

(2003) 06 AP CK 0014

Andhra Pradesh High Court

Case No: Writ Petition No. 10662 of 2003

R. Jagadeeshwar

APPELLANT

Vs

P. Goutham Goud and Others

RESPONDENT

Date of Decision: June 20, 2003

Acts Referred:

- Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads) Rules, 1995 - Rule 2(1)
- Andhra Pradesh Panchayat Raj Act, 1994 - Section 19, 233
- Constitution of India, 1950 - Article 226

Citation: (2003) 6 ALT 226

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Advocate: Prabhakar Sripada, for the Appellant; M.S. Tirumala Rani and P. Raghavendra Reddy, S.C. for Gram Panchayats for Respondent No. 11, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

V.V.S. Rao, J.

The petitioner unsuccessfully contested the election for the post of Sarpanch of Gram Panchayat, Kollapur in Mahbubnagar District. The first respondent was elected as Sarpanch by securing 3302 votes. The petitioner filed an election petition being E.P.No. 19 of 2001 u/s 233 of the A.P. Panchayat Raj Act, 1994 ("the Act") read with Rule 2(1) of the A.P. Panchayat Raj Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (hereafter called "the Rules") contending that the first respondent has got three children by name Balu Mahesh, Pratyusha and Sai Krishna born on 8-4-1999, 28-4-1993 and 29-8-1996 respectively and, therefore, he incurred disqualification u/s 19(c) of the Act. He prayed the Election Tribunal-cum-Junior Civil Judge, Kollapur, Mahbubnagar District

to set aside the election of Respondent No. 1.

2. The first respondent opposed the election petition contending that the second and third children were not born in a private hospital at Kurnool, that they were born at Dr. V. Ganeswara Clinic, that the third son Saikrishna was born on 27-2-1994 much prior to the date of coming into force of the Act and, therefore, he did not incur any disqualification. He also categorically averred that his wife underwent tubectomy operation at Balaji Nursing Home on 22-3-1994. He also alleged that the petitioner and Congress Party M.L.A., J. Krishna Rao tampered with the birth records and registers in the office of Kadiri Municipal Corporation, that they tampered with school records and admission forms at St. Mary's School, Kollapur and that he filed a police complaint and when police did not take any action he also filed writ petition before this Court.

3. The petitioner examined himself as P.W.1 and examined one L.V. Subba Rao as P.W.2 besides marking Exs.A-1 to A-19. The first respondent examined himself as R.W.1 and examined Dr. V. Ganeswar and one Narasimha as R.Ws.2 and 3 respectively. The first respondent also marked Exs.B-1 to B-17 and Exs.X-1 to X-3 were marked by the Court besides marking Ex.X-3-A and X-3-B which are relevant entries in Ex.X-3. The learned Election Tribunal framed the following issues:

(1) Whether the petitioner has raised any objection before the election officer at the time of filing nomination by respondent No. 1 to the post of Sarpanch or at the time of scrutiny of the nominations filed by the contested candidates?

(2) When the third child of respondent No. 1 by name. Saikrishna born whether prior to the commencement of the Act or within one year or after one year of the commencement of the Act?

(3) Whether the respondent No. 1 is disqualified to contest for the post of Sarpanch of Kollapur Gram Panchayat and to be continued in the said posts?

(4) Whether the petitioner is entitled for the declaration as prayed for?

4. On appreciation of oral and documentary evidence on record, on point No. 1, the lower Tribunal held that the petitioner has not raised any oral objection about the disqualification of the first respondent at any time. On point No. 2, the Election Tribunal recorded that the petitioner failed to prove that the third issue of the first respondent was born on 29-8-1996 and, therefore, he does not incur any disqualification. Point Nos. 3 and 4 were answered accordingly in favour of the first respondent.

5. In this writ petition filed challenging the order of the Election Tribunal-cum-Junior Civil Judge, Kurnool in O.P.No. 19 of 2001, dated 10-3-2003, learned counsel for the petitioner, Sri Prabhakar Sripada submits that the Election Tribunal erred in appreciating the documentary evidence and that the Tribunal ought not to have ignored Ex.A-3 which is date of birth certificate of the third issue of the first

respondent. Likewise, he contends that R.W.2, Doctor clearly stated that a certificate was issued by him based on Ex.X-1 Register of Births maintained by the nursing home in which entries were made by the compounder. According to the learned counsel, as compounder was not examined, no credence can be given to the summoned document.

6. The first respondent filed a caveat petition before this Court through Ms. Tirumala Rani and, therefore, the matter was heard at length at the admission stage. Learned counsel for the first respondent submits that the Gram Panchayat was regularly maintaining a register of births and based on that an entry Ex.X-3A was made showing the date of birth of third son of first respondent as 27-2-1994. She further submits that Ex.X-2 is a letter issued by the Mandal Revenue Officer based on register of births and deaths duly maintained in the course of official business and, therefore, the learned Tribunal has not committed any error in relying on these documents.

7. The question raised in this writ petition challenging an order in an election O.P. is essentially a dispute regarding question of fact. It is now well settled that when statute entrusts to" a tribunal the power to determine the fact and the decision maker, after relying on the evidence adduced before him/her takes a view, ordinarily even the appellate Court cannot interfere with the finding of such original authority. Indeed, as held by the Supreme Court in [Rahim Khan Vs. Khurshid Ahmed and Others](#), even in election matters tried by jurisdictional courts/tribunals, this principle applies. In the said case, it was held that the burden to invalidate an election heavily lies on the person who assails the election. Merely because another view is possible stemming from the oral and documentary evidence on record, the appellate forum cannot interfere. It was held:

.....An election once held is not to be treated in a lighthearted manner and defeated candidates or disgruntled electors should not get away with it by filing election petitions on unsubstantial grounds and irresponsible evidence, thereby introducing a serious element of uncertainty in the verdict already rendered by the electorate. An election is a politically scared public act, not of one person or of one official, but of the collective will of the whole constituency. Courts naturally must respect this public expression secretly written and show extreme reluctance to set aside or declare void an election which has already been held unless clear and cogent testimony compelling the Court to uphold the corrupt practice alleged against the returned candidate is adduced. Indeed election petitions where corrupt practices are imputed must be regarded as proceedings of a quasi-criminal nature wherein strict proof is necessary. The burden is therefore heavy on him who assails an election which has been concluded.

8. It is also well settled that in election disputes, on appreciation of oral and documentary evidence if two views are possible, the appellate Court should lean in favour of elected candidate and election should not be interfered and declared void

unless there are strong reasons to come to a conclusion that the finding recorded by the election tribunal is not only incorrect but clearly wrong and perverse (See [Ram Singh and Others Vs. Ram Singh, \).](#)

9. The submission of the learned counsel for the petitioner is required to be examined in the light of the principles noticed hereinabove. In support of his case, the petitioner mainly relied on Exs.A-3, A-4, A-5, A-10, A-11, A-12, A-13, A-15 and A-18. Exs.A-4 and A-5 are admission forms allegedly inserted by the first respondent in the school records of St. Mary's School in which the second and third children of the first respondent are allegedly studying. Exs.A-14 and A-15 are the admission forms allegedly filed by the first respondent in the said school. Exs.A-10 to A-13 are attendance registers. These documents, in law, are not considered to be public documents nor they can be treated as conclusive proof of date of birth of the third child of the first respondent. The learned Tribunal rightly "rejected them.

10. Ex.A-3 is the birth certificate of Sai Krishna, third son of the first respondent issued by Municipal Corporation of Kurnool on 27-8-2001 whereas Ex.A-18 is the true extract of the birth register of the said Corporation in respect of Sai Krishna. The learned Tribunal rejected the same on the ground that there are interpolations in Ex.A-18 wherein the surname of respondent No. 1 was corrected as "P" from "B" and the issue was shown as 5th issue instead of third child. This creates a doubt and probalises the defence of the first respondent that the petitioner in connivance with local M.L.A., concocted the records. The learned Tribunal therefore rightly held that the petitioner failed to prove by oral and documentary evidence that second and third issues of the first respondent were born in Shanti Clinic.

11. Insofar as the rebuttal evidence of the first respondent is concerned, it is his case that his second and third children were born at Dr. Gnaneswara Clinic at Kollapur. In support of the same, he examined R.W.2 who is Dr. Gnaneswar and also marked Exs.X-1 to X-3. As seen from the evidence placed before this Court, R.W.2 clearly stated that Ex.X-1 register is maintained at the nursing home/clinic regularly and as and when there is a birth in the clinic it was duly recorded by the compounder. There are no reasons to discard the evidence of R.W.2 who proved Exs.X-1, X-2, X-3-A and X-3-B. Besides that Ex.X-3 register of births maintained by Gram Panchayat, Kollapur also supports the case of the fifth respondent that the third child was born much prior to coming into force of the Act and that the date of birth is 27-2-1994. The unimpeached evidence let in by R.W.1 (the first respondent) that his wife underwent tubectomy operation at Balaji Nursing Home, Kurnool also probalises the case of the first respondent. On balancing of probabilities, it is clear that the case of the petitioner, as rightly observed by the Tribunal, stands disproved.

12. After perusing the impugned order dated 10-3-2003 in O.P.No. 19 of 2001 and the evidence let in by both the parties before the tribunal I am convinced that no interference is called for in exercise of jurisdiction under Article 226 of the Constitution of India. It is well settled that a tribunal's decision can be invalidated

and quashed only when there is grave error apparent on the face of the record. It is also well settled that then two views are possible on the face of the evidence on record, the court of judicial review should not set aside the finding of fact merely because the court feels that other view is possible. In election matters, such course cannot be resorted to.

13. The writ petition, for the above reasons, is dismissed in limine.