

**THE HON'BLE SRI JUSTICE T. VINOD KUMAR**

**Writ Petition No.27918 of 2019**

**ORDER:**

The challenge in the present writ petition under Article 226 of Constitution of India is to the proceeding of the 2<sup>nd</sup> respondent-Chief Executive Officer, Zilla Praja Parishad, Komuram Bheem Asifabad, vide notice No.P1/39/2019, dated 23.11.2019, issued by invoking the provisions of Sections 27 and 151 of the Telangana Panchayat Raj Act, 2018 (for short 'the Act'), as being illegal, arbitrary, without jurisdiction and contrary to the procedure prescribed under Section 27 of the Act.

2. Heard Sri V. Ravi Kiran Rao, learned counsel for the petitioner and the learned Government Pleader for Panchayat Raj and Rural Development appearing for the official respondents and Sri G. Narender Reddy, learned Standing Counsel appearing for Gram Panchayat.

3. By the impugned proceeding dated 23.11.2019, which is termed as notice, issued under the signature of the second respondent, the petitioner who was elected as Member of Mandal Parishad Territorial Constituency, Takkallapalli, Rebbena Mandal, was called upon to offer his explanation along with the supporting evidence as to why action cannot be taken against him for having more than three children after 31.05.1995 attracting the disqualification under the provisions of Section 21 (3) of the Act.

4. The impugned proceedings termed as “Notice” is issued to the petitioner based on the complaint dated 06.08.2019 of one Dasari Balaiah, who is the 4<sup>th</sup> respondent in the writ petition, wherein it is stated that the petitioner is having three children after the prescribed date, thereby attracting the disqualification under Section 21 (3) the Act, disentitling the petitioner from being a member of the Mandal Parishad Territorial Constituency, Takkallapalli, Rebbena Mandal.

5. The learned counsel for the petitioner submits that the impugned proceedings termed as ‘notice’ is clearly without jurisdiction and in violation of the provisions of Section 27 of the Act. He further submits that there is no power vested under the Act on the authorities to issue any such notice, much less the authorities are not empowered to take any action with regard to continuation of the petitioner as a member of the Mandal Parishad.

6. The learned counsel for the petitioner further submits that the power to disqualify the petitioner for contravention of Section 21 (3) of the Act would only vest with the District Court and the authorities are merely required to give intimation of such complaint being made against the petitioner, as provided under Section 27 of the Act and cannot call upon the petitioner to offer his explanation.

7. On the other hand, the learned Government Pleader for Panchayat Raj and the learned Standing Counsel for Gram Panchayat supports the notice as issued to the petitioner and submit that the authority in terms of the provisions of the Act while giving intimation is also empowered to seek explanation from the petitioner in response to the notice as it is only after receiving such explanation, the authority can form a preliminary opinion as to whether the said complaint received merits consideration or not, whereupon placing such material before the Gram Panchayat in case of member of Gram Panchayat or District Collector in case of Mandal Praja Parishad, can seek a direction to initiate proceedings before the District Court as provided under the Act.

8. The learned Standing Counsel for Gram Panchayat further submits that though the proceedings by which the petitioner is given intimation of the complaint received with regard to the disqualification of the petitioner as member of the Mandal Parishad is termed as 'notice', by mere use of such nomenclature, the proceedings cannot be said to be vitiated. Further, the learned Standing Counsel would also submit that by seeking an explanation through intimation though termed as 'notice', the authorities are not trying to usurp the power on to themselves by taking any decision thereon having regard to the express power conferred on the District Court under the Act.

9. Having given due consideration to the submissions made on either side, in order to appreciate the contentions urged by the learned counsel for the petitioner, it is necessary to examine the intent and purport of Section 27 of the Act, which reads as under:

**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 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.”

10. A bare reading of the above provision clearly indicates that it is only the District Court having jurisdiction over the area that can go into the issue as to whether a member has attracted disqualification for being in violation of provisions of Section 19 to 25 and adjudicate thereon. However, the section clearly having empowered the authority specified therein, being Panchayat Secretary to look into the issue relating to a member attracting disqualification under

the provisions 19 to 25 of the Act, based on a mere **‘allegation’** (emphasis supplied by court) made by a voter or authority, the said authority cannot act without first issuing intimation to the concerned member through District Panchayat Officer and ascertaining the correctness or otherwise of such allegation made, which is only by receiving a response from such member to the intimation given, whereupon the said authority can arrive at a conclusion as to whether such allegation made merits further consideration by the Gram panchayat or District collector as the case may be.

11. It only after giving intimation to such member of the allegation against him and on obtaining the response thereto, the Panchayat Secretary at the direction of Gram Panchayat or the District Collector shall within a period of two months from the date on which such intimation is given is required to apply to the District Court having jurisdiction over the area for decision.

12. The express language used in Section 27 of Act makes it very clear that the provision does not merely provide for intimation being given to the member upon such allegation being made, but also enables the authority to seek for response from the member as to whether such member is agreeing to the allegations so made against him or is disputing the same. The submission of the learned counsel for the petitioner that the authority specified in Section 27 of the Act, is merely empowered to issue intimation and cannot

ask / seek explanation from the member, could have been considered if the word used is “complaint”. On the contrary, in the Section the word “allegation” is used in three places, which is in the nature of a ‘claim’. Thus, the authority cannot put in motion the process of approaching the District Court, merely on basis of “allegation” without making out a prima facie case either by having a denial or acceptance from the member.

13. The learned counsel for the petitioner would urge that the authority by themselves cannot take any decision under Section 27 of the Act and having regard to the language used in the impugned proceedings indicates as if the authorities are contemplating to take action by themselves by disqualifying the petitioner, it is to be noted that the power to disqualify a member as noted herein above is not vested on the authorities prescribed under the Act. Such power is only vested with the District Court and it is for the authority prescribed to issue intimation to the member and upon receiving explanation from such member, the authority may arrive at a prima facie conclusion as to whether the allegation made with regard to the disqualification on the face of it appears to be correct or otherwise so that further action as contemplated under the provision can be taken.

14. The issue relating to the power of authorities under the Act and the authorities themselves taking action based on the notices issued has been considered by this

Court in Writ Petition 19970 of 2016 arising under the analogues provision of Section 22 of the Andhra Pradesh Panchyat Raj Act, 1994, which is parimateria Section 27 of the Act whereby this Court held as under:

“To discharge the functions under Section 22 of the Act, the Executive Officer on receipt of a complaint/intimation about the disqualification of an elected member is required to put on notice the concerned Member about the complaint and on receiving the response he is required to take further steps to enable the Mandal Parishads or the Commissioner to take appropriate decision; whether to initiate proceedings by filing an Election O.P before the District Court or not. The act of recording a prima facie opinion to enable the respective authorities to take action cannot by itself be termed as deciding the complaint about the very disqualification. In that view of the matter, the mere recording of prima facie opinion in the impugned order cannot be found fault.”

15. This Court in the above said decision further held that such explanation can be sought for from a member after intimation being given is for the purpose of the said authority *prima facie* forming an opinion for the purpose of examining as to whether the material is required to be placed before the concerned Panchayat or the District Collector, which can be looked into by the said functionary to accord permission for approaching the District Collector for a decision.

16. Thus, having regard to the above, though the impugned proceeding is termed as notice, the intent and purport of the same being in the nature of intimation to the petitioner about the allegation relating to the disqualification

of the petitioner to be as a member of the Mandal Parishad and seeking for an explanation which can be taken note of before further action as contemplated under the provision is taken. Thus, that by itself cannot be construed, as the authority exercising power by itself, as is being apprehended.

17. This Court in Writ Petition No.19970 of 2016 also took note of the said aspect and observed thus:

“The expression of the opinion is for limited purpose and it shall not be construed as the conclusion of the decision on the merits of the matter. To allay the fears of the petitioner, that the prima facie opinion expressed by the 4<sup>th</sup> respondent may be construed as a declaration as to the 5<sup>th</sup> respondent not earning disqualification under Section 19 (3) of the Act, it is made clear that the petitioner would be entitled to approach the competent District Court seeking adjudication of the disqualification of the 5<sup>th</sup> respondent.”

18. Accordingly, having regard to the view taken by this Court in Writ Petition No.19970 of 2016, further views expressed by this court and having regard to the provisions of the Act, it is made clear that any such decision with regard to a member attracting disqualification under the provisions mentioned in Section 27 would ultimately have to be taken only by the District Court and not by any authority who either issues any intimation by whatever name, it can be called or any authority who is empowered to accord sanction for approval or initiating proceedings before the District Court.

19. Subject to the above observations, the writ petition is disposed of. However, there shall be no order as to costs.

20. As a sequel thereto, Miscellaneous Applications, if any, pending in this writ petition shall stand closed.

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**T. VINOD KUMAR, J**

Date: 27.12.2019  
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