
(2001) 08 AP CK 0070

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16286 of 2001

Jandrajupalli Purushotham

APPELLANT

Vs

District Collector, Prakasam Dist., Ongole and Others

RESPONDENT

Date of Decision : 31-08-2001

Acts Referred:

Andhra Pradesh Panchayat Raj (Reservation of Seats and Offices of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 2001 — Rule 4(1)
Constitution of India, 1950 — Article 226, 243
Delimitation Act, 1972 — Section 8, 9

Citation : (2001) 6 ALD 722 : (2001) 5 ALT 714

Hon'ble Judges : S.B. Sinha, C.J; V.V.S. Rao, J

Bench : Division Bench

Advocate : T. Rajendra Prasad, for the Appellant; Ramesh Ranganadham, Additional Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The petitioner is a resident of Budavada Village in Cheemakurthi Mandal of Prakasam District. He claims to be one of the voters of the said village. His grievance is that respondents 1 to 3 did not reserve any wards in the said village for candidates belonging to SCs though there are 300 SC voters in the village. Therefore, he seeks a writ in the nature of mandamus directing the respondents to reserve seats/wards in Buduvada Gram Panchayat to SCs. He also challenges Article 243-O of the Constitution of India as ultra vires the basic structure of the Constitution.

2. In the affidavit accompanying the writ petition the petitioner states that there were 2037 voters in the village during the Assembly elections. During the last Gram Panchayat elections one ward was reserved for SC candidate and two for BCs. For the Gram Panchayat Elections-2001 the respondents have reserved two wards for BCs, but they have not reserved any ward for SC (General) or SC (Women) categories. The petitioner contends that as per Andhra Pradesh Panchayat Raj (Reservation of Seats and Offices of Gram Panchayats, Mandal

Parishads and Zilla Parishads) Rules, 2001 (hereinafter called "Reservation Rules") the Revenue Divisional Officer (RDO) is required to determine number of seats to be reserved in a Gram Panchayat concerned for members belonging to SCs and STs and as per Rule 4(1) the reservation shall be as nearly as may be as there are SC voters in the village. The action of the respondents in not reserving any wards for SCs., though there are 300 voters is illegal and unconstitutional. The petitioner also states that the RDO has not sent any communication to the concerned Mandal Development Officer (MDO), but still election notification was issued. This is unconstitutional being contrary to the provisions of Article 243-D of the Constitution of India.

3. The petitioner also contends that Article 243-O which bars interference by Courts in election matters is violative of basic structure of the Constitution of India as the same seeks to take away the power of judicial review vested in this Court and therefore it is liable to be struck down.

4. The learned Counsel for the petitioner Sri T. Rajendra Prasad, refers to the judgment of this Court in S. Fakruddin and Others Vs. The Govt. of A. P. and Others, , and submits that though the Full Bench upheld the provisions of Article 243-O in the SLP filed there against all the questions decided by this Court were left open by the Supreme Court and therefore the question whether Article 243-O is constitutionally valid is a question which is still res Integra.

5. On the other hand learned Additional Advocate-General, Sri Ramesh Ranganadhan placed reliance on the judgment of Apex Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., , and Anugrah Narain Singh and Another Vs. State of U.P. and Others, and submits that Article 243-O is constitutionally valid as the same has been interpreted by the Supreme Court as not excluding judicial review and in appropriate case the delimitation of constituencies or allotment of seats to such constituencies can be questioned on limited grounds.

6. In our considered opinion, the question whether Article 243-O is constitutionally valid or not is no more res integra. Article 243-O, Article 243-ZG and Article 329 of the Constitution of India are in "pari materia" and they may be extracted for the sake of comparison.

243-O. Bar to interference by Courts in electoral matters:--Notwithstanding anything in this Constitution,--

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 243K, shall not be called in question in any Court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

243-ZG. Bar to interference by Courts in electoral matters .---Notwithstanding anything in this Constitution,--

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made Article 243-ZA shall not be called in question in any Court.

(b) no election to any Municipality shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

329. Bar to interference by Courts in electoral matters :--Notwithstanding anything in this Constitution :--

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328 shall not be called in question in any Court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

7. A plain reading of the provisions shows that no election shall be called in question except by an election petition and that the validity of any law relating to delimitation of constituencies or allotment of seats to such constituencies can be questioned in any Court. In Ponnuswamy's case (supra) a Constitution Bench of the Supreme Court considered the effect of clause (b) of Article 329 on exercise of power by the High Court under Article 226 of the Constitution of India. An unanimous Court held that Article 323(b) must be read as complementary to clause (a) of the Article and that the provisions creates rights and provides for their enforcement before Special Tribunal and therefore no matter in relation to elections can be questioned under Article 226 of the Constitution. The Apex Court summed up the conclusions as under:

(1) Having regard to the important functions which the Legislature have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with the principle, the scheme of election law in this country as well as England is that no significance should be attached to anything which does not affect the "election", and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special Tribunal by means of an election petition and not be made the

subject of a dispute before any Court while the election is in progress.

8. In *Meghraj Kothari Vs. Delimitation Commission and Others*, , a Constitution Bench again considered the question. After referring to *Sangram Singh Vs. Election Tribunal, Kotah*, *Bhurey Lal Baya*, and *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, , held as under:

In this case we are not faced with that difficulty because the Constitution itself provides under Article 329(a) that any law relating to the delimitation of constituencies etc., made or purporting to be made under Article 327 shall not be called in question in any Court. Therefore, an order u/s 8 or 9 and published u/s 10(1) would not be saved merely because of the use of the expression "shall not be called in question in any Court". But if by the publication of the order in the Gazette of India it is to be treated as law made under Article 327, Article 329 would prevent any investigation by any Court of law.

9. In *Pradhan Sangh Kshetra Samiti, Jabalpur, District Jaunpur and others Vs. State of U.P. and others*, , a Division Bench of the Allahabad High Court declared some provisions of U.P. Panchayat Raj Act, 1947 as amended by U.P. Act 9 of 1994 as ultra vires Article 243G of the Constitution. The Supreme Court in *Pradhan Sangh Kshetra Samiti's* case (supra) reversed the judgment of the Allahabad High Court holding:

What is more objectionable is the approach of the High Court is that although Clause (a) of Article 243-O of the Constitution enacts a bar on the interference by the Courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243K and the election to any Panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them.

10. Dealing with the provisions of Article 243-O of the Supreme Court held that to a limited extent the judicial review is available. It is apposite to notice the observations of the Supreme Court.

If we read Articles 243-C, 243-K and 243-O in place of Article 327 and Sections 2(kk), 11-F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the Panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged nor the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued.

11. In *Anugrah Narain Singh's* case (supra) the Supreme Court considered the question of maintainability of writ petition under Article 226 of the Constitution having regard to the provisions of Article 243-ZG which bars interference by

Courts in election matters. Placing reliance on earlier judgment of the Supreme Court in *Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman*, AIR 1985 SC 1233, the Supreme Court considered the question whether delimitation of wards in municipalities and allotment of such wards to SCs and STs and BCs cannot be challenged in view of Clause (b) of Article 243-ZG and held as under:

The answer must be emphatically in the affirmative. The bar imposed by Article 243-ZG is two fold. Validity of laws relating to delimitation and allotment of seats made under Article 243-ZG cannot be questioned in any Court. No election to a municipality can be questioned except by an election petition. Moreover, it is well settled by now that if the election is imminent or well under way, the Court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because someone or the other will always find some excuse to move the Court and stall the elections.....

12. A Full Bench of this Court in an unreported judgment dated 11-7-2001 in WP No.13740 of 2001 cited with approval a judgment of one of us (VVSR, J) in *Channala Ramachandra Rao Vs. State of A.P. and others*, , wherein this Court noticed the following principles as well-settled.

(i) by reason of Clause (a) of Article 243-ZG, the Division of Municipality into territorial constituencies called wards or allotment of seats to such wards or the notification specifying the offices of Chairpersons of Municipalities reserved to persons belonging to STs., SCs., and/or BCs, cannot ordinarily be challenged under Article 226 of the Constitution.

(ii) In view of the embargo placed by Clause (a) of Article 243-ZG, a law providing for delimitation of constituencies and allotment of seats to such constituencies made by the State Legislature under Clause (6) of Article 243T read with Clause (2) of Article 243-ZA and the Entry 5 of List II of Seventh Schedule to the Constitution cannot be called in question under Article 226 of the Constitution.

(iii) The principles (i) and (ii) are subject to the condition that if the delimitation notification is arbitrary and in the sense that before delimitation no objections were invited and no hearing was given to a limited extent, the same is amenable to judicial review by this Court under Article 226 of the Constitution.

13. This Bench in its judgment dated 5-7-2001 in WP No.13489 of 2001 after referring to the judgment in *Channala Ramachandra Rao v. State of A.P.*, held that only on the ground of arbitrariness writ petition is maintainable.

14. The Full Bench of this Court in *S. Fakruddin's case* (supra) held "notwithstanding the bar as to the jurisdiction of the Court in regard to Panchayat elections that bar is to the ordinary jurisdiction of this Court and not to the extraordinary jurisdiction under Article 226 of the Constitution and Article 243-O does not take away the power of the High Court under Article 226. It was also held that in regard to any challenge to the election or in any intermediary

stage the High Court shall abstain to interfere on the ground of alternative effective and independent remedy but can still interfere on the question of jurisdictional errors. No doubt, the Supreme Court in its order dated 8-4-1997 in Civil Appeal Nos.934 to 938 of 1995 left the questions open. In our considered opinion, however, the subsequent judgments in Pradhan Sangh Kshetra Samiti's case (supra) and Anugrah Narain Singh's case (supra) are complete answer to the question raised in this writ petition. We accordingly hold that Article 243-O does not bar jurisdiction of this Court under Article 226 of the Constitution and that such any writ petition can only be entertained on the ground of arbitrariness in the sense that no objections were invited and no hearing was given. In any event when once the election notification is issued no election including the delimitation of the constituencies or allotment of seats to such constituencies can be challenged in writ petition.

15. It is not denied that the election notification was issued on 4-8-2001 and the petitioner filed this writ petition on 6-8-2001. The writ petition is liable to be dismissed in limini as the same is devoid of merits.

16. Tn the premise the writ petition fails and the same is accordingly dismissed at the admission stage. There shall be no order as to costs.