

(1979) 08 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 219 of 1979

Katineni Pullayya

APPELLANT

Vs

Konarchapalli Weavers" Co-operative Production and Sales
Society Ltd., Konarchapalli Village and Others

RESPONDENT

Date of Decision : 24-08-1979

Acts Referred:

Citation : AIR 1980 AP 289

Hon'ble Judges : C. Kondaiah, C.J;P.A. Choudary, J

Bench : Division Bench

Advocate : Duba Mohan Rao, for the Appellant; Govt. Pleader for Food and Agriculture and S. Dasaratharama Reddy, for the Respondent

Judgement

P.A. Choudary, J.—This is an appeal filed by the writ petitioner against an order of our learned brother Justice Gangadhara Rao, dismissing his Writ Petition filed for the purpose of quashing an election notice dated 20-11-1978 issued by the Election Officer of Konarachipalli Weavers" Co-operative Production and Sales Society, Konarachapalli village. By means of that election notice the date of poll was fixed for 23-12-1978. The meeting was to elect the Managing Committee of the aforesaid Society. The notice fixed 10-12-1978 as the day for receiving nominations. As 10-12-78 happened to be a public holiday the appellant contended that the aforesaid notice dated 20-11-1978 fixing 10-12-1978 as the date for receiving nominations is illegal as being contrary to the provisions of R. 22 (2) (f) (iv) of the Andhra Pradesh Co-operative Societies Rules 1964. His relief in these proceedings is grounded on that basis. It is necessary to read R. 22 (2) (f) (iv).

"22 (2) (f). Notice of the general meeting shall also be affixed to the notice board of the society and its branches, if any. The notice shall contain information regarding:

(i) to (iii).....

(ii)

(iv) The name of the election officer, date, place and the hours between which nomination papers shall be filed by the members, such date being not less than seven clear days before the date fixed for election and such date not being a public holiday."

A bare perusal of the rule clearly shows that the statute clearly intended to exclude a public holiday from being fixed as the day for receipt of nomination papers. The action of the Election Officer fixing 10-12-1978 a public holiday as the day for receipt of nominations is clearly reckless and is not in conformity with the statutory provision. But nominations have been filed by several voters of whom the petitioner is one. Scrutiny took place and the poll took place in the General Body Meeting. The question, therefore is, should we quash the election notice and set aside the elections? That question for its answer depends upon the intention of the Legislature and not merely on the language used in the statute. It is a well settled rule of construction that a Statutory Provision mandatory in its form may yet be only directory in its intent. In order to find out whether a rule is directory or mandatory, several tests have been laid down. But the most relevant test for our purpose is to be found in the following passage that occurs in Maxwell, (on "The Interpretation of Statutes", 10th Edn., page 381):

"On the other hand, where the prescriptions of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to person who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or in other words, as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them."

The above test received the approval of the Privy Council in the case of *Montreal Street Rly. Co. v. Normandin* (1917 AC 170) : (AIR 1917 PC 142) and also of the Supreme Court in *State of U.P. Vs. Manbodhan Lal Srivastava*, and *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, . In the case before us neither the members of the General Body who filed their nominations nor those who polled their votes have any control over the Election Officer and his action. If we invalidate the election notice issued by the negligent Election Officer that would work serious general inconvenience and injustice to the members of the Society without promoting the essential aims of the Legislature. If the election notice had not been served on all, or the elections were not conducted fairly different considerations would have arisen. We, therefore, hold that the rule is merely directory and not mandatory.

2. For these reasons we reject the only contention urged by the appellant and dismiss the Writ Appeal.

3. Writ appeal dismissed.