

Andhra High Court

Chennaboina Sambaiah vs District Collector And Ors. on 10 June, 2005

Equivalent citations: 2005 (5) ALD 269

Author: E D Rao

Bench: E D Rao

ORDER Elipe Dharma Rao, J.

1. The petitioner, who is Upa Sarpanch of Muthojipeta Gram Panchayat, filed this writ petition, seeking to declare the action of the respondents in continuing the 4th respondent as Sarpanch of the said Gram Panchayat, despite acquiring disqualification under Section 19(3) of the A.P. Panchayat Raj Act, 1994 (for brevity the Act), as illegal, unauthorized, arbitrary and contrary to the provisions of the Act and Rules made thereunder and the spirit and object of proviso under Section 19(3) of the Act.

2. It is averred that the 4th respondent and the petitioner were elected as Sarpanch and Upa-Sarpanch of Muthojipeta Gram Panchayat in the elections held on 17-8-2001. It is the case of the petitioner that the 4th respondent at the time of election as Sarpanch, was having more than two children and suppressing this fact, he entered the office and, as such, the petitioner and other members made a representation dated 31-12-2002 to the 2nd respondent enlightening him of this fact, who in turn by his letter dated 12-3-2003 directed the third respondent to issue show-cause notice to the 4th respondent calling upon him to explain as to why action should not be taken for violation of Section 19(3) of the Act. Subsequently, the first respondent basing on the report of the Mandal Revenue Officer, Narasampet, concluded that the 4th respondent has acquired disqualification in giving birth to 3rd child and thus passed an order Proceedings No. 19/2003/A2 dated 8-5-2003. This order was assailed by the 4th respondent before this Court in W.P.No. 19854 of 2003 and a learned Single Judge of this Court disposed of the same on 2-7-2003 at the stage of admission, on the ground of alternative remedy, directing the 4th respondent to approach the District Court within a period of one month from the date of receipt of a copy of the order and seek appropriate orders. Pursuant thereto, the 4th respondent filed OP No. 610 of 2003 before the learned Principal District Judge, Warangal. Subsequently, the first respondent has issued proceedings dated 4-10-2003 permitting the 4th respondent to continue in the post of Sarpanch, subject to the result of OP No. 610 of 2003. It is stated that the said O.P. was dismissed as not pressed and as such there was no stay and the disqualification acquired by the 4th respondent is clear, which disentitles him to hold the post of Sarpanch any further. Therefore, since the official respondents have failed to discharge their duties, in spite of his best efforts, the petitioner came up with this writ petition.

3. Before deciding the controversy, I would like to refer to the proceedings passed by Mr. K. Prabhakar Reddy, I.A.S., District Collector, (Panchayat Wing), Warangal, first respondent herein. The first respondent, based on the representation dated 31-12-2002 submitted by the petitioner herein, called for a report from the Mandal Revenue Officer, Narasampet, who submitted a report dated 11-12-2003, stating that the 4th respondent D. Laxman, has given birth to 3rd child on 5-10-2002. Consequent thereto, on the show-cause notice of the 2nd respondent, the 4th respondent submitted reply, which is said to be not convincing. Therefore, the first respondent passed the order dated 8-5-2003, a part of which reads as under:

"... Therefore, under Section 19(3) of A.P.P.R. Act, 1994 read with Section 22 of the said Act, Sri D. Laxman, Sarpanch, Gram Panchayat, Muthojipet Mandal, Narasampet, is hereby disqualified from the post of Sarpanch of the said Gram Panchayat for having given birth to 3rd child after specified date under Andhra Pradesh Panchayat Raj Act, 1994 with immediate effect Since Sri D. Laxman, Sarpanch, Gram Panchayat, Muthojipet was disqualified to hold the post of Sarpanch, Gram Panchayat, Muthojipet of Narasampet Mandal, the Sub-Treasury Officer, Narasampet and Branch Manager concerned are requested not to honour the cheques presented by Sri D. Laxman, Sarpanch (who is under disqualification), Gram Panchayat, Muthojipet.

Further to run the day-to-day administration of the Gram Panchayat, Muthojipet and under Section 26 of Andhra Pradesh Panchayat Raj Act, 1994, Sri Ch. Sambaiah, Upa-Sarpanch is hereby appointed as temporary Sarpanch, Gram Panchayat, Muthojipet Mandal, Narasampet with immediate effect till the post of Sarpanch is filled up.

The Extension Officer (PR & RD), Narasampet is required to intimate the casual vacancy to this office, consequent to disqualification of Sri D. Laxman, Sarpanch, Gram Panchayat, Muthojipet Mandal, Narasampet..."

4. A plain reading of this order, prima facie shows that this was passed without looking into the provisions of law, bearing on the issue. The officials of the rank of District Collector, while dealing with the rights of citizens, 4th respondent herein, are expected to be vigilant enough. The first respondent lacks jurisdiction to decide as to whether the 4th respondent had acquired disqualification for having given birth to 3rd child. There is a procedure contemplated under Section 22 of the Act, which says that where an allegation is made that any person who is elected as a Member of a Gram Panchayat is not qualified or has become disqualified, the power is concerned on the District Court. For better appreciation of the lis, it is apt to reproduce Section 22 of the Act, which reads:

Authority to decide the question of disqualifications of members: (1) Where an allegation is made that any person who is elected as a Member of a Gram Panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the Executive Authority in writing and the Executive Authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made. Or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections, such member or any other Member may, and the Executive Authority, at the direction of the Gram Panchayat or the Commissioner, shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, applied to the District Court having jurisdiction over the area in which the Office of the Gram Panchayat is situated for decision.

(2) Pending such decision, the Member shall be entitled to act as if he is qualified or were not disqualified.

(3) ... ."

5. Therefore, it is evident that the Member and the Executive Authority, at the direction of the Gram Panchayat or the Commissioner, on the resolution of the Gram Panchayat, shall within a period of two months of such intimation or doubt, apply to the District Court having jurisdiction over the area. Thus this is a matter to be referred to the District Court, which is competent and having jurisdiction to conduct an enquiry with regard to incurring of disqualification by the 4th respondent. Therefore, I hold that the District Collector has no power and does not get jurisdiction under Section 26 of the Act to declare the disqualification of Sarpanch, Upa-Sarpanch or the Member of Gram Panchayat under the Act. For this reason, the order passed by the first respondent in exercise of powers under Section 26 in appointing the petitioner as temporary Sarpanch till the post of Sarpanch is filled up, is non-est in the eye of law. Therefore, it is accordingly set aside in the interest of inhabitants of Muthojipet

6. Adverting to the prayer in the writ petition, to declare the action of the respondents in continuing the 4th respondent as Sarpanch of Muthojipet Gram Panchayat, cannot be granted for more than one reason. As stated earlier, against the order of the first respondent dated 8-5-2003, the 4th respondent filed WP No. 19854 of 2003 and in compliance of the directions of this Court by order dated 2-7-2003, the petitioner, as an alternative remedy available under Section 22 of the Act, filed OP No. 610 of 2003 before the Principal District Judge, Warangal, thereupon, the first respondent issued proceedings dated 4-10-2003 permitting the 4th respondent to continue as Sarpanch. It is unknown, why the petitioner has abstained from filing a copy of the order dated 4-10-2003 for perusal of this Court. Therefore, I desist from expressing any opinion in this regard. It is case of the petitioner that since the said OP No. 610 of 2003 was dismissed as not pressed, neither there was any stay nor there was anything to peruse further and, therefore, the respondents have committed in illegality in continuing the 4th respondent as Sarpanch of the said village.

7. The entire issue revolves round the contravention of Section 19(3) of the Act. Therefore, is expedient to extract Section 19(3) of the Act, which reads thus:

Disqualification of Candidates:

(1) ...

(2) ...

(3) Any person having more than two children shall be disqualified for election or for continuing as member:

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

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 clause 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..."

8. As stated earlier, when the petitioner and some of the members have made a representation dated 31-12-2002 to the second respondent, the second respondent ought to have dealt with the representation as per the procedure contemplated under Section 22 of the Act, instead of directing the third respondent to issue show-cause notice to the 4th respondent. It appears, on the report of the Mandal Revenue Officer, Narasampet, without there being any resolution passed by the Gram Panchayat, Muthojipet, the first respondent has swung into action and inflicted disqualification to hold the post of Sarpanch, on the 4th respondent, which is in derogation of Section 22 of the Act. Originally, the District Munsif Courts were conferred with the jurisdiction to adjudicate upon this issue, but by virtue of Amendment Act 22 of 2002, which came into effect from 20-6-2002, the jurisdiction is conferred on the District Courts over the area, in which the Office of the Gram Panchayat is situated for decision. Evidently in reply to the show-cause notice issued to the 4th respondent, he submitted reply dated 27-3-2003, but as per the proceeding dated 8-5-2003, the reply submitted by the 4th respondent was not convincing. There is nothing on record, which suggest that explanation was considered. Even otherwise, the first respondent is not competent and it is not within his powers to decide the lis under Section 22 of the Act. As can be gathered from the sworn statement of the petitioners that the District Collector has usurped the powers of the District Court and called for the report from the Mandal Revenue Officer, Narasampet and passed the order dated 8-5-2003 disqualifying the 4th respondent for having given birth to 3rd child and withdrew the cheque powers in exercise of powers under Section 26 of the Act. Therefore, the entire exercise of the first respondent is without jurisdiction and is, therefore, liable to be set aside, being contrary to Section 22 of the Act. Since there is an efficacious alternative remedy provided under Section 22 of the Act neither the first respondent nor this Court get jurisdiction to entertain the relief. The petitioner has misconceived of law and approached this Court for the grant of relief, which prima facie cannot be granted. There is nothing on record to show that in the absence of any resolution passed by the Gram Panchayat, Muthojipet and reference to the District Court, in compliance of Section 22 of the Act, the first respondent does not get jurisdiction to pass the order-dated 8-5-2003. As on today, there is no declaration from the competent Court, with regard to the acquiring of disqualification by the 4th respondent. Perhaps, to overcome the lacuna of not passing a resolution by the Gram Panchayat directing the Executive Authority to refer the matter to the District Court, within a period of two months, when the provision of law also enables to file a petition before the District Court, for declaration of disqualification of 4th respondent, the petitioner has not chosen to do so and approached this Court invoking the extraordinary jurisdiction of this Court, under Article 226 of the Constitution, which cannot be entertained. I am unable to appreciate the contention of the petitioner that the respondents have failed to discharge their duties for the reason that Sub-section (2) of Section 22 entitles the Member to act as if he is qualified, pending decision of the District Court. Therefore, the respondents have not committed any illegality in continuing the 4th respondent as Sarpanch, in the absence of any declaration of disqualification from the District Court, to hold the post of Sarpanch. Consequently, the relief sought for by the petitioner in this writ petition also cannot be granted, as the writ petition itself is not maintainable. Accordingly, the writ petition fails and is dismissed. No order as to costs.