

(2001) 04 AP CK 0128
In the Andhra Pradesh High Court
Case No : Writ Petition No. 7333 of 2001

M. Baga Reddy

APPELLANT

Vs

Sonia Gandhi and others

RESPONDENT

Date of Decision : 27-04-2001

Acts Referred:

Constitution of India, 1950 — Article 102(2), 105, 12, 14, 191(2)

Citation : (2001) 3 ALD 636

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

Bench : Division Bench

Advocate : Mr. K.G. Kannabiran, for the Appellant; Mrs. P.A. Kamaleswari, for the Respondent

Judgement

S.B. Sinha, C.J.—Whether the Indian National Congress is a State within the meaning of Article 12 of the Constitution of India and as such a writ petition will be maintainable is the question involved in this application.

2. The petitioner herein contested for Member of Parliament from Medak Constituency in 1999. He lost his election. According to the petitioner the Indian National Congress being a political party of National importance should give full status as Pradesh Congress Committee to the Telangana region comprising of 10 districts and consequently a direction shall be given to the State Election Commission to accord recognition thereto. The petitioner has traced the history of the creation of State of Andhra Pradesh and inter alia contends that as even in terms of the amended Constitution Indian National Congress, it continues to show Andhra State as one of the Pradesh Congress Committees. By ignoring the case of Telangana region the possibility of the movement for a separate Telangana State may get momentum.

3. Mr. Kannabiran the learned senior Counsel appearing on behalf of the petitioner inter alia submitted that the Indian National Congress being the oldest Congress party would be amenable to writ jurisdiction on this Court under Article 226 of the Constitution. The learned Counsel would submit that Constitution of

the Pradesh Congress Committees ignoring the claim of the Telangana region violates the equality concept envisaged under Article 14 of the Constitution. The learned Counsel would urge that activities of a political party of the nature of Indian National Congress must be held to be within the public sphere and it would be amenable to writ jurisdiction of this Court. It was submitted that political parties have been given Constitutional recognition in terms of 10th Schedule of the Constitution and as such the internal affairs of the party cannot be said to be a private affair. Mr. Kannabiran would urge that a political party must so regulate its procedure in terms of Constitutional commitments and thus if it fails to take any action in relation thereto, a writ of mandamus would issue. By way of example, the learned Counsel would contend that having regard to the expanded sphere of jurisdiction under Article 226 of the Constitution the High Court even may interfere in relation to criminalisation of politics. In support of the said contention strong reliance has been placed by the learned Counsel on *Andi Mukta Sadguru Shree Muktajee Vandas Swami Suvarna Jayanti Mahotsav Smarak Trust and Others Vs. V.R. Rudani and Others*, , *Air India Statutory Corporation, etc. Vs. United Labour Union and others* [overruled], and *Shri Kihota Hollohon Vs. Mr. Zachilhu and others*, .

4. A writ petition would be maintainable normally against the State within the meaning of Article 12 of the Constitution. In certain situation the jurisdiction of this Court under Article 226 may be expanded but the same may be confined only in relation to such organisations which have a statutory or public duty to perform. A writ of mandamus as is well known must issue to a person who has a public duty to perform. Public law elements or public law character must be considered to be the basis for issuance of such writ. All India Congress Committee is a society. It has its own bye-laws. Such bye-laws are not framed in terms of the provisions of a statute. The Constitution and rules of Indian National Congress pertain to the character of the bye-laws similar to those framed by the Co-operative Societies registered under the Co-operative Societies Act or societies registered under the Societies Registration Act or companies registered under the Companies Act. Although in terms of the provisions of the said Acts the Co-operative Societies, societies and the companies are entitled to frame their own rules and bye-laws, such rules and bye-laws do not have any statutory flavour.

5. A political party of the magnitude of Indian National Congress may have some public function but it has nothing to do with the sovereign function nor its activities satisfy the public law element. The State within the meaning of Article 12 of the Constitution must perform sovereign function of the State. The question as to whether even a company or a society which is owned or controlled by the State would answer the description of State within the meaning of Article 12 or not came up for consideration in *Chander Mohan Khanna Vs. The National Council of Educational Research and Training and other* [OVERRULED], . In the aforementioned decision the Apex Court upon taking into consideration the memorandum of association under which it was governed as also the rules

framed by it for its internal management held:

Article 12 should not be stretched so as to bring in every autonomous body which has some nexus with the Government within the sweep of the expression "State". A wide enlargement of the meaning must be tempered by a wise limitation. It must not be lost sight of that in the modern concept of Welfare State, independent institution, corporation and agency are generally subject to State control. The State control does not render such bodies as "State" under Article 12. The State control, however vast and pervasive, is not determinative. The financial contribution by the State is also not conclusive. The combination of State aid coupled with an unusual degree of control over the management and policies of the body, and rendering of an-important public service being the obligatory functions of the State may largely point out that the body is "State". If the Government operates behind a corporate veil, carrying out Governmental activity and Governmental functions of vital public importance, there may be little difficulty in identifying the body as "State" within the meaning of Article 12 of the Constitution. [See P.K. Ramachandra Iyer and Others Vs. Union of India (UOI) and Others, ; (ii) Central Inland Water Transport Corporation Limited and Another Vs. Brojo Nath Ganguly and Another, ; and (iii) Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, . Almost a similar case was considered by this Court in Tekraj Vasandi alias K.L. Basandhi Vs. Union of India (UOI) and Others, . This Court was required to determine whether the Institute of Constitutional and Parliamentary Studies (ICPS) was State under Article 12. The ICPS was a registered society financed mostly by the Central Government and partly by gifts and donations from Indian and foreign agencies. The first President of the society was the then Speaker of the Lok Sabha. Out of the five Vice-Presidents three were the then Central Ministers; the other two were the then Chief Justice of India and the Attorney-General. The objects of the society were to provide for Constitutional and Parliamentary studies, promotion of research in Constitutional law, setting up of legislative research and reference service for the benefit of legislators, organisation of training programmes in matters of Parliamentary interest and importance and publication of a journal. The Court found that ICPS was born as a voluntary organisation. It found further that though the annual financial contribution from the State was substantial, it was entitled to receive aid from the public and in fact, received contributions from other sources. Its objects were not Governmental business. As regards the argument that the Government exercised pervasive control over ICPS, the Court said (at p. 481 of AIR):

"In a Welfare StateGovernmental control is very pervasive and touches all aspects of social existence.....A broad picture (of the matter has to be taken and a discerning mind has to be applied keeping the realities and human experiences in view so as to reach a reasonable conclusion."

6. Even a right to vote is not a fundamental right but in merely a statutory right although the edifice of democracy is based upon such rights. The Constitution of

Indian National Congress as noticed hereinbefore is framed by it for its own guidance. By reason of such constitution it merely controlled its own activities vis-a-vis its members and/or its commitments to the people of India. By any stretch of imagination a political party does not undertake any sovereign function although its activities may involve public activities. In *Shri Anadi Mukta Sadguru* (supra) it was categorically held that although Article 226 of the Constitution confers power on the High Courts to issue writs for the enforcement of fundamental rights as well as non-fundamental rights, thereby only other persons or body performing public duty would be covered apart from the statutory authorities and instrumentalities of the State. It was held:

.....The form of the body concerned is not very much relevant. What is relevant is the nature of the duty imposed on the body. The duty must be judged in the light of positive obligation owned by the person or authority to the affected party. No matter by what means the duty is imposed. If a positive obligation exists mandamus cannot be denied.

7. It is pertinent to note that a political party does not have any positive obligation to form a regional committee. No citizen of India or any other person would be affected by non-formation of a regional committee. No statutory or public duty is imposed upon the Indian National Congress to constitute a regional committee. It may be noticed that in paragraph 21 of the said judgment the learned Judges referred to Professor De Smith wherein it is stated :

To be enforceable by mandamus a public duty does not necessarily have to be one imposed by statute. It may be sufficient for the duty to have been imposed by charter, common law, custom or even contract." (Judicial Review of Administrative Act 4th Ed. p. 540).

8. However, it is relevant to note that the said statement does not find place in the 5th edition of the same treatise. In *Kihota Hollohon* (supra) the Apex Court was considering the question as to whether the provisions of disqualification contained in 10th Schedule appended to the Constitution are violative of freedom of speech, freedom to vote and conscience of the members of Parliament and Legislatures of the State. The answer to the said question was rendered in the negative. It was further held that the provisions of the 10th Schedule also do not violate Articles 105 and 194 of the Constitution. Articles 102(2) and 191(2) of the Constitution read thus:

102 (2) : A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

191 (2) : A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the Tenth Schedule.

9. Both the aforementioned provisions deal with disqualification of a representative of the people as Member of Parliament. Such members of

Parliament are elected or nominated in terms of the provisions of the Constitution. They have Constitutional role to play both in the State's legislative and executive sphere of activities. A political party whose Member is a member of Parliament does not have any Constitutional functions. The 10th Schedule whereupon strong reliance has been placed by Mr. Kannabiran refers to the provisions as to disqualification on ground of defection.

10. The said provisions had been inserted by reason of Constitution (52nd Amendment) Act, 1985 with a view to prevent defection of the Members of Parliament. It is only for the said limited purpose a political party has been recognised whose member of Parliament may be who has taken recourse to such defection. So far as internal matters of a political party are concerned the same have nothing to do with Constitutional functions. The affairs of the party may although relate to public in general its internal affairs would be treated to be a private affair. The Courts cannot intermeddle therewith nor for that matter a writ of mandamus can issue. In *Air India Statutory Corporation (supra)* the Apex Court was dealing with a question as to whether abolition of contract would automatically entitle the contract labourers to become the workmen of the principal employer. The correctness of the said decision has been questioned. The Apex Court in *Bharat Petroleum Corpn. Ltd. Vs. Mumbai Shramik Sangha and Others*, , held:

.....For a public law remedy enforceable under Article 226 of the Constitution, the actions of the authority need to fall in the real of public law be it a legislative act of the State, an executive act of the State or an instrumentality or a person or authority imbued with a public law element. The question requires to be determined in each case.

11. By no stretch of imagination in our considered view the action of a political party comes within the purview of the legislative act of the State, executive act of the State or an instrumentality or a person, authority imbued with public law element. If the submission of Mr. Kannabiran is accepted, as indicated hereinbefore even any Co-operative Society, or a society registered under the Societies Registration Act or a company registered under the Companies Act would also be amenable to writ jurisdiction. The said organisations although are governed in accordance with the provisions of statute, they have not been and cannot be considered to be State within Article 12 of the Constitution. A writ may lie against a private body inter alia to protect the fundamental rights declared under Part III of the Constitution or in extraordinary circumstances if the monstrosity of the situation warrants it. A Full Bench of this Court in *Sri Konaseema Co-operative Central Bank Limited v. N. Seetharama Raju*, AIR 1990 AP 171, has held that a writ petition against a Cooperative Society is not maintainable. This aspect of the matter has recently been considered by a Division Bench of the Madras High Court also in *Thanikachalam and others v. Madhwanthakam Agricultural Producers Co-operative Marketing Society and others*, 2001 (1) LLT 285.

12. For the aforementioned reasons, the writ petition is not maintainable which is accordingly dismissed. No costs.