

(1955) 02 AP CK 0010

In the Andhra Pradesh High Court

Case No : Writ Petition No. 698 of 1954

Chenchurama, Naidu

APPELLANT

Vs

Chief Electoral Officer, Andhra State and Another

RESPONDENT

Date of Decision : 08-02-1955

Acts Referred:

Constitution of India, 1950 — Article 226, 324, 329

Citation : AIR 1955 AP 180

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : P. Babulu Reddy and G. Venkiah Naidu, for the Appellant; D. Narasaraju, Advocate General and M. Seshachalapati, Addl. Govt. Pleader, for the Respondent

Judgement

(1) This is a petition under Art. 226 of the Constitution for issuing a writ in the nature of Mandamus, directing the respondents to prepare the electoral roll in the Kondapi Constituency consisting of the three entire revenue firkas of Singarayakonda, Kondapi and Gudlur as notified in the final order in the India Gazette Extraordinary or for issuing any other suitable writ or direction in the circumstances of the case.

(2) The petitioner was a Member of the Andhra State Assembly from the Kandukur constituency. The Andhra Legislative Assembly was dissolved and a fresh notification was issued on 20.12.1954 calling for nominations to be filed on or before 3.1.1955.

(3) In the last general elections conducted in 1952, Kandukur Taluk as a whole was part of a double-member constituency having one reserved seat and one general seat. In 1952, the Delimitation Commission Act was passed, and in pursuance of the said Act, a Delimitation Commission was appointed. It made enquiries with a view to the delimitation of constituencies in the Andhra State. With respect to the Nellore District, the Delimitation Commission published its recommendations as required under S. 8 (3) (a) of the Delimitation Commission

Act on 26.4.1954, and gave time till 17.5.1954 for preferring objections. As per the proposal of the Delimitation Commission, Kandukur and Kondapi and it was provided that the Kandukur constituency should consist of Kandukur, Ponnalur and Chundi firkas, and that the Kondapi constituency should consist of Kondapi, Singarayakonda and Gudlur firkas. It is stated by the Chief Electoral Officer, Andhra, that no objections were filed on or before the date fixed for preferring the objections, that is, 17.5.1954, for the above proposals. On the basis of the proposal of the Delimitation Commission, final Order No. 19 was published in the Gazette of India on 4.10.1954.

(4) According to the petitioner, in the electoral roll finally published, a portion of the Kondapi constituency has been taken away and added to the Kandukur constituency. He submits that 23 villages from Gudlur out of 40 villages have been omitted and 9 villages out of 44 villages have been taken away from Kondapi revenue firka and these villages have been added to the Kandukur constituency. The petitioner states that the population of the 32 villages taken out from the Kondapi constituency will be about 25,000 and the number of voters will be about 12,000, According to him they have been illegally disabled from voting in the Kondapi constituency. He has filed the petition for the issue of a writ in the nature of Mandamus directing respondent 1 to prepare the final electoral roll in Kondapi constituency consisting of the entire revenue firkas of Singarayakonda, Kondapi and Gudlur.

(5) The learned Advocate General appearing for the respondents, who are the Chief Electoral Officer, Andhra State, and the Returning Officer for Kondapi Constituency, Kandukur, contends that the writ petition is not maintainable by reason of the bar contained in Art. 329 of the Constitution of India.

(6) Article 329 of the Constitution of India runs thus :

"Notwithstanding anything in this Constitution --

(a) the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such Constituencies made or purporting to be made under Art. 327 or Art. 328, shall not be called in question in any Court ;

(b) No election to either house of Parliament or in the House of either House of Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

(7) In -- N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , the Supreme Court of India held that the words "notwithstanding anything in this Constitution" in Art. 329 give to that Article the same wide and binding effect as a statute passed by a sovereign Legislature like the English Parliament and that Art. 329 covers all "electoral". In summing up their conclusion, their Lordships of the Supreme Court stated thus :

"(1) Having regard to the important functions which the Legislatures have to

perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) in conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election" ; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

(8) It is common ground that the constituency in question has been called upon to elect a member and, in pursuance of the notification published in that behalf, nominations have been filed and the list of valid nominations have been finally published. The election has been fixed for 24.2.1953.

(9) The question for consideration is whether the Court has jurisdiction to issue a writ of the nature prayed for. Following the decision of the Supreme Court, in -- "Ponnuswamy v. Returning Officer, Namakkal Constituency (A)", I hold that Art. 329 provides a complete bar to the High Court entertaining any writ which has the effect of interfering with any part of the electoral process. There can be no doubt that the issue of a writ of mandamus as prayed for in this petition would have the consequence of interfering with the election while it is in progress. Part XV of the Constitution of India is headed "Elections" and Arts. 324 to 329 of that part form a separate code by themselves. They create rights and provide for their enforcement through a special tribunal to the exclusion of all courts, including the High Court. The words "Notwithstanding anything in this Constitution" exclude the jurisdiction of the High Court to deal with any matter which may arise while the elections are in progress. If so much is conceded the conclusion is inevitable that this writ petition cannot be maintained. In the view I have taken I am not expressing any opinion about the merits of the contention of the petitioner.

(10) Upholding the preliminary objection of the learned Advocate General, I hold that the writ petition must fail. It is, therefore, dismissed with costs. Advocate's fee Rs. 150/-.

(11) Petition dismissed.