

THE HON'BLE SRI JUSTICE T. VINOD KUMAR

Writ Petition No.21792 of 2019

ORDER:

The present writ petition is filed under Article 226 of the Constitution of India for issuance of a *Writ of Mandamus* to declare the action of the 2nd respondent-Revenue Divisional Officer, Utnoor, Adilabad District, in issuing the impugned notice bearing No.H/1825/2019, dated 26.08.2019, as being illegal, arbitrary, unjust and contrary to G.O.Ms.No.4 Panchayat Raj and Rural Development (PTS.III) Department, dated 29.01.2019.

Heard Sri Gajanand Chakravarthi, learned counsel for the petitioner and the learned Assistant Government Pleader for Panchayat Raj and Sri A. Ananda Chary, learned counsel appearing for the 3rd respondent.

It is the case of the petitioner that the 2nd respondent lacks jurisdiction in issuing the impugned notice to the petitioner whereby the petitioner's election to the post of Sarpanch of Shyampur Gram Panchayat is sought to be questioned on the ground of the petitioner having more than two children, contrary to the provisions of Section 21 of the Telangana Panchayat Raj Act, 2018 (hereinafter referred to as 'the Act') and also contrary to G.O.Ms.No.4, dated 29.01.2019 whereunder Rules relating to the authority and manner for disposing the election petitions in respect of Gram

Panchayats, Mandal Praja Parishads and Zilla Parishads have been framed.

It is the case of the petitioner that the 2nd respondent issued impugned notice dated 26.08.2019, based on the application of the 3rd respondent in the writ petition dated 21.08.2019 whereby it is claimed that the petitioner is having three children thereby attracting disqualification under the provisions of the Act and sought for necessary action being taken against the petitioner.

The learned counsel for the petitioner would contend that the 2nd respondent treated the complaint of the 3rd respondent as election petition and issued notice to the petitioner fixing the hearing on 07.09.2019, which it is claimed as clearly without jurisdiction.

The learned counsel for the petitioner submits that though in the scheduled areas, the 2nd respondent is the authority who would act as Election Tribunal, the said authority cannot entertain any election petition if the same is filed beyond the period of 30 days as provided in G.O.Ms.No.4 dated 29.01.2019. Further, it is also submitted by the learned counsel for the petitioner that the election to the office of the Sarpanch was held on 30.01.2019 and the petitioner having been elected as Sarpanch thereat, the election petition if any challenging such election could have been presented within the period of 30 days and not beyond,

much less by way of complaint made in August, 2019. As the notice issued by the 2nd respondent is based on the complaint of the 3rd respondent dated 21.08.2019, the impugned notice as issued by the 2nd respondent in treating such complaint as election petition, is clearly without jurisdiction is the submission of the learned counsel for the petitioner and prays for the same being set aside.

On the other hand, the learned Government Pleader for Panchayat Raj submits that the impugned proceeding is only a notice and it is always open for the petitioner to make submissions before the authority who would consider the same in accordance with the provisions of the Telangana Panchayat Raj Act, 2018. The learned Government Pleader also submits that based on the complaint made by the 3rd respondent about the petitioner attracting disqualification under Section 21 of the Act, the 2nd respondent has initiated proceedings, which can be treated as proceedings under Section 27 of the Act.

Having given due consideration to the submissions made, it is seen that the 3rd respondent at whose behest the impugned notice has been issued by the 2nd respondent authority was not a candidate in the election held on 30.01.2019. Thus, the question of the 3rd respondent filing election petition would not arise. In such circumstances, the complaint made by the 3rd respondent can only be considered

as a complaint made under Section 27 of the Act. However, as per the provisions of the Act, such complaint is required to be made in writing to the Panchayat Secretary in case of Gram Panchayats, thereupon the Panchayat Secretary after issuing a notice to such member against whom an allegation is made and upon receiving the explanation from such member and after obtaining the approval either from the Panchayat or the District Collector within a period of two months from the date on which the intimation is given to such member apply to the District Court having jurisdiction over the area for decision, as to whether the member has attracted disqualification under Section 21 of the Act.

Admittedly, the 3rd respondent having made a complaint to the 2nd respondent with regard to the petitioner attracting disqualification under Section 21 of the Act, the 2nd respondent could not and ought not to have assumed jurisdiction onto himself to decide as to whether the petitioner attracts disqualification or not, since the said authority is not the competent authority to act thereupon or to take a decision thereon, as per Section 27 of the Act. It is only the District Court that is conferred with such power to adjudicate and having jurisdiction. Further, the 2nd respondent also ought not to have considered the said representation of the 3rd respondent as election petition, because such election petition can be maintained only by the person, who has participated in the election against the petitioner.

Considered from any angle, the impugned notice as issued by the 2nd respondent is clearly without jurisdiction and thus, the submission of the learned counsel for the respondents that the impugned proceeding being only a notice to which the petitioner can submit its reply would not impress upon this Court for not entertaining this writ petition. Further, this Court having come to the conclusion that the impugned proceeding is without jurisdiction, the natural consequence is to set aside the same.

Accordingly, the writ petition is allowed and the impugned order / notice bearing No.H/1825/2019, dated 26.08.2019 issued by the 2nd respondent is set aside.

However, it is left open for the authority to initiate proceedings under the provisions of Telangana Panchayat Raj Act, 2018, based on fresh complaint if any received/made with regard to the petitioner attracting disqualification under Section 21 of the Act and act in accordance with law.

There shall be no order as to costs.

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

T. VINOD KUMAR, J

Date: 21.01.2020
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