

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.30670 OF 2018

ORDER

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

‘For the reasons stated in the accompanying affidavit, the Petitioner herein prays that this Hon’ble Court may be pleased to issue a writ or order or orders or directions, more particularly one in the nature of Writ of Mandamus declaring the action of the 1st respondent in issuing the Memo No.1046/Pts.III/A2/2018 dt.16-08-2018 is arbitrary, illegal, without jurisdiction and violation of principles of natural justice, consequently direct the 1st respondent to issue a G.O. permitting the petitioner and his wife Smt. Thota Rajitha to contest all the ensuing local body elections in the Panchayat Raj Institutions granting relaxation from sub-section 3 of Section 21 of the Telangana Panchayat Raj Act, 2018 adopting the guidelines laid down in G.O.Rt.No.1148 dt.11-07-2013 and pass such other order or orders as this Hon’ble Court may deem fit and proper in the circumstances of the case.’

The petitioner submitted representation dated 14.03.2014 bringing it to the notice of the Government that he underwent vasectomy operation at the Primary Health Centre, Kataram, Karimnagar District, in November, 2002 after he had two children, but owing to the failure thereof, he begot a third child. As the birth of the third child would disqualify him and his wife from contesting elections to any post under the Andhra Pradesh Panchayat Raj Act, 1994 (*for brevity*, ‘the Act of 1994’), he applied to the Government to exercise power under the *proviso* to Section 19(3) of the Act of 1994 and direct that such disqualification should not apply to him and his wife.

Upon the failure of the State to act on the said representation, the petitioner submitted reminders thereafter and then filed W.P.No.14457 of 2018. His prayer therein was to declare the action of the State in not disposing of his representation dated 14.03.2014 as illegal and to consequently direct the State to dispose it of. By order dated 06.06.2018, a learned Judge of the common High Court for the States of Telangana and Andhra Pradesh disposed of the said writ petition directing the State of Telangana to dispose of the petitioner's representation dated 14.03.2014, keeping in view the facts and circumstances of the case, and to communicate the decision taken thereon to him within a time frame.

Pursuant to this order, the Principal Secretary to Government (FAC), Panchayat Raj and Rural Development (Pts.III) Department, Government of Telangana, issued the impugned Memo dated 16.08.2018 baldly stating to the effect that the Government, after careful examination of the matter in the light of Section 21(3) of the Telangana Panchayat Raj Act, 2018 (*for brevity*, 'the Act of 2018'), could not permit the petitioner or his wife to contest the local body elections and accordingly rejected his request.

Sri E.Madan Mohan Rao, learned counsel representing Sri Mirza Aijaz Ali Baig, learned counsel for the petitioner, would point out that the failure of the vasectomy operation resulting in the birth of a third child could not be doubted as the Government itself paid compensation to the petitioner for such failure. Reliance is placed on the Receipt-cum-Certificate/Declaration issued by the District Medical & Health Officer, Karimnagar, certifying that the petitioner was paid a sum of Rs.30,000/-

compensation owing to the failure of the vasectomy operation undergone by him.

That apart, the learned counsel would also invite the attention of this Court to G.O.Rt.No.1148, Panchayat Raj and Rural Development (Election & Rules) Department, dated 11.07.2013 issued by the erstwhile Government of Andhra Pradesh holding one T.Ramulu of Ameerpet Gram Panchayat, Maheswaram Mandal, Ranga Reddy District, who also had a third child due to failure of a family planning operation, entitled to relaxation of the rule so that he could contest the election to the post of Sarpanch. The Government exercised power in this regard under the *third proviso* to Section 19(3) of the Act of 1994.

It is no doubt true that Section 21(3) of the Act of 2018 does not provide for any such power of relaxation as was given to the Government under the *proviso* to Section 19(3) of the Act of 1994. However, it is not open to the State to apply the Act of 2018 to the case on hand as the application of the petitioner seeking relaxation of the rule was made as long back as on 14.03.2014. The inaction on the part of the State itself in taking appropriate measures upon the said application within time cannot enable it at this stage to apply the new Act.

Be it viewed from any angle, the rejection of the petitioner's application by the Principal Secretary to Government (FAC), Panchayat Raj and Rural Development (Pts.III) Department, Government of Telangana, under the impugned Memo dated 16.08.2018 cannot be countenanced. The very application of the provisions of the Act of 2018 is untenable and reflects total non-application of mind by the State.

The writ petition is accordingly allowed setting aside the impugned Memo dated 16.08.2018. The matter is remitted to the State of Telangana for consideration afresh keeping in view all the aforestated facts and the essential fact that what would apply to the case on hand would be the provisions of the Act of 1994 and not the Act of 2018. A fresh decision shall be taken upon the representation of the petitioner expeditiously and in any event, not later than four weeks from the date of receipt of a copy of this order.

Pending miscellaneous shall stand closed in the light of this final order. No order as to costs.

21st FEBRUARY, 2019

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SANJAY KUMAR, J