
(2012) 09 AP CK 0033

In the Andhra Pradesh High Court

Case No : Writ Petition No. 6801 of 2010

Davuluri Malyadri and Another

APPELLANT

Vs

The Collector and District Election Authority, Prakasam
District, Ongole and Eleven Others

RESPONDENT

Date of Decision : 11-09-2012

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 31, 32(7)(a), 61(3),
61(3), 61(4)
Constitution of India, 1950 — Article 226

Citation : (2013) 1 ALT 207

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : M. Ravindranath Reddy, for the Appellant; O. Manohar Reddy, Respondent No. 4 and Sri Sitaram Chaparla, Respondents 5 to 12, for the Respondent

Final Decision : Dismissed

Judgement

G. Chandraiah

1. Heard Sri M. Ravindranath Reddy, counsel for the writ petitioners, Government Pleader for Co-operation for respondents 1 to 3, Sri O. Manohar Reddy, counsel for the 4th respondent - Society and Sri Sitaram Chaparla, counsel for the impleaded respondents 5 to 12. The 4th respondent is M/s Ponnaluru Primary Agricultural Co-operative Credit Society Ltd., Ponnaluru Village and Mandal, Prakasam District and it is represented by Person-in-charge. The 3rd respondent - Election Officer, issued election notification under Rule 22(b)(vi) of the A. P. Co-operative Societies Rules, 1964 on 31.01.2010 for conducting elections for constitution the Managing Committee of the 4th respondent - Society. Challenging the said election notification, the present writ petition is filed.

2. The grievance of the writ petitioners is that the 3rd respondent - Election Officer has not verified the voters list and without publishing the draft electoral

list and inviting objections, published the final electoral list and out of 1214 members shown in the final list, 204 members, which constitute 17 per cent voters, died and their names were shown in the final voters list and that there are several other discrepancies like exclusion of eligible members from the list and, therefore, as the elections are being conducted based on invalid voters list, which goes to the root of the matter and which is also affecting the division of wards, the entire election process is vitiated, therefore, sought a direction to declare the election notification, based on invalid voters list, as illegal and arbitrary.

3. This court while admitting the writ petition on 26.3.2010 passed the following interim order in WPMP. No. 8795/2010:

The contention urged in this writ petition is that since more than 17% of the voters are dead, the inclusion of their names in the voters' list affects the very basis of the election and the division of each of the 13 constituencies. The election is scheduled to be held on 28.3.2010.

Since the petitioners have approached this court just on the eve of the election, I do not consider it appropriate to stay the polling. Let the polling go on and let the results of the election be declared.

All proceedings thereafter are stayed for a period of four weeks.

Learned Government Pleader for Co-operation takes notice on behalf of respondents 1 and 2.

Sri M. Ravindranath Reddy, learned counsel for the petitioners, is permitted to take out notice on respondents 3 and 4, by registered post with acknowledgement due and to file proof of service within two weeks.

List the WPMP after three weeks."

4. On 28.3.2010, the elections were conducted and the results were declared on the same day and thereafter, in view of the interim orders, no further steps were taken. On 23.4.2010, the above interim orders of this court were extended until further orders.

5. The elected members of the 4th respondent - society in the elections held on 28.3.2010, got impleaded as respondents 5 to 12 in WPMP. No. 20986/2010.

6. Counter affidavits were filed on behalf of the 4th respondent - Society and respondents 1 and 2.

7. In the counter affidavits and in the implead petition, while denying the writ averments, it is stated inter alia that the District Election Authority has appointed the Election Officer on 7.11.2009 and requisition was made by Election Officer for production of records and the same was produced on 13.11.2009 and the list of eligible voters was prepared by the Chief Executive Officer on 17.11.2009 and the objections to the voters list were invited from 23.11.2009 to 18.12.2009. It

is stated that the averment that 204 members died out of 1230 members, was not intimated to the 4th respondent - society. As no objections were received, the final list was prepared and the same was handed over to the Election Officer on 19.12.2009 and he, after scrutinizing the same with reference to the admission register of the society, finalized the list and subsequently, the election notification was given under Rule 22(b)(vi) of the Rules on 31.1.2010 and the elections were conducted on 28.3.2010 and the results were also declared on the same day. It is stated that writ petition, under Article 226 of the Constitution of India, after commencement of election proceedings, is not maintainable and that the petitioners have an alternative effective remedy u/s 61(4) of the A. P. Co-operative Societies Act, by way of reference of the election dispute to the Tribunal. With these averments, the writ petition was sought to be dismissed.

8. The learned counsel appearing for the writ petitioners, while reiterating the writ averments, strenuously contended that 17 percent of the electorate died and without deleting their names, the elections were conducted and this goes to the root of the matter and on the basis of invalid voters list, elections cannot be conducted and hence the entire elections are invalid. The learned counsel also produced as many as 164 death certificates issued by the authorities along with the material papers. He stated that in the counter affidavits filed on behalf of the respondents 1 and 2 and 4, the fact of dying of 17 per cent of voters, is not denied and they only sought to justify the election process and in view of this undisputed fact, the writ petition is maintainable and the entire election process has to be declared as invalid. Relying on the judgment of the Apex Court reported in *BAR COUNSEL OF DELHI AND ANOTHER v. SURJEET SINGH AND OTHERS* AIR 1980 SC 1012 he contended that since the entire elections have been challenged, on the ground of invalid voters list and as the same goes to the root of the matter, this court under Article 226 of the Constitution of India, can interfere with the same and declare the elections as unconstitutional and that the petitioners need not be directed to avail alternate remedy. He further contended that this court admitted the writ petition and granted interim directions on 26.3.2010 and at this stage after a period of about two and half years, in the light of the admitted facts, it is not justified to relegate the petitioner to avail alternate remedy. In support of this contention, he relied on the judgment of the Apex Court reported in *DR BAL KRISHNA AGARWAL v. STATE OF U.P.* (1995) 1 SCC 614 With these contentions, he sought to set aside the election notification and the subsequent proceedings.

9. On the other hand, the learned counsel appearing for the respective respondents, while reiterating the averments made in the counter affidavits and disputing the contention of the writ petitioners with regard to the death of about 204 electorate, contended that this court under the writ jurisdiction, cannot undertake the task of verifying the death certificates produced by the writ petitioners and such disputed questions of fact cannot be gone into by this court and when once the election process has begun, and the disputes in connection with the elections, have to be agitated before the Tribunal u/s 61(4) and the writ

petition is liable to be dismissed on the ground of availability of alternate remedy. In support of their contentions, reliance is placed on the judgments of the Division Bench of this court reported in *The Gudivada Cooperative Urban Bank Ltd. Vs. Smt. Sheik Mahaboobi and Others*, and *M.A.R.V.S. Sai Babu Vs. Commissioner and Registrar of Co.op. Societies, Government of Andhra Pradesh, Hyderabad and others*, With reference to the judgments relied on by the counsel for the petitioners, it is contended that in Bar Council of Delhi case (1 supra), the facts therein disclose that there was challenge to a proviso to Rule 3(j) of Bar Council of Delhi Election Rules, 1968, based on which the electoral rolls were prepared and as the question of law was challenged, the writ petition was entertained and the said proviso was declared as ultra vires and consequently, the electoral rolls, which were prepared on invalid provision of law, was declared as illegal and accordingly the elections were set aside. The learned counsel submitted that in the said judgment, the Apex Court has categorically held at paragraph No. 18 that merely because the whole election has been challenged by way of a writ petition, the petition would be maintainable in spite of there being an alternative remedy being available, is incorrect and that where the alternative remedy is no remedy in the eye of law to cover the challenge or in any event, is not adequate and efficacious remedy, then writ petition to the whole election is available. It is contended that in the present case, there is no challenge to any of the provisions of the statute and no question of law is involved and therefore, the writ petition, involving disputed questions of fact, cannot be entertained. It is contended that even in the judgment of the Apex Court in *Dr. Bal Krishna Agarwal case (Supra)*, pure question of law was agitated and, therefore, the Apex Court was of the view that the High Court therein was not right in dismissing the writ petition of the appellant on the ground of availability of an alternative remedy. Therefore, the said judgment is also not applicable to the facts of the present case. With these contentions, the writ petition was sought to be dismissed.

10. In view of the above rival contentions, the point that arises for my consideration is whether, in the light of the present facts and circumstances, whether the writ petition is not maintainable in view of availability of an alternative remedy?

11. Before considering the facts of the case, it is necessary note the law laid down by the Apex Court, with regard to maintainability of a writ petition, when an alternative remedy is available. The Apex Court in *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*, , held as under:

15. ... But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

12. In Bar Council of Delhi (1 supra), while considering the validity of a proviso

under Rule 3(j) of Bar Council of Delhi Election Rules, 1968 and consequently challenge to the entire elections, vis-a-vis, availability of alternate remedy, the Apex Court at paragraph No. 18 of the judgment, held as under:

We may add that the view expressed by some of the High Courts in the cases referred to above that merely because the whole election has been challenged by a writ petition, the petition would be maintainable in spite of there being an alternative remedy being available, so widely put, may not be quite correct and especially after the recent amendment of Article 226 of the Constitution. If the alternative remedy fully covers the challenge to the election then that remedy and that remedy alone must be resorted to even though it involves the challenge of the election of all the successful candidates. But if the nature and the ground of the challenge of the whole election are such that the alternative remedy is no remedy in the eye of law to cover the challenge or in any event, is not adequate and efficacious remedy, then the remedy of writ petition to challenge the whole election is still available. In the present case we have pointed out above that the Election Tribunal would have found itself incompetent to declare the proviso to Rule 3(j) of the Delhi Bar Council Rules ultra vires and that being so the alternative remedy provided in Rule 34(8) was no remedy at all.

13. The quintessence of the above judgments is that where enforcement of fundamental right is sought; or that there is violation of the principles of natural justice; or that the impugned order or proceedings were passed without jurisdiction; or that if a virus of a Act is challenged, then the writ petition is maintainable and the availability of alternative remedy will not operate as a bar. Further, in the judgment of the Apex Court (1 supra), it is held that if the alternative remedy fully covers the challenge to the election, then that remedy and that remedy alone must be resorted to even though it involves the challenge of the election of all the successful candidates. But if the nature and the ground of the challenge of the whole election are such that the alternative remedy is no remedy in the eye of law to cover the challenge or in any event, is not adequate and efficacious remedy, then the remedy of writ petition to challenge the whole election is still available.

14. Keeping in view the above law laid down by the Apex Court, coming to the facts of the case, it could be seen that the grievance of the petitioner is that 17 per cent of the total electorate are dead and they are included in the final list and without publishing the draft list by following the Rule 22, the final list has been published and hence based on such invalid electoral list, the elections have been conducted, the same are invalid and liable to set aside. On the other hand, the case of the respondents in the counter affidavits is that draft list has been published inviting objections and as no objections were received and as the death of 17 per cent of electorate, as alleged by the writ petitioners, were not brought to the notice of the Chief Executive Officer, final list has been prepared. In my considered view, these are disputed questions of fact and needs verification of records.

15. It is to be noticed that in the present case, the elections notification was given and subsequently, the elections were conducted and the entire dispute is with regard to preparation of final electoral list in connection with elections. Such dispute relating to the elections, have to be referred to the Election Tribunal having jurisdiction u/s 61(3) and (4), of the Act. The said provisions for better appreciation are extracted as under:

61. Disputes which may be referred to the Registrar:

(3) Every dispute relating to, or in connection with, any election to a committee of a society shall be referred for decision to the Tribunal having jurisdiction over the place where the main office of the society is situated, whose decision shall be final.

(4) Every dispute relating to, or in connection with any election shall be referred under sub-section (3) only after the date of declaration of the results of such election.

16. Therefore, when an alternative remedy is available, this court is not inclined to entertain the writ petition, and moreover no question of law is involved and the circumstances enumerated by the Apex Court in the judgment cited 5 supra, are also not forthcoming. Further, it is well settled that this court cannot delve into the disputed questions of fact under the writ jurisdiction.

17. Further, in the present case, the election process has begun and at that stage, the writ petitioners have approached this court, disputing the electoral list, on the ground that dead persons were included in the said list. A Division Bench of this court in Gudivada Co-operative Urban Ltd., case (cited 3 supra), in similar facts and circumstances, where there was challenge to the elections on the ground of illegalities in voters list, held that in exercise of power by High Court under Article 226 of Constitution of India, it cannot interfere or interdict election process and grant interim measures of stay or directions against such elections on ground of illegalities in voters list, and such grounds can form part in an election petition to assail ultimate election results and that having regard to availability of alternative and more efficacious remedy u/s 61(3) of the A. P. Co-operative Societies Act, 1964, High Court would not venture to invoke jurisdiction under Article 226 of the Constitution, nor can make any interdiction in the process. The relevant portion at paragraph nos.17 and 20, is extracted as under:

17. From the above well-laid principles, it follows apparently that it is not every ground or a reason on which the aggrieved party can approach this Court under Article 226 of the Constitution of India. Unless and until such ground goes to the very invalidity and based on which the election is sought to proceed making either voters list or otherwise totally non est having regard to the preparation under invalidity or there being no fundamental basis there for, this Court could not possibly entertain any such writ petition. In fact all the other grounds which normally arise, be it on an electoral corrupt practices or an erroneous preparation of voters list, either by deletion or addition as such, this do constitute well within

the mischief of enquiry under an election petition. That apart an enquiry into such grounds mentioned later is a fact finding one which can be more aptly be appreciated from the evidence as can be let in by both sides on the footing of assertion and denial. Therefore, there is a clear distinction on which this Court can entertain a writ petition on the limitation as pointed out above.

20. From the above well-laid principles, it follows apparently that it is not every ground or a reason on which the aggrieved party can approach this Court under Article 226 of the Constitution of India. Unless and until such ground goes to the very invalidity and based on which the election is sought to proceed making either voters list or otherwise totally non est having regard to the preparation under invalidity or there being no fundamental basis there for, this Court could not possibly entertain any such writ petition. In fact all the other grounds which normally arise, be it on an electoral corrupt practices or an erroneous preparation of voters list, either by deletion or addition as such, this do constitute well within the mischief of enquiry under an election petition. That apart an enquiry into such grounds mentioned later is a fact finding one which can be more aptly be appreciated from the evidence as can be let in by both sides on the footing of assertion and denial. Therefore, there is a clear distinction on which this Court can entertain a writ petition on the limitation as pointed out above.

18. In another judgment, a Division Bench of this court in M.A.R.V.S. Sai Baba (supra), held as under:

7. It is pertinent to mention that the issue relating to the validity of membership of a society including that of wrong admission of a member or non-inclusion of a valid member in the rolls of the society is an issue to be decided before the election process begins and that can be a valid ground to invoke Section 32 (7) (a) of the Act to set right the things and then proceed for the elections and appoint a Person-in-charge to manage the affairs of the society in the interregnum. But, once a decision is taken to hold the elections and the election process commences by issue of notification, Section 32 (7) (a) of the Act has got no role and any dispute in connection with the election, be it of the nomination, of improper electoral roll and other aspects, have to be settled only by way of a judicial adjudication contemplated in Section 61 (3) of the Act, which reads :

61 (3) (a) Every dispute relating to, or in connection with, any election to a committee of a society referred to in clause (a) of sub-section (3) of Section 31, shall be referred for decision to a Subordinate Judge, or where there is no such Subordinate Judge, to the District Judge having jurisdiction over the place where the main office of the society is situated, whose decision thereon shall be final. (b) Every dispute relating to, or in connection with, any election to the office of President of the Primary Co-operative Society referred to in sub-section (5) of Section 31 or to a committee of such class of societies, as may, by notification in the Andhra Pradesh Gazette, be specified by the Government in this behalf and referred to in clause (b) of subsection (3) of Section 31, shall be referred for decision to a District Munsiff having jurisdiction over the place where the main

office or the society is situated, and his decision thereon shall be final.

Again Section 61 (3) of the Act is subject to Section 61 (4) of the Act, which mandates that such a dispute relating to, or in connection with, any election can be entertained only after declaration of the result.

19. In the above judgments of the Division Bench of this court, it is clearly held that this court under Article 226 of the Constitution of India, cannot interfere with the election process and any dispute in connection with the election, be it of the nomination, of improper electoral roll and other aspects, have to be settled only by way of a judicial adjudication contemplated in Section 61 (3) of the Act.

20. Earlier when the elections to the present 4th respondent - society was postponed on the ground of law and order problem, writ petition was filed before this court in W.P. No. 3471/2010 and this court by order dated 11.2.2010 while setting the aside the decision of the Government to postpone elections, directed the 3rd respondent to take all necessary steps for providing adequate security arrangements for holding elections, and thereafter, hold elections in accordance with law, at the earliest in any event on or before 31.3.2010. While passing such a direction, at page No. 11, the learned single Judge, advertent to the contention that there are discrepancies in the voters list, relying on the judgment of the Apex Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, observed as under:

Discrepancies in the voters list is not among the enumerated circumstances in Rule 22-C(1) for postponement of elections. This is a matter to be agitated before the Election Tribunal after the election result is declared. u/s 61(3) of the A.P. Co-operative Societies Act, 1964, every dispute relating to, or in connection with, any election to a committee of a society shall be referred for decision to the Tribunal having jurisdiction over the place where the main office of the society is situated, whose decision thereon shall be final. u/s 61(4), every dispute relating to, or in connection with, any election shall be referred under sub-section (3) only after the date of declaration of the result of such election. The provision of a special jurisdiction which can be invoked by an aggrieved party at the end of the election excludes any other form, the right and remedy being creatures of the statute. (*Mohinder Singh Gill v. Chief Election Commissioner*).

21. From the above judgments, it is clear that in view of the availability of an efficacious alternative remedy, the writ petition is not maintainable.

22. The judgments relied on by the counsel for the petitioners are not applicable to the facts of the present case, since in the said judgments, pure questions of law, were involved and such questions of law, cannot be adjudicated by the Tribunal, which is constituted under the statute and such questions of law, have to be dealt with by the Constitutional Courts, and the Apex Court in the judgment cited 1 supra, has categorically drawn a distinction and held that where the alternative remedy is no remedy in the eye of law to cover the challenge or, in any event, is not adequate and efficacious remedy, then the remedy of writ

petition is maintainable. In the present case, at the cost of repetition, it is required to be noticed that the petitioners are disputing the electoral list, based on which election notification was given and such dispute in connection with elections, has to be adjudicated by the Election Tribunal based on the evidence to be made available by the parties.

23. For the foregoing reasons, I do not find any merit in the writ petition and the same is liable to be dismissed, on the ground of availability of an alternative remedy and the issue framed is answered in the affirmative. In the result, the writ petition is dismissed, but having regard to the facts and circumstances of the case, without costs. In sequence thereto, all the M.Ps. stands closed.