

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 40172 OF 2018

ORDER:

1) The petitioner, who is the Councilor of Badangpet Municipality, filed the present writ petition, seeking to declare the endorsement, dated 30.10.2018, issued by the State Election Commission for Telangana ie., 6th respondent, rejecting the representation, dated 25.10.2018, made by the petitioner for holding elections to the post of Chairperson of second respondent municipality at the earliest in terms of Section 26-A of the Andhra Pradesh Municipalities Act, 1965 (for short "the Act"), as illegal, improper and incorrect.

2) The facts in brief are as under:

The election to the post of Chairperson of the second respondent municipality took place in the year 2014 for a term of five years, wherein one Sama Narasimha Goud, was elected as a Chairperson. Recently, 14 councilors moved no-confidence against the Chairperson vide proceedings, dated 04.08.2018. The District Collector vide his proceedings dated 07.08.2018, notified the meeting of the second respondent municipality council on 29.08.2018, for consideration of the said no-confidence motion. The same was challenged in W.P.No.27162 of 2018 before this Court, wherein this Court

directed the authorities to start the process of no-confidence afresh by following due process of law. Consequently, the meeting of no-confidence motion against the Chairperson was held on 29.08.2018 and the same came to be passed by a majority of 18 members out of 20 members. The fifth respondent submitted the proceedings to the District Collector vide letter dated 29.08.2018, who inturn communicated the same to the Director of Municipal Administration. Thereafter, on 10.09.2018 the third respondent herein communicated to the first respondent about the no-confidence motion of 18 ward members against the Chairperson, in Form No.I and as such the first respondent issued a gazette notification, notifying removal of Chairperson and the resultant vacancy to be filled. Since the election to the post of Chairperson are not conducted with immediate effect, a representation came to be made by the petitioner for holding of the elections in terms of Section 26-A of the Act. Their inaction lead to filing of W.P.No.38172 of 2018, wherein this Court vide its orders dated 23.10.2018 directed the sixth respondent to deal with the representation submitted by the petitioner in accordance with law within a period of 10 days. In compliance of the order dated 23.10.2018, the sixth respondent issued the impugned proceedings dated 30.10.2018 stating that second proviso to Rule-8 of the Telangana Municipalities (Conduct of

Election of Chairperson and Vice-Chairperson) Rules, 2005 (for short “the Rules”), stipulates that any casual vacancy shall be filled within six months from the date of occurrence of such vacancy. Challenging the same the present writ petition came to be filed.

3) Sri D.V.Seetha Rammurthy, learned Senior Counsel appearing for the petitioner would contend that if the elections are not held immediately, it would be against the spirit of Part-IX-A of the Constitution of India. He further submits that deliberately the sixth respondent is delaying in holding elections to the post of Chairperson. Referring to Section 26-A of the Act and the Rules made under the Act, he would contend that the explanation given for not holding the election at the earliest will not stand to scrutiny of the law laid down by this Court in *T.Rama Krishna and another v. Commissioner and Director of Municipal Administration and others*¹ and *S.K.Pushpalatha v. The State of Andhra Pradesh and others*².

4) On the other hand, Sri G.Vidya Sagar, learned Standing Counsel for the Corporation opposed the same. A counter came to be filed disputing the averments made in the affidavit filed in support of the writ petition. Referring to

¹ (1998) 1 ALT 488

² Manu/AP/0713/2016

Rule-8 of the Rules, he would contend that any casual vacancy shall be filled up within a period of six months from the date of occurrence of such vacancy. He further pleaded that on 06.10.2018 the Election Commission of India notified the schedule for holding general elections to the Legislative Assembly and the pole in Telangana is scheduled to be held on 07.12.2018. Since the election code is in operation in the State of Telangana, and as the entire election machinery including the District administration is in the process of conducting assembly elections, pleads that election to the post of Chairperson will be held immediately after the general elections to the State Assembly, though six months time is available to hold the elections from the date of occurrence of vacancy.

5) Insofar as the two judgments relied upon by the counsel for the petitioner is concerned, he would contend that the same would not apply to the facts in issue. Insofar as the first judgment is concerned, he pleads that the said judgment came to be delivered without taking into consideration the Rules made in the year 2005 and the second judgment also will not apply for the reason that in the said case elections to the post of Mayor were not conducted inspite of the said post being vacant since more than a year.

6) In order appreciate the rival contention, it would be useful to refer to Section 26-A of the Act, which is as under:

“26-A: Procedure when office of Chairperson is vacant:

(1) Where the office of the Chairperson falls vacant, the Vice-Chairperson shall perform the functions of the Chairperson until a new Chairperson is elected. Immediately on the occurrence of such vacancy, the Commissioner shall intimate the fact to the election authority and the election authority shall arrange the election of the Chairperson.

(2) Where the office of the Chairperson is vacant and there is either a vacancy in the office of the Vice-Chairperson, or the Vice-Chairperson has been continuously absent from jurisdiction for more than fifteen days or its incapacitated for more than fifteen days, the District Collector in the case of a special selection grade municipality or the Revenue Divisional Officer, in the case of any other municipality, shall, notwithstanding anything in this Act or in the Rules and Notifications issued thereunder, exercise the powers and perform the functions of the Chairperson until a new Chairperson or Vice-Chairperson is elected, or the Vice-Chairperson returns to jurisdiction or recovers from incapacity.”

7) A reading of the said section makes it clear that where the office of the Chairperson falls vacant, the Vice-Chairperson shall perform the functions of the Chairperson until the new Chairperson is elected. It is also states that immediately on the occurrence of such vacancy, the Commissioner shall intimate the fact to the Election Authority and the Election Authority shall arrange the election to the post of Chairperson.

8) Rule-8 of the Rules, which fall in part-III, deal with the procedure for filling up a casual vacancies, and it reads as under:

“8.Procedure for filling casual vacancies: The rules in Part- II shall apply for filling up a casual vacancy in the office of the Chairperson/ Vice-Chairperson of a Municipality.

Provided that every casual vacancy shall be filled up within a period of six months from the date of occurrence of such vacancy.”

9) A reading of the said Rule makes it clear that every casual vacancy shall be filled up within a period of six months from the date of occurrence of such vacancy. Though the word “casual vacancy” is not defined, but it is an undisputed fact that the vacancy which arises after the election and in due course of term is said to be a casual vacancy. Therefore, a harmonious reading of Section 26-A of the Act and Rule 8 of

the Rules, would reveal that immediately on occurrence of such vacancy the Commissioner shall intimate the fact to the election authority, who shall arrange the election and the period within which the casual vacancy in the office of chairperson or Vice-Chairperson to be filled up would be within a period of six months of such occurrence.

10) In the instant case the vacancy arose because of the no-confidence motion being moved against the existing Chairperson. The material on record discloses that immediately after the motion was passed, steps were taken in intimating the said fact to the authorities and a gazette notification was also published in the month of October, 2018. The judgment in *T.Rama Krishna and another v. Commissioner and Director of Municipal Administration and others (1 supra)*, which was pressed into service by the learned counsel for the petitioner, was decided on 18.12.1997. Though in the said judgment, a learned Single Judge of this Court held that Section 26-A of the Act mandates holding of elections immediately on the occurrence of such vacancy but there was no reference to the Rules, since the Rules relating to conduct of elections of Chairperson and Vice-Chairpersons came to be incorporated in the year 2005. Therefore, the said judgment, which was delivered in the year 1997 may not be of any help to the petitioner.

11) Coming to the judgment of another Single Judge of this Court in *S.K.Pushpalatha v. The State of Andhra Pradesh and others (2 supra)*, it was also a case where the post of Mayor of Chittoor Municipality was vacant over a period of one year and no elections were held though the said post was reserved for Woman. The reason for not holding the elections to the post of Mayor was due to existence of two vacancies of Ward Members. Precisely, the issue was whether the Election Commission was justified in delaying holding elections to the post of Mayor and defers such election till the elections to two existing vacancies of Ward Members are held. Referring to various judgments including *Kishan Singh Tomar v. Municipal Corporation of the City of Ahmedabad*³, the Court held that the election authority was not justified in delaying the elections and consequently directed the State Election Commission to hold election to the post of Mayor of Chittoor Municipal Corporation without linking up of such election to the election of vacant Ward Members of Chittoor Municipal Corporation.

12) Situation in the instant case, as observed by me earlier is different. Gazette Notification to the post which fell vacant came to be published some time in the month of October, 2018 but steps for holding election could not be taken

³ (2006) 8 SCC 352

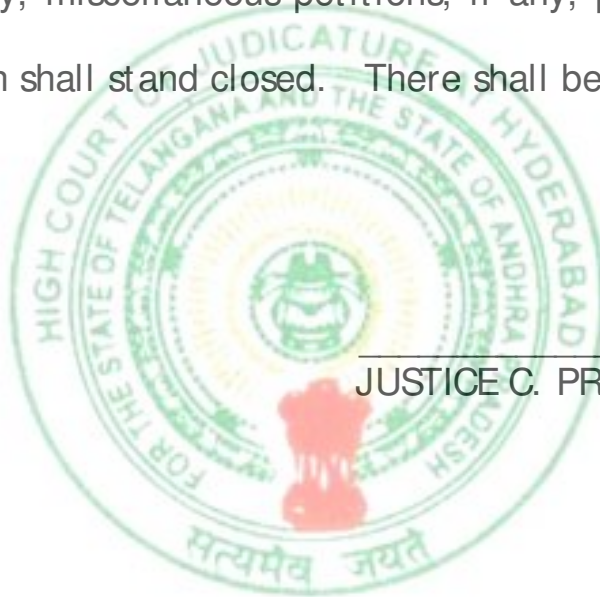
immediately for more than one reason. Firstly, the general election notification came to be issued on 06.10.2018 fixing the schedule of general elections for the Telangana State Legislative Assembly on 07.12.2018. Since the election code came into operation, the 6th respondent in the counter stated that the State Election Commission is prepared to hold elections to the Chairperson of Badangpet Municipality, within one month after completion of general elections to Telangana State Legislative Assembly. Sri G. Vidya Sagar, learned Standing Counsel for the Corporation, stated across the Bar that though in the affidavit it is stated that the election to the post of Chairperson will be held one month after general elections, but will take steps and complete the process at the earliest.

13) Apart from that it is also to be noted here that though Section 26-A of the Act postulate holding of elections immediately which in all probability would mean at the earliest, but if the same read with Rule 8 of the Rules, it would indicate that every casual vacancy shall be filled up within a period of six months from the date of occurrence of such vacancy. As the vacancy arose is a casual vacancy, the last date for filling up the said vacancy would be before the expiry of the six months period.

14) Having regard to the legal provision and in view of the averments in the counter filed by the sixth respondent that steps shall be taken for holding of the elections to the post of Chairperson immediately after completion of General Assembly Elections of Telangana State, the request of the petitioner for holding the elections immediately cannot be accepted.

15) Accordingly, the Writ Petition is dismissed. Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

30.11.2018
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JUSTICE C. PRAVEEN KUMAR