred to as petitioner and the respondents as arrayed in this Writ Petition.

4. The facts, which are necessary to be stated as a prelude to this order and which are noticeable from the record, are as follows:

“The 2nd respondent, who is unsuccessful in the elections held for the post of Mandal Parishad Territorial Constituency of Veeraipally (Chinnamandadi) Village, filed the afore-stated Election OP against the petitioner, who is the returned candidate, on the ground that the petitioner incurred disqualification on account of having more than three children. The said Election OP filed by the 2nd respondent was resisted by the petitioner by filing a counter. During the course of trial/enquiry before the Tribunal, PWs1 to 5 & RWs1 to 8 were examined and exhibits P1 to P11 & R1 to R8 and X1 to X12 were marked. On merits and by the order impugned in this Writ Petition, the Tribunal allowed the Election OP filed by the 2nd respondent and set aside the election of the petitioner on the said ground of disqualification which was urged by the 2nd

respondent herein and declared the 2nd respondent as elected to the subject post. Aggrieved thereof, the present Writ Petition is filed.”

5. At the hearing, learned counsel for the petitioner, having drawn the attention of this Court to Section 19 (3) of the A.P. Panchayat Raj Act, 1994, contended that the petitioner, though, admitted the birth of the child in question, produced oral and documentary evidence to substantiate the defence that the date of birth of the child in question viz., Mounika is within the grace period of one year from the date of commencement of the afore-stated Act and that, therefore, the election of the petitioner herein as well as her candidature for the elected post are valid. However, the Tribunal, having examined the oral and documentary evidence, found that the documentary evidence produced by the 2nd respondent is reliable on a relative scale and that the documentary evidence produced by the petitioner is tainted being suspicious and eventually accepted the version of the 2nd respondent and accordingly passed the impugned order allowing the election petition of the 2nd respondent.

6. Learned counsel for the 2nd respondent supported the orders of the Tribunal.

7. At the hearing, learned counsel for the petitioner fairly stated that since the term of the election is over, no cause survives for adjudication and therefore, without going into the merits of the matter, the Writ Petition may be disposed of reserving liberty to the petitioner to contest in elections in future notwithstanding the order, which is impugned in this Writ Petition.

8. Having regard to the submissions, the Writ Petition is dismissed as the cause does not survive for adjudication, however, without going into the merits of the matter nonetheless reserving liberty to the petitioner to contest in any elections either local or state or central, in future, notwithstanding the orders of the election Tribunal, which are impugned in this Writ Petition.

There shall be no order as to costs.

Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

September 26, 2018
MD

M.SEETHARAMA MURTI, J

