

(2014) 07 AP CK 0146
In the Andhra Pradesh High Court
Case No : Writ Petition No. 12066 of 2014

Dubbaka Narsimha Reddy	Vs	APPELLANT
Election Commission of India		RESPONDENT

Date of Decision : 09-07-2014

Acts Referred:

Representation of the People Act, 1951 — Section 125A, 33, 33A

Citation : (2014) 6 ALD 569 : (2014) 6 ALD(Cri) 569 : (2014) 5 ALT 238

Hon'ble Judges : Kalyan Jyoti Sengupta, C.J.; Sanjay Kumar, J

Bench : Division Bench

Advocate : V. Venkataramana, Senior Advocate Appeared for K. Pallavi, Advocate for the Appellant; Avinash Desai, Govt. Pleader for Revenue, S. Niranjana Reddy and D. Prakash Reddy, Senior Advocate, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Kalyan Jyoti Sengupta, J.—As it appears from the writ petition, the summary of facts is as under. The writ petitioner and fifth respondent filed nomination to contest Elections for 92- Nalgonda Assembly Constituency. As required under the law, the fifth respondent was to and did file an affidavit disclosing his personal information in Form -26. In the affidavit filed with the Election Officer, the fifth respondent stated, amongst others, his educational qualification as follows:

He also mentioned in the form regarding Highest Educational qualification as under:

The footnote at the place of educational qualifications in the form requires as follows:

(Give details of highest School/University education with full form of the certificate/diploma/degree course, Name of the School/ College/ University and the year in which the course was completed).

2. Contention of the writ petitioner is that the aforesaid affidavit is not in

accordance with law as prescribed. To be precise, if we have understood correctly, the complaint of the writ petitioner is that information supplied by the fifth respondent in the affidavit with regard to his educational qualification is false. He has not acquired Educational Qualification as disclosed. According to the writ petitioner, supply of incorrect information regarding educational qualification also amounts to concealment and suppression of real fact and this invites not only appropriate civil action, but also criminal action.

3. At the time of filing of the writ petition, the election was not over. Taking note of the fact, we did not pass any interim order at all, though prayed for. After the election was over, it was found that the fifth respondent was elected, defeating the petitioner. In view of the changed circumstances, the prayer of the writ petitioner has been allowed to be amended. The prayer amended reads as follows:

and consequently direct the respondents 2 and 3 to enquire about the educational qualification of the 5th respondent in pursuance of the representation dated 12-04-2014 and take appropriate steps in accordance with law.

Now relief sought for by the writ petitioner is for making enquiry about educational qualification of the fifth respondent and taking appropriate steps by the Election Officials.

4. Counter affidavits have been filed before the matter is taken up for final hearing.

The election officials have stated that under the provisions of Section 125A of the Representation of the People Act, 1951 (hereinafter referred to as Act 1951), the Election Officer has not been given any power or duty to enquire into falsity of the statements made in the affidavit in order to initiate criminal action grievance of which is primarily focused right now. It is also stated that remedy of this grievance lies elsewhere. It is further stated that at the time of filing of the nomination, neither the law nor any pronouncement of the Supreme Court has mandated to enquire into as asked for.

5. The fifth respondent has filed counter affidavit stating that there is no false nor inaccurate information in the affidavit filed by him and he has explained the same in the affidavit and we have heard it merely.

6. We are not making any comment nor rendering any decision on this issue for the reasons, which would be explained later on.

7. In this matter, we requested Sri D. Prakash Reddy, learned Senior Advocate, to assist us. He has accepted our request and assisted us very ably.

8. Sri V. Venkataramana, learned Senior Counsel appearing for the petitioner, submits that when a representation has been made for taking an action, action should have been taken by the election officials not doing so it resulted inaction.

Hence, a direction should be given to enquire into at this stage now. According to him irrespective of provision of Section 125A of the Act 1951 does not prohibit from taking action on the question of falsity.

9. Sri D. Prakash Reddy, learned amicus curiae, has brought to our attention to the several decisions of the Supreme Court, which are quoted hereunder, to inform this Court about the historical background of insertion of Section 125A in the Act 1951.

(i) Union of India (UOI) Vs. Association for Democratic Reforms and Another, .

(ii) People's Union for civil Liberties (PUCL) and Others Vs. Union of India (UOI) and Another, .

(iii) Resurgence India Vs. Election Commission of India and Another, .

10. Even after the amendment, the Hon''ble supreme Court, while taking note of the said amendment to aforesaid Section, has explained what would be the duty of the Election Officer to work with the complaint of false information or inaccurate information or concealment of information in the affidavits and at what stage. Sri D. Prakash Reddy, learned amicus curiae, says that Section 125A of Act 1951 is very clear that any person including the petitioner himself can make a complaint about false statement on Oath before appropriate authority. He is fair enough to inform us that law also enables the Election Officer to do so. The Supreme Court has recorded that at the time of filing nomination, it is simply impossible to take action.

11. Learned Counsel for the Election Commission of India adopted and supported the argument of Sri D. Prakash Reddy. In addition thereto, he has produced a Circular dt.26.4.2014 issued by the Election Commission of India, giving guidelines as to what is to be done with regard to false declaration or concealment of information or furnishing incorrect information in the affidavit u/s 125A of Act 1951.

12. Learned counsel for the fifth respondent reiterating the statements in the counter affidavit, submits that complaint can be lodged by any person and it is not necessary the election officer must lodge. Therefore, there is no question of considering the representation made by the petitioner for enquiring into the alleged criminal action. As far as the civil consequence is concerned, it is for the petitioner to approach appropriate forum.

13. We have heard all of them and we have considered everything before us, including the Supreme Court pronouncement in aforementioned cases. We are of the view that when Section 125A of Act 1951 is incorporated, obviously with the intervention of the Court by above decisions of the Hon''ble Supreme Court of India, it would be suffice to read the section to know what is meant and we set out the said Section hereunder:

125-A. Penalty for filing false affidavit, etc.-- A candidate who himself or through

his proposer, with intent to be elected in an election, --

(i) fails to furnish information relating to sub-section (1) of section 33A; or

(ii) gives false information which he knows or has reason to believe to be false; or

(iii) conceals any information, in his nomination paper delivered under sub-section (1) of section 33 or in his affidavit which is required to be delivered under sub-section (2) of section 33A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.

14. From a reading of the aforesaid Section, it does not appear that Election Officer has to take any step for initiating any criminal proceedings. The aforesaid provision nowhere says that it is the duty coupled with power or power coupled with duty or power to take any action. It merely provides penal measure for filing affidavit giving false information or concealing information.

15. Further more, there is a Circular issued by the Election Commission of India to all the Chief Electoral Officers of all States and Union Territories with regard to filing of false affidavits in Form-26. Paragraph 3 of the aforesaid Circular, reads as follows:

3. u/s 125A, there is no stipulation that complaints under that section have to be made by the public servant concerned (in this case the R.O.). Therefore, it would be open to any aggrieved person to move petition before the appropriate Court of competent jurisdiction with petition for action u/s 125A in the case of any false declaration or concealing of information in the affidavit in Form 26.

When the guidelines have been issued that have got statutory force also, have to be followed by all the concerned officials unless Statute requires expressly an officer appointed thereunder has duty or power coupled with duty to act. The Court of law cannot mandate, for concept of rule of law does not permit so.

16. Thus we are unable to grant any relief as asked for, however, we give liberty to take steps in accordance with law. This writ petition is disposed of accordingly. There will be no order as to costs.