

(2008) 02 AP CK 0036
In the Andhra Pradesh High Court
Case No : C.R.P. No. 3067 of 2007

Jogi Satyanarayanaramma

APPELLANT

Vs

Kodi Vijaya Lakshmi and Others

RESPONDENT

Date of Decision : 28-02-2008

Acts Referred:

Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads) Rules, 1995 — Rule 12, 2(2), 3, 3(2), 3(7)
Andhra Pradesh Panchayat Raj Act, 1994 — Section 17, 18, 19, 19(3), 22
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2008) 3 ALD 1 : (2008) 2 ALT 343

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : S.R. Sanku, for the Appellant; Palanki Ram Mohan, for the Respondent

Final Decision : Allowed

Judgement

G. Chandraiah, J.—Heard both the counsel.

2. Aggrieved by the order passed by the Election Tribunal (Junior Civil Judge) Palkol in holding that it has no jurisdiction to entertain the election petition filed u/s 233 of the Act for the alleged disqualification suffered by returned candidate u/s 19(3) of the Act and that the District Court alone has jurisdiction to entertain the election petition and that the election petitioner has not complied with the procedure u/s 22 of the Act, the present revision is filed.

3. From the material on record it could be seen that the revision petitioner filed E.O.P. No. 4/2006 on the file of Election Tribunal (Junior Civil Judge) Palkol u/s 233 of the A.P. Panchayat Raj Act, 1994 (for short "the Act") alleging that the 1st respondent who was elected to the post of Sarpanch of Sagamcheruvu Gram Panchayat suffers disqualification u/s 19(3) of the said Act as she has four children by the date of nomination and hence sought for declaration that the 1st

respondent herein should be disqualified for contesting for the post of Sarpanch and also for a declaration that the election which was held on 6-8-2006 as void. The 1st respondent, elected candidate, filed the present interlocutory application in I.A. No. 1047/2006 alleging that the Election Tribunal (Junior Civil Judge) has no jurisdiction to entertain the election O.P. and the District Court alone has jurisdiction to entertain the election petition and accordingly sought for rejection of the main O.P. By the impugned order dated 27-6-2007, the court below considering Sections 233 and 22(1) of the Act held that the District Court alone has jurisdiction to entertain the election petition and that the revision petitioner has not followed the procedure u/s 22 of the Act and accordingly allowing the I.A., rejected the election petition. Aggrieved by the same, the present revision is filed.

4. The above issue with regard to jurisdiction of the Election Tribunal (Junior Civil Judge) in entertaining the election petition filed u/s 233 of the Act for the allegation of disqualification suffered by the returned candidate u/s 19(3) of the Act, is squarely covered by a Division Bench judgment of this Court in Mellimi Lakshmikantam Vs. Election Tribunal-cum-Principal District Judge and Others, wherein it was held that the District Munsif (Junior Civil Judge) has alone got jurisdiction to entertain the election petition and the District Court has no jurisdiction.

5. From a reading of the above judgment of the Division Bench of this Court it could be seen that the appellant therein was elected to the post of Sarpanch, Kanuru Gram Panchayat of Peravali Mandal, West Godavari District and the 2nd respondent filed election petition in O.P. No. 799/2006 on the file of Election Tribunal-cum-Principal District Judge, West Godavari at Eluru, under Sections 233, 19(3) and 22(1) of the Act read with Rule 2(2)(i)(a) and 4(ii) of the Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for short "the Rules") for setting aside the election of the appellant to the post of Sarpanch and declare the 2nd respondent as duly elected. The appellant filed an interlocutory application under Order 7, Rule 11(d) of C.P.C. read with Rule 3(2) and (7) of the Rules for dismissal of the election O.P. on the ground that the District Court has no jurisdiction to entertain the election petition. The said interlocutory application was dismissed. Challenging the same, he filed W.P. No. 658/2007 and the learned single Judge by order dated 30-4-2007 while upholding the order of the lower court, held that the Election Tribunal-cum-Principal District Judge, has got jurisdiction to entertain the election petition. Aggrieved by the same, the matter was carried in appeal in W.A. No. 836/2007. By order dated 23-10-2007, the Division Bench of this Court while setting aside the order of the learned single Judge and allowing the appeal, held that only the Election Tribunal as envisaged under Rule 2(2) of the Rules i.e., the District Munsif has alone got the jurisdiction to entertain the election petition and not the District Judge and that the District Court is not designated as Election Tribunal within the meaning of Section 233 of the Act read with Rule 2(2)(i)(a) of the Rules and that there does not exist any

body or authority with the designation "Election Tribunal-cum-Principal District Judge". The relevant portion of the judgment of the Division Bench of this Court is extracted as under for better appreciation:

An analysis of the above reproduced provisions makes it clear that while the question as to whether a person elected as a member of the Gram Panchayat is not qualified or has become disqualified u/s 17, Section 18, Section 19, etc. can be decided u/s 22(1) by the District Court having jurisdiction over the area in which the office of the Gram Panchayat is situated, an election to any post under the Andhra Pradesh Panchayat Raj Act, 1994 can be called in question only by presenting an election petition to the Tribunal specified in Rule 2(2)(a) of the Rules and adjudicated by such Tribunal if it is satisfied about existence of either of the grounds enumerated in Clauses (a) to (d) of Rule 12. Though the provisions of Section 22(1) and Rule 12(a) read with Section 233 appear to be overlapping, the person seeking to challenge the election has the option to avail either of the remedies. In a given case, the aggrieved person (this term includes "a voter") for the purpose of Section 22(1) can file a petition to the District Court u/s 22(1) even though an election petition may not have been filed within the prescribed time u/s 233 read with Rules 2(2)(a) and 3....

District Court is not designated as an Election Tribunal within the meaning of Section 233 of the Act read with Rule 2(2)(i)(a) of the Rules. As a matter of fact, there does not exist any body or authority with the designation "Election Tribunal-cum-Principal District Judge". Therefore, respondent No. 1 did not have jurisdiction to entertain the petition filed by respondent No. 2 and the said respondent committed a grave illegality by rejecting the objection raised by the appellant therein to the very maintainability of the election petition.

6. The Division Bench of this Court in the decision cited 1 supra, relied on a judgment of a learned single Judge of this Court in *M. Jagannadha Rao Vs. Government of A.P. and Others*, . The learned single Judge while considering Sections 22 and 233 of the Act held as under:

10. On a careful scrutiny of Sections 22 and 233 of the Act, this Court is of the considered opinion that these provisions virtually operate in different fields and the scope and ambit also appear to be different. It cannot be said that the remedy by way of Election Petition always can be equated with the remedy u/s 22 of the Act. It is needless to say that the grounds which were raised and to be adjudicated on judicial side in Election Petition may be different grounds and the grounds which may be available in relation to disqualifications to be adjudged u/s 22 of the Act may be of limited in nature which may have to be decided by the concerned authorities in accordance with the procedure u/s 22 of the Act. Be that as it may, the remedies available in relation to disqualification u/s 22 of the Act by authorities and by way of Election Petition u/s 233 of the Act, these are simultaneous remedies and merely because a party invokes the jurisdiction of Election Tribunal by filing Election Petition, unless there is specific prohibition, it cannot be said that such party cannot pursue the remedy u/s 22 of the Act. If

such interpretation to be adopted it would amount to doing violence to the spirit of the legislation in introducing such remedies by indicating separate specific provisions viz., Section 22 of the Act and Section 233 of the Act. Hence, these two provisions and the exercise of powers in relation to the respective aspects, operate definitely in different fields at least up to some extent and may be that certain grounds may be overlapping.

7. From the above judgment of the learned single Judge of this Court it is clear that scope and ambit of Sections 22 and 233 of the Act operate in different fields and the grounds to be adjudicated on judicial side in Election Petition u/s 233 of the Act may be different from the grounds available in relation to disqualification to be adjudged u/s 22 of the Act. Further it is also to be seen that there is also no provision, which contemplates that a person filing election petition u/s 233 of the Act, shall first comply with the procedure u/s 22 of the Act. Further the aggrieved party has options available under Sections 22 and 233 of the Act and as per the judgment of the learned single Judge of this Court, these are simultaneous remedies and they can be exercised unless the statute specifically bars the exercise of the same and both the provisions operate in different fields. Hence, the observation of the court below that the election petitioner has not complied with the procedure u/s 22 of the Act is unwarranted.

8. In view of the above, the impugned order of the Court below is set aside and the revision is allowed. The court below is directed to entertain the election O.P. and dispose of the same in accordance with law.

9. In the circumstances of the case, there shall be no order as to costs.