
(2016) 03 AP CK 0005

In the Andhra Pradesh High Court

Case No : Civil Revision Petition Nos. 5418 of 2015 and 511 of 2016

Chennavelli Narsimulu

APPELLANT

Vs

Molgari Narayan Goud and Others

RESPONDENT

Date of Decision : 01-03-2016

Acts Referred:

Andhra Pradesh Municipalities Act, 1965 — Section 13-A, Section 13B, Section 17, Section 18, Section 19, Section 20
Andhra Pradesh Panchayat Raj Act, 1994 — Section 13, Section 13, Section 14, Section 15, Section 15, Section 16, Section 16, Se

Citation : (2016) 3 ALT 541 : (2016) 3 AndhLD 529

Hon'ble Judges : A. Ramalingeswara Rao, J.

Bench : Single Bench

Advocate : J. Prabhakar, for the Appellant; M.V. Subba Reddy, for the Respondent

Final Decision : Disposed Off

Judgement

A. Ramalingeswara Rao, J.—1. These two Civil Revision Petitions are being disposed of by this common order as they arise out of the same cause of action.

2. CRP No. 5418 of 2015 was filed, challenging the order in Election OP No. 1 of 2013, dated 23.11.2015, whereunder the first respondent in the Election Petition was directed to produce his two children along with their Aadhar cards on 27.11.2015 with an observation that failing production of them, adverse inference would be drawn against him.

3. The said order was passed by the learned Principal District Judge, Mahaboobnagar, with the following observations.

This Election OP is filed by the petitioner alleging that the 1st respondent, who is elected as Sarpanch of Muddireddypally village of Balanagar mandal, in the Panchayat Election that was held on 27.07.2013 is having disqualification to hold the post of Sarpanch on the ground that 1st respondent got disqualification

under Sec.19(3) of A.P. Panchayat Raj Act, by having three children after the notified date 30.05.1994 and to declare the petitioner as elected Sarpanch of the village. First respondent is contesting this Election OP by stating that he is having only two children.

Both the parties lead evidence. The petitioner filed some documents and examined the witnesses to substantiate his case. In this context, I have to state that there are some doubts against the documentary evidence produced by the petitioner in view of the absence of authenticated documents. The petitioner filed Ex.A-19 two photographs of three children who were returning from the school and contending that those three children are the children of 1st respondent.

First respondent as RW-1 in his evidence stated that the children pointed 1 and 2 in Ex.A-19 photographs are his children (1) Shailu and (2) Swaran Kumar and the 3rd child pointed in Ex.A-19 photographs is not his son.

Under Section 165 of Indian Evidence Act, the Judge may, in order to discover or to obtain proper proof of relevant facts, ask any question he pleases, in any form, at any time, of any witness, or of the parties about any fact relevant or irrelevant and may order the production of any document or thing;

Provided that the judgment must be based upon facts declared by this Act to be relevant, and duly proved.

In these circumstances, the two children who are admitted by 1st respondent in his evidence are proper witnesses to say whether 1st respondent is having two children or three children. From them this court can ascertain the truth. In these circumstances, by invoking the powers under Sec.165 of Indian Evidence Act, this Court is directing the 1st respondent to produce his two children along with their Aadhar Cards, so that this Court may examine them as court witness to ascertain the truth.

4. When the said CRP came up for consideration before this Court, the learned counsel for the petitioner brought to the notice of this Court a judgment reported in Mellimi Lakshmikantam v. Election Tribunal-cum-Principal District Judge, West Godavari at Eluru , 2008(1) ALT 388 (DB), and submitted that the learned principal District Judge has no jurisdiction to decide OP No. 1 of 2013. In those circumstances, the learned Principal District Judge, Mahaboobnagar, was directed to take up the matter on 28.12.2015, hear the learned Counsel on both sides on the basis of the material available on record and decide the point of jurisdiction. Accordingly, the learned Principal District Judge heard the matter and passed an order on 31.12.2015 holding that he is having jurisdiction to entertain the Election Petition No. 1 of 2013. Challenging the said order, CRP No. 511 of 2016 is filed.

5. The Election OP No. 1 of 2013 was filed by the petitioner/respondent herein, who was a defeated candidate in the election held on 27.07.2013 for the post of Sarpanch of Mudireddypalli village. The said petition was styled as Election OP

and the name of the Court was mentioned as Election Tribunal-cum-Principal District Judge, at Mahaboobnagar. Apart from the first respondent therein, who was an elected candidate, two other contesting candidates were made as parties and the officers were also arrayed as respondents 4 to 7. The prayer sought in the Election OP reads as follows.

It is therefore prayed that the Hon''ble Court may be pleased to declare that the respondent No. 1 has got disqualifications to hold the post of Sarpanch of Mudireddipally village, Balanagar Mandal, Mahabubnagar District, for having more than three children after commencement of the A.P. Panchayat Raj Act, 1994 and consequently to declare the petitioner as elected Sarpanch of the Mudireddypally village, Balanagar Mandal, Mahabubnagar District.

6. The averments in paragraphs 1 and 2 of the Election Petition related to the date of filing of nominations, scrutiny and withdrawal thereof. It was also averred that the petitioner and respondents 1 to 3 were in the fray. It was further stated that on 14.07.2013 the petitioner and respondents 2 and 3 raised an objection before the fourth respondent on the nomination of the first respondent on the ground that his wife gave birth to three children after the notified date 30.05.1994 and the nomination was invalid. In spite of the said objection, the nomination of the first respondent was accepted. A symbol was allotted to the first respondent and election was held on 27.07.2013. In paragraph 3 of the petition, the petitioner stated that the first respondent cannot contest the election, cannot act as Sarpanch of the village and gave details of the three children. In paragraph 4 it was stated that in view of filing of nominations by suppressing the fact of having three children, the first respondent has no right to contest and continue in the post of Sarpanch. He gave details of the evidence in support of his case of the first respondent having three children. In paragraph 5 of the petition it was stated as follows.

That the present petition is filed for violations of provision of Section 19 of AP Panchayat Raj Act for adjudication of disqualification by the Hon''ble Court on the basis of the material placed before the Court. The respondent No. 1 deliberately suppressed the facts of his three children born after the notified date 30.05.1994 of the Act and managed the election officers not to reject his nomination even in spite of filing objections in this regard. After elections also the petitioner made a complaint to the District Collector, Mahabubnagar and also to the District Panchayat Officer, Mahabubnagar who is respondent Nos. 6 and 7 herein, but they did not take any steps against the respondent No. 1 and concerned election officer. The present petition is purely violation of Section 19(3) of AP PR Act to declare the respondent No. 1 has got disqualifications for having more than two children one year after the commencement of Act 1994. Therefore the Hon''ble Court has got jurisdiction to entertain and try the petition for the relief.

7. In the cause of action only two dates, i.e., 14.07.2013 when the petitioner filed objections and 27.07.2013 when the first respondent was declared as elected Sarpanch, were mentioned. A court fee of Rs. 100/- was paid under

Schedule II Article 11(v) of the APCF and SV Act.

8. In the counter filed by the first respondent, apart from denying various averments made in the petition, a specific plea was taken in paragraph 8 thereof stating that the Court has no jurisdiction to adjudicate the dispute in view of the nature of pleadings and nature of relief sought by the petitioner. It was further stated in paragraph 9 that the petitioner has not complied with the mandatory procedure, not filed any complaint before the Election Officer before election and not invited any order therein. It was stated that the petition filed before the Tribunal was not maintainable.

9. A perusal of the averments in the petition would clearly show that the petitioner has not shown the provision under which he filed the petition, though in the subject he stated that he filed it under Section 22 of the Act.

10. On the face of the above averments, both parties led evidence and the order as stated above was passed on 23.11.2015 by the learned District Judge. Now it has to be seen whether the petition filed by the petitioner was under Section 22 of the Act or under Section 233 of the Act. If it is under Section 233 of the Act, the Principal District Judge is not having jurisdiction, whereas if it is under Section 22 of the Act, he got jurisdiction, but the mandatory procedure contemplated under the said Section has to be complied with. The point stated above for consideration in the present CRP No. 511 of 2016, will have a bearing on CRP No. 5418 of 2015.

11. In order to see whether the petition complies with one or the other section, the relevant provisions have to be looked into.

"22. Authority to decide questions of disqualification 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, apply to the District Court having jurisdiction over the area in which 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 clause (b) of Section 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.

233. Election Petitions:- No election held under this Act shall be called in question except by an election petition presented to such authority and in accordance with such rules as may be made in this behalf."

12. The relevant Rules under the Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995, are as follows.

"5. (i) At the time of presentation of the petition, the petitioner shall deposit with it in cash Rs. 100/- (Rupees One Hundred only) as security for the costs of the same.

Explanation:- Where the election of more than one returned candidate is called in question a separate deposit shall be made in respect of each such returned candidate.

(ii) If the provisions of sub-rule(1) are not complied with, the Election Tribunal shall dismiss the petition.

(iii) Open compliance with the provisions of sub-rule(1), the Election Tribunal shall proceed to enquire into the petition."

13. If in the opinion of the Election Tribunal,

"(a) that on the date of his election, a Returned Candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Act, or

(b) that any corrupt practice as laid down under Sec. 211 of the Act has been committed by a Returned Candidate or his election agent or by any other person with the consent of the Returned Candidate or his election agent, or

(c) that any nomination has been improperly rejected, or

(d) that the result of the election, in so far as it concerns a Returned Candidate has been materially affected,

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice, committed in the interest of the Returned Candidate by an Agent other than his election agent, with the connivance of the Returned Candidate, or

(iii) by any improper reception, refusal, or rejection of any vote, or the reception of any vote which is void,

(iv) by any non-compliance with the provisions of the Act, or any Rules or Orders made under the Act.

(A) The Election Tribunal shall declare the election of the Returned Candidate to be void.

(B) If the Election Tribunal holds the Returned Candidate guilty under clause (b) and clause (d)(ii) of this rule, the Election Tribunal shall in addition to declare the election of the Returned Candidate as void, shall also declare that the Returned Candidate shall be disqualified to contest in any elections under this Act, for a period of six years from the date of the order."

14. Learned counsel for the petitioner has relied on a decision of the Hon''ble Supreme Court in *State of HP v. Surinder Singh Banolta* , (2006) 12 SCC 484, and submitted that the disqualification mentioned under Section 19(3) should be decided exclusively by the Election Tribunal.

15. Learned counsel for the Election Petitioner/first respondent relied on the decisions of this Court in *N. Tirupataiahs case* (supra), *Smt. Erlapati Veera Lakshmis case* (supra) and *Balaga Savithramma v. Nalla Satyanarayana* , 2008 Law Suit (AP) 806.

16. An identical issue came up for consideration before the Madras High Court under the provisions of Madras Village Panchayats Act. The Division Bench of Madras High Court consisting of the then Chief Justice Mr. K. Subba Rao and Mr. Justice Bhimasankaram considered the issue in *Venturu Chinnammineedu v. The Election Commissioner, Ramachandrapur* ILR 1956 Andhra 383, and held that the provisions operate in two different fields. In the said case the petitioner, respondent and two others filed nominations for the post of President of Grampanchayat. In the election held, the petitioner was declared duly elected as President. The respondent filed an election petition before the Election Commissioner for setting aside the election on the ground that the petitioner was in arrears of tax and therefore he was not qualified to be a candidate for election. The petitioner challenged the same stating that the question of disqualification of a candidate on the ground that he was in arrears could not be raised in an election petition and that the question could be agitated only in the manner prescribed by Section 19 of the Act, which is similar to Section 22 of the present Act.

17. In the said decision it was held that the disqualification of a member by reason of his being in arrears prior to the nomination was one attaching to the candidate during the process of election and as such it fell within the jurisdiction of the Election Commissioner. The rules for the decision of election disputes and the provisions of Section 19 were intended to govern two different situations. Under the Election Rules, no election could be set aside except by way of an election petition (as in Section 233 of the present Act). The word electing was comprehensive enough to take in the entire process starting from the nomination and ending with the declaration of the results. If a nomination was improperly received or refused for the reason that the candidate was not qualified or had become disqualified within the meaning of Sections 13 to 16 it was a defect

during the process of election and therefore that question could be considered only in an election petition, whereas section 19 provided for the decision of the question of the disqualification of a person, who had been elected member. The operation of that section, therefore was confined only to a stage after the election. It dealt with a person after he had been elected. Thus, there was no conflict between the provisions of Section 19 and the rules for the decision of election disputes. After considering the rules for deciding the election dispute and Section 19 of the Madras Village Panchayats Act, 1950, the Division Bench held as follows.

The gist of the aforesaid provisions in so far as it is relevant to the question now raised, may be stated thus. Save as otherwise provided, no election can be questioned on the ground that the result of the election has been materially affected by the improper reception or refusal of the nomination paper or vote or by non-compliance with the provisions of the Act or the rules made thereunder. Under section 19 of the Act or the rules with section 21(6), if a person is elected as President and he is not qualified or has become disqualified under sections 13, 15, 16 or 17, the President or any other member or the executive authority may apply to the prescribed judicial authority to decide the question whether the said President is not qualified or has become disqualified under the aforesaid provisions. The learned Counsel contends that the question of disqualification under section 16(h) of the Act directly falls within the scope of section 19 and, therefore, that question can be decided only by the prescribed judicial authority if he is approached in the manner provided by that section and that question is, therefore, taken out of the jurisdiction of the election tribunal. This argument, if accepted, will make rule 11(c) nugatory for, under that rule, the Election Commissioner can set aside the election on the ground of improper reception of the nomination paper, and it cannot be denied that the acceptance of a nomination paper of a candidate who is disqualified under section 16(h) is an improper reception of that nomination paper. It is true that under Rule 1, save as otherwise provided, no election can be set aside except by an election petition and, if section 19 is one of such saving provisions, there may not be any conflict between the procedure prescribed under Section 19 and that provided under the rules. But it is a well-settled rule of construction of statutes that an attempt should be made to reconcile the provisions if the language permits it rather than to import a conflict between them. To our mind, it appears that the rules for the decision of election disputes and the provisions of section 19 are intended to govern two different situations. Under the election rules, no election can be set aside except by way of an election petition. The word election comprehensive enough to take in the entire process starting from the nomination and ending with the declaration of the results. See *PONNUSWAMI vs. RETURNING OFFICER, NAMAKKAL* (, AIR 1952 SC 64) and *SELVARANGARAJU vs. DORAISWAMI MUDALIYAR* (ILR 52 Mad. 732 (FB)). If a nomination paper is improperly received or refused for the reason that the candidate is not qualified or has become disqualified within the meaning of sections 13 to 16, it is a defect during the

process of election and, therefore, that question falls to be considered only in an Election Petition, whereas section 19 provides for the decision of the question of the disqualification of a person, who has been elected member for, under that section, when it is alleged that any person who has been elected as a member of a panchayat is not qualified or has become disqualified, the persons mentioned therein can apply to the prescribed judicial authority for a decision on the question of the qualification or disqualification. The operation of that section, therefore, is confined only to a stage after the election. It deals with a member after he has been elected. There is, therefore, no essential conflict between the provisions of section 19 and the rules for the decision of election disputes. The disqualification of a member during the course of election i.e., from the date of the nomination upto the declaration of the result of the election falls under the latter and the question of the disqualification of a sitting member or President comes within the scope of the former. This construction, without doing violence to the language, avoids the conflict and reconciles the provisions. A full Bench of the Madras High Court in SELVARANGA RAJU vs. DORAISWAMI MUDALIAR (ILR 52 Mad. 732 (FB)) resolved the conflict in a similar manner when a question arose under analogous provisions under the Madras District Municipalities Act. There, the question was whether a disqualification under section 49 of the Madras District Municipalities Act, 1920, can be made a ground for petition before an election Court impugning the election under rules 1 and 11(c) of the rules for the decision of disputes as to the validity of the election held under the Act, and it was contended, as it is contended before us that the question fell within the scope of section 51 of the Act. Section 51 of that Act reads:

"Whether it is alleged that any person who has been election or appointed as a councilor is disqualified under section 49 or section 50 and such person does not admit the allegations or whenever any councilor is himself in doubt whether or not he has become disqualified for office."

Anantakrishna Ayyar J., who delivered the judgment on behalf of the Full Bench, in construing the said section, observed at page 744 as follows:

"The expression is disqualified and has become disqualified occurring in the section seem to me to postulate a case where a person has validly become a councilor either by means of a proper and regular election, or by a proper appointment; and they seem to provide only for cases where a person has been validly and properly elected or appointed as a councilor, but where a question is raised that, owing to the present existence in him of a particular disqualification, he should cease to be a councilor."

We respectfully express our accord with the aforesaid observations. The only difference is that in the latter section instead of the words is disqualified in section 51 of the District Municipalities Act the words is not qualified are found. It is not necessary in this case to consider the effect of the change on the scope of an enquiry under section 19 of the Act, for the question now raised is only whether the disqualification of the member by reason of his being in arrears prior

to the nomination could be questioned in the election petition. We, therefore, hold that as the disqualification was one attaching to the candidate during the process of election, it falls within the jurisdiction of the Election Commissioner.

18. A learned single Judge of this Court in *N. Tirupataiah v. District Panchayat Officer, Nellore*, 2005(1) ALD 181, while interpreting Section 22 of the AP Panchayat Raj Act 1994, held that competent authority to decide disqualification was the District Court but not the District Panchayat Officer in spite of an allegation relating to Section 19(3) of the Act. In that decision the issue with regard to maintainability of case before a District court did not come up for consideration. That case arose when the petitioner therein gave a complaint to the second respondent alleging that the third respondent incurred disqualification for being elected or for being continued as Sarpanch on the ground that he was having three children as on the date of election and, therefore, incurred disqualification. As no action was taken, the petitioner filed a writ petition and the same was disposed of on 11.02.2002 directing the second respondent to take action and when that order was not complied with Contempt Case No. 806 of 2002 was filed. Based on the enquiry conducted, a memo was issued informing the petitioner that the third respondent did not attract disqualification and challenging the same the Writ Petition was filed. This Court held as follows.

"An analysis of above provision would show that (i) any voter or authority may make allegation in writing that a member or a Sarpanch of Gram Panchayat is not qualified or has become disqualified under sections 17 to 20 of the Act; (ii) such an allegation in writing has to be made to the executive authority, which according to Section 2 (12) means the Panchayat Secretary appointed to each Gram Panchayat; [as amended by AP Act No. 22 of 2002 with effect from 20.06.2002]. (iii) on receipt of such complaint in writing, the executive authority has to inform the District Panchayat Officer, who in turn will send an intimation to the Member or Sarpanch, who allegedly incurred the disqualification; (iv) on receipt of such intimation, if there is any dispute as to disqualification alleged, the member or any other member of the Gram Panchayat, or Panchayat Secretary or the Commissioner, are entitled to apply to the District Court for a decision as to whether a Member or Sarpanch incurred disqualification and (v) such application to the District Court has to be made within a period of two months from the date on which such intimation is given or doubt is entertained."

Ultimately, the writ petition was allowed and liberty was given to the petitioner to move the District Court for a decision on the question of disqualification of the third respondent.

19. In *Chennaboina Sambaiah v. District Collector, Warangal District*, 2005(5) ALD 269, another learned single Judge of this Court, without noticing the said decision, came to the same conclusion by holding that the District Collector has no jurisdiction to decide the question and it has to be decided by the District Court under Section 22 of the Act.

20. Another learned single Judge of this Court in *Koripathi Sriranga Gopala Rao v. District Collector, West Godavari district, Eluru* , 2006(4) ALD 822, considered the issue of disqualification of Sarpanch and dismissed the case challenging the inaction of the respondents 1 and 2 in not taking action against the third respondent to disqualify him from the post of Sarpanch of the Grampanchayat in view of the fact that he filed an Insolvency Petition. Though the facts of the said case come within the four corners of Section 22 of the Act, the writ petition was dismissed. The said decision has no bearing and cannot be applied for deciding the present case.

21. In *Nallapati Kotamma v. Lanka Bhagyalakshmi* , 2006(5) ALD 631, this Court held that giving away the third child in adoption does not alter the situation for the purpose of attracting disqualification. The said decision was rendered based on the decision of the Hon''ble Supreme Court in *Javed v. State of Haryana* , (2003) 8 SCC 369.

22. In *Shaik Vazeeruddin v. Kaikalur Gram Panchayat, Kaikalur, Krishna District* , 2007(2) ALD 523 also a learned single Judge of this Court, while interpreting Sections 19(3) and 22 of the Act held that the District Court was competent to decide the dispute, but in that case the distinction between Section 22 of the Act and Section 233 of the Act was not considered, though the decision of the Madras High Court in *Venturu Chinnammineedus* case (*supra*) was available by that time. In the said case, the order passed by the District Panchayat Officer holding that the elected member did not incur disqualification was under challenge. In those circumstances only it was held that it is not the District Panchayat Officer who is competent, but it is the District Court under Section 22 of the Act which can decide the dispute.

23. However, in a decision of this Court reported in *M. Jagannadha Rao v. Government of AP* , 2007(1) ALD 779, the issue with regard to jurisdiction under Sections 22 and 233 of the Act came up for consideration, but it was held that they are simultaneous remedies. In the said case, the writ petitioner was a voter of the Grampanchayat and the fifth respondent was also a voter. In spite of raising objection to the nomination of the fifth respondent stating that he was having more than three children his nomination was accepted and he was elected as Sarpanch of the Grampanchayat. In those circumstances, Election OP No. 15 of 2006 was filed before the Principal District Munsif-cum-Election Tribunal, Yelamanchili under Section 233 of the Act and also filed Election OP No. 1162 of 2006 on the file of the Principal District Judge, Visakhapatnam questioning the same election under Section 22 of the Act. In those circumstances it was held that two provisions operate in two different fields. With due respect to the learned Judge, the reasoning adopted by the learned single Judge does not appear to be correct in view of the reasoning given by the Division Bench of Madras High Court in *Venturu Chinnammineedus* case (*supra*).

24. This Court in *Mellimi Lakshmikantams* case (*supra*), on the facts of the case, held that the District Court was not designated as Election Tribunal under Section

233 read with Rule 2(2)(i)(a) of the Rules and no Court exists with the designation Election Tribunal-cum-Principal District Judge and, hence the said Court was not having any jurisdiction. Accordingly, it was held that the learned District Judge was not having jurisdiction and the application filed by the elected candidate under Order 7 Rule 11(d) of CPC read with Rule 3(2) and (7) of the Rules was set aside. In the said case election to the office of the Sarpanch, Kanuru Gram Panchayat of Peravali Mandal, West Godavari District was held on 02.08.2006. The appellant before the Division Bench and respondents 2 and 3 contested the election. The appellant was declared elected. The second respondent filed Election Petition challenging the election with an identical relief as in the instant case and the appellant before the Division Bench filed an application under Order 7 Rule 11(d) CPC for dismissal of the said petition. The same was dismissed by the first respondent on 04.01.2007. When the appellant challenged the same in WP No. 658 of 2007, a learned single Judge of this Court, referring to the provisions of Rules 3 to 7 and 8 to 15 of the Rules read with Section 22 of the Act and also referring to the judgments in N. Tirupataiah's case (supra), Sarihaddu Ramya v. Gudiwada Rural Mandal Parishad, 2005(1) ALT 673, and M. Jagannadha Raos case (supra), held as follows.

"The conspectus of the above three decisions is that whether or not an election petition is preferred under Section 233 of the Act, the voter, an unsuccessful candidate, the executive authority or the Commissioner of Panchayat are entitled to apply to the District Court for a decision as to the returned candidate was not qualified at the time of election, or incurred disqualification subsequently. In a given case, simultaneously both the remedies can also be pursued depending on the facts and circumstances of the case. For instance, if the election petition is filed on one ground and subsequently, the elected candidate incurs disqualification under Section 22 of the Act can be presented before the District Court. Therefore, this Court holds that first respondent does not suffer from any inherent lack of jurisdiction, and therefore, election OP is maintainable notwithstanding the fact that the second respondent purportedly filed petition under Section 233 of the Act read with the Rules. The mention of wrong provision would not disentitle the remedy under Section 22 of the Act."

The Division Bench considered Sections 19(3), 22(1), 233 read with Rules 2(1), Rule 2(2)(i)(a), 3, 5, 7 and 12 and held as follows.

"The tenor and prayer of the petition filed by respondent No. 2 shows that she had challenged the election of the appellant herein on the ground that in view of Section 19(3), she was not qualified to contest the election. She deposited the amount of Court fees of Rs. 50/- and costs of Rs. 100/- and stated that the petition was being filed within the limitation of thirty days."

This clearly shows that the petition filed by respondent No. 2 was in accordance with the election petition under Section 233 of the Act read with Rules 3, 5 and 12 of the Rules and not an application under Section 22(1) of the Act. The prayer made by respondent No. 2 is more than sufficient to clear any misgiving or doubt

about the nature of the petition filed by respondent No. 2. If she had intended to seek only disqualification of the appellant herein, there was no occasion for her to invoke the provisions of the Rules and make specific prayer for being declared as elected on the premise that she had secured the next highest votes.

25. Similar issue came up for consideration before the learned single Judge of this Court in *Sonti Srinivasa Rao v. Boina Lakshmi Narayana*, 2006(5) ALT 825, under the provisions of the A.P. Municipalities Act, 1965. In the said case elections were held on 27.09.2005 for Gudivada Municipality and the petitioner was declared as elected for 27th Ward. The first respondent was a defeated candidate and the second respondent was a voter in the Ward. The respondents issued a notice under Section 17 of the AP Municipalities Act, 1965, to the Commissioner of Municipality stating that the petitioner had three children at the time of filing his nomination and thereby he incurred disqualification under Section 13B of the Act. When no action was taken on the notice, they filed an Election Petition No. 411 of 2005 with a prayer to declare the election of the petitioner as void. This Court considered Section 17 of the A.P. Municipalities Act, 1965 and held that the District Judge has no jurisdiction when the election petition has to be filed before a Subordinate Judge. The observations made by the Court are as follows.

From a perusal of the section, it is evident that the only way through which proceedings can land before the Court of District Judge, under Section 17 is through an application, made by the Commissioner. The provision does not enable the complainant himself to approach the District Judge for adjudication. In case, there was any inaction or default, on the part of the Commissioner in taking necessary steps, contemplated under Section 13-A, the aggrieved party must have recourse to any remedy, to compel the Commissioner to discharge his obligation. The default on the part of the Commissioner does not confer right upon the complainant, to approach the District Judge.

The manner of initiation of proceedings, the parameters of adjudication and the outcome thereof in the proceedings initiated under Section 17 of the Act, on the one hand, and the Rules, on the other hand are radically different from each other. There does not exist any scope for taking the one for the other. Therefore, the respondents 1 and 2 did not have the competence to approach the District Judge, with an application under Section 17 of the Act.

26. Coming to the present case, when the learned District Judge, Mahaboobnagar was directed to consider the point of jurisdiction, he noticed that the petitioner filed a memo on 13.10.2015 giving up the relief with regard to consequential declaration that the petitioner be declared to have been elected as Sarpanch of Mudireddypalli village, Balanagar Mandal, Mahaboobnagar District. He noted that a counter was filed by the first respondent before him, but he did not pass any orders with a view to dispose of the said memo along with Election Petition. After direction of this Court on 11.12.2015, the petitioner also filed another petition on 21.12.2015 under Order 7 Rule 17 CPC seeking amendment

of the petition to delete the words Election Tribunal-cum in the main petition and in injunction petition, but the petition was not numbered. Ultimately, the learned District Judge, tabulated the differences in M. Lakshmi Kantams case (supra) and in the present Election Petition and finding differences on three points, held that the said decision was not helpful to the case of the first respondent before him. Similarly, he held that the case of Erlapati Veera Lakshmi v. Guda Haritha Rani , 2009(4) ALD 648, is distinguishable and in view of the memo filed by the petitioner, he held that the Court was having jurisdiction, by an order dated 31.12.2015.

27. The distinguishing features found by the learned District Judge are on the points of quoting of sections, payment of court fee and the relief. It is settled law that in order to examine the jurisdiction of the Court, the averments made in the petition have to be looked into. As stated above, the petition contained the averments pertaining to Section 22 as well as Section 233 of the Act.

28. A reading of whole scheme of the Act would disclose that a person may incur disqualification and yet file nomination for a post. If an objection is raised by an objector for such nomination and was overruled, it is a matter relating to the process of election. The election of such candidate shall not be called in question except by an election petition as per Section 233 of the Act. After acceptance of the nomination, in spite of disqualification, if a candidate got elected, the objector has a choice to file an Election Petition within the prescribed time or invoke the procedure under Section 22 of the Act. But after being elected, a candidate who incurred disqualification and got elected continues in office, a separate procedure is prescribed under Section 22 of the Act. The procedure prescribed under Section 22 of the Act is that any voter or authority shall complain of the disqualifications incurred by a candidate under Sections 17, 18, 19 or 20 to the executive authority in writing. The executive authority shall give due intimation of such allegation to the member who was alleged to have incurred disqualification through the District Panchayat Officer, if the member disputes the correctness of the allegations so made. If the member got a doubt with regard to disqualification, 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 Court having jurisdiction. Obviously, in the instant case no such procedure was followed. Hence, it cannot be termed that the present petition filed by the first respondent herein is a petition filed under Section 22 of the Act. This can be further substantiated by the absence of any allegation in the cause of action. The court fee was paid as per the Rules of the election petition but not in accordance with the Andhra Pradesh Court Fee and Suits Valuation Act. The Election Petitioner could not decide himself with regard to nature of the proceedings he was taking. He filed the petition within one month from the date of election by depositing Rs. 100/-. Under Section 22 of the Act, he got two months period after intimation by the executive authority. In the light of the averments made in

the petition styling it as an Election Petition, I have no manner of doubt that the petition filed was an Election Petition challenging the election of the successful candidate as having incurred disqualification under Section 19(3) of the Act and the District Judge is not having any jurisdiction to decide the said dispute in view of the averments in the petition and in the absence of following the procedure contemplated under Section 22 of the Act.

29. The Civil Revision Petition No. 511 of 2016 is allowed setting aside the order of the learned District Judge, Mahaboobnagar, passed in Election OP No. 01 of 2013, dated 31.12.2015 and holding that he has no jurisdiction to entertain the same. In view of this, no further orders are necessary in CRP No. 5418 of 2015 and it is accordingly closed. However, this will not prevent the petitioner in O.P. No. 1 of 2013 from pursuing his remedies under Section 22 of the Act, if he is so advised. There shall be no order as to costs.

30. As a sequel thereto, the miscellaneous Petitions, if any, pending in these Civil Revision Petitions shall stand closed.