
(1999) 09 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 19351 and 19491 of 1991

Indian National Congress Party, Hyd.

APPELLANT

Vs

Central Election Commission and others

RESPONDENT

Date of Decision : 17-09-1999

Acts Referred:

Constitution of India, 1950 — Article 21, 226, 325, 326, 329
Representation of the People Act, 1951 — Section 28

Citation : (2000) 1 ALD 262 : (1999) 5 ALT 595

Hon'ble Judges : V. Eswaraiyah, J;B. Subhashan Reddy, J

Bench : Division Bench

Advocate : Mr. A.S. Ramachandra Rao, for Mr. L. Ravichander, for the Appellant; Mr. C.P. Sarathy and Mrs. Jayashree Sarathy, SC for Election Commission and Mr. D. Prakash Reddy, A.A.G., for the Respondent

Judgement

B. Subhashan Reddy, J

Both these writ petitions have been filed by Indian National Congress Party represented by the Secretary, Dr. K.V.P. Ramachandra Rao, Andhra Pradesh Congress Committee, Hyderabad. Central Election Commission, Chief Electoral Officer, Andhra Pradesh, and the Superintendents of Police of the Districts of Adilabad, Karimnagar, Nizamabad, Warangal and Medak as also the Director-General of Police, Andhra Pradesh are the respondents. Telugu Desam Party represented by its General Secretary is also arrayed as one of the respondents and, in fact, allegations are made against the said party, which is the ruling party in the State of Andhra Pradesh.

2. In Writ Petition No.19351 of 1999, relief is sought for the intervention of this Court to issue directions to ensure the absence of M/s. Umesh Kumar, Inspector-General of Police, Greyhounds and S.R. Tiwari, Deputy Inspector-General of Police, Special Investigating Bureau, Anti-Naxal Group from the four districts of Adilabad, Karimnagar, Nizamabad and Warangal to ensure that they do not in any manner interfere with the peaceful conduct of elections to the Parliamentary

and Assembly Constituencies scheduled on 18-9-1999. The petitioner also prays that if it is felt necessary, the above two officers should be restrained from entering those four districts.

3. In Writ Petition No. 19491 of 1999, the prayer is to direct the Central Election Commission, New Delhi and the Chief Electoral Officer, Andhra Pradesh to take all necessary steps to maintain special surveillance over persons entering and staying in the five districts of Adilabad, Nizamabad, Medak, Karimnagar and Warangal and to take all necessary steps to seriously supervise the entry and exit of the persons into the above five districts till the conduct of elections scheduled on 18-9-1999.

4. Previous to the above writ petitions, Writ Petition No.18201 of 1999 was filed by the petitioner on 25-8-1999 and the same was disposed of by a Division Bench of this Court and the learned Chief Justice speaking for the Court was of the considered view that it was not for this Court to embark upon the enquiry, but the petitioner will be at liberty to make the copy of the writ petition in the form of a representation and give the same to the Election Commission within 24 hours who may pass appropriate orders in accordance with law, rules and the requirement of administrative exigencies as well as availability of resources, if already no steps have been taken, to hold free and fair election. It is stated that pursuant to the above order, a representation was made on 27-8-1999 by the petitioner to the Chief Election Commissioner, New Delhi.

5. Again on 32-9-1999, a further representation was made by the petitioner addressed to the Chief Election Commissioner, New Delhi and the Chief Electoral Officer of Andhra Pradesh making allegations against the Chief Minister, that he is soft on the police personnel and that he is seeking their help to rig the elections by terrorising the voters.

6. The same pleas have been reiterated in these two writ petitions. Apart from making general allegations that the ruling party is taking the help of the police personnel to rig the elections by keeping the electorate at bay, by terrorising them, facilitating rigging in favour of the ruling party, a special reference is made to two officers, namely, Mr. Umesh Kumar and Mr. S.R. Tiwari, who are in-charge of anti-naxal movement. It is the specific allegation that the above two officers, under the guise of supervising anti-naxal activities, are used by the ruling party to rig the elections in its favour and that the same has been done in the year 1998 and that the same will be done in the ensuing elections in the above naxal-infested districts.

7. Mr. S. Ramachandra Rao, the learned senior Counsel appearing for the petitioner in both the writ petitions, vehemently contends that unchecked violence, both during pre-poll and polling days of first and second phases of elections in the State of Andhra Pradesh and the killing of several persons, be it belonging to either of the political parties or bureaucrats and even including high-ranked police officers is a pointer to the failure of handling the law and order

situation by the State and for ensuring free and fair elections, directions be issued to the Central Election Commission to supervise the elections in the above four districts by sending the special observers and also Central Police Force, by completely avoiding the State Police.

8. Mr. D. Prakash Reddy, teamed Additional Advocate-General appearing for the State Government, submits that the police personnel had been taking all possible precautions to ensure free and fair poll in the State and they did their job well in the first and second phases of elections and merely because there were stray incidents here and there, it cannot be held that the State had failed to maintain law and order. He refuted the allegations of Mr. S. Ramachander Rao stating that the allegations are vague, baseless and false and that these writ petitions have been filed with oblique motive of demoralising the police by making repeated accusations. He also submitted that two officers named had been incharge of anti-naxal operations and are high-ranked officers having been appointed to the said posts in the year 1996 and are continuing till this date and allegations against them have got absolutely no legs to stand.

9. Ms. Jayashree Sarathy, the learned Counsel appearing for the Central Government and the Chief Electoral Officer of the State, submits that the Central Election Commission and under its directives, the Chief Electoral Officer of the State, are taking all possible steps and, in fact, reinforced the police force drawing from all cadres and no effort is saved in making arrangements for free and fair elections. She has submitted before us the correspondence with the Chief Electoral Officer as also the written instructions sent detailing the arrangements made, particularly, taking stock of the sensitive situation in the naxal-infested areas which are the subject matter of these writ petitions.

10. The democratic principles form the basic structure of our Constitution and the free and fair elections are basic concepts of democracy. The Election Commission is invested with the powers u/s 324 of Indian Constitution and the allied provisions to ensure free and fair elections and for that purpose, the said Commission is invested with powers to prepare the electoral rolls, conduct elections and oversee that the said elections are held in a free and fair manner. While the police personnel are obligated to monitor the law and order situation, the Election Commission is specifically invested with the power of drawing such police personnel and also other officers/persons, as the circumstances may warrant, to monitor the situation during the poll days. Poll related violence has to be deprecated as it negates the very essence of democracy. Every voter has got constitutional right to exercise his franchise and a reading of Articles 325 and 326 of the Indian Constitution makes it abundantly clear. If this right is violated, there will be a glaring infraction of the right to life enshrined in Article 21 of Indian Constitution. As such, heavy responsibility is cast upon the Election Commission to see that no voter is prevented from exercising his franchise and that any attempt to curb the right of any voter has to be met with all force. It shall not be mistaken that Article 329 of Indian Constitution limits the power of

the High Court, which is a constitutional functionary and which is invested with plenary powers, to issue writs under Article 226 of the Constitution of India, if the situation so warrants. Election Commission is a body with specific functions entrusted to it and enumerated above, but, if it fails in its duties to meet the constitutional demands, which will go to the very roots of democracy, the High Court as a constitutional functionary cannot shut its eyes and be a silent spectator. Should this Court feel that there is any lapse or deficiency on the part of the Election Commission and its subsidiaries, this Court shall not shirk its responsibility from acting in the manner restoring faith of the people in democracy and issue appropriate directions to the Election Commission for taking such effective steps, as may be necessary, for ensuring free and fair poll. From a reading of the written instructions which have been handed over to Ms. Jayasree Sarathy, who had in turn handed over to us, we are satisfied that sufficient measures have been taken by the Election Commission of India and its subsidiary i.e., Chief Electoral Officer of Andhra Pradesh for ensuring free and fair elections. The allegations levelled by the petitioner against the Chief Minister of this State and also the Telugu Desam Party functionaries including that of the two Officers, namely, Mr. Umesh Kumar and Mr. S.T. Tiwari that rigging had taken place in the year 1998 and that rigging is going to take place in these elections and that for that purpose, several persons are being employed and are going to act under the cover and protection of the above two Officers, are without any basis. There is no material placed before this Court in support of the said allegations. The said allegations are also general and vague. No presumption can be drawn that merely because the Telugu Desam Party had won more Parliamentary seats in the above four naxal-infested areas of Telangana region during 1998 elections, there was rigging in those districts and that they are going to rig this time too. There are Central Observers and there are Central forces and there is machinery, which are in direct control and management of the Central Election Commission and the Chief Electoral Officer of this State and under him, the District Election Officers. Furthermore, Ms. Jayasree Sarathy, the learned Counsel appearing for the Election Commission, after our poser of direct question with regard to the duties assigned to the above two Officers, namely, M/s. Umesh Kumar and Tiwari, after obtaining instructions from the election authorities, has stated that though the above Officers are deemed to be the Officers under Election Commission of India in view of exercise of the powers u/s 28-A of the Representation of People Act, 1951, till the completion of these elections, the said two Officers, as yet, have not been entrusted with duties relating to actual polling process in the ensuing elections scheduled on 18-9-1999 and that in any event, they are under the direct control, superintendence and discipline of Election Commission of India till the Election Process is completed, and that the State Government has got no control over them during the above election process, which ends only on 7th October, 1999.

11. In view of what is stated supra, as we are satisfied that the Election Commission and its subsidiary authorities at the State and District level are in

full control of the situation and they made all possible arrangements for proper conduct of the elections in consonance with Constitutional mandate, we do not see any grounds warranting interference of this Court to issue any directives.

12. The writ petitions are, thus, dismissed. No costs.