

(1992) 01 AP CK 0011

In the Andhra Pradesh High Court

Case No : Writ Petition No. 474 of 1992

Gangarapu Ushaiah

APPELLANT

Vs

The District Collector(Co-operation) Medak District and others

RESPONDENT

Date of Decision : 31-01-1992

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1992 AP 220 : (1992) 1 ALT 662 : (1992) 1 AnWR 391 : (1992) 1 APLJ 390

Hon'ble Judges : Radhakrishna Rao, J

Bench : Single Bench

Advocate : R. Subhash Reddy, for the Appellant; L. Prabhakar Reddy, for the Respondent

Judgement

Radhakrishna Rao, J. 1. The 2nd respondent herein who is the Election Officer issued a Notification on 2-1-1992 to hold the elections to the Managing Committee of the Primary Agricultural Co-operative Credit Society, Chin-takunta Village, Andole Mandal, Medak District. The petitioner has filed his nomination for membership of the Managing Committee for Ward No. 2, mentioning his serial No. 984 in the voter's list prepared for this purpose. Unfortunately, the 2nd respondent rejected the nomination of the petitioner by the impugned order dated 10 -1-1992 on the sole ground that his name at Serial No. 984 is not tallied whereas his serial number is at 982. Assailing the validity of this rejection order, the petitioner filed this writ petition under Article 226 of the Constitution of India praying to set aside the impugned order and direct the respondents to treat his nomination as valid.

2. According to the election programme given by the 2nd respondent, 9-1-1992 is the date for filing nominations, 10-1-1992 is the date for scrutiny, 11-1-1992 is the date of withdrawal and 23-1-1992 is elections to Members of the Managing Committee and 29-1-1992 is the election day to the post of Chairman of the 3rd respondent-society.

The impugned order reads as follows:

10-1-1992

REJECTION ORDER

"The nomination of Sri Gangarapu Ushaiah son of Devaiah for Ward No. 2 of P.A.Cs. Chinta Kunta is rejected, as he has mentioned his serial number in the nomination form as 984 his serial number mentioned in the voters" list is at 982. Hence not tallied, nomination rejected.

Sd/- Narayana Rao

Election Officer,

PACS, Chintakunta."

The main grounds urged by the petitioner are that there is a bona fide mistake in giving the Serial at 984 in the nomination form, that his identity is beyond doubt and in any case under Rule 22 of the A. P. Co-operative Societies Rules, ("the Rules") any misdescription either of the candidate or the proposer cannot be the ground to throw away the nomination when the identity of the candidate is not in dispute.

It is necessary to notice sub-rule 6(2) of Rule 22 of Rules:

22. xx xx 6. Scrutiny of nomination papers

(1) XX XX XX (2) The election officer shall examine the nomination papers and decide all objections, which may be made by any candidate or his proposer, in respect of any nomination and may, either on such objection, or on his own motion and after such summary enquiry, if any, as he thinks necessary, reject any nomination:

Provided that the nomination of a candidate shall not be rejected merely on the ground of the incorrect description of his name or of the name of the proposer or of any other particulars relating to the candidate as entered in the list of members referred to in sub-rule (3) if the identity of the candidate or proposer, as the case may be is established beyond reasonable doubt."

3. A close reading of the above sub-rule 6(2) of Rule 22 clearly shows that the nomination of a candidate shall not be rejected for any incorrect description either of his name or of the proposer or of any other particulars relating to the candidate in the voters" list if the identity of the candidate is established beyond reasonable doubt.

4. In this case, the petitioner has mentioned his serial No. 984 whereas on scrutiny by the Election Officer his name is found at Serial No. 982. The impugned order is silent as to whether there is any other "Ushaiah" other than the petitioner. It appears, there is some variance in the serial numbers in the old voters list and the new voters" list. When there is variance in the serial numbers

in the old voters" list and the new voters" list and when the petitioner is claiming that he is the person at the new voters" list and when the petitioner is claiming that he is the person at the new serial number 982 and when there is no dispute with regard to his identity, there is no reason in rejecting his nomination merely on the ground that the name mentioned at Sl. No. 984 is not tallying. The petitioner is an identifiable person and there is no other person by the same name in the village. In these circumstances, the rejection of the nomination is ex facie bad and patently irregular.

5. It is well settled that when once an election process has begun, this Court should not ordinarily interfere in the said election process. But when once the rejection order of a candidate is patently bad, it is not desirable for this Court to drive such a person to an Election Tribunal. If there are any disputed facts and those disputed facts have to be investigated, then this Court may not interfere under Article 226 of the Constitution. There is no dispute with regard to the membership of the petitioner in the 3rd respondent-Society. He mentioned his name at Serial No. 984 as against 982. The respondents have not come out with any case that there is another person by name "Ushaiah" and the petitioner's identity is in doubt. There are only two nominations, one is that of the petitioner and the other is that of Ganta Vittal, who is now sought to be impleaded as the fourth respondent in the writ petition. When the petitioner's nomination was rejected, there remains only one valid nomination of the proposed respondent and he was declared elected unanimously. It is only at the behest of the proposed respondent who raised an objection with regard to the variance in the serial number mentioned by the petitioner, that his nomination was rejected.

6. The proviso to Clause (2) of sub-rule (6) of Rule 22 of the Rules clearly envisages that the nomination of a candidate cannot be rejected if the identity of the candidate is established beyond reasonable doubt. The facts of this case clearly disclose that the identity of the petitioner is established beyond reasonable doubt as the respondents failed to bring out a case that the petitioner is not an identifiable person and that there is another person by the same name. Though this Court, exercising its extraordinary jurisdiction under Article 226 of the Constitution does not ordinarily interfere when once an election process is commenced, but when once the order of rejection of candidate is ex facie found bad and is contrary to the Rules, the rejection of the petitioners can be said to be not valid and it can be set aside.

7. In the result, the impugned order is set aside and consequently the nomination of the petitioner shall be held to be valid, and the 2nd respondent is directed to complete the election process for Ward No. 2 of the 3rd respondent-Society.

The writ petition is accordingly allowed. No costs.

Petition allowed.