

(2000) 03 AP CK 0057

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3325 of 2000

Krishna Vishnu

APPELLANT

Vs

State Election Commissioner and others

RESPONDENT

Date of Decision : 06-03-2000

Acts Referred:

Andhra Pradesh Municipal (Conduct of Election) Rules, 1965 — Rule 10(2), 12, 13(3)
Andhra Pradesh Municipalities (Decisions of Election Disputes) Rules, 1967 — Rule 10
Andhra Pradesh Municipalities Act, 1965 — Section 5
Constitution of India, 1950 — Article 243

Citation : AIR 2000 AP 274 : (2000) 2 ALD 727 : (2000) 2 ALT 570

Hon'ble Judges : V.V.S. Rao, J

Bench : Single Bench

Advocate : Mr. N. Samuel Sunder, for the Appellant; Mr. V.V. Prabhakar Rao, SC for State Election Commission, Mr. V. Viswanadham, SC for Municipality and Mr. S. Satyam Reddy, for the Respondent

Judgement

1. This writ petition is filed praying for a writ of mandamus declaring the action of the respondents viz., the State Election Commission, and the Election Officer-cum-Commissioner, Kapra Municipality in conducting election to Ward No.24 of Kapra Municipality on 9-3-2000 as illegal, arbitrary and unconstitutional and against the election procedure laid down in A.P. Municipalities and Nagar Panchayats (Conduct of Election) Rules, 1965 (the Election Rules, for brevity) and for a consequential direction to the respondents 1 and 2 to allot the TDP symbol of "cycle" to the petitioner.

2. The petitioner filed nomination for Ward No.24 (SC General) of Kapra Municipality. He claims that the Telugu Desam Party (TDP) nominated him and also given B Form after taking allegiance to the party. On 22-2-2000, after scrutiny of the nominations, the 2nd respondent, according to the petitioner, included the name of the petitioner as one of the contestants having party affiliation to TDP. On 25-2-2000, the 2nd respondent sent a communication convening a meeting on the next day. The meeting was intended for

implementation of model code of conduct and for ascertaining election expenditure. According to the petitioner, the third respondent filed nomination as independent candidate and it was also shown in Form IIA, According to the petitioner, acceptance of nomination of the third respondent is illegal in that his name does not tally with the name included in the voters' list.

3. On 26-2-2000, the petitioner was allotted the election symbol "ship" as independent candidate and the 3rd respondent was allotted "cycle" symbol, the official symbol of TDP. It is the allegation of the petitioner that the third respondent did not file nomination as TDP candidate and, therefore, allotting "cycle" symbol to the third respondent "is abuse of power with mala fide intention". The petitioner also states that allotment of "cycle" symbol to the third respondent instead of the petitioner is a material irregularity, which affects the results of the election of the petitioner and is illegal and arbitrary. Assailing this action of the 2nd respondent in allotting "cycle" symbol to the third respondent, the petitioner approached this Court.

4. On 1-3-2000, when the matter" was listed for preliminary hearing before me, I directed the learned Standing Counsel for the 2nd respondent as well as the learned Standing Counsel for the State Election Commission to get instructions in the matter. On 2-3-2000, the learned Standing Counsel for the 2nd respondent, Sri V. Vishwanatham and Sri Satyam Reddy, learned Counsel for the 3rd respondent appeared before me. They submitted that the third respondent was the official candidate nominated by the TDP who was given the B Form by the District TDP President. Therefore, the third respondent was allotted the official TDP symbol. The petitioner is not an official TDP candidate and he was not given B Form. In any event, they would submit that even according to the petitioner, if the allotment of "cycle" symbol to the third respondent allegedly materially affects the results of the election, only election petition is maintainable and a writ petition is not maintainable.

5. Section 5-A of the A.P. Municipalities Act, 1965 (the Act, for brevity), as it exists today, was inserted by AP Act 1 of 1995 with effect from 3-2-1995. The said provision empowers the Election Authority to specify the symbols including the symbols "reserved for recognised political party for exclusive allotment" to contesting candidates set up by that party and the symbols that may be chosen by the candidates contesting at an election to the office of Chairperson and Members. This has to be done by a notification in A.P. Gazette. "Recognised political party" shall have the same meaning assigned to it in the Election Symbols (Reservation and Allotment) Order 1968 issued under Article 324 of the Constitution of India. Sub-rule (3) of Rule 13 of the Election Rules empowers the election officer to assign each candidate in an election a "distinctive symbol. The proviso to sub-rule (3) of Rule 13 is relevant. It is useful to extract the same.

"Provided that a candidate set up by National Party for the election for a seat in a ward shall choose and shall be allotted the symbol reserved for that party and no other symbol. A candidate set up by a State Party for the Election for a seat in a

ward shall choose and shall be allotted the symbol reserved for that party and no other symbol. A reserved symbol shall not be chosen by or allotted to any candidate other than a candidate set up by a National Party for whom such symbol has been reserved or a candidate set up by a State Party for whom such symbol has been reserved in the State. No reserved symbol be allotted to other candidates even if no candidate has been set up by such National or State Party in a ward. A symbol once assigned to a candidate shall not be altered after the list of contesting candidates has been published".

6. The proviso makes it compulsory for the Election Officer to allot the symbol reserved for National Party or State Party, as the case may be. A reserved symbol (for National Party or State Party) shall not be chosen or allotted to any other candidate, except to a candidate set up by National Party or a candidate set up by State Party. Even if the National Party or State Party has not set up a candidate, the symbol reserved for such party shall not be allotted to anybody. The explanation to sub-rule (3) of Rule 13 requires two conditions to be fulfilled in allotting a reserved symbol to the candidate set up by National Party or State Party. The first condition is a declaration by the candidate to the effect that he is a candidate set up by National or State Party. The second condition is a notice in writing by the President, Secretary or such authorised office bearer of the party communicating in advance to the Election Officer not later than 3.00 p.m., on the last date of withdrawal of the candidates that the candidate is set up by the National Party or State Party. Therefore, the conspectus of Section 5-A of the Act read with the explanation and the proviso to sub-rule (3) of Rule 13 of the Election Rules shows that the crucial event for entitlement of a reserved symbol is a notice signed by the officer bearer of the National Party or State Party, which in election parlance is called B Form.

7. As per sub-rule (4) of Rule 10, after scrutiny of nominations is completed, the Election Officer shall publish, in Form IIA, the list of validly nominated candidates. Sub-rule (4) of Rule 10 as such does not require allotment of symbols at the stage of scrutiny of nominations and, in fact, it only says that there shall be one entry only in respect of each nominated candidate in the list. Rule 12 deals with procedure for withdrawal of nominations, which is not relevant for the purpose of this case. Form IIA in Column No.5 requires the Election Officer to note the party affiliation also of the validly nominated candidate(s), which is not there in sub-rule (4) of Rule 10. When a candidate will be allotted the symbol or when a candidate will be allotted the reserved symbol for National Party or State Party is a stage that comes up after the expiry of the time allowed for withdrawal of candidates under Rule 12(1) of the Election Rules. After the withdrawals, as per sub-rule (1) of Rule 13, the Election Officer shall prepare a list in Form IV of the persons who have not withdrawn their candidature and publish the same forthwith on the notice board. This is list of contesting candidates. At this stage, the question of allotment of symbols, either the symbols reserved for National Party or State Party or other symbols from which the contesting candidates may choose subject to restrictions that may be

imposed by the Election Officer, arises. Column No.6 of Form IV which is the list of contesting candidates deals with "distinctive symbols assigned to contesting candidates". As per the proviso to sub-rule (3) of Rule 13, the symbol once assigned to a candidate shall not be altered after the list of candidates has been published. This clinchingly shows that whether a candidate is nominated by a State Party or not cannot be presumed or assumed based on any entry in Form IIA which is only the list of validly nominated candidates.

8. The contention of the learned Counsel for the petitioner, Sri Samuel Sunder, that the entry in Form IIA (list of validly nominated candidates) as well as the allegiance to TDP are conclusive that he is a TDP candidate, is devoid of any merit. Indeed, the learned Counsel for the petitioner insisted that this Court should decide this issue at this stage itself though the decision could have waited till the elections are over. Be that as it may, in my considered opinion, there is no illegality or irregularity in the action of the 2nd respondent in allotting "cycle" symbol of TDP to the third respondent.

9. As per Rule 10(a)(c) of the Rules for Decision of Election Disputes (1967), irregular and illegal acceptance or rejection of nomination paper materially affecting the result of the election is a ground for the Election Tribunal to declare the election as void. Indeed, in Para 8 of the affidavit accompanying the writ petition, the petitioner states that accepting improper nomination paper and rejecting the proper nomination paper including allotment of "ship" symbol to the petitioner would materially affect the result of the election. In view of this, clause (b) of Article 243-ZG of the Constitution bars a writ petition.

10. In Writ Petition No.2969 of 2000 and Batch, by judgment dated 2-3-2000, I have referred to two decisions of the Supreme Court and a Division Bench judgment of the Madhya Pradesh High Court in Anugrah Narain Singh and Another Vs. State of U.P. and Others, , State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., , and State Election Commission, Bhopal Vs. Ras Bihari Raghuwanshi and Others, , and held that a writ petition is not maintainable when a nomination is improperly rejected or accepted. In view of this, the present writ petition is not maintainable, even when a symbol is not allotted properly or allotted properly.

11. For the above reasons, the writ petition is dismissed with costs quantified at Rs.1000/-.