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**(2022) 11 TEL CK 0103**

**In the Telangana High Court**

**Case No :** Writ Petition Nos. 29737 And 29738 Of 2022

Peddapally Padmavathi

APPELLANT

Vs

Thogari Renuka

RESPONDENT

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**Date of Decision :** 21-11-2022

**Acts Referred:**

Constitution Of India, 1950 — Article 226  
Telangana Panchayat Raj Act, 2018 — Section 21(3)  
Evidence Act, 1872 — Section 102

**Citation :** (2022) 11 TEL CK 0103

**Hon'ble Judges :** A.Abhishek Reddy, J

**Bench :** Single Bench

**Advocate :** Rohit Pogula

**Final Decision :** Dismissed

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## Judgement

Since the issue involved in both the writ petitions is intrinsically connected with each other, they are taken up together and being disposed of by this common order.

Aggrieved by the common order dated 14.07.2022 passed by the Election Tribunal-cum-Senior Civil Judge at Nagarkurnool in E.O.P. No.2 of 2019 and E.O.P.No.1 of 2019, the present writ petitions are filed.

For the sake of convenience, the parties are hereinafter referred to as they are arrayed in W.P. No.29737 of 2022.

Brief facts leading to filing of the present writ petitions are that pursuant to the notification issued by respondent No.2-Chief Election Commissioner to conduct elections of Manal Parishad Territorial Constituency (MPTC) and Zilla Parishad Territorial Constituency (ZPTC) in the State of Telangana, the petitioner-Padmavathi, respondent No.1-Smt. Thogari Renuka and respondent No.5-Smt.N. Sumithra have contested for the post of ZPTC from Tekulapally Constituency, Nagarkurnool District, which is a reserved seat for 'Schedule Caste SC)-Mahila'.

At the time of scrutiny of nomination, complaints were made against the petitioner that she was having three children as on the cut-off date and therefore she is ineligible to contest the election. The petitioner has submitted a detailed explanation to the Returning Officer stating that in the first delivery, she gave birth to a male child namely P. Bharath Kumar, who was born on 29.12.1997 and in the second pregnancy, she gave birth to two male children viz., P. Vinay Kumar and P. Ganesh on 01.09.2001 and stated to have filed relevant material in support of the said reply. The Returning Officer duly taking into consideration the said explanation has rejected the complaints and allowed the nomination of the petitioner to the post of ZPTC. In the elections that were held, the petitioner was elected to the post of ZPTC and subsequently, she had been elected as Chairperson of Zilla Parishad, Nagarkurnool District, and in the said capacity she is presently serving. Aggrieved by the rejection of their complaints and the result of the Elections to the post of ZPTC, the respondent No.1-Smt. Thogari Renuka, who also contested for the said post of ZPTC on behalf of the Bharatiya Janata Party, has filed E.O.P. No.2 of 2019 and the respondent No.5-Smt. N. Sumitra has filed E.O.P. No.1 of 2019 before the Election Tribunal-cum-Senior Civil Judge, Nagarkurnool. The Tribunal vide common order dated 14.07.2022 has allowed both the EOPs declaring the election of the writ petitioner-Padmavathi as void and declaring the respondent No.1-Smt. Thogari Renuka as duly elected member of ZPTC of Tekulapally Constituency. However, the prayer to direct the respondent authorities to conduct fresh elections was negated. Aggrieved thereby, the writ petitioner is before this Court by filing the present writ petitions.

On 19.07.2022, this Court while admitting the writ petitions has granted interim suspension of the common judgment dated 14.07.2022 passed by the Election Tribunal in OP Nos.1 and 2 of 2019.

A counter affidavit has been filed in W.P. No.29737 of 2022 along with a vacate stay petition. Further, in both the writ petitions additional counters have also been filed. It is mainly contended that the Election Tribunal having conducted a full-fledged trial in the Election OPs filed by the contesting respondents has passed the impugned common order holding that the petitioner is having more than two children after the cut off date i.e. 31.05.1995. That the petitioner has incurred automatic disqualification under Section 21 (3) of the Telangana Panchayat Raj Act, 2018 (in short 'the Act') as she is having three children. That the petitioner has failed to substantiate her claim that in the second delivery she gave birth to twin boys on 01.09.2001. The Tribunal has disbelieved the version of the petitioner and passed the impugned order based on the documentary evidence. It is further urged that even for the sake of argument the contention of the petitioner that she has given birth to twins on 01.09.2001 is taken to be true, still the Act does not permit any exemption under Section 21 (3) of the Act. That the Tribunal has given a reasoned order and the petitioner has no locus to challenge the impugned order and that the Writ Petitions are liable to be dismissed. It is further stated that the petitioner has taken the plea that she gave birth to twins on 01.09.2001 and in support of her case, she has produced

Date of Birth Certificates issued by the Registrar of Birth and Deaths, letter issued by the Director of Vijay Marie Hospital, Hyderabad, and also the bonafide certificates of the children issued by Sai Ram High School, Hyderabad. However, the Tribunal has disbelieved the said documents after careful examination of the contra documents produced by the contesting respondents herein. Hence, the petitioner cannot again make averments with regard to the genuineness or authenticity of the documents, which were already marked and relied by the Tribunal while passing the impugned order. It is submitted that after finding that the Registrar of Birth and Deaths has issued two different Date of Birth Certificates to the petitioner and respondent No.5, at paragraph Nos.29 and 30 of the impugned common order dated 14.07.2022, the Tribunal has expressed doubt about the veracity of the said certificates and pointed out that both the petitioner as well as respondent No.5 took no steps to examine the Registrar of Birth and Deaths and therefore concluded that the said Date of Birth Certificates filed by the petitioner are of no help in determining the lis.

The other contention of the petitioner is that in respect of election of her husband a similar issue was raised and the Revenue Divisional Officer after conducting an enquiry had held that he is entitled for benefit of doubt and therefore the petitioner is also entitled for similar concession.

Learned counsel for the petitioner has stated that the Tribunal without following the procedure contemplated under the Indian Evidence Act, 1872 (in short 'the Evidence Act') has relied on Ex.P.4-letter dated 30.04.2018 issued by the Assistant Medical Officer of Health and Registrar of Birth and Death, Khairatabad, Hyderabad, and Ex.P.5-letter dated 01.05.2019 issued by the Assistant Medical Officer of Health, and Ex.P.6-letter dated 30.04.2019 issued by the Vijay Marie Hospital and ignored the Birth Certificates under Exs.R.1 and R.4, obtained through Mee Seva, and produced by the petitioner before the Tribunal. That placing reliance on Exs.P.4 to P.6, which are merely letters issued by the authorities of GHMC and Vijay Marie Hospital, without examining the author of the said letters or calling for the original record, is not only bad but contrary to the well established procedure and principles of law. That the Tribunal has thrown the burden on the petitioner herein for establishing her case, which is against the principles of law, more specifically the provisions of the Evidence Act. It is further stated that the basic principle of law regarding proof is that the initial burden of proof is always on the person who approaches the Court, but not on the defendants or respondents with few exceptions. That the Tribunal ought not have shifted the burden on the petitioner herein without the respondents having discharged their burden. The petitioner is arrayed as respondent No.1 before the Tribunal, and the impugned order passed by the Tribunal is contrary to the principles of law and has to be necessarily set aside. Learned counsel has further stated that all the documents produced by the respondents herein, more particularly in the Election Petitions before the Tribunal, are not marked through the author of those documents or proved through them by examining them nor the original record was called for and therefore the Tribunal ought to have

rejected the documents produced by the respondents as not proved. The Tribunal has placed much reliance on the documents produced by the respondents, more specifically on Exs.P.4 and P.5, without examining the persons who issued them or calling for the original records. Therefore, the learned counsel has prayed to allow the present Writ Petitions.

Per contra, the learned Senior counsel appearing on behalf of the contesting respondents has contended that the letters issued by the Vijay Marie Hospital where the children of the petitioner were born clearly establish that as per the available records of the hospital, the date of birth of the three children are of different dates. That the second and third issues viz., Vinay Kumar and Ganesh are not twins born on the same date, but born on different dates. Even the letter issued by the GHMC Ex.P.5 also confirms the said fact. That the initial burden of proof has been discharged by the respondents herein and it was for the petitioner to prove that the second and third children are twins born on the same date i.e. 01.09.2001 by leading contra evidence, but she has failed to do so. The documents submitted by the petitioner herein before the Tribunal, more specifically, Exs.R.1 and R.4 are held to be fabricated/manipulated by the Tribunal. That the impugned order is in consonance with the ratio law down by this Hon'ble Court as well as the Hon'ble Supreme Court and there is no contrariness in the impugned order as alleged by the petitioner. As per Section 102 of the Evidence Act, in an Election Petition, the burden of proof has to be discharged by the petitioner herein, but not by the respondents. That the other documents filed by the petitioner before the Tribunal are based on the manipulated documents i.e. Exs.R.1 and R.4 and therefore cannot be relied on and rightly rejected by the Tribunal. That the Tribunal has passed a well reasoned order based on the documentary evidence and same does not call for any interference by this Hon'ble Court under Article 226 of the Constitution of India. That re-appreciation of evidence cannot be done by this Court under Article 226 of the Constitution of India and thus prayed to dismiss the writ petitions.

Perused the material on record.

The admitted facts before this Court are that the petitioner-Padmavathi is having three children viz., P. Bharath Kumar, P. Vinay Kumar and P. Ganesh. There is no dispute with regard to the date of birth of the first child namely P. Bharath Kumar being born on 29.12.1997. While it is the contention of the petitioner that the other two sons namely P. Vinay Kumar and P. Ganesh are twins and were born on the same day i.e. 01.09.2001. The contention of the respondents is that they were born on two different dates i.e. P. Vinay Kumar on 03.09.1999 and P. Ganesh on 01.09.2001. The petitioner in support of her stand, has got marked Exs.R.1 and R.4, the certified copies of the Birth certificates issued by the GHMC through Mee Seva. It is the further contention of the respondents that certified copies obtained from the GHMC through Mee Seva and marked as Exs.R.1 and R.4 are fabricated documents and to substantiate the same, the contesting respondents have produced the letter from GHMC under Ex.P.4 and also the

letter issued by the Assistant Medical Officer of Health Department under Ex.P.5, which clearly show that Vinay Kumar was born on 03.09.1999 and not on 01.09.2001 as contended by the writ petitioner.

In order to verify the genuinity of documents produced by the petitioner, this Court vide order dated 14.10.2022 has called for the original records of Birth and Deaths Register pertaining to Ward No.10, Circle 7, from the office of the Greater Hyderabad Municipal Corporation, Khairatabad, and pursuant to the said order, the Deputy Commissioner has produced the original records before this Court.

The petitioner has mainly relied on the certified copy of the birth certificates issued by GHMC, which were marked as Exs.R.1 and R.4, to support her case that in the second pregnancy twins were born. The said certified copies reveal that P.Vinay Kumar was born on 01.09.2001 vide Birth Certificate Registration No.4498 whereas P. Ganesh is also shown to have born on the very same day i.e. on 01.09.2001 vide Birth Certificate Registration No.4499, but as per the original GHMC records produced before this Court, as against registration No.4498, the following details are mentioned:

- 1) Date & Time of Birth : 01.09.2001 at 1.11 am
- 2) Sex : Female
- 3) Name of the child : --
- 4) Father's name : K. Virachari
- 5) Mother's name : K. Shashikala
- 6) Hospital name : Vijay Marie Hospital

But, in the copy of the Birth Certificate, issued by the GHMC through Mee Seva, and filed by the petitioner in respect of registration No.4498 (marked as Ex.R.1), the following details are mentioned:

- 1) Name : P. Vinay Kumar
- 2) Date of Birth : 01-Sep-2001
- 3) Place of Birth : Vijay Marie Hospital    Hyderabad
- 4) Name of Father : P. Bangaraiya
- 5) Name of Mother : P. Padmavathi

Scanned copy of the original record in respect of registration No.4498 of Birth & Deaths Register produced by the authorities, is appended hereunder.

Further, as per the original records as against registration No.4499, the following details are mentioned:

- 1) Date & Time of Birth : 01.09.2001 at 3.12 am

- 2) Sex : Male
- 3) Name of the child : P. Ganesh
- 4) Father's name : P. Bangaraiya
- 5) Mother's name : P. Padmavathi
- 6) Hospital name : Vijay Marie Hospital

In the copy of the Birth Certificate, obtained through Mee Seva and filed by the petitioner in respect of registration No.4499, the above details are reflected correctly.

Moreover, as per the original record of Register of Births and Deaths pertaining to Ward No.10, the record containing Registration Nos.4070 to 5043 pertaining to the year 1999 reveals that the petitioner has given birth to P. Vinay Kumar on 03.09.1999 vide Birth Registration No.4708. Therefore, Ex.P.2 filed by the contesting respondents has to be held as a true and correct certified copy of the birth certificate of P. Vinay Kumar. The original record clearly points to the fact that the second and third children are born on two different dates and not on the same date and that they are not twins, as contended by the petitioner.

On careful comparison of the copies of the Birth Certificates filed by the petitioner with that of the original record produced before this Court, it has to be necessarily held that the birth certificate bearing No.4498, which is got marked by the petitioner as Ex.R.1 before the Tribunal, is a bogus and fabricated document, which has been issued contrary to the original record of Birth & Deaths Register maintained by the GHMC. The above proved factum clearly reveals that the petitioner has approached this Court with unclean hands.

In *K.D. Sharma vs. Steel Authority of India Limited* (2008) 12 SCC 481, the Hon'ble Supreme Court has held that where the petitioner approaches the Court with unclean hands and makes a false statement or conceals material facts or misleads the Court, the Court may dismiss the petition at the threshold without considering the merits of the claim. The Court would be failing in its duty if it does not reject the petition on the said ground. The person, who approaches the Court with unclean hands, cannot claim any equitable relief.

Even though the learned counsel for the petitioner has vehemently argued that the original author of Exs.P.4 to P.6 were not examined and therefore the Tribunal ought to have rejected the EOPs on this ground alone, it is to be noted that the petitioner has not raised any such objection when the said documents were marked before the Tribunal. Once the documents are marked without any protest or objection, the Tribunal was bound to consider the said documents. Moreover, Ex.P.2 issued by the GHMC is in consonance with the original record and no illegality has been committed by the Tribunal by placing reliance on Exs.P.4 and P.5.

Insofar as the another contention urged by the learned counsel for the petitioner

that when similar objection was taken in respect of the election of her husband, the RDO concerned has conducted an enquiry and held that he is entitled for benefit of doubt, and therefore the petitioner is also entitled for similar concession, it is to be seen that the proceedings conducted by the RDO are summary in nature and no full-fledged enquiry was conducted and therefore the said ground is also not available to the petitioner herein.

For the afore-stated reasons and in view of the law laid down by the Hon'ble Supreme Court in K.D. Sharma (referred supra), this Court does not find any infirmity or illegality in the order passed by the Tribunal. The reliance placed by the Tribunal on Exs.P.4 to P.6 for rejecting the claim of the petitioner is perfectly justified and inconsonance with the original record. Therefore, the impugned order does not call for any interference of this Court.

Accordingly, both the writ petitions are dismissed.

Miscellaneous petitions pending, if any, shall stand closed.