

(2014) 11 AP CK 0110

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3782 of 2014

Vemula Srimathi

APPELLANT

Vs

Bairi Srivani

RESPONDENT

Date of Decision : 21-11-2014

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 19(3), 22, 22(1), 233
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, 151
Constitution of India, 1950 — Article 243(o)

Citation : (2015) 3 ALD 650 : (2015) 5 ALT 83

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : S. Madan Mohan Rao, Advocates for the Appellant; M. Rajamalla Reddy, Advocates for the Respondent

Judgement

P. Naveen Rao, J.—This revision petition is filed questioning the order dated 13.10.2014 in I.A. No. 316 of 2014 in O.P. No. 3 of 2013 on the file of the Junior Civil Judge, Sirsilla, Karimnagar district. The revision petitioner is first respondent in O.P. 3 of 2013. Respondents 1 and 2 herein are petitioners in O.P. No. 3 of 2013. For the sake of convenience, the parties are referred to as arrayed in O.P. No. 3 of 2014.

2. O.P. No. 3 of 2014 was filed challenging the election of respondent no. 1 as Sarpanch on the ground that she has three children and thus earned disqualification to contest the election to the office of Sarpanch.

3. Pursuant to notification dated 9.7.2013, elections were conducted for Sarpanch and Ward Members of Gram Panchayat and results were declared on 27.7.2013 wherein respondent no. 1 was elected. Challenging the election of the first respondent, election petition in O.P. No. 3 of 2013 was filed under Section 233 of A.P. Panchayath Raj Act and Rule 3 of A.P. Panchayath Raj (Election Tribunals in respect of the Grama Panchayaths, Mandal Praja Parishads and Zilla Praja Parishad) Rules, 1995. One of the contentions urged to set aside the

election of first respondent was that first respondent suffered disqualification as provided under Section 19(3) of the Panchayat Raj Act, 1994, as she was having more than two children.

4. In the election petition, following reliefs were sought:

"Therefore petitioner prays:

1. The election of the respondent No. 1 to post of Surpanch of Indiramma Colony village, Textile Park area, in Sircilla Mandalam, be set aside,
2. The petitioner No. 1 who has secured next highest number of votes than other contestants be duly declared as elected.

Or

3. Alternatively, the fresh election to the post of Surpanch of Indiramma Colony village, Textile Park area, in Sircilla mandalam, kindly be ordered....."

5. Before the Election Tribunal/Junior Civil Judge, Sircilla, respondent no. 1 filed I.A. No. 316 of 2014 under Order VII Rule 10 read with Section 151 CPC praying that the Court of Junior Civil Judge, Sircilla has no jurisdiction to entertain the election petition in O.P. No. 3 of 2013 and election petition be dismissed. By order dated 13.10.2014 said application was dismissed. Hence this revision.

6. Learned counsel for the respondent no. 1/revision petitioner submitted that the allegation leveled against the first respondent is that she is having more than two children, therefore earned disqualification as attracted by provision contained in Section 22. Whenever provision in Section 22 is attracted, the remedy of filing of an application lies before the District Court and not before the Junior Civil Judge and therefore, Junior Civil Judge has no jurisdiction to entertain the Election Petition. It is further contended that the Rules framed in exercise of powers under Section 233 of the Act, 1994 as notified under G.O. Ms. No. 111 Panchayat Raj Rural Development (Election III) Department dated 3.3.1995, have no application to the election disputes and such Rules cannot supersede the provisions contained in the principal Act. When principal Act specifically provides for deciding the issue of disqualification on account of having more than two children under Section 22, forum provided is District Court and no other Court has jurisdiction wherever such allegation is raised.

7. It is further contended that Section 233 does not mention word "Election Tribunal", it only mentions "Authority". Similar mention is made in Section 22 also. Even Article 243(O) prescribes that law to be made by the legislature should govern the election disputes, and law as made by the legislature that is the Panchayat Raj Act, talks about the authority to decide election dispute including complaints as prescribed in Section 22 and therefore in all matters concerning the disqualification, District Court alone has jurisdiction.

8. In response, learned counsel for petitioners/respondents herein contends that this is an election dispute wherein petitioners have prayed to set aside the

election of respondent No. 1 and also sought for declaration to declare the first petitioner as elected candidate or in alternative to hold fresh elections. In support of the claim for granting the relief, one of the contentions urged was that the respondent No. 1 suffered disqualification as she has more than two children and such a ground can be raised in the election petition also. An additional forum is created under Section 22 whereunder any one can challenge the eligibility of a person to contest to the office of Sarpanch or Ward Member on the ground of suffering any of the disqualification and in such a case petition shall lie only to District Court. In so far as election petition is concerned under Section 233 read with rules framed thereunder, the Junior Civil Judge alone has jurisdiction to entertain and consider the dispute.

9. The issue involved in this revision is no more res integra.

10. In *M. Jagannadha Rao Vs. Government of A.P. and Others*, , learned single Judge of this Court construed the provisions Sections 22 and 233 of A.P. Panchayat Raj Act, 1994 and 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 under Section 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 under Section 22 of the Act may be of limited nature which may have to be decided by the concerned authorities in accordance with the procedure under Section 22 of the Act. Be that as it may, the remedies available in relation to disqualification under Section 22 of the Act by authorities and by way of Election Petition under Section 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 under Section 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 upto some extent and may be that certain grounds may be overlapping."

11. The Division Bench of this Court in WA No. 836 of 2007 dated 23.10.2007, approved the decision of the learned single Judge. The facts in issue before the Division Bench are identical to the facts in this case. In the said case also the declaration sought by the petitioner was to set aside election of first respondent therein and consequential declaration that petitioner therein as elected as Sarpanch or in the alternative to order for fresh elections. The Division Bench held that 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 option to avail either of the remedies. In the given case, aggrieved person which term includes a voter for the purpose of Section 22(1) can file a petition to the District Court under Section 22(1) even though an election petition may not have been filed within the prescribed time under Section 233 read with Rules 2(2)(a) and 3. The Division Bench further observed that the prayer made by the petitioner in the election petition is more than sufficient to clear any mis-giving or doubt about the nature of the petition filed by the petitioner in the election petition. It is further held that District Court is not designated as election tribunal within the meaning of Section 233 of the Act read with Rule 12(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". It was thus held that District Court did not have jurisdiction to entertain election petition. The above election petition was filed directly in the District Court. The Division Bench held that if petitioner therein intends to seek only disqualification of the elected candidate, there was no occasion for her to invoke the provisions of the Rules and make specific prayer for being declared as elected on the premise that she had secured the next highest votes.

12. Following the above judgment of the Division Bench, learned single Judge of this Court has taken same view in *Jogi Satyanarayanaramma Vs. Kodi Vijaya Lakshmi and Others*, .

13. With reference to all other contentions, the decision of this Court in *Erlapati Veera Lakshmi Vs. Guda Haritha Rani*, , is a complete answer. This Court construed the provisions in Section 233 of the Act and Article 243(o) of the Constitution of India. This Court held that an election petition is maintainable only before the Election Tribunal and District Court has no jurisdiction.

14. In the present revision as noted above, petitioner is not only seeking to set aside the election of first respondent but also sought for a consequential relief to declare the first petitioner as elected or in the alternative to hold fresh elections. Thus, the present petition is pure and simple an election petition and the Election Tribunal i.e., Junior Civil Judge Court alone has jurisdiction to entertain the election petition under Section 233 read with Rule 12(2) of the Rules to decide the disqualification of the elected candidate and to grant the consequential reliefs.

15. Thus, I see no error in the decision arrived by the Election Tribunal-Junior Civil Judge, Sirsilla warranting interference of this Court. The revision fails and accordingly the same is dismissed. No costs. Sequel to the same, miscellaneous petitions, if any, stand dismissed.