
(1996) 08 AP CK 0100

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 1533 and 3474 of 1996

Gangaram and P. Ramachandra Reddy

APPELLANT

Vs

State Election Commission and Others

RESPONDENT

Date of Decision : 29-08-1996

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 153, 153(1), 201, 233
Constitution of India, 1950 — Article 243K(1)

Citation : (1996) 4 ALT 454

Hon'ble Judges : S.R. Nayak, J;M.N. Rao, J

Bench : Division Bench

Advocate : V. Ravinder Rao, in W.P. 1533/96 and Vinod Kumar Despande, in W.P. No. 3474/96, for the Appellant; V. Ravinder Rao, in W.P. 3474/96, Prabhakar and G.P. for Panchayat Raj for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Allowed

Judgement

M.N. Rao, J.—This judgment will dispose of both the writ petitions in view of commonality of questions of law and fact involved.

2. The petitioner in W.P.No. 1533 of 1996 - Sri Gangaram - was elected from Mirzapur Mandal Parishad Territorial Constituency on Congress Party ticket to the Bhainsa Mandal Parishad. Bhainsa Mandal Parishad in Adilabad District consists of eight territorial constituencies. Every Mandal Parishad, as per Section 153 of the Andhra Pradesh Panchayat Raj Act, 1994 (for short "the Act"), shall have one President and one Vice-President elected by the elected members of the Mandal Parishad. The office of the President/ Bhainsa Mandal Parishad, was reserved for members of Scheduled Castes in accordance with the procedure prescribed under sub-section (2) of Section 153 of the Act. Of the eight elected members of the Bhainsa Mandal Parishad, three belonged to the congress Party and five to the Telugu Desam Party (for short "T.D.P."). Apart from the elected members, every Mandal Parishad consists of four categories of persons specified u/s 149 (1) of the Act, viz., Member of the Legislative Assembly, Lok Sabha Member, Rajya

Sabha Member and a person belonging to the Minorities, co-opted in the prescribed manner. Besides Sri Gangaram, who belongs to a Scheduled Caste, the other two members of the Congress Party are Smt. Bhoodevi, also belonging to a Scheduled Caste, and Smt. Sayamma. The T.D.P. has no members belonging to the Scheduled Castes. Members belonging to a recognised political party must obey the whip issued by the prescribed functionary of the Party as enjoined by Section 153 (1) of the Act.

3. A Notification was issued on 14-3-1995 drawing up the schedule fixing the date 18-3-1995 for election of the President, Vice-President and Co-opted member of the Mandal Parishad. On 18-3-1995 all the eight members of the Mandal Parishad were present. After the election of the co-opted member was over, another meeting had commenced without any break for election of the President and the Vice-President. First, the Vice-President's election was taken up and Sri P. Ramachandra Reddy, the petitioner in W.P.No. 3474 of 1996 belonging to the T.D.P., was declared elected. Immediately, all the five members belonging to the T.D.P., walked out of the meeting evidently for the reason that there was no scheduled caste person among the T.D.P. members to seek election to the office of President. The name of Sri Gangaram, the petitioner in W.P.No. 1533 of 1996, was proposed for Presidentship by Smt. Bhoodevi and seconded by Smt. Sayamma, both belonging to the Congress Party. When Sri Gangaram said that he was contesting for the post of President, the Election Officer adjourned the meeting to the next day i.e., 19-3-1995 stating that no business could be transacted as there was no quorum-presence of at least one half of the number of members. On the next date of adjournment, nobody was present.

4. Challenging the action of the Election Officer in adjourning the meeting to 19-3-1995 as arbitrary and contrary to the provisions of the Act and Rule 13(2) of the Rules relating to Conduct of Election of Member (Co-opted) and President/Vice President of Mandal Parishads issued in G.O.Ms.No, 756 Panchayat Raj, Rural Development and Relief (Elec. III), Department dated 30-11-1994 (for short "The Rules"), Sri Gangaram filed WP.No. 11775 of 1995. Rule 13(2) lays down that if only one candidate is duly proposed, there shall be no election and he shall be declared to have been elected. The State Election Commission, the District Collector, the Election Officer as well as Sri Ramachandra Reddy, the Vice-President, were made parties to that writ petition. In the counter-affidavit filed by the Election officer, it was admitted that Sri Gangaram filed nomination for the post of President but the meeting was postponed as there was no quorum. A Division Bench of this Court allowed the Writ Petition on 28-11-1995 directing the Election Officer "to consider the case of the petitioner for declaration as President of the said Mandal Praja Parishad as per Rule 13(2) of the Rules", and pass orders within a week. A review petition -Rev. W.P.M.P. No. 35079 of 1995 - was filed by Sri Ramachandra Reddy, the Vice-President of the Mandal Parishad, contending, inter alia, that notice was not served upon him in the writ petition and that the assertion of Sri Gangaram, the writ petitioner, that he filed nomination for the office of President could not be acted upon as there was no

procedure prescribed for filing of nominations in the absence of quorum. That review petition was allowed by the Division Bench by an order dated 15-12-1995 with a direction to the Election Officer to follow the procedure laid down in Rules 13(1) and (2) and in case he finds that the nomination of Sri Gangaram was the only valid one, the result should be declared. In case the Election Officer was of the view that there was no valid nomination by Sri Gangaram, the schedule for conduct of election should be revised and nominations should be called for filling the post of President. The Division Bench set a time limit of one month for completing this exercise. In compliance of the directions of the Court, the Election Officer declared Sri Gangaram on 18-12-1995 as the elected candidate and he assumed charge.

5. The State Election Commissioner passed an order on 27-12-1995 taking the view that the counter-affidavit filed by the Election Officer in W.P.No. 11775 of 1995 that Sri Gangaram was the only candidate whose nomination was filed for the post of President was incorrect since there could not have been a nomination in the absence of quorum and that the direction issued by the High Court was only to consider the case of Sri Gangaram for declaration and as there was no valid meeting, the declaration made by the Election Officer on 18-12-1995 that Gangaram was duly elected was contrary to law. On that view, the State Election Commissioner directed the District Collector, who is also the District Election authority, to call for a special meeting as per rules and conduct the election after giving notice to all concerned and that the Revenue Divisional Officer, Nirmal shall be the Election Officer for conducting the special meeting. This order was passed by the State Election Commissioner without notice to Sri Gangaram. Sri Gangaram was not allowed to function as the President despite his claim that he assumed office, on the ground that the State Election Commissioner on 27-12-1995 set aside the order of the Election Officer. The Vice-President, Sri Ramachandra Reddy, under sub-section (4) of Section 165 of the Act, was exercising the powers and performing the functions of the President on the ground that the office of President was vacant.

6. In compliance of the aforesaid directions of the State Election Commission, a notice was issued by the Revenue Divisional Officer (the Election Officer) on 5-1-1996 fixing the date 10-1-1996 for election of the President. On 10-1-1996, the T.D.P members abstained but all the three members of the Congress Party were present. Once again, Sri Gangaram filed the whip issued by the Congress Party directing its members to vote in his favour. He also, besides filing a written representation to the Revenue Divisional Officer, filed his nomination in writing and the same was proposed and seconded by the other two members belonging to his party by giving letters to that effect in writing.

7. As the Election Officer did not declare the result on the view that there was no valid meeting because of want of quorum, Sri Gangaram filed W.P.No. 1533 of 1996 for a direction to the authorities to declare him as the candidate duly elected to the post of President of the Bhainsa Mandal Parishad. The plea raised

by Sri Gangaram in this writ petition is that as his was the only duly proposed nomination, he should have been declared as the President under Rule 13(2) of the Rules and that on a mis-interpretation of Rule 13(2), the State Election Commissioner had erroneously given a direction on 27-12-1995 to the District Collector to take steps for convening another special meeting for election of the President. An interim direction was given in W.P.M.P.No. 1838 of 1996 in W.P.No. 1533 of 1996 by a Division Bench directing the Election Officer to declare Sri Gangaram as the elected candidate to the office of President and the declaration to be subject to the result of the writ petition. In compliance of the interim direction, Sri Gangaram was declared elected and he started functioning as the President.

8. Sri Ramachandra Reddy, the Vice-President, who, till the date of the above interim direction, was performing the functions and exercising the powers of the President u/s 165 (4) of the Act, could not do so any further and so he filed Writ Petition No. 3474 of 1996 questioning the legality of the order of the Election Officer dated 18-12-1995 by which Sri Gangaram was declared elected, but which was subsequently set aside by the State Election Commissioner by his order dated 27-12-1995. The plea taken in W.P.No. 3474 of 1996 is that as there was no quorum at any of the special meetings convened for the election of the President, the question of accepting the nomination of Sri Gangaram would not arise and, therefore, the action of the Election Officer in declaring Sri Gangaram as the elected President on 18-12-1995 was void.

9. Sri Ravinder Rao, learned counsel for the Petitioner in W.P.No. 1533 of 1996, has argued that the State Election Commissioner had no power to set aside the election of Sri Gangaram, the petitioner, which was declared on 18-12-1995 by the Election officer and the only remedy available for any aggrieved person was to approach the duly constituted Election Tribunal challenging the legality of the election. The power of superintendence, direction and control of the preparation of the electoral rolls for and the conduct of elections to the panchayats vested in the State Election Commission under Article 243-K of the Constitution of India and Section 201 of the Act do not encompass the power to set aside a declaration of result made by the Election Officer. He has also urged that the State Election Commissioner's order dated 27-12-1995 was in breach of principles of natural justice in that the affected person - Sri Gangaram - was not heard before the declaration made in his favour as the President was interfered with by the State Election Commissioner. Reservation of seats in Panchayat Raj Institutions - Gram Panchayats, Mandal Praja Parishads and Zilla Parishads - as envisaged by Article 243-D of the Constitution and the relevant provisions in the Act could not be defeated by procedural prescriptions. When there was only one candidate available and when he has filed a valid nomination, it could not be ignored on the ground that there was no valid meeting due to want of quorum.

10. Controverting these contentions, Sri M.V. Ramana Reddy, learned senior counsel for Sri P. Ramachandra Reddy, the petitioner in W.P.No.3474 of 1996 and

the Vice-President, has strongly urged that the requirement of quorum is a valid condition precedent for any business to be transacted. When there was a rule prescribing a particular strength as the quorum, it must be adhered to and in the absence of any such rule, all the members must be present at such a meeting. As there was no quorum at any point of time when the matter concerning the election of the President was taken up, it must be deemed that there was no valid nomination at all and consequently there was no election to the office of President. The rule relating to quorum being a statutory one of a mandatory nature, its infraction could not be condoned in any respect, even in respect of an election to a post reserved in favour of scheduled castes and other weaker sections.

11. We have to first consider whether there was a valid nomination of Sri Gangaram on 18-3-1995 when the special meeting was convened for election of the President and Vice-President. The Division Bench in Rev. W.P.M.P. No. 35079 of 1995 in W.P.No. 11775 of 1995 directed the Election Officer:

".....to follow the procedure laid down under Rule 13(1) and (2) of A.P. Conduct of Election of Member (Co-opted) and President/Vice President of Mandal Parishad Rules, 1994. In case he finds that the nomination of the first respondent herein is the only nomination and is valid one, he is directed to consider declaration of results according to Rules. In case, he finds that there is no such valid nomination of the first respondent herein, he is directed to call for nominations by refixing the schedule for conducting elections to the post of President, Mandal Praja Parishad, Bhainsa. The District Collector i.e., the District Election Authority, is directed to inform the concerned Election Officer or any other concerned officer to take up the proceedings as stated supra."

As already adverted to at the threshold, the post of President of Bhainsa Mandal Parishad was reserved to be filled by a member of the Scheduled castes and that of the three Congress Party members, the petitioner in W.P. No. 1533 of 1996 - Sri Gangaram - and one Smt. Bhoodevi, belong to Scheduled Castes and from among the five T.D.P., members, no one belongs to a scheduled caste. Article 243-D ordains that seats shall be reserved in favour of persons belonging to the Scheduled Castes and Scheduled Tribes in every Panchayat and the number of seats so reserved shall be in proportion to the population of the Scheduled Castes and Scheduled Tribes as the case may be to the total population of the Panchayat area. The reservation comprehends the Office of Chair Persons of the three categories of Panchayat Raj Institutions - The Gram Panchayats, the Mandal Parishads and the Zilla Parishads - as is explicit from the expression "panchayats at each level" contained in Article 243-D of the Constitution in regard to reservations to the office of Chair Persons. This constitutional mandate was carried out in the statute in Section 153 in so far as the Mandal Parishad, the second tier institution is concerned. Sub-section (1) of Section 153, which is relevant, is in the following terms;

"(1) For every Mandal Parishad, there shall be one President and one Vice--

President who shall be elected by and from among the elected members specified in clause (i) of sub-section (1) of Section 149 by show of hands duly obeying the party whip given by such functionary of the recognised political party as may be prescribed. If at an election held for the purpose, no President or Vice-President is elected, fresh election shall be held. The names of the President and the Vice-President so elected shall be published in the prescribed manner:

Provided that if a Member of the Legislative Assembly of the State or of either House of Parliament is elected to either of the said offices/ he shall cease to hold such office unless within fifteen days from the date of election to such office, he ceases to be member of the Legislative Assembly of the State or of either House of Parliament by resignation or otherwise.

Provided further that a member voting under this sub-section in disobedience of the party whip shall cease to hold office forthwith and the vacancy caused by such cessation shall be filled as a casual vacancy."

The method of election is by show of hands and every elector belonging to a recognised Political Party is obliged to comply with the whip given by the _ prescribed functionary of the Party. Disobedience of the whip entails cessation of office. Sub-section (3) speaks of the first meeting of the Mandal Parishad for election of President and Vice-President:

"(3) The first meeting of the Mandal Parishad to elect a President and Vice-President shall be called as soon as may be, after the results of the ordinary elections to the office of elected members of the Mandal Parishad have been published. The notice of the date and time of the meeting for the election of President and Vice-President shall be given to the elected members in the prescribed manner:

Provided that if, for any reason, the election of the President or Vice- President is not held on the date fixed as aforesaid, the meeting for the election of the President and Vice President shall be held on the next day, whether or not it is a holiday observed by the Mandal Parishad."

Under the above sub-section, it is obligatory to mention in the election notice the date and the time of the meeting for the election of President and Vice-President and if for any reason, if the election is not held on the date so fixed, the meeting shall be held on the next day irrespective of the fact whether the next day happens to be a holiday.

12. Part-IV of the statutory rules for conduct of elections issued in G-O.Ms.No. 756 deals with the election of President and Vice-president. It is necessary to notice Rules 11, 12 and 13:

"11. (1) On the same day on which the special meeting for election of a member of Mandala Parishad specified in clause (v) of sub-section (1) of Section 149 is held and soon after the election of the member is over, a special meeting shall also be held by the Collector, or any Gazetted Officer authorised by him in the

office of the Mandal Parishad at the hour to be announced at the end of the meeting held for election of the member specified in clause (v) of sub-section (1) of Section 149 for the election of President /Vice-President in the manner laid down hereafter.

(2) Notice of the date and hour of such meeting shall be given in Form-II A to the members specified in clauses (i) to (iv) of sub-section (1) Section 149 atleast three clear days in advance of the date of the meeting fixed for the election of the President/Vice President, Mandala Parishad by the Collector or any Gazetted Officer authorised by him. In respect of member elected under clause (v) of sub-section (1) of Section 149, the notice shall be in Form IV-A placed on the notice board of the Mandal Parishad.

12. No meeting for the conduct of election of President/Vice-President of a Mandal Parishad shall be held unless there be present at the meeting at least one half of the number of members then on the Mandal Parishad who are entitled to vote at the election.

13. (1) A candidate for the office of the President/Vice-President of a Mandal Parishad shall be proposed by one member and seconded by another. The names of all the candidates validly proposed also seconded shall be read out by the Presiding Officer at such meeting.

A candidate for the Office of President/Vice-President of a Mandal Parishad shall be proposed by one member and seconded by another. If any candidate claims to be contesting on behalf of a political party, he shall produce an authorisation from the President of the recognised political party of the State or a person duly authorised by the State President under his office seal and such authorisation shall be produced before the Presiding Officer on or before 11.00 A.M. on the day preceding the day of the election for the election of the Office of President/Vice President of Mandal Parishad.

The names of all candidates validly proposed and seconded shall be read out along with the name of the Political Party which has set him up by the Presiding Officer in such a meeting.

(2) If only one candidate is duly proposed, there shall be no election and he shall be declared to have been elected.

(3) If there are two or more candidates, an election shall be held by show of hands and votes taken of the members present at the meeting.

(4) The Presiding Officer shall thereafter record the number of Votes polled, for each such candidates ascertained by show of hands. He shall announce the number of votes secured by each candidate and shall declare the candidate who secures the highest number of votes, as elected.

(5) In the event of there being an equality of votes between the two 35 Candidates, the Presiding Officer shall draw lots in the presence of the members

and the candidates whose name is first drawn shall be declared to have been duly elected.

(6) Deleted.

(7)

13. It is uncontroversial that on 18-3-1995 at the special meeting convened, the first item taken up was the election of the co-opted member. After that was over, an announcement was required to be made about the next meeting for election of the President and Vice-President. Immediately after the election of the co-opted member was over, it is not in dispute, the Election Officer announced that the next special meeting would immediately take place without any break for electing the President and Vice President. The order of preference of election as enjoined in sub-rule (1) of Rule 11 is that the election of President should be taken up first followed by the election of Vice-President as is evident from the words "for the election of President /Vice-President in the manner laid down here-after" in sub-rule (1). That in the first instance, the election of the " President should take place is also evident from the order in which the words "President / Vice-President" are used in sub-rule (2) of Rule 11 and Rules 12 and 13. The quorum for the conduct of election of President and Vice-President is one half of the number of members entitled to vote, as laid down in Rule 12. That every candidate for the office of President and Vice-President shall be proposed by one member and seconded by another member is the mandate of Rule 13(1), which also enjoins that a candidate contesting on behalf of a political party shall produce an authorisation from the President of that cognised political party or ! a person authorised by the State President and the authorisation shall be produced before the Presiding Officer on or before 11.00 A.M. on the day preceding the day of election. It also obligates that the names of all candidates "validly proposed and seconded shall be read out along with the name of the political party which has set him up/by the Presiding Officer in such a meeting."

14. It is, therefore, clear that the act of proposing and seconding need not be when the meeting has commenced. It could be earlier than the commencement of the meeting. That is why sub-rule (1) of Rule 13 obligates the Presiding Officer to read out the names of the candidates validly proposed and seconded. Instead of taking up the election of the President first on 18-3-1995, a situation was contrived obviously to stifle the election of the President, by taking up the election of the Vice-President in the first instance. The nomination of Sri Gangaram as President, validly proposed and seconded, was already there. As all the eight electors (members) were present on 18-3-1995, had the Election Officer taken up the item concerning the election of the President in the first instance, Sri Gangaram would have been declared elected without any hitch as his was the only validly proposed nomination. It was only with a view to avoiding that situation, the election of the Vice-President was taken up as the first item and after the Vice-President's election was over, the five members of the T.D.P. walked out. Sub-rule (2) of Rule 13 is attracted automatically in cases where

only one candidate is duly proposed and there is no option for the Election Officer except to declare him as the elected candidate. The language admits of no doubt: "If only one candidate is duly proposed, there shall be no election and he shall be declared to have been elected." It is only when there are two or more candidates, an election shall be held by show of hands as laid down in sub-rule (3). The mandatory requirement of taking up the election of the President in the first instance was not complied with deliberately as there is no one belonging to a scheduled caste among the five members of the T.D.P, who constitute the majority. In this fact situation, the only interpretation that must be given, in our view, to the statutory rules is that as the nomination of Sri Gangaram is the only valid nomination, he should have been declared elected as the President by the Election Officer.

15. The constitutional mandate concerning reservation in favour of members of Scheduled Castes and Scheduled Tribes in the office of Chair- persons in all the three categories of the Panchayat Raj Institutions cannot be circumvented by any statutory provisions or rules made under a statute. The command of Article 243-D with regard to reservation in the Office of Chair Persons in all the three categories of the Panchayat Raj Institutions is clear and unambiguous. By any interpretative process, by a statutory provision or rule, this constitutional command cannot be allowed to be stifled. The intention of the Constitution makers as expressed in the language employed needs no extrinsic aids of construction.

16. The provision relating to "quorum", in our view, has already been complied with when the special meeting for the purpose of election of President and Vice-President commenced after the election of the co-opted member was over. The meeting was only one meeting convened for election of the member (co-opted), President and Vice-President. It cannot be split up into two meetings one for the election of President and the other for the election of Vice- President for the purpose of applying the quorum rule. If, at the beginning, when a meeting commenced, there was quorum and business was taken up, until the listed business was over, it must be deemed that there was quorum for the meeting. The requirement that certain number of members should be present at a meeting is only for the purpose of facilitating valid transaction of business. It is a matter for the rules of the body concerned to specify the quorum, See: Shackleton - On the Law and Practice of Meetings, 7th Edn., P.47.

17. SriRamanaReddy"sargumentthatif there was quorum in the beginning when business was taken up and if it had disappeared later, no business could be validly transacted is a well settled legal position in English Company Law for which the foundation was laid in *Re Hartly Baird, Ltd.*², is untenable. In this English case, Article 46 of the Articles of the Company envisaged presence of not less than 3/4ths shareholders of a particular class for the purpose of transacting business at a meeting convened. Article 52 laid down that no business should be transacted at any meeting unless the quorum was present. There was quorum

when the meeting had commenced but one person left the meeting after lodging a protest and, thereafter, the meeting proceeded to consider the business for which it had been called and a resolution was passed. i.e. The question was: whether such a resolution was valid? Wynn Parry, J., differing from a contrary view taken by a Scottish Court, held that the meeting in question:

"....was one at which a valid class resolution was passed, because at the commencement of the meeting i.e., when the meeting proceeded to business, there was a quorum as provided by Article 46 of the Articles of Association".

If there were only two members and if one was absent, the ruling in *Re Hartley Baird Ltd.* 1954(3)All.E.R.695. had no application, was the view expressed in *Re London Flats Ltd.* 1969 (2) All.E.R. 744. It was held that if there was only one member present, there was no meeting at all - "it is well settled that as a general rule, a single shareholder cannot constitute a meeting". We, therefore, hold that it was impermissible in law for the Election Officer to take up in the first instance the item concerning the election of the Vice-President relegating to the second position, the item concerning the election of the President. When the meeting had commenced for the election of President /Vice-President, there was quorum and the departure of the majority members would not have the effect of invalidating the "duly proposed and seconded nomination of Sri Gangaram for the office of President. If there was only one valid nomination, Rule 12 of the Rules concerning quorum has no application and the candidate must be declared to have been elected. It is only in a case where there is more than one candidate in the field, the question of election will arise and consequently, the quorum rule comes into play.

18. If Rule 12 is to be made applicable to a case where there is only one duly proposed and seconded nomination, it will lead to absurd situations resulting in defeating the object and intent of the constitutional mandate and the statutory requirement. Where unintended results emerge, the language of a statute or a rule should be innovatively and realistically interpreted to accord with the object and intent of the statute, is a well accepted canon of interpretation. The principle stated by Maxwell:

"Where the language of a statute, in its ordinary meaning and grammatical construction, leads to a manifest contradiction of the apparent purpose of the enactment, or to some inconvenience or absurdity, hardship or injustice, presumably not intended, a construction may be put upon it which modifies the meaning of the words, and even the structure of the sentence."

was accepted by our Supreme Court in *Tirath Singh Vs. Bachittar Singh and Others*, . How a statutory provision should be interpreted when there is a conflict between literal interpretation and what was intended by the Legislature, was explained by the Supreme Court in *I.T. Commr., Bangalore v. J.H. Gotla*, :

"Where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the legislature,

the Court might modify the language used by the Legislature so as to achieve the intention of the Legislature and produce a rational construction. The task of interpretation of a statutory provision is an attempt to discover the intention of the Legislature from the language used. It is necessary to remember that language is at best an imperfect instrument for the expression of human intention. It is well to remember the warning administered by Judge Learned Hand that one should not make a fortress out of dictionary but remember that statutes always have some purpose or object to accomplish and sympathetic and imaginative discovery is the surest guide to their meaning."

To the same effect is the ruling in *Girdhari Lal and Sons Vs. Balbir Nath Mathur and Others*, .

19. Recognising the constitutional imperative in this regard (reservation of seats for Scheduled Castes and Scheduled Tribes in the Office of Chair Persons of the three categories of Panchayats), the State Election Commissioner, by his notification No. 293/SEC/95 dated 16-3-1995 in exercise of the powers u/s 201 of the Act, after taking cognizance of the fact that in certain Mandals and Zilla Parishads only one candidate belonging to the reserved category got elected, expressed the opinion that there was no need to call for a special meeting and consequently directed the Collectors and District Election Authorities to declare the candidate as the .Chair Person for the concerned Mandal /Zilla Parishad. The relevant portion of the notification is in the following terms:

"When the chair person of the said Mandal/Zilla Parishad is reserved for that category and in such circumstances, the State Election Commission, feels, considering the mandatory provisions and directions in the Constitution of India and A.P. Panchayat Raj Act, it is not required to call for a special meeting of the elected members to elect the lone candidate of reserved category for the office of the Chair Person of Mandal /Zilla Parishad of that category. In such situation, the State Election Commission, in exercise of his powers conferred under Article 243K directs the Collectors and District Election Authorities to declare that candidate as the Chair-Person for that Mandal/Zilla Parishad."

20. The next question to be considered is: whether the State Election Commissioner has power to set aside the election of a candidate after the result was declared ?

21. In compliance of the direction of the Division Bench in *Rev. W.P.M.P.No. 35079 of 1995* in *W.P.No. 11775 of 1995*, the Election Officer by his order dated 18-12-1995 declared Sri Gangaram as the President of the Mandal Parishad after satisfying himself that Sri Gangaram's was the only valid, nomination. In the counter-affidavit filed by the Election Officer, it was stated that Sri Gangaram was the "lone candidate who filed nomination for the post of President". After considering the rule position as incorporated in Rules 11,12 and 13, the Election Officer, in compliance of the directions of the Division Bench, found that the nomination of Sri Gangaram was a valid one and accordingly declared him, the

returned candidate. However, the State Election Commissioner, by his order dated 27-12-1995; held that the view taken by the Election Officer was illegal and non-est and accordingly, he directed the District Collector, the District Election Authority, to call for another special meeting.

22. Admittedly, notice was not issued to Sri Gangaram, the affected person, before this order was passed.

23. By Article 243K(1) of the Constitution, the superintendence, direction and the control of preparation of electoral roll for and the conduct of elections to the Panchayats shall be vested in a State Election Commission, consisting of State Election Commissioner to be appointed by the Government. The nature of jurisdiction and the extent of power conferred on the State Election Commissioner in respect of elections to the Panchayats are in pari-materia with the power conferred, under clause (1) of Article 324, on the Election Commission in respect of elections to Parliament, Legislature of every State and election to the office of the President and Vice-president of India. Section 200 of the Act also speaks of superintendence, direction and control of the State Election Commissioner in respect of the preparation of electoral rolls and conduct of elections to the Panchayat Raj Institutions. Section 201 says that all elections to the Panchayat Raj Institutions shall be held under the provisions and control of the State Election Commission and for this purpose, "it shall have power to give such directions as it may deem necessary to the Commissioner, District Collector or any officer or servant of the Government and the Panchayat Raj Institutions so as to ensure efficient conduct of the elections under this Act." Section 233, in emphatic terms, lays down that no election held under the Act "shall be called in question except by an election petition presented to such authority and in accordance with such rules as may be made in this behalf". Rule 13(2) of the Rules, already extracted supra, enjoins the Presiding Officer to declare the result if there was only one candidate duly proposed. If there is more than one candidate, he is required, by sub-rule (4), to record the number of votes polled for each of such candidates ascertained by show of hands. He shall announce the number of votes secured by each candidate and shall declare the candidate who secures the highest number of votes, as elected. By Rule 14, the Presiding Officer is required to prepare a record of the proceedings and shall publish on the notice board, a notice signed by him stating the name of the person elected and submit a copy of the notice to the State Election Commissioner, District Collector and the Commissioner of Panchayat Raj.

24. After the declaration was made by the Presiding Officer, the election of a candidate can only be challenged by an election petition u/s 233 of the Act. The Election Commissioner has no power to interfere with the declaration of a result, whatever be the reason. The power to give directions to the Commissioner and the other officers, vested in him by Section 201, was only for the purpose of ensuring efficient conduct of the elections. Once a declaration was made, the election has come to an end and, thereafter, the power of superintendence and

control of the Election Commissioner is not available. Any action initiated by the Election Commissioner to interfere with the result of an election would be in breach of Section 153 and the statutory rules adverted to supra. The legal position in this regard is well settled. In A.C. Jose Vs. Sivan Pillai and Others, . it was held by the Supreme Court, in the context of the exercise of powers by the Election Commission under Article 324 of the Constitution:

"Where there is an Act and express Rules made thereunder, it is not open to the Commission to override the Act or the Rules and pass orders in direct disobedience to the mandate contained in the Act or the Rules. In other words, the powers of the Commission are meant to supplement rather than supplant the law (both statute and Rules) in the matter of superintendence, direction and control as provided by Article 324."

The order of the State Election Commissioner dated 27-12-1995 also suffers from another fatal infirmity in that it was passed without notice to Sri Gangaram, the affected candidate, whose election was set aside by that order.

25. What we have said about the legal position as to the meeting held on 18-3-1995 applies equally to the meeting held on 10-1-1996, which was convened after the State Election Commissioner had set aside the election of Sri Gangaram by his order dated 27-12-1995. As to the meeting held on 10-1-1996, Sri Gangaram's nomination was already filed, which was validly proposed and seconded. The authorisation of the political party and the whip issued by that party, on whose behalf he contested, was also filed.

25. For the above reasons, we declare that Sri Gangaram, the petitioner in W.P.No. 1533 of 1996, was duly elected as the President of Bhainsa Mandal Parishad and accordingly the Writ petition is allowed. Consequently, W.P. No. 3474 of 1996 filed by Sri P. Ramachandra Reddy, Vice-President of the Mandal Parishad, is dismissed. In the circumstances, there shall be no order as to costs in both the writ petitions.