

THE HON'BLE SRI JUSTICE A. ABHISHEK REDDY

WRIT PETITION No.22630 of 2021

ORDER:

This Writ Petition is filed seeking the following relief:

“... to issue writ, order or orders, one in the nature of writ of certiorari quashing the E.O.P. No.05/2019 dated 09.09.2021 in the Court of the Principal District Judge, Nalgonda, which having disqualified the Petitioner herein on the ground of having 3 children and thereby violating Sec.21(3) of the Telangana Panchayat Raj Act, 2018 (hereinafter referred to Act, 2018) inspite of the fact that the Petitioner herein has only 2 children which fact was not allowed to be brought on record by the Trial Court and thereby the order being arbitrary, illegal, without any application of mind or reasons and thereby violative of the Act of 2018 and Petitioner's Fundamental Rights under Article 14 and 21 of the Constitution of India and to consequently quash the same in the interest of justice and pass such other order or orders may deem fit and proper in the circumstances of the case.”

Heard Sri P. Venu Gopal, learned senior counsel, appearing on behalf of Sri B. Mayur Reddy, learned counsel for the petitioner, Sri P. Sudheer Rao, learned Standing Counsel for Telangana State Election Commission, the learned Government Pleader for Panchayat Raj, Sri N. Praveen Kumar, learned Standing Counsel for Municipalities, and Sri C. Kalyan Rao, learned Standing Counsel for Gram Panchayat, for the official

respondents, and Sri L. Preetham Reddy, learned counsel for respondent No.12.

Learned Senior Counsel Sri P. Venu Gopal has contended that in E.O.P.5 of 2019 filed by respondent No.12 herein, the petitioner herein was set *ex parte* on 16.02.2021 and as such, the petitioner has filed I.A. No.758/2021 under Order IX Rule 7 of the Code of Civil Procedure but the same was dismissed *vide* order dated 23.07.2021. Subsequently, the petitioner has filed C.R.P. No.1130 of 2021 challenging the dismissal order dated 23.07.2021 passed in I.A.No.758 of 2021. But, even before the CRP could be heard and orders passed on merits, the main EOP itself was allowed *vide* impugned order dated 01.09.2021 and the election of the petitioner was set aside on the ground that the petitioner had more than two children. Learned Senior counsel has stated that the documents relied by the respondent No.12 are fabricated documents and has drawn the attention of this Court to the Birth Certificate filed and relied by the respondent No.12 in the EOP. Learned Senior Counsel has further stated that the petitioner had only two children namely (1) Boska Rahul Ryan and (2) Boska Rishanth Ryan, who were born on 13.07.2012 and 08.03.2014 respectively. That even though the Birth Certificate relied by respondent No.12, who

filed the E.O.P., shows the name of the parents as that of the petitioner and his wife and the name of the child as Boska Sharook Prins, but as a matter of fact, the actual Birth Certificate procured by the petitioner shows the names of the parents as Chinnaboska Pavitra and Chinnaboska Praveen and has also drawn the attention of the Court to the Aadhaar Card bearing No.4081 0624 6127, which shows the name of the cardholder as Chinnaboska Sharon Prince and the name of the father as Chinnaboska Praveen. Learned Senior Counsel has also relied on the National Food Security Cards issued by Department of Consumer Affairs, Food & Civil Supplies, Government of Telangana, bearing new Ration Card No.365390381375 to buttress his contention that the petitioner has only two children viz., Boska Rishanth Ryan and Boska Rahul Ryan. Even though, the learned Senior counsel has tried to argue the case on merits by raising various contentions, this Court is not inclined to deal with the matter on merits as the documents relied by the petitioner are not marked in the EOP and the respondent No.12 never had the opportunity to cross-examine the witness or produce contra evidence to rebut the document now relied by the petitioner in the present writ petition.

Per contra, the learned counsel for the contesting respondent No.12 has stated that even though several opportunities were given to the petitioner to contest the EOP, the petitioner did not choose to appear before the Election Tribunal and therefore the Election Tribunal had no other option but to set the petitioner *ex parte*. Learned counsel has further stated that even though the petitioner had knowledge about the filing of the EOP, he did not choose to participate in the proceedings and only after he was set *ex parte*, the present I.A.No.758/2021 is filed, and even the said I.A. is not filed within time, and therefore, the Tribunal has dismissed the I.A. That the order of the Election Tribunal passed in I.A.No.758/2021, dated 23.07.2021 has become final as in the C.R.P. filed against the said order, no orders were passed. Leaned counsel has further stated that even though the petitioner had filed CRP before this Court against the dismissal of I.A., no interim orders were granted by this Court. Hence, in the absence of the interim orders staying the proceedings before the Election Tribunal, the Election Tribunal has decided the main EOP itself on merits and passed the impugned order. Learned counsel has stated that once the order of setting the petitioner *ex parte* has become final, the petitioner cannot challenge the orders passed in the EOP

and rely on the documents which have not been produced or marked before the Election Tribunal. Hence, he prayed to dismiss the writ petition.

Heard and perused the record.

A perusal of the material on record shows that the petitioner was set *ex parte* on 16.02.2021 and thereafter he had filed an application to set aside the order dated 16.02.2021 being I.A.No.758/2021, but the same was also dismissed on 23.07.2021 on the ground of delay and laches. Even though the petitioner had filed a CRP before this Court being C.R.P. No.1130 of 2021, but even before the CRP could be decided on merits by this Court, the main EOP itself was decided by the Election Tribunal.

This Court as well as the Hon'ble Supreme Court in a catena of cases have held that the Courts or Tribunals should always endeavour to pass orders on merits more so when the matters are contested by both sides, but not on mere technicalities or procedural lapses. The Courts have repeatedly held that the provisions of the C.P.C. should be liberally interpreted to advance the substantial justice.

Having regard to the above, this Court is of the opinion that the ends of justice would be met if the order passed by the

Election Tribunal is set aside and the matter is remanded back to the Tribunal for passing orders on merits after the evidence of the petitioner herein is adduced and documents are marked. Therefore, the impugned order is set aside. Consequentially, the order setting the petitioner *ex parte* is also set aside and the petitioner is entitled to participate in the trial of the EOP.

Accordingly, the Writ Petition is allowed subject to the petitioner paying an amount of Rs.20,000/- (Rupees twenty thousand only) to the learned counsel for respondent No.12, within a period of ten days from the date of receipt of a copy of this order. Consequentially, the order setting the petitioner *ex parte* in the EOP by the Election Tribunal also stands set aside and the parties are permitted to lead evidence, if any, in the EOP. However, it is made clear that the petitioner shall co-operate for the early disposal of EOP and the Election Tribunal shall dispose of the EOP as expeditiously as possible, within a period of two months from the date of receipt of a copy of this order. If the Election Tribunal is of the opinion that the petitioner is trying to drag the matter or not cooperating for the early disposal of the EOP, necessary final orders may be passed based on the material available on record. It is also made clear that in case any evidence is led by the petitioner, the respondent

No.12 will have the right of cross-examination and also lead any contra evidence, if necessary.

With the above observations and directions, the Writ Petition is allowed.

Miscellaneous petitions pending in this writ petition, if any, shall stand closed. There shall be no order as to costs.

A.ABHISHEK REDDY, J

Date :25.03.2022
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