

(1967) 11 AP CK 0013
In the Andhra Pradesh High Court
Case No : Writ Petition No. 478 of 1967

Bandi Naidu

APPELLANT

Vs

Pavuluri Ramanujiah and Others

RESPONDENT

Date of Decision : 23-11-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1969 AP 22

Hon'ble Judges : Chinnappa Reddy, J

Bench : Single Bench

Advocate : P.A. Choudhary, for the Appellant; Govt. Pleader for K. Krishna Rao, for the Respondent

Judgement

1. The petitioner who is a member of the Gram Panchayat of Carnipudi seeks information from the 1st respondent as to the authority on which he is now holding the office of President and member of the Gram Panchayat of Carnipudi. It is admitted that the respondent was first elected as a member, later Upa Sarpanch and still later Sarpanch of the Gram Panchayat. The petitioner's contention is that the first respondent has not paid property-tax for the year 1965-66 and he is therefore disqualified from holding office by reason of Sec. 20 of the Andhara Pradesh Gram Panchayat Act. It is stated by him that Panchayat Extension Officer who inspected the records of the Panchayat has also submitted a report to the Commissioner of Panchayats to that effect and yet no action has been taken. Consequent on the failure of the authorities to take action he has invoked the jurisdiction of the High Court under Art. 226 for the issue of a writ of Quo Warranto.

2. A duly elected member does not cease to be a member merely because some one alleges that he has incurred a disqualification. The Act has provided a machinery for determination of questions regarding disqualification. Section 22 which prescribes the machinery runs as follows:

"22 (1) Where an allegation is made that any person who is elected or nominated

as a member of a gram panchayat is not qualified or has become disqualified u/s 16, and 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 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 qualified 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 apply to the District Munsif 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) Where a person ceases to be the Sarpanch or Upa Sarpanch of a gram panchayat as a consequence of his ceasing to be a member of the gram panchayat under Cl. (k) of S. 20 and is restored later to his membership of the gram panchayat under sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa Sarpanch, as the case may be".

3. It is seen from S. 22 that any voter or authority may make an allegation in writing to the Executive Authority of a Panchayat that a member of the Panchayat has become disqualified. On receipt of such an allegation in writing the Executive Authority shall give intimation of such allegation to the member concerned. The member may admit the allegation in which case he will cease to be a member or he may dispute the correctness of the allegation in which case a reference has to be made to the District Munsif for determining the question of disqualification. The reference may be made by the member concerned or any other member or the Executive Authority at the instance of the Gram Panchayat or Commissioner. Where the Executive Authority is directed to make a reference by the Gram Panchayat or the Commissioner he is bound to do so. Sub-sec. (2) further provides that pending decision by the District Munsif the member shall be entitled to act as if he was not disqualified. It is therefore clear that it is open to any member who alleges that another member has incurred a disqualification to invoke the jurisdiction of the District Munsif to decide the question of disqualification. The question of disqualification can only be decided on evidence and a writ proceeding is obviously a most inappropriate proceeding for deciding such a question. The writ petition is therefore, dismissed with costs. Advocate's fee Rs. 100.

4. Petition dismissed.