

(1996) 03 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5867 of 1996

Kotla Vijaya Bhaskar Reddy

APPELLANT

Vs

Election Commission and Others

RESPONDENT

Date of Decision : 25-03-1996

Acts Referred:

Representation of the People Act, 1951 — Section 150

Citation : (1996) 2 ALT 1

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

Advocate : K. Venkata Ramaiah, for the Appellant; C.P. Sarathy, for Respondent No. 1, Govt. Pleader for G.A.D. for Respondent No. 2 and C. Damodhar Reddy, for the Respondent

Judgement

B. Subhashan Reddy, J.—This writ petition has been filed by (he former Chief Minister of Andhra Pradesh, Sri Kotla Vijayabhaskar Reddy, seeking issuance of a Writ of Mandamus against the Election Commission - Respondent No. 1 and also making the Chief Electoral Officer of Andhra Pradesh as Respondent No. 2, to immediately notify the date for by-election to Dhone Assembly Constituency-181 of Kurnool District.

2. Notice before admission was issued, in response to which Mr. C.P. Sarathy, the learned senior Counsel appeared and argued for the 1st respondent, while Mr. E. Dharma Rao, learned Government Pleader appeared for the 2nd respondent and Mr. C. Damodhar Reddy appeared for the 3rd respondent. Mr. C.P. Sarathy after obtaining instructions from the Election Commission submits that the Election Commission is ready to hold the Poll, but there is a legal embargo, due to the pendency of Election Petition No. 20 of 1995 before this Court, which was instituted by the 3rd respondent assailing the election of the writ petitioner herein on the ground of adopting corrupt practices and indulging in violence. The said Election Petition is at the state of filing written statement and it is admitted that written statement is yet to be filed. I have gone through the pleadings in the

Election Petition and the facts are stated in support of the plea that the writ petitioner herein had indulged in corrupt practices and also violence. But, that is a question of fact to be proved and this Court as Election Tribunal will deal with the said Election Petition. I am not encroaching upon the power of the Election Tribunal. But, I have to dwell on the subject insofar as the embargo plea to notify the Constituency for by-election is concerned.

3. In the election conducted to Dhone Assembly Constituency during the end of 1994, while the writ petitioner herein had secured 67,685 votes, the 3rd respondent had secured 29,590 and the majority of votes secured by the writ petitioner herein over the 3rd respondent was 38,095. Apart from the writ petitioner and the 3rd respondent, three others, namely, (1) Bajari; (2) Eswaraiah and (3) Sunkanna, had also contested the election. Both, Mr. C.P. Sarathy and Mr. Damodhar Reddy, as also Mr. E. Dharma Rao appearing for the respondents herein submits that even though u/s 150 of the Representation of the People Act, 1951, as contended by Mr. K.Venkatramaiah, the Assembly Constituency, whenever falls vacant, has got to be notified for by-election, there is an exception to that rule and the said exception is found in Section 84 read with Section 101(b) of the Representation of the People Act, 1951. Support is taken from the judgment rendered by this Court in D. Sanjeevaiah v. Election Tribunal, A.P. 1967 (2) An.W.R. 53 in which it was held that until Election Petition is disposed of, where there is not only a prayer to set aside the election on the ground of corrupt practices, but also a further prayer to declare the petitioner as having been duly elected, Section 150 of the Representation of the People Act, 1951 will not come into play. The said judgment was also upheld by the Supreme Court in D. Sanjeevayya v. Election Tribunal, A.P. AIR 1967 SC 1211. But, the said proposition is distinguishable in view of the judgment of the Constitution Bench of the Supreme Court in Konappa Rudrappa Nadgouda Vs. Vishwanath Reddy and Another, to the following effect:

"....We are again enable to see any logic in the assumption that votes cast in favour of a person who is regarded by the Returning Officer as validly nominated, but who is in truth disqualified, could still be treated as valid votes, for the purpose of determining whether a fresh election should be held. When there are only two contesting candidates, and one of them is under a statutory disqualification, votes cast in favour of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification. This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of disqualification all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected. In such a case, question of notice to the votes may not, if aware of the disqualification have voted for the disqualified candidate".

Making emphasis on the above proposition laid down by the Constitution Bench, the Supreme Court in later judgment in Gadakh Yashwantrao Kankarrao Vs. E.V.

alias Balasaheb Vikhe Patil and Others, has set aside the declaration made in favour of Balasaheb Vikhe Patil who secured the next highest number of votes after Gadakh and who was declared to have been elected, consequent to setting aside the election of Mr. Gadakh on the ground of indulging in corrupt practices. The said law laid down by the Supreme Court operates as a stare decisis and is the law of the land under Article 141 of the Constitution of India. The irresistible conclusion is that even taking all the allegations in the election petition filed by the 3rd respondent against the writ petitioner herein as true for the purpose of this writ petition, the 3rd respondent cannot be declared as elected and if the Election Petition is allowed holding that the writ petitioner has secured votes by corrupt practices, his election will be set aside. But the writ petitioner had resigned from his Assembly Constituency by tendering resignation to the Speaker of A.P. Legislative Assembly on 4-3-1996 and this fact is not disputed. So, the Dhone Assembly constituency is vacant and on account of the law laid down by the Supreme Court mentioned supra, the 3rd respondent cannot be declared to have been elected and the by-election has got to be conducted. The consequence, if the writ petitioner is held to have been indulged in corrupt practices during the Assembly elections in 1994, is a question apart as law will take its own course when such an adjudication is made by this Court and if it attains finality. But, suffice it to say that by-election has got to be conducted. But, I cannot just direct the Election Commission to conduct simultaneously with Parliamentary elections. While Election Commission is bound to conduct the election, this Court would not set a date for conducting such an election, as primarily the said power has to be exercised by the Election Commission, for which deliberations and consideration on several factors are necessary. Constitutional functionary like this Court, will not enter that exercise and may do so in appropriate cases only if the Election Commission fails to carry out the statutory or Constitutional duties in conformity with the democratic norms.

4. In view of what is stated supra, the 1st respondent is directed to consider the appropriate date for conducting the by-election to Dhone Assembly Constituency as expeditiously as possible and without reference to the pendency of Election Petition No. 20/1995 on the file of this Court. The W.P. is disposed of accordingly. No costs.