

(1993) 01 SC CK 0012
In the Supreme Court Of India
Case No : Civil Appeal No. 5016 of 1990

Abhimanyudu Dake

APPELLANT

Vs

Vivekananda Karupati and Others

RESPONDENT

Date of Decision : 15-01-1993

Acts Referred:

Representation of the People Act, 1951 — Section 116

Citation : AIR 1993 SC 1944 : (1993) 1 SCALE 219 : (1993) 4 SCC 93 Supp

Hon'ble Judges : N. P. Singh, J;K. Jayachandra Reddy, J

Bench : Division Bench

Advocate : Vimal Chandra, S. Dave and Rani Chabra, for the Appellant;

Final Decision : Dismissed

Judgement

1. This appeal is filed u/s 116 of the Representation of the People Act and pertains to the assembly election that was held in November, 1989 in Andhra Pradesh. The appellant was one of the four candidates that contested from Gopalapuram Legislative Assembly (No. 71) Constituency which was reserved for Scheduled Castes. There were three more candidates. The nominations were filed. The appellant, Smt. Sarojini Devi Dasari and Smt. Jhansi Rani Namburi filed their nominations as independent candidates. Sri Vivekananda Karupati filed his nomination; as Telugu Desam candidate. The time and date for withdrawal was 1 P.M. on 2.11.89. The appellant was supposed to contest as an official candidate of the Congress Party and as required under the Rules he had to file the certificate issued by the President of the Congress Party on the same day before 3 P.M. and he failed to do so. Therefore, he figured as an independent candidate. After the polling took place the counting was done and Telugu Desam candidate was declared. elected who got the highest number of votes 50,411. The appellant got the next highest votes 42,599. Smt. Dasari Sarojini Devi, independent candidate, polled 737 votes and Smt. Numburi Jhansi Rani, independent candidate polled 2,148 votes. Questioning the declaration of the fourth Telugu Desam candidate the appellant filed an election petition under

provisions of the Representation of the People Act. The High Court after hearing the parties framed eighteen issues which are as under: -

- (1) Whether the petitioner is the approved candidate of Cong.(I) Party for No. 71-Gopalapuram A.P. Legislative Constituency for the election held on 22.11.1989 ?
- (2) Whether the 3rd respondent has filed the letter of withdrawal before the time fixed for withdrawal ?
- (3) Whether the appearance of 3rd respondent's name with "Boat" symbol on the ballot paper affected the result of the election ?
- (4) Whether the election is valid by reason of improper acceptance of a nomination which is already withdrawn ?
- (5) Whether the action of the 4th respondent in not allotting "Hand" symbol to the petitioner on the sole ground that the notice was delivered to him a few minutes after 3.00 P.M. on 2.11.1989 is illegal?
- (6) Whether the 4th respondent acted with bias in favour of the first respondent ?
- (7) Whether the petitioner was not given an opportunity to choose one of the free symbols as an Independent candidate ?
- (8) Whether the allotment of " Aeroplane" (Symbol) which was allotted to an independent candidate contesting to Lok Sabha from Bhadrachalam Parliamentary Constituency is illegal and has created confusion in the mind of the electorate ?
- (9) Whether the "Aeroplane" symbol was printed with a light ink in a small size on the ballot papers when compared to "Cycle" symbol of the first respondent and whether that has misled the electorate ?
- (10) Whether the 4th respondent and the Polling Officer gave the ballot papers meant for the Legislative Assembly as well as Lok Sabha at the same time and the voters were asked to put the marks on both the ballot papers ? Whether in Polling Station Nos. 15 and 16 Pangidigudam village in Janganddigudem (11) Mandal, the Polling Officer as well as the Polling Agents of Telugu Desam Party wearing yellow dress were canvassing for votes in the polling stations ?
- (11) a. Whether in polling stations No. 15 and 16 of Pangidigudam village in Janganddigudem Mandal, the polling has been stopped due to disorder for 5 (five) hours and 30 (thirty) minutes and resumed the election after 5.00 P.M. and held upto 11.15 P.M. on 22.11.89?
- (12) Whether the counting agents of the petitioner not allowed to note the number of valid and invalid votes?
- (13) Whether the 4th respondent without properly verifying the votes, invalidated certain valid votes cast in favour of the petitioner ?

(14) Whether the 4th respondent counted some invalid votes in favour of the first respondent under his influence ?

(15) Whether the petitioner has made out any grounds for scrutiny and recount of all the votes polled in the election from No. 71-Gopalapuram Constituency to the A.P. Legislative Assembly held on 22.11.89?

(16) Whether the election of the first respondent as declared elected from No. 71 Gopalapuram A.P. Legislative Assembly Constituency is liable to be declared as void ?

(17) Whether the petitioner is entitled for a declaration as having been duly elected to the said Constituency ?

(18) To what relief ?

2. For the purpose of the present appeal Issues Nos. 1 to 5 are relevant. The evidence was led and after consideration of the material on record the High Court dismissed the election petition. In this appeal the learned Counsel for the appellant on the basis of the Issues Nos. 1 and 5 submitted that the appellant should have been treated as Congress (I) Party candidate and symbol of "Hand" should have been allotted to him; that letter of withdrawal of third respondent namely Smt. Jhansi Rani Namburi should have been accepted and at any rate failure to do so has resulted in loss of some of the votes which ought to have been cast in favour of the appellant and lastly that the symbol allotted to the appellant namely the "Aeroplane" and the symbol allotted to the third respondent "Boat" created confusion in the minds of the electorate" Added to this the allotment of symbol "Aeroplane" for the candidate in the Parliamentary election which was also held at the same time has further created such confusions.

3. It may be mentioned here that admittedly the appellant did not file the certificate, to the effect that the appellant was the official Congress candidate given by the Congress Party President within the time. The reason put forward was that due to the circumstances beyond his control he could not file the same in time. This could hardly be a ground to condone the lapse particularly in election matters. In view of the fact that such certificate was not filed in time as per the rules the question of allotting him the symbol 'Hand' did not arise. Regarding the similarity between the two symbols "Aeroplane" and "Boat" also has no significance because the symbols are distinct and at any rate the number of votes polled by the appellant and the third respondent would show that the electorate did not commit any such mistake. Coming to the withdrawal of nomination by respondent No. 3 the fact remains that original withdrawal letter was not filed nor summoned. Therefore, it cannot be said that there was withdrawal in the eye of the law. Even assuming there is some substance in this submission but having regard to the votes polled by the third respondent 2,148 even if these votes are to be added to the appellant even then the difference between him and the elected candidate is considerably big and so will not affect the election. The submission that the allotment of "Aeroplane" symbol to the

Parliamentary candidate also fails on the same ground. We see no substance in this election petition and it is dismissed accordingly. No costs.