
(2008) 11 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23669 of 2008

Samala Janaki Ramulu

APPELLANT

Vs

Munigadapa Kanakaiah

RESPONDENT

Date of Decision : 15-11-2008

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 19, 19(1)
Penal Code, 1860 (IPC) — Section 147, 148, 149, 324

Citation : (2009) 1 ALD 584 : (2009) 1 ALT 529

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Raj Kumar Rudra, for the Appellant; N. Sreedhar Reddy, for Respondent No. 1, GP for Panchayat Raj and Rural Dev. for Respondent Nos. 2 to 4s, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—The elections to the Gram Panchayat of Challur Village, Rajapet Mandal, Nalgonda District were held on 02.08.2006. The petitioner and the first respondent filed nominations for Ward No. 10 of the Gram Panchayat. The petitioner raised an objection for the nomination of the first respondent on the ground that he was convicted for an offence, in C.C. No. 587 of 2001 by the Court of the Additional Judicial Magistrate of First Class, Bhongir and was sentenced to pay fine of Rs. 600/-. The nomination of the first respondent was rejected by the Returning Officer, the second respondent herein, on the ground that he was convicted for an offence, in C.C. No. 587 of 2001. The appeal preferred by the first respondent before the third respondent was also dismissed. Thereby, the first respondent was kept out of fray of election and the petitioner was declared as elected.

2. The first respondent filed O.P. No. 14 of 2006 before the Principal Junior Civil Judge, Bhongir challenging the rejection of his nomination. The petitioner was impleaded as the first respondent. Through its order, dated 20.10.2008, the

learned Junior Civil Judge allowed the O.P. and has set aside the election of the petitioner. Direction was also issued to respondents 2 to 4 herein to take steps to fill the resultant vacancy. The petitioner feels aggrieved by the order of the learned Principal Junior Civil Judge.

3. Sri Raj Kumar Rudra, the learned Counsel for the petitioner submits that except stating that he preferred an appeal before the Court of the IV Additional Sessions Judge (Fast Track Court) at Nalgonda against the sentence and conviction in C.C. No. 587 of 2001, the first respondent did not place the copy of the judgment and in that view of the matter, there was absolutely no illegality in rejection of the nomination of the first respondent. He contends that for the lapses on the part of the first respondent, the election of the petitioner cannot be set aside.

4. Sri N. Sreedhar Reddy, who filed caveat, on behalf of the first respondent submits that his client did not incur disqualification u/s 19 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short "the Act") and even if the judgment in Criminal Appeal No. 144 of 2003 was to be ignored, the disqualification u/s 19 of the Act is not attracted. He submits that when it was categorically pleaded by the first respondent that the conviction and sentence against him were set aside in appeal, the third respondent ought to have examined the matter and that the learned Principal Junior Civil Judge, Bhongir had corrected the injustice meted out to the first respondent.

5. It is a matter of record that the first respondent was convicted for the offences under Sections 147 148 and 324 read with Section 149 I.P.C. by the trial Court in C.C. No. 587 of 2001, through judgment, dated 09.09.2003. The nomination of the first respondent was rejected only on the basis of the judgment in C.C. No. 587 of 2001. In the appeal preferred by him before the third respondent, the first respondent pleaded that Criminal Appeal No. 144 of 2003 was filed against the judgment in C.C. No. 587 of 2001 and that the same was allowed. That, however, was not taken into account and the third respondent rejected the appeal filed against the order for rejection of nomination.

6. The only controversy in the O.P. is as to whether the rejection of nomination of the first respondent by the second respondent was proper and legal.

7. The conviction and sentence ordered against the first respondent by the trial Court were set aside in Criminal Appeal No. 144 of 2003. It is urged that even if the order of the lower appellate Court is not taken into account and the conviction and sentence were to remain, the petitioner did not incur disqualification. Therefore, it becomes necessary to examine the scope of the relevant provisions of Sub-section (1) of Section 19 of the Act, which reads as under:

19. Disqualification of candidates: (1) A person who has been convicted by a Criminal Court,-

(a) for an offence under the Protection of Civil Rights Act, 1955; or

(b) for an offence involving moral delinquency; shall be disqualified for election as a Member for a period of five years from the date of conviction or where he is sentenced to imprisonment while undergoing sentence and after a period of five years from the date of expiration thereof.

8. From a perusal of this, it becomes clear that a person would incur disqualification from being elected or holding an elected post, if he was convicted for an offence involving "moral delinquency". Sentence becomes immaterial in such cases. Disqualification would also occur, if a person is sentenced to undergo imprisonment for two years. In this category of cases, the nature of offence i.e. whether it involves "moral delinquency" becomes insignificant.

9. It is not in dispute that the conviction of the first respondent by the trial Court was for the offences under Sections 147 148 and 324 read with Section 149 I.P.C. That was in relation to a quarrel among the neighbours. No question of moral delinquency is involved in it. Further, the sentence was not of imprisonment for two years; and it was only fine of Rs. 600/-. Therefore, even assuming that the conviction against the first respondent in C.C. No. 587 of 2003 remained, he did not incur disqualification.

10. The second respondent rejected the nomination of the first respondent on a complaint made by the petitioner on the basis of C.C. No. 587 of 2001. He did not even verify whether Section 19(1) is attracted at all, much less whether any appeal was preferred against the judgment in C.C. No. 587 of 2001 and if so, the result. It is rather unfortunate that even the third respondent, the appellate authority also did not verify the relevant facts when the first respondent specifically pleaded that the Criminal Appeal No. 144 of 2003 preferred by him against the judgment in C.C. No. 587 of 2001 was allowed. Assuming that there was any lapse on the part of the first respondent in producing the copy judgment of the lower appellate Court, the third respondent ought to have verified the matter with reference to Section 19 of the Act. Viewed from any angle, the rejection of the nomination of the first respondent cannot be sustained in law. The learned Principal Junior Civil Judge, Bhongir had examined the matter from correct perspective and no interference is warranted with the order in the O.P.

11. Hence, the writ petition is dismissed. There shall be no order as to costs.