

THE HONOURABLE SRI JUSTICE T. VINOD KUMAR

WRIT PETITION NO.19896 AND 19906 OF 2010

COMMON ORDER:

These Writ Petitions are filed under Article 226 of the Constitution of India for issuance of writ of mandamus declaring the judgment of the Principal District Judge, Warangal dated 31.07.2010 in Election O.P. Nos.1127 and 1256 of 2006, as being illegal, arbitrary and perverse.

2. Since the issue involved in both the Writ Petitions being common, the same are being disposed of by this common order.

3. By the present writ petitions, challenge is made to the judgment dated 31.07.2010 in Election O.P. Nos. 1127 and 1256 of 2006 passed by the Principal District Judge, Warangal, whereby the petitioner who is elected as the Sarpanch of Bachachannapet Gram panchayat of Warangal District on 06.08.2006, has been declared disqualified to hold the said office, on account of petitioner attracting disqualification under Section 19(3) of A.P. Panchayat Raj Act, 1994,(herein after referred to as 'Act') for having more than two children.

4. The case of the petitioner is that, though the petitioner is having more than two children, as all the children were born prior to the cut off date i.e., 1st May, 1995, as specified

in the Act, for attracting disqualification, the petitioner does not attract the disqualification as provided under Section 19(3) of the Act, for holding the office of Sarpanch and the petitioner is entitled to continue in the office of the Sarpanch of Bachachannapet Mandal of Warangal District.

5. Though the Writ Petition came to be filed in the year 2010 being aggrieved by the order of the Principal District Judge, Warangal, no interim orders were passed by this Court, inasmuch as it was submitted that, upon the petitioner being declared as disqualified to hold the office of Sarpanch, by the order of the Principal District Judge, the same was given effect to and the Upa-sarpanch had already taken charge. It is to be seen that the petitioner was elected as Sarpanch in the election conducted in June, 2006, and nearly after a period of four years, he was held to be disqualified by the Principal District Judge, which resulted in the Upa-sarpanch being put in place of the petitioner as Sarpanch of the said Gram panchayat.

6. Though, at this point of time, the cause in the Writ Petition may not survive for adjudication by this Court, as the period for which the petitioner was elected having long over, and there being two elections held subsequently, the learned counsel for the petitioner however, submitted that having regard to the findings recorded by the Principal District Judge, Warangal, would disentitle the petitioner taking part

in any election or to hold a public office by way of seeking election where such condition would be applicable, and thus, seeks adjudication.

7. The brief facts of the case are, the unofficial respondents in the present writ petitions have filed two Election O.Ps before the District Court under Section 22 read with Section 19(3) of the Act, seeking a declaration that the petitioner is disqualified to hold or continue in the post of Sarpanch, Gram panchayat Bachachannapet, as the petitioner had seven living children as on the date of filing of his nomination of the election, thereby attracting disqualification under Section 19(3) of the Act.

8. The Trial court, after going through the material placed on record and the evidence adduced before the said Court, had come to a conclusion that the last child i.e., 7th child of the petitioner was born on 08.09.1997, thereby the petitioner attracting disqualification under the Act, for contesting the election to the post of member or Sarpanch of Gram panchayat. Based on the above said finding, the learned District Judge allowed both the Election O.Ps disqualifying the petitioner from holding the post of Sarpanch.

9. Before the District Judge, the respondent who filed O.P.s examined himself as P.W-1 and Exs.P-1 to P-6 were marked, while the petitioner herein including himself another witnesses examined as R.W-1 and R.W-2 and marked Exs.R-1

to R-11. In addition to R.Ws.1 and 2, the official respondents R.Ws-3 and 4 were also examined before the Trial Court.

10. Though the factum of the petitioner having the 7th child who is born on 08.09.1997 is not in dispute, since, the petitioner himself has produced the study and date of birth certificate of G. Krupa, thereby attracting the disqualification subsequently, the claim of the petitioner is with regard to the finding recorded by the District Judge in the Election O.Ps holding that the petitioner has attracted disqualification on the date of filing of nomination and being declared as elected, since, all the other children were born within the period provided under Section 19(3) of the Act, and thus the Court erred in holding that on account of the birth of the 7th child on 08.09.1997, the petitioner attracted disqualification.

11. On the other hand, learned Government Pleader submits that the requirement under the provisions of A.P. Gram Panchayat Act, for any person to be eligible to contest the election as a member or Sarpanch is to have not more than two children with exception of a further child being born before 30.04.1995 i.e., within a period of one year from the 1994 Act having been brought into force. Since, the petitioner admittedly had six children, which is not in dispute, though there is some dispute regarding the date of birth of the 5th and 6th child recorded in the records, the petitioner had begotten another child on 08.09.1997, the

petitioner automatically becomes ineligible to contest to the office of the member or Sarpanch in terms of the provisions of A.P. Panchayat Raj Act, 1994, and stands disqualified to continue in such office thereafter.

12. Heard learned Counsel for the petitioner Sri M. Ashin Reddy for Sri B. Vijaysen Reddy, and learned Government Pleader for Panchayat Raj, Sri G. Narender Reddy, learned Standing Counsel for Gram Panchayat and learned Government Pleader for Revenue.

13. Having regard to the submissions made on behalf of the parties, in order to appreciate the contentions urged, it is necessary to examine the scope of Section 19(3) of the A.P. Panchayat Raj Act, 1994 as being applicable to the issue raised. Section 19(3) of the Act reads as under:

“A person having more than two children shall be disqualified for election or for continuing as member.”

A reading of the Section 19(3) of the Panchayat Raj Act as above, indicates that the said section is in two parts namely – (i) a person attracting disqualification from contesting election as a member and (ii) upon being elected, continuing as member; for having more than two children. The first part of the Section deals with a person seeking an election after the amendment to the provision, while the second part would cover a person who is holding the office as member as on the date of the amendment to the section or after becoming a member attracting disqualification on

account of increase in number of children contrary to Section 19(3) and the proviso. Thus, the second part of the provision would be applicable post election of a person as a member. This would be evident by use of disjunctive “or” between first part and second part.

14. When a challenge to the said Section has been made as being ultravires the Constitution, this Court in the case of ***Are Gangadhar v. Zillaparishad Karimnagar***¹, held the provision to be intravires the Constitution. This Court in the aforesaid decision held that right to contest election is merely a statutory right not a constitutional right and does not invade the right of privacy of a person.

15. Though, it is urged on behalf of the petitioner that the petitioner does not attract disqualification, since on the date when the Amendment Act had come into force, the petitioner’s children were within the dates specified viz., 1st May, 1995. However, the fact of the petitioner giving birth to another child on 08.09.1997, not in dispute, would still disentitle the petitioner from continuing as member or being elected as Sarpanch, as the second part of the Section 19(3) of the Act, dealing with ‘continuing as member’ would get attracted. The only situation where the said disqualification does not get attracted is by way of exception as provided in the proviso to sub-section (3) of Section 19 of the Act which reads as under:

¹ 1999(5) ALD 585

“Provided that the birth within one year from the date of commencement of the Andhra Pradesh Panchayat Raj Act, 1994 hereinafter in this section referred to as the date of such commencement, of an additional child shall not be taken into consideration for the purposes of this section:

Provided further that a person having more than two children (excluding the child if any born within one year from the date of such commencement) shall not be disqualified under this section for so long as the number of children he had on the date of such commencement does not increase:

Provided also that the Government may direct that the disqualification in this section shall not apply in respect of a person for reasons to be recorded in writing.”

The Proviso to sub-section (3) makes it abundantly clear that a person would attract disqualification having more than two children with an exception of another child being born before 1st May, 1995, would not be disqualified so long as the number of children does not increase.

16. Admittedly, in the facts of the present case, even accepting the contention urged on behalf of the petitioner that the petitioner had given birth to two children one in February, 1994 and another in January, 1995, thereby not attracting the disqualification, still the petitioner would attract the disqualification specified in 19(3) of the Act on account of the petitioner begotten another child on 08.09.1997. This Court in the case of **Are Gangadhar** (1 supra) has also held that a person would attract the disqualification if he or she begots 3rd child after the election.

17. Though, it is sought to be urged on behalf of the petitioner that the elder children of the petitioner are married earlier to the Amendment Act having come into force, the fact of marriage does not take away the condition of the said children not being considered for the purpose of determining as to whether the petitioner is having more than two children on the date of 1994 Act have come into force.

18. Further, the claim of the petitioner before the Trial court was that his 4th child by name Santhi Priya was born on 08.09.1990, 5th child by name Krupa was born on 19.09.1992, 6th child by name Anand was born on 26.12.1994 and the 7th child by name Elia was born on 28.01.1995 respectively. In the cross-examination of the petitioner, it is elicited from the petitioner that the date of birth of the last child of the petitioner was recorded in the school records as 08.09.1997 and the petitioner had not made any effort to change the date of birth of the said child in school records.

19. With regard to the exhibit filed by the petitioner marked as Exs.R-1 to R-4, it was put to the petitioner that they are not the date of birth certificates, but are only certificate issued by the Municipal authorities recording non-availability of the information relating to the birth of the above children. The Trial court taking note of the above exhibits marked by the petitioner and the documents which were marked by the

other respondents had come to the conclusion that the petitioner attracted disqualification in terms of sub-section (3) of Section 19 of the A.P. Panchayat Raj Act, 1994, to hold the office of the Sarpanch of Bachachannapet Gram Panchayat.

20. The learned counsel for the petitioner made a feeble attempt by submitting that on account of the certificate issued by the Municipal Corporation authorities with regard to non-availability of the recording of the date of birth of the petitioner's children on 08.09.1990, 10.01.1992, 26.02.1994 and 28.01.1995, it would have to be necessarily construed as the child having been born on the said date, does not merit consideration.

21. On the other hand, if the petitioner claims that the children were born on the said dates for which the petitioner had approached the authorities seeking for issuance of certificate and the said municipal authorities having informed the petitioner that having a search made on the request of the petitioner on the said dates specified, the event relating to birth on the said date being not registered, would indicate that the children of the petitioner were not born on the said date, as otherwise, the same would have been duly recorded in the register. It is also not the case of the petitioner that the children were born in any other place where no such record is maintained. On the other hand, in the evidence filed before the Trial court, the petitioner has categorically stated that the

petitioner's wife gave birth to the children at the petitioner's in-laws house at Hyderabad and in support of which the non-availability certificates issued by the municipal authorities are sought to be relied upon, which for the reason mentioned above cannot be accepted as the date of birth certificate.

22. Thus, considered from any angle, the claim of the petitioner of not attracting the disqualification as provided under Section 19(3) of the A.P. Panchayat Raj Act, 1994, is devoid of merit and the order dated 31.07.2010 in Election O.P. Nos. 1127 of 2006 and 1256 of 2006 passed by the Principal District Judge, Warangal, does not call for any interference.

23. Accordingly, these Writ Petitions are without merit and are dismissed. No order as to costs.

24. As a sequel thereto, the miscellaneous petitions pending, if any, shall stand closed.

T. VINOD KUMAR, J

Date: 18.02.2020

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