
(2006) 07 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17947 of 2005

Nallapati Kotamma

APPELLANT

Vs

Lanka Bhagyalakshmi and Others

RESPONDENT

Date of Decision : 19-07-2006

Acts Referred:

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

Citation : (2006) 5 ALD 631

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.V.S. Suresh Kumar, for the Appellant; G.P. for Panchayat Raj for the Respondents 2 to 4, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Heard the counsel.

2. This writ petition is filed by Nallapati Kotamma questioning the order dated 21-03-2005 in EOP No. 30 of 2001 on the file of Election Tribunal-cum- Principal Junior Civil Judge, Guntur.

3. It is stated that the election for the post of Sarpanch to the Gram Panchayat, Vengalayapalem was held on 17-08-2001 and the said post was reserved for Scheduled Caste woman. The last date for filing of nomination was on 04-08-2001, the scrutiny of the applications was held on 05-08-2001 and the last date for withdrawal of nomination was on 08-08-2001. The petitioner was one of the contestants along with the respondents 1 to 7 in EOP No. 30 of 2001 to the post of Sarpanch, Vengalayapalem. The first respondent secured maximum number of votes and elected as Sarpanch of Vengalayapalem and the petitioner secured the second highest number of votes. It is an admitted fact that the first respondent gave birth to a male child on 06-09-2001 and hence, she incurred disqualification to be a Sarpanch of Vengalayapalem Gram Panchayat.

Section 19(3) of the Andhra Pradesh Panchayat Raj Act, 1994 (for short "the

Act") is as hereunder;

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 clause referred to as the date of such commencement of an additional child shall not be taken into consideration for the purpose of this clause;

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 clause 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.

It is further stated that as per the said provision, a person, who is having more than two children, is disqualified to be elected as a Sarpanch of the Gram Panchayat and the only exemption under the proviso is with regard to a third child being born within one year from the date of commencement of the Act i.e., 20-05-1995 and thus, the first respondent is disqualified either to be elected or to continue as Sarpanch of the Gram Panchayat.

3. The learned Principal Junior Civil Judge-cum-Election Tribunal, recorded certain reasons at para 30 of the order in EOP NO.20 of 2001. On appreciation of the evidence of P.Ws 1 to 4, R.Ws 1 to 7 and also Exs.A1 to A3 and Exs.X1 and X2, the learned Judge came to the conclusion that the petitioner is not entitled to the reliefs as prayed for and ultimately dismissed the same. Aggrieved by the same, the present writ petition is filed.

4. The question of adoption or the factum of adoption would not alter the situation in any way for the purpose of attracting the disqualification. The same had been decided by the Apex Court in Javed and Others Vs. State of Haryana and Others, :

5. The fact that the first respondent is having three children and does not fall under exemption is not in serious controversy. The fact that u/s 19(3) of the Act, disqualification would be attracted also is not in serious controversy. The oral evidence of P.Ws 1 to 4 and R.Ws 1 to 7 and Exs.A1 to A2 and Ex.X1 and X2 would not seriously alter the situation as far as disqualification is concerned. The plea of adoption also is unsustainable. Hence, viewed from any angle, the impugned order cannot be sustained.

6. In the light of the finding recorded above, the first respondent incurred disqualification to be a Sarpanch within the meaning of Section 19(3) of the Act and the petitioner is bound to succeed. The concerned authorities are directed to

take appropriate steps in relation to the fresh election to be conducted for the post of the Sarpanch in question.

Accordingly, the Writ Petition is allowed to the extent indicated above. No order as to costs.