

Joga Ravi Vara Prasad Vs. Commissioner, Mandapeta Municipal Council, Mandapeta

Joga Ravi Vara Prasad Vs. Commissioner, Mandapeta Municipal Council, Mandapeta

SooperKanoon Citation : sooperkanoon.com/426110

Court : Andhra Pradesh

Decided On : Dec-15-2000

Reported in : 2001(1)ALD396; 2001(1)ALT456

Judge : Elipe Dharma Rao, J.

Acts : Andhra Pradesh Municipalities Act, 1965 - Sections 13, 13-A, 13-B, 14, 15, 16, 16(1)(A), 17 and 19; A.P. Excise Act - Sections 34; Untouchability (Offences) Act, 1955

Appeal No. : WP No. 24926 of 2000

Appellant : Joga Ravi Vara Prasad

Respondent : Commissioner, Mandapeta Municipal Council, Mandapeta

Advocate for Def. : Mr. E. Sambasiva Pratap, SC for Municipality, Adv.

Advocate for Pet/Ap. : Mr. D. Sudershan Reddy, Adv.

Judgement :

ORDER

1. This writ petition is filed seeking to issue a writ of mandamus declaring the action of the respondent in issuing the proceedings ROC No.373/99 C3, dated 1-11-2000 in disqualifying the petitioner from the post of Municipal, Councillor for 18th ward of Mandapeta Municipality, Mandapeta, East Godavari District as illegal and arbitrary and consequently to set aside the same and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

2. It is submitted that the petitioner was elected as Municipal Councillor for the 18th Ward of Mandapeta Municipality, Mandapeta, East Godavari District during the elections held in the month of March, 2000. While so, he was convicted for the offence under Section 34(a) of A.P. Excise Act in CC No.88 of 1992 on the file of the Judicial First Class Magistrate, Alamuru and was sentenced to undergo imprisonment for six months which was confirmed in appeal by this Court. The respondent-Commissioner has received information from the Sub-Inspector of Prohibition and Excise, Alamuru through his letter dated 27-10-2000 regarding the conviction of the petitioner in a criminal case and on the basis of the said intimation, the respondent-Commissioner passed the impugned proceedings disqualifying the petitioner for the post of Councillor of the 18th ward of Mandapeta Municipality since he has incurred disqualification under Section 16(1)(A) of the A.P. Municipalities Act, 1965 (for short 'the Act'). Assailing the correctness of the impugned proceedings passed by the respondent-Commissioner, the present writ petition is filed.

3. Learned Counsel for the petitioner submits that the respondent-Commissioner has no power under the Act to disqualify the Councillor of the Municipality. He further submits that under Section 17 of the Act if the Municipal Authorities receive information from any voter or any authority that a Councillor of a Municipality has incurred disqualification, that information has to be given to the Councillor and if that particular

Councillor disputes the same, the same has to be placed before the Council or the Municipal authorities have to obtain permission from the Government and then only the matter has to be referred to the competent civil Court for its determination and till such time, the Councillor, who is alleged to have incurred disqualification, shall continue in the office and without following the procedure contemplated under Section 17 of the Act, the respondent-Commissioner has passed the impugned order disqualifying the Councillor assuming that he is empowered to do so.

4. On a perusal of the provisions of Section 17 of the Act, it contemplates the procedure to be followed to disqualify the Councillor who has incurred disqualification under Sections 13, 13-A, 13-B, 14, 15, 16 and 19 of the Act.

5. Section 13 of the Act contemplates qualifications of the candidates i.e., a person shall be qualified for election as a member only if his name appears on the electoral roll for the Municipality and if he is not less than 21 years of age. Section 13-A of the Act contemplates General Disqualifications i.e., a person shall be disqualified for being chosen as, or for being a member of a Municipality if he is disqualified by or under any law for the time being in force for the purpose of elections to the Legislature of the State concerned; provided that no person shall be disqualified on the ground that he is less than 21 years of age, if he has attained the age of twenty one years. Section 13-B of the Act deals with the disqualification of the persons who have more than two children for election or for continuing as member; provided that the birth within one year from the date of commencement of the Andhra Pradesh Municipal Laws, 1994 of an additional child shall not be taken into consideration for the purpose of this disqualification; provided further that a person having more than two children, excluding the child if any born within one year from the date of such commencement, shall not be disqualified under this section for so long as the number of children he had on the date of such commencement does not increase; it is further provided that the Government may direct that the disqualification in this section shall not apply in respect of a person for reasons to be recorded in writing.

6. Section 14 of the Act contemplates disqualification for election or for holding office as a member; a person holding the office of profit under a municipality, the Central Government or the State Government shall be disqualified for election or for holding office as a member; provided that a person shall not be deemed to hold an office of profit under Municipality by reason only that he is a Chairperson or a member of a municipality in the State and further provided that a Village Officer, who is not actually performing the functions or discharging the duties as such Officer shall not be so disqualified.

7. Section 15 of the Act enlists another category of persons for disqualifications viz., (1) a person who has been sentenced by a criminal Court to imprisonment of an offence under the Untouchability (Offences) Act, 1955, for any offence other than an offence of political character or any offence not involving moral delinquency, such sentence not having been suspended, reversed or the offence pardoned shall be disqualified for election as a member while undergoing the sentence and for the five years from the date of the expiration thereof; (2) A person shall be disqualified for election as a member if such person is, on the date fixed for scrutiny of nomination for election, of unsound mind and stands so declared by a competent Court, a deaf-mute or suffering from leprosy; an applicant to be adjudicated insolvent or un-discharged insolvent; interested in a subsisting lease or contract entered into with or any work being done for, the Council except as a share holder, other than a Director, in a company; provided that a person shall not be deemed to have been any interest in such contract or work by reason only of his having a share or interest in:

(i) any sale or purchase of immovable property or any agreement for the same; or

(ii) any public loan raised by Municipality or any security for the payment of money only; or

(iii) newspapers in which any advertisement relating to the affairs of the Council is inserted; or

(iv) the sale to the Council of any articles in which he regularly trades, or the purchase from the Council of any articles to a value in either case not exceeding five hundred rupees in the aggregate in any year during the

period of the contract or work;

(v) the occasional letting out on hire to the Municipality or hiring from the Municipality of any article for an amount not exceeding in the aggregate in any one year five hundred rupees; employed as a paid legal practitioner on behalf of the Council or as a legal practitioner against the Council; an honorary Magistrate for the municipal town; etc.....

8. Section 16 of the Act prescribes the disqualifications of members subject to the provisions of Section 17, that a member shall cease to hold his office if he is sentenced by a criminal Court to such punishment and for such offence as is described in sub-section (1) of Section 15; that he becomes of unsound mind and stands so declared by a competent Court; that she is a deaf-mute or suffering from leprosy; or he applies to be adjudicated or is adjudicated as an insolvent. This section also contains the disqualifications enumerated in Sections 13, 13-A, 13-B, 14 and 15 of the Act.

9. Section 19 of the Act contemplates disqualification of persons convicted of election offences.

10. Thus, Sections 13 to 16 and 19 of the Act enumerate the conditions under which the Members can be disqualified to act as such and to be elected as such or continue in the office as such; if the member is alleged to have incurred any one of the disqualification prescribed under the above sections and the same shall be brought to the notice of the Commissioner of Municipal Council; thereafter; what action he should take is contemplated under Section 17 of the Act.

Section 17 of the Act is as follows:

'17. District Judge to decide questions of disqualifications of members :-Where an allegation is made by any voter or authority to the Commissioner in writing that any person, who is elected as a Councillor, has not qualified or has become disqualified under Sections 13, 13-A, 13-B, 14, 15, 16 and 19 of the Act and the Commissioner has given intimation of such allegation to the Councillor and such Councillor disputes the correctness of the allegation so made or where any Councillor himself entertains any doubt whether or not he has become disqualified under any of those sections,

(a) such Councillor or any other Councillor may, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, and

(b) the Commissioner shall either on the direction of the Council or with the approval of the Government, if no such direction is given, within a period of two months from the date of placing of the matter by the Commissioner before the Council;

apply for a decision to the District Judge of the District in which the Municipality is situated.

(2) The said District Judge after making such inquiry, as he deems necessary shall determine whether or not such person is disqualified and his decision shall be final.

(3) Pending such decision, the member shall be entitled to act as if he was not disqualified.

11. Section 17 of the Act empowers the District Judge to decide questions of disqualifications of members; where an allegation is made by any voter or authority to the Commissioner in writing that any person who is elected as a member has not qualified or has become disqualified under Sections 13, 13-A, 13-B, 14, 15, 16 or 19 and the Commissioner has given intimation of such allegation to the member and such member disputes the correctness of the allegation so made or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections; (a) such member or any other member may, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, and (b) the Commissioner shall, either on the direction of the Council or with the approval of the Government if no such direction is given within a period of two months from the date of placing of the matter

by the Commissioner before the Council, apply for a decision to the District Judge of the district in which the Municipality is situated.

12. Sub-section hereof provides that the District Judge, after making such inquiry as he deems necessary, shall determine whether or not such person is disqualified and his decision shall be final and sub-section (3) hereof provides that such member shall continue in the office pending decision of the District Judge.

13. A reading of the provisions of Section 17 makes it clear that if any allegation is made by any voter or authority to the Commissioner, in writing, that any person who is elected as a member has not qualified or has become disqualified for the reasons mentioned in Sections, 13, 13-A, 13-B, 14, 15, 16 and 19, a duty is cast on the Commissioner to intimate the allegations made against the member and if the correctness of such allegation is disputed by any member, or any member himself entertains any doubt whether or not he has become disqualified under any of the above sections, the member himself or any other member within a period of two months from the date of such intimation or the doubt is entertained, the Commissioner either on the direction of the Council or with the approval of the Government, if no such direction is given within a period of two months from the date of placing the matter by the Commissioner before the Council, apply to the District Judge of the District in which the Municipality is situated.

14. When the member was intimated with regard to the disqualification by any voter any authority to the Commissioner, he has to intimate the allegation to the member concerned and if the said member disputes the correctness of the said allegation, the Commissioner has to place before the Council of the Municipality for its sanction, otherwise he may get the approval of the Government to refer the matter to the District Judge for his decision and two months time is prescribed to the Council for its opinion as to the reference of the matter to the District Judge and if such a decision was not given by the Council within the stipulated time, the Commissioner can suo motu refer the matter to the District Judge, in whose jurisdiction the Municipality is situated, for a decision. This section further obligates the District Judge, after making such inquiry, as he deems it necessary, to determine whether or not such a person is disqualified and his decision is final. While conducting the enquiry, the District Judge has to give notice and opportunity to the member who was alleged to have been disqualified to satisfy the principles of natural justice and till such time i.e., the order is passed by the District Judge, after such enquiry with regard to the alleged disqualification incurred by the member, the member is entitled to continue as if he was not disqualified. Thus Section 17 is self contained Code which prescribes the procedure to determine the disqualification incurred by the member and the Commissioner by himself has no power to determine the disqualification of the member against whom allegation is made. However, a duty is cast on the Commissioner when he receives such intimation from a voter or authority to intimate the same to the concerned member and when he denies such an allegation, the matter has to be placed before the Council or apply to the Government for its approval. When the matter is placed before the council, within a period of two months, he can apply to the District Judge, within whose jurisdiction the Municipality is situated, for his decision. Sub-section (3) of Section 17 enables such a member to continue in office subject to the decision of the District Judge.

15. That being the legal position, now let us examine the impugned order passed by the Commissioner Mandapeta Municipality, whether it falls within the four comers of Section 17 of the Act.

16. The Commissioner, Mandapeta Municipality, has passed the impugned proceedings based on the letter dated 17-10-2000 from the Prohibition and Excise Inspector, Alamuru, intimating him that the petitioner was convicted for the offence under Section 34(a) of the A.P. Excise Act by the Judicial Magistrate of First Class, Alamuru in CC No.88 of 1992 and the same was not intimated to the petitioner. Therefore, the petitioner had no opportunity to dispute the said allegation leveled against him. Further it is not evident from the impugned order 2001(1) FR--F-26 passed by the respondent that the matter was placed before the Council for its sanction or the Commissioner has sought the approval of the Government to apply to the District Judge, East Godavari District for his decision. When the matter was not placed before the Municipal Council for its sanction, therefore the impugned action of Commissioner is in violation of the provisions of Section 17 of the

Act. Further instead of applying for the decision of District Judge, the Commissioner himself has assumed the role of District Judge, under Section 17 of the Act, and passed the impugned order disqualifying the petitioner to continue as a member of the Council. The Commissioner instead of passing the impugned order by himself, he should have applied to the District Judge for his decision. Thus he has not followed the procedure contemplated under Section 17 of the Act and accordingly it is contrary to the sacrosanct provisions of the Act, which action is detrimental to the interest of the petitioner, which impugned action deprived the petitioner to continue as a member under Section 17(3) of the Act till the decision of the District Judge. Accordingly, the impugned order passed by the Commissioner is set aside as it is offending Section 17 of the Act and the writ petition is accordingly allowed. No costs.

17. It is needless to mention here that if the Commissioner, Mandapeta Municipality, intends to proceed with the matter, he is at liberty to do so according to the procedure contemplated under the provisions of Section 14 of A.P. Municipalities Act.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com