

HIGH COURT FOR THE STATE OF TELANGANA

THE HON'BLE SRI JUSTICE RAGHVENDRA SINGH CHAUHAN

AND

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT APPEAL No.308 OF 2019

Dated: 09.04.2019

Between:

Smt.Ramaram Sujatha.

...APPELLANT

And

The State of Telangana,
Rep. by its Principal Secretary,
Panchayat Raj and Rural Development
Department and others.

...RESPONDENTS

Counsel for the Appellant:
appearing

Mr. B.Vijaysen Reddy
for Mr.B.Chandrasen Reddy,

Counsel for the Respondents:

Government Pleader for
Panchayat Raj for R-1
Government Pleader for
Revenue for R-2 & R-3
Mr.G.Narender Reddy,
Standing Counsel for R-4

The Court made the following:

**THE HONOURABLE THE ACTING CHIEF JUSTICE
SRI RAGHVENDRA SINGH CHAUHAN
AND
THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY
WRIT APPEAL No. 308 OF 2019**

JUDGMENT: (Per Hon'ble the Acting Chief Justice Sri Raghvendra Singh Chauhan)

Smt. Ramaram Sujatha, the appellant, aggrieved by the order dated 27.03.2019 passed by the learned Single Judge in I.A.No.1 of 2019 in W.P.No.6336 of 2019, whereby the learned Single Judge has dismissed the Interlocutory Application for seeking stay of the suspension of the order dated 23.03.2019, whereby the appellant was removed from the office of the President, after passing of the 'no confidence motion' against her.

Briefly, the facts of the case are that the appellant was duly elected as MPTC (Mandal Parishad Territorial Constituency), Bogaram, Keesara Mandal, in the year 2014, under SC (General) category. Subsequently, she was elected as Mandal Praja Parishath of Keesara Mandal by the MPTC's. According to her, ever since she took charge as President of Mandal Praja Parishad, she has been discharging her duties honestly and sincerely. However, the respondent Nos. 5 to 19 proposed to move 'no confidence motion' against her by notice dated 13.07.2018 and by notice dated 18.07.2018. The said notice was submitted by them before the Revenue Divisional Officer, the 3rd respondent. However, subsequently, said notice was rejected. Therefore, on 31.07.2018 again a notice was served and request was made in Form-II to the 3rd respondent for convening a meeting of 'no confidence motion'. The meeting was held on 28.08.2018 at

11.00 a.m, and the said meeting was attended by 19 out of 20 members. During the meeting, 16 members have voted in favour of 'no confidence' and three persons voted against motion. Challenging the same, appellant filed Writ Petition and prayed for stay. However, by the impugned order, learned Single Judge has dismissed Interlocutory Application. Hence, this appeal before this Court.

Mr. B.Vijaysen Reddy, learned counsel for the appellant, representing Mr.B.Chandrasen Reddy, submits that even prior to the passing of 'no confidence motion', the appellant had filed an application against seven members, *inter alia* on the ground that since they did not attend three consecutive meetings, they should be declared as having become disqualified under Section 25(d) of Telangana Panchayat Raj Act, 2018 (for brevity 'the Act').

Secondly, since these seven persons are taken as having become disqualified, they should not have been permitted to participate in the 'no confidence motion'. In order to buttress his plea, the learned counsel has placed an interesting question with regard to interpretation of Section 27 of the Act. According to him, Section 27(2) permits a member to continue to participate in a mandal meeting. However, this right to participate in a meeting is restricted only to an ordinary meeting and not an extraordinary meeting like 'no confidence' motion. Therefore, according to him, since seven persons, who are disqualified, they should not have been permitted to participate in the 'no confidence motion'. Moreover, if these seven persons are excluded, then the requisite forum would not have exist. Hence, learned Single Judge was

not justified in dismissing the Interlocutory Application filed by the appellant.

On the other hand, learned Government Pleader for Panchayat Raj, appearing for the respondent No.1, has raised the following counter contentions.

Firstly, that before a member can be disqualified, a declaration has to be made after the dispute is adjudicated by the District Collector.

Secondly, intimation of the disqualification has to be communicated to the concerned member. However, in the present case, the District Collector has not declared the seven persons as having become disqualified. Moreover, no such communication has been intimated to them. Therefore, under Section 27, they would continue to have right to vote in every meeting.

Thirdly, Section 27 does not distinguish about an ordinary and extraordinary meeting. Section 27(2), in fact, states that pending such a decision, meaning thereby, a decision with regard to disqualification of a member, the member would be entitled to act as if he is a qualified. Therefore, according to him, seven members against whom an allegation of disqualification was made, would continue to have the right to participate as a members, as though they were qualified.

Fourthly, even Section 263 of the Act, which deals with motion of 'no confidence', does not pre-empt a member against whom an allegation of disqualification is made from participating in the 'no confidence' meeting. Therefore, according to her, an interpretation being offered by the learned counsel for the appellant, is clearly contrary

to the intention, scope and ambit of Section 27 of the Act. According to her, any interpretation which would make a provision of law otiose has to be avoided.

Lastly, since seven members continues to be qualified to participate in the 'no confidence motion', since sixteen out of nineteen members have voted in favour of 'no confidence motion', learned counsel submits that the learned Single Judge was justified in dismissing the Interlocutory Application. Hence, she supported the impugned order.

Heard learned counsel for the parties, and perused the impugned order.

Sections 25 and 27 of the Act, reads as under:

25. Disqualification of members: *Subject to the provisions of section 27, a member shall cease to hold office as such if he,—*

- (a) is or becomes subject to any of the disqualifications specified in section 21;*
- (b) is elected as a member to a Ward/Office reserved for Scheduled Castes or Scheduled Tribes or Backward Classes on the basis of a community certificate and subsequently the said community certificate is cancelled under section 5 of the Telangana (Scheduled Castes, Scheduled Tribes and Backward Classes) Regulation of issue of Community Certificates Act, 1993;*
- (c) is removed by the District Collector based on a resolution passed by the Gram Panchayat unanimously for misconduct by the member;*
- (d) absents himself from the meetings of the Gram Panchayat for a period of ninety days, reckoned from the date of the commencement of his term of office, or if within the said period, less than three ordinary meetings have been held, absents himself from three consecutive ordinary meetings held after the said date:*

Provided that in the case of woman member, a period of not more than six months at a time shall be excluded in reckoning the period of absence aforesaid, if for reasons of physical disability due to advanced stage of pregnancy and delivery, such member absents herself from meetings after giving a written intimation to the Panchayat Secretary of the date from which she would be absent:

Provided further that no meeting from which a member absented himself shall be counted against him under this clause if,-

- (i) due notice of that meeting was not given to him in the prescribed manner; or*
- (ii) the meeting was held on requisition of members.*

Explanation:- For the purpose of this clause,-

- (i) “Ordinary Meeting” shall mean a meeting held after giving a notice of at least three days before the day of the meeting;*
- (ii) Where a meeting other than an ordinary meeting intervenes between ordinary meeting and another ordinary meeting, those two ordinary meetings shall be regarded as being consecutive to each other.*

27. 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 sections 19, 20, 21, 22, 23, 24 and 25 by any voter or authority to the Panchayat Secretary in writing and the Panchayat Secretary 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 Panchayat Secretary, at the direction of the Gram Panchayat or the District Collector 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.”

Although, Section 25 lays down the condition under which a member can be declared to be disqualified from holding office, Section 27 requires an adjudication by the District Collector. According to Section 27(2), during pendency of the proceedings before the District Collector, the member would be entitled to act as if he is qualified to hold his office. Interestingly, Section 27 does not make distinction between ordinary and extraordinary meetings. Therefore, Section 27(2) would be applicable to both ordinary and extraordinary meetings, including the meeting for ‘no confidence’ motion.

Section 263 of the Act reads as under:

263. Motion of no confidence in President or Chairperson:-

(1) A motion expressing want of confidence in the President or Vice-President or Chairperson or Vice Chairperson may be made by giving a written notice of intention to move the motion in such form and to such authority as may be prescribed, signed by not less than one half of the total number of members of Mandal Praja Parishad or as the case may be the Zilla Praja Parishad and further action on such notice shall be taken in accordance with the procedure prescribed:

Provided that no notice of motion under this section shall be made within four years of the date of assumption of office by the person against whom the motion is sought to be moved:

Provided further that no such notice shall be made against the same person more than once during his term of office.

Explanation:- For the removal of doubts, it is hereby declared that for the purpose of this section the expression "total number of members" means, all the members who are entitled to vote in the election to the office concerned inclusive of the President or Chairperson but irrespective of any vacancy existing in the office of such members at the time of meeting:

Provided that a suspended office bearer or member shall also be taken into consideration for computing the total number of members and he shall also be entitled to vote in a meeting held under this section.

(2) If the motion is carried with the support of two thirds of the total number of members in the case of the President or a Vice-President or the Chairperson or Vice-Chairperson, the Government shall by notification remove him from office and the resulting vacancy shall be filled in the same manner as a casual vacancy.

Explanation:- For the purposes of the section, in the determination of two-thirds of the total number of members, any fraction below 0.5 shall be ignored and any fraction of 0.5 or above shall be taken as one."

A bare perusal of the said section clearly reveals that the section nowhere states that a member against whom an allegation of disqualification has been made, would be pre-empted or precluded from exercising his rights, as a member, in a 'no confidence motion'. Since, no such power is contained in Section 263, obviously, this Court, cannot read a bar in the said provision.

Needless to say, if the interpretation offered by the learned counsel for the appellant would be accepted, it would tantamount for setting a bar in Section 263 of the Act. However, it is trite to state that the judiciary has no power to amend law. Thus, the interpretation offered by the learned counsel for the appellant, cannot be accepted. However, acceptance of such an interpretation would make Section 27(2) otiose. An interpretation that makes provision of law otiose has to be avoided. Therefore, the contention raised by the learned counsel for the appellant, is unacceptable.

Obviously, the seven members against whom an allegation was made by the appellant, continues to be qualified to participate in the 'no confidence motion'. Therefore, learned Single Judge was justified in concluding that in fact sixteen out of nineteen members have voted in favour of 'no confidence motion'. Hence, learned Single Judge was legally justified in dismissing the Interlocutory Application, filed by the appellant.

For the aforesaid reasons, this Court does not find any illegality or perversity in the impugned order. Since the appeal is devoid of merits, it is hereby dismissed.

(RAGHVENDRA SINGH CHAUHAN, J)

(A.RAJASHEKER REDDY, J)

9th April 2019

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**THE HONOURABLE THE ACTING CHIEF JUSTICE
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