

HON'BLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO.1700 OF 2020

ORDER:

The present Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for records relating to Memo No.A3/325/2019-Pts dated 18.01.2020 passed by the 2nd Respondent whereby the said respondent disqualified the petitioner from the post of 4th ward member as well as Upa-sarpanch, Gram panchayat Sundilla village, Ramagiri Mandal, Peddapalli District and to set aside the same on the ground the violation of principles of natural justice, without jurisdiction and contrary to the order passed by this Court in W.P. No.5906/2019 dated 22-3-2019.

2. Heard Sri G. Madhusudan Reddy, learned Counsel for the petitioner, learned Government Pleader for Panchayat Raj and Sri G. Narender Reddy, learned Standing Counsel for Gram Panchayat appearing for the 4th Respondent.

3. The brief facts of the case are that the petitioner was elected as a 4th ward member of Sundilla village Grampanchayat and thereafter went on to become a Upa-Sarpanch of the said Gram Panchayat. It is claimed that the 3rd respondent basing on the complaint made by one Renikuntla Ravi, S/o Bhumaiah, wherein, it is alleged that the petitioner is having three children, who all are stated to have been born after 30.05.1995, and thus, attracting disqualification to contest the election of the ward member or hold the post of the ward member and Upa-sarpanch, being in

contravention of Section 21(3) of the Telangana Panchayat Raj Act, 2018 (for short 'the Act').

4. It is seen that Sri Janagama Krishna Swamy S/o Pochamallu of the same village along with Renikuntla Ravi filed Writ Petition before this Court in W.P. No.5906 of 2019 questioning the action of official respondents in not disqualifying the petitioner under the provisions of the Act. This Court while disposing the above said Writ Petition filed by the said person, directed the official respondents to take appropriate action as per the due procedure based on the representation dated 19-02-2019 given to the 2nd respondent. The above said Writ Petition was disposed off by this Court vide order dated 22.03.2019. As the said authority failed to take action as per the order of this Court, the petitioner filed Contempt Case before this court in C.C. No.1690 of 2019.

5. It is seen that after the disposal of W.P. No.5906 of 2019 by this court on 22.03.2019, the 3rd Respondent herein had issued a notice in Lr. No. A7/325/2019-P dated 12.04.2019, to the petitioner, intimating the petitioner regarding the allegation made by one Renikuntla Ravi, a resident of the village with regard to the petitioner having three children and thereby attracting disqualification under Section 21(3) of the Act, 2018. By the said communication, the 3rd respondent also informed the petitioner that the 4th respondent and Mandal Development Officer submitted its report. As the things stood thus, the 2nd respondent based on the report furnished by the 3rd respondent issued impugned memo No. A3/325/2019-Pts, dated 18-01-2020 declaring the petitioner as being disqualified to the post of 4th ward member as well as Upa-sarpanch Gram panchayat, Sundilla village of Ramagiri

Mandal as per Section 21(3) of the Act, for having three living children. By the above impugned proceeding, the 3rd respondent was directed not to allow the petitioner to function as a 4th ward member/Upa-sarpanch to any of the meetings of the Gram panchayat and other activities hereof.

6. The main challenge to the above proceeding in the present Writ Petition is laid by the petitioner on the ground that the said authority while taking note of the directions issued in W.P. No.5906 of 2019, did not take into consideration the procedure relating to disqualification of a member as provided under Section 27 of the Act, as noted in the said order of this Court.

7. The learned Counsel by drawing attention of this Court to the order of this court in W.P.No.5906 of 2019 submits that, this Court having regard to the scheme of the act, had categorically noted that the authority competent to take decision with regard to the disqualification of a member, is the District Court, and the authorities are required to approach the Court within the time specified under the Act.

8. The Learned Government pleader for Panchayat Raj and Learned Standing Counsel for Gram Panchayat does not dispute the said legal position.

9. Having regard to the submissions made and perusing the record, it is seen that this court while disposing of the W.P. No.5906 of 2019, has in clear and unambiguous terms observed that in order to take action under Section 27 of the Act, the Panchayat Secretary or District Panchayat Officer shall within two months from the date on which intimation regarding the petitioner

attracting the disqualification under Section 21 of the Act, shall apply to the District Court, having jurisdiction over the area in which the office of the Gram panchayat is situated, for decision. As seen from the record, the impugned order is passed by the 2nd Respondent, who is the District Collector and not the competent authority in terms of the provisions of Section 27 of the Act.

9. Further, in similar circumstances, this Court in W.P. No.27918 of 2019 dealing with the scope of Section 27 of the Act, has held that the decision regarding a member attracting disqualification based on complaint, ultimately has to be taken only by the District Court and not by any authority who either issues intimation or any authority who is empowered to accord sanction for initiating proceedings before the District Court.

10. Having regard to the settled position of law as noted herein above, the impugned order passed by the 2nd respondent declaring the petitioner to be disqualified from the post of 4th ward member and Upa-sarpanch of Gram panchayat Sundilla village, is clearly without jurisdiction and cannot be sustained.

11. Accordingly, the Writ Petition is allowed and the impugned proceeding No. A3/325/2019-Pts dated.18-1-2020 is hereby set aside. No order as to costs.

12. Pending miscellaneous petitions, if any, shall stand closed in the light of this final order.

JUSTICE T.VINOD KUMAR

Date: 27.02.2020

MRKR