

(2008) 09 AP CK 0013
In the Andhra Pradesh High Court
Case No : Writ Petition No. 7144 of 2008

Banda Mahender Goud

APPELLANT

Vs

State of Andhra Pradesh and Others

RESPONDENT

Date of Decision : 26-09-2008

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 19(3)
Evidence Act, 1872 — Section 114, 35

Citation : (2008) 6 ALD 827

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : C. Hanumantha Rao, for the Appellant; Government Pleader for Panchayat Raj and Rural Development for Respondent Nos. 1 to 5 and G. Madhusudhan Reddy, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—Election to the Gram Panchayat, Thallapally Village of Shabad Mandal, Ranga Reddy District, was held on 2.8.2006. The petitioner, the 6th respondent, and certain others contested for the office of Sarpanch. The petitioner was declared as elected. The 6th respondent filed O.P. No. 1 of 2006 before the Junior Civil Judge-cum-Election Tribunal, Chevella, challenging the election of the petitioner. He pleaded inter alia, that the petitioner gave birth to fourth child, in the year 1999 and thereby, incurred disqualification u/s 19(3) of the A.P. Panchayat Raj Act, 1994 (for short "the Act"). The particulars gathered by him, about the fourth child, by name, Srikanth Goud, were furnished.

2. The petitioner opposed the O.P., by stating that his son, Srikanth Goud, was born on 22.5.1995, and in that view of the matter, he did not incur disqualification. Through its judgment dated 24.3.2008, the Tribunal held that the petitioner incurred disqualification and thereby, had set aside his election. As a consequence, the Tribunal declared the 6th respondent as having been elected as a Sarpanch. The order Of the Tribunal in the O.P. is challenged in this writ

petition.

Sri C. Hanumantha Rao, learned Counsel for the petitioner submits that his client placed before the Tribunal, the Birth Certificate, in respect of the child, issued under the Registration of Births and Deaths Act, 1969 (for short "the Births and Deaths Act"), marked as Ex.R-2, and still the Tribunal did not take the same into account. He contends that the 6th respondent procured the documents from different agencies, totally unconnected with the child.

3. Sri G. Madhusudhan Reddy, learned Counsel appearing for the 6th respondent, on the other hand, submits that the Tribunal had discussed the voluminous oral and documentary evidence, and arrived at a conclusion, that the petitioner gave birth to a child, one year, after the Act came into force. He contends that, not only the principles, governing the appreciation of evidence, but also those, underlying the relevant enactments, were thoroughly analyzed by the Tribunal, and that no interference is warranted, with the order under challenge. Learned Government Pleader for Panchayat Raj has also advanced his contentions.

4. The only basis, pleaded by the 6th respondent, while challenging the election of the petitioner, is referable to Section 19(3) of the Act. The provision reads as under:

Section 19(3): A 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 section referred to as the date of such commencement, of an additional child shall not be taken into consideration for the purpose 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.

5. The Act came into force on 31.5.1994. From a perusal of the Section, it becomes clear that, if an individual gives birth to a third or subsequent child, after expiry of one year, from the notified date, he shall incur disqualification. Admittedly, the petitioner had fourth child. The 6th respondent pleaded that the fourth child, by name, Srikanth Goud, was born on 22.9.1999.

6. In support of his contention, he examined as many as 11 witnesses, and filed Exs.A-1 to A-10. To rebut that contention, the petitioner examined RWs.1 to 6, and filed Exs.R-1 to R-15. The Tribunal also summoned certain documents, and marked them, under Exs.X-1 and X-2.

Since the 6th respondent wanted the Tribunal to set aside the election of the petitioner herein, the burden squarely rested upon him, to prove the facts, pleaded in the O.P. The documentary evidence relied upon by the 6th respondent comprised of, certificates issued by an educational institution, and letters from Anganwadi workers, etc. This evidence would have commanded respectability, in the absence of any authenticated proof of the date of birth of the child. The Births and Deaths Act provides for the registration of births and deaths.

7. A certificate issued thereunder carries acceptability, in view of Section 35 of the Evidence Act. An identical situation arose before the Division Bench of this Court, in *Bhukya Bujji Vs. Bhukya Saraswathi and Others*, . It was observed as under:

Para-15: The register is maintained under the provisions of the Registration of Births and Deaths Act, 1969 (Central Act No. 18 of 1969). Section 35 of the Evidence Act provides that entries made in such a register in public record in performance of official duty relevant. Presumption of correctness is attached to such entries. Therefore, on the evidence led, not only the extracts from register are admissible in evidence u/s 35 of Evidence Act but presumption of regularity of official acts done in discharge of the public duties ought to have been raised u/s 114 of the Evidence Act.

8. In the instant case, the petitioner filed Ex.R-2, Birth Certificate, issued under the Births and Deaths Act. Similar certificate of his another son, by name, Anand Kumar, was also filed as Ex.R-1. To substantiate his contention, that he admitted his child in a different institution, than the one, mentioned by the 6th respondent. He filed the certificates, issued by the said institution. The Head Master thereof was examined as a witness. The Tribunal disbelieved. It was not on grounds of proof. It ignored the same, on the ground that the relevant provisions were repealed in the year 2000. The Tribunal did not take the trouble of examining the date of repeal of the enactment, or the Rules made thereunder, much less, the effect thereof. A casual observation was made to the following effect:

Admittedly, certificate under Exs.R-1 and R-2 were issued as per the provisions of the expelle laws, which was not in force as on date of issuance of those documents, as such Exs.R-1 and R-2 cannot be said to be genuine documents.

9. The approach of the Tribunal cannot be countenanced. The person outside the family cannot be expected to have better knowledge about dates of the birth of the child in the family. Strong and cogent evidence was needed to disbelieve the contents of Ex.R-2. Several suggestions were made to witnesses, examined on behalf of the 6th respondent, as to their not being aware of the correct state of affairs.

10. Even assuming that there was some ambiguity, in the matter and two views are possible, the one, which sustains the election, ought to have been adopted. In *J. Pushpalatha Vs. Election Tribunal and Others*, , this Court observed as

under:

Para-39: An aspect, which needs to be kept in mind is that the election process, is the lifeline of democracy. The result of the elections indicates the mandate given by the electorate. In setting aside the election, a Tribunal or the Court, as the case may be, would not only be depriving of the elected candidate of his or her elected office, but also would be reversing the mandate of the electorate. The same can be resorted to only when the contingencies provided for under the relevant statutes are firmly and clinchingly established. Extension of logic and reasoning have very little place in such cases. The disqualification attached u/s 19(3) of the Act visits the concerned individual with unfavourable and disadvantageous, if not, punitive consequences. In a way, it deprives such persons, of the rights vested in them, or denies to them, which others are entitled to. Even this would result in drastic consequences, so far as such person is concerned. Such deprivation also should be on strong footing and findings, which should be unequivocal and where no second view is possible. Even where two views are possible, the one, which respects the verdict of the electorate and sustains the rights of the individual, should be preferred to the one, which reverses the mandate of the electorate or deprives the elected person of his office.

11. The Tribunal, in the instant case, was mostly swayed away by the so-called inconsistency, about the date of birth of the child, as projected by the 6th respondent. It ought to have placed its finding on a very strong base, before setting aside the election of the petitioner.

The writ petition is accordingly allowed, and the order passed by the Tribunal, in O.P. No. 1 of 2006 is set aside. There shall be no order as to costs.