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Court : Andhra Pradesh

Decided On : Nov-09-2015

Judge : C.V. Nagarjuna Reddy

Appeal No. : Writ Petition No. 36574 of 2015

Appellant : Shaik Azeem Uddin

Respondent : The State of Telangana, repled by its Principal Secretary, Municipal Administration and Urban Development Department and Others

Advocate for Pet/Ap. : Mr. M.Rajender Reddy

Judgement :

This Writ Petition is filed for a Mandamus to set aside order, dated 15.10.2015, in I.A.No.633 of 2015 in O.P.No.234 of 2014 on the file of the Family Court-cum-Additional District Judge, Nizamabad.

I have heard Mr. A.Sudershan Reddy, learned senior counsel for Mr. M.Rajender Reddy, learned counsel for the petitioner and perused the record.

The petitioner was elected as Corporator of Ward No.39 of Nizamabad Municipal Corporation. Respondent No.3, who is a voter, filed the above-mentioned O.P. for setting aside the said election of the petitioner. In the said O.P., the petitioner filed I.A.No.633 of 2015 for dismissing the said O.P. only on the ground that respondent No.3 has already availed the remedy of approaching the Commissioner of Nizamabad Municipal Corporation for disqualifying him under Section-23-D of the Greater Hyderabad Municipal Corporation Act, 1955 (for short the Act') and that therefore, having availed such a remedy, he is not entitled to file the O.P. The lower Court has dismissed, and in my view correctly, the said I.A.

Under Section-23-D of the Act, if an elected member has not qualified or has become disqualified under Sections-21, 21-A, 21-B, 22 or 23 of the Act, any voter or authority may move the Commissioner for deciding the said dispute. Under Section-71 of the Act, a person aggrieved by the election of any candidate is entitled to call in question such election.

A reading of both these provisions would show that they are not mutually exclusive and that they operate independently. Therefore, availing both the remedies by an aggrieved person is very much permissible under the Act and in the absence of any specific bar under Section-71 of the Act to the effect that a person who has availed the remedy under Section-23-D of the Act cannot institute proceedings under Section-71 thereof, the O.P. filed by respondent No.3 is not liable to be dismissed only on the ground that he has moved the Commissioner under Section-23-D of the Act.

In the above view of the matter, I do not find any illegality in the order of the Family Court-cum-Additional District Judge, Nizamabad in dismissing the I.A. filed by the petitioner for rejecting the above-mentioned O.P.

Accordingly, the Writ Petition is dismissed.

As a sequel to dismissal of the Writ Petition, W.P.M.P.No.47110 of 2015 filed by the petitioner for interim relief shall stand dismissed as infructuous.

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