

HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION No.10478 of 2019

ORDER:

1 The prayer of the petitioner in this case reads as under:

‘For the reasons stated in the accompanying affidavit, it is prayed that this Hon’ble Court may be pleased to issue a Writ or Direction more particularly a writ of CERTIORARI calling for entire records connected to appeal in No A/09/2019 dt 30042019 allowed by the 3rd respondent by setting aside the order of Returning officer Khatalapur Mandal in rejecting the 5th respondent nomination for the elections of ZPTC Khatalapur Jagityal District as illegal arbitrary unconstitutional and in violation of provisions of the Telangana Gram Panchayat Raj Act 2018 and consequently disqualify the 5th respondent as per the Section 203 of Telangana Panchayat Raj Act 2018 and pleased to pass such order or orders as this Hon’ble Court may deem fit in the interest of justice.’

2 The factual background is that the petitioner and the 5th respondent submitted their nominations for participating in the election to the post of Zilla Parishad Territorial Constituency Member, Khatalpur.

3 While so, it is the case of the petitioner that the 5th respondent suffered disqualification under Section 21 (3) of the Telangana Panchayat Raj Act, 2018 (for short, ‘the Act of 2018’). The record bears out that the nomination of the 5th respondent was initially rejected on this ground, but the appellate authority reversed the said rejection order and permitted the 5th respondent to participate in the elections process. Aggrieved thereby, the petitioner is before this Court.

4 By order dated 22.5.2019, this Court granted interim stay of all further proceedings including the counting and declaration of the result of the election to the post of Khatalpur Zilla Parishad Territorial Constituency Member. Thereafter, I.A.No.3 of 2019 was filed by the 5th respondent to vacate the said order. By order dated 03.6.2019 this Court vacated the earlier stay order. This order reads as follows:

By order dated 22.05.2019, this Court granted interim stay of all further proceedings including the counting and declaration of the result of Khatalapur ZPTC election.

I.A.No.3 of 2019 was filed by the fifth respondent in the writ petition to vacate the aforestated interim order.

Though time is sought on behalf of Mr. P.V.S.K.Chakravarthy, learned counsel for the petitioner, on the ground that he is out of station, Mr. G.Vidyasagar, learned senior counsel appearing for Mr.P.Sudheer Rao, learned counsel for the State Election Commission, Telangana, would inform this Court that the stay of counting of votes in relation to this ZPTC would have a cascading effect as the indirect elections that would have to be held in the District would also be stalled pursuant thereto.

Mr.V.Ravinder Rao, learned senior counsel appearing for Ms.A.Deepthi, learned counsel for the fifth respondent/vacate stay petitioner, would inform this Court that there is no certainty of the fifth respondent being declared elected and it is wholly premature at this stage for this Court to stall the entire election process.

As the grievance of the petitioner appears to be limited to the eligibility of the fifth respondent to contest the election, this Court sees no purpose served in stalling the counting and declaration of the result in the subject election. All the more so, when it impacts the elections in the entire District. Such a stay order would not be in aid of the election process and would, in fact, defeat it. The interim stay granted on 22.05.2019 is accordingly vacated.

5 It is now stated before this Court that the 5th respondent was declared elected.

6 As to whether the disqualification envisaged by Section 21(3) of the Act of 2018 would stand attracted to the case on hand, given the admitted fact that the sterilization procedure undergone by the 5th respondent failed leading to the birth of a third child, would require examination. However, such examination cannot be undertaken by a writ Court. All the more so, in the light of the law laid down by the Supreme Court in N.P. Ponnuswami vs. Returning Officer, Nammakkal Constituency, Nammakkal, Salem District¹ and later decisions. That apart, it may also be noted that Section 27 of the Act of 2018 affords another alternative remedy to the petitioner in addition to an Election Petition under Section 242 of the Act of 2018. The proper course for the petitioner would therefore be to avail either of these effective alternate statutory remedies provided to him.

¹ AIR 1952 SC 64

6 The Writ Petition is accordingly dismissed on this short ground without going into the merits of the matter. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order. No order as to costs.

JUSTICE SANJAY KUMAR

Date: 10th June, 2019.
Kvsn

