

(2009) 03 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 2772 of 2009

Guntamukkala Venkata Ramana Murthy

APPELLANT

Vs

The Mandala Parishad Development Officer-cum-Mandal
Returning (Election) Officer and Others

RESPONDENT

Date of Decision : 24-03-2009

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 19(3)

Citation : (2009) 3 ALD 613 : (2009) 4 ALT 6

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Nandigam Krishna Rao, for the Appellant; Somakonda Reddy, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The elections to the Mandal Parishad, Kurupam Mandal, Vizianagaram District, were held in the year 2006. The petitioner and the 5th respondent filed their nominations for being elected as MPTC members from G. Sivada Segment. The petitioner was declared elected as Chairman, in the elections held on 28.06.2006.

2. The 5th respondent filed O.P. No. 1 of 2006, before the Agency Divisional Officer (Revenue Divisional Officer) - cum - Election Tribunal, Parvathipuram (for short "the Tribunal"). The only ground urged by him was that the petitioner incurred disqualification u/s 19(3) of the A.P. Panchayat Raj Act, 1994 (for short "the Act"), in as much as he had three children by the date of filing of nomination. The petitioner denied the allegation and contested the O.P. Through its order, dated 05.02.2009, the Tribunal allowed the O.P., and had set aside the election. The same is challenged in this Writ Petition.

3. Sri Nandigama Krishna Rao, learned Counsel for the petitioner, submits that the child, by name, Anwesh, who was alleged to be the third son of the

petitioner, is, in fact, the son of the petitioner's brother, by name, Badraiah and though adequate material was placed before the Tribunal, a finding to the contrary was recorded. He contends that the Tribunal did not follow the prescribed procedure, be it, in the context of administration of oath or recording of depositions. Learned Counsel submits that though it was elicited through the Head Mistress of the school, who was examined as PW.5, that the records of the school were tampered, the same was not taken into account.

4. Sri Somakonda Reddy, learned Counsel for the 5th respondent, on the other hand, submits that it was established beyond any pale of doubt that the petitioner had three children, and thereby, incurred disqualification u/s 19(3) of the Act.

5. The only ground on which the 5th respondent challenges the election of the petitioner is one referable to Section 19(3) of the Act. The provision reads as under:

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 purposes 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.

6. From a perusal of this provision, it becomes clear that an individual would be disqualified to contest in the election, or to hold an elected office, in case he has more than two children, as on 20.05.1994, on which date the Act came into force. The second proviso relieves the rigor to certain extent, in case a child, in excess of two, is born, within one year on which date the Act came into force; the disqualification does not get attached.

7. The allegation made by the 5th respondent against the petitioner is that the third child, by name, Anwesh was born on 10.05.1998. If this is true, the disqualification gets attached. The plea of the petitioner was that Anwesh was the child of his brother, by name Badraiah. That means he has disowned the child. Therefore, the entire controversy turns around, whether Anwesh was the child of the petitioner, or his brother, Badraiah.

8. On his part, the 5th respondent examined as many as 7 witnesses. They

included the Village Revenue Officer, Anganwadi Teacher, Head Mistress of Z.P.P.S School, where the child was admitted, Head Master of another school, and Medical Officer of the Primary Health Centre. Exs.A.1 to A.8 were marked. The Study, Conduct and Date of Birth certificate of Anvesh was marked as Ex.A.4. The household card got issued to the family of the petitioner herein was marked as Ex.A.5. Ex.A.8 is the sterilization certificate issued to the petitioner, which depicted that he underwent vasectomy operation on 08.02.2000 and by that time, he had three male children.

9. On behalf of the petitioner, 7 witnesses were examined. In addition to himself, the petitioner examined the Panchayat Secretary, Anganwadi Teacher, Supervisor, I.C.D.S. Kurupam, C.D.P.O., Kurupam, Tahsildar, Kurupam and Village Revenue Officer. He filed Exs.B.1 to B.17.

10. By filing Exs.B.7 and B.8, the petitioner wanted to project that Anvesh was the son of his brother, Guntamukkala Badraiah. Certain documents were also issued to the effect that the register of births and deaths for the village is not available.

11. The only issue that arises for consideration is, whether the petitioner is the father of the child, by name Anvesh.

12. The Study certificate, in relation to the child was filed before the Tribunal as Ex.A.4. In this, the name of the father of the child was mentioned as G.Ramana Murthy i.e. the petitioner, and the date of birth was shown as 10.05.1998. The Head Mistress, who issued the certificate, was examined as PW.5. She stated that Ex.A.4 was issued on verification of the record. It was elicited from this witness, by the petitioner, that another certificate marked as Ex.B.9 was issued by showing the name of the father of the child as Badraiah. She has, however, explained that certain interpolations were made in the register, when she was on maternity leave and Ex.B.9 was issued on the strength of the interpolated entries. Therefore, it is obvious that an effort was made to tamper the school records also. PW.5 has explained that the name of the petitioner was figured as the father of the child and that the same was altered. A strong circumstance, in this regard, exists against the petitioner.

13. Notwithstanding the slight uncertainty about the documents, referred to above, there is clinching evidence against the petitioner. The petitioner was issued household card by the concerned agency. The duplicate of the household card was filed as Ex.A.5. The petitioner did not dispute the correctness of this document. A perusal of Ex.A.5, clearly shows that Anvesh was shown as the son of the petitioner, and his wife Guntamukkala Anuradha. The particulars, such as House number, annual income, the names of other children, and the wife of the petitioner; were mentioned in the household card. Even if there exists any doubt as to the correctness of the written entries in Ex.A.5, one important aspect, is that the card contains photographs of the petitioner, his wife and three children. The names of three children are Harish, Akhilesh and Anvesh. Exs.A.2, A.3 and

A.4 are the Study, Conduct and Date of Birth certificates issued by the school, for the three children. Therefore, the whole defence of the petitioner, that Anwesh is not his child, falls into ground.

14. The facts of the present case, in fact, reflect the levels to which individuals can stoop to retain false prestige, or temporal benefits. Many people feel that a birth of child is a blessing of the Almighty. For all practical purposes, the petitioner treated the third child as a curse upon him, and he made every effort to disown the child, with the sole object of retaining the elected office. This is an index of the social values. Unfortunately, the Government, in particular, and the society, in general, has several mechanisms to enumerate several social indices, but none to think about the moral or ethical values. It is hoped that the petitioner and several persons like him, would undergo necessary transformation, in this regard.

15. The Legislature itself provided a mechanism to overcome certain contingencies. The proviso to Sub-section (3) of Section 19 of the Act, enables the Government to exempt an individual from the incidence of disqualification. He can certainly make an effort in that direction.

16. Learned Counsel for the petitioner submits that the prescribed procedure was not accurately followed by the Tribunal, and thereby, on that account, the impugned order is liable to be set aside. It was mostly in relation to the manner of recording of evidence. In this regard, it needs to be observed that the relevant Rules do not provide for verbatim reproduction of evidence, and it would be sufficient, if the gist of the evidence is taken note of. Further, the Tribunal, in this case, is not a regular Court. In the agency area, the revenue authorities are conferred with the power, to adjudicate the civil disputes also. Though the Presiding Officer of the Tribunal is not a trained Judicial Officer, she has analysed the pleadings and evidence, with required amount of objectivity, and arrived at proper conclusions. Even assuming that there was some non-conformity with the actual freedom of judgment, this Court is satisfied that the adjudication is perfect.

17. For the foregoing reasons, the Writ Petition is dismissed, upholding the order passed by the Tribunal, but directing that it shall be open to the petitioner to approach the Government for exemption.

18. There shall be no order as to costs.