

(1983) 01 AP CK 0002

In the Andhra Pradesh High Court

Case No : Writ Petition No. 4836 of 1981

M. Omkar

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 19-01-1983

Acts Referred:

Constitution of India, 1950 — Article 19(1)

Citation : AIR 1983 AP 379 : (1983) 2 APLJ 81

Hon'ble Judges : Ramachandra Rao, J; Jagannadha Rao, J

Bench : Division Bench

Advocate : V.T.M. Prasad, for the Appellant; Government Pleader for Panchayat Raj, for the Respondent

Judgement

Ramachandra Rao, J.—The petitioner herein a Member of the legislative assembly challenges the constitutional validity of sub-r. (3) of R. 36 Andhra pradesh conduct of Election of members (Co-opted) and vice presidents of panchayat samithis and members (co-opted) chairman and vice-chairman of Zilla parishad Rules, 1979 framed under the Andhra pradesh panchayat samithis and Zilla parishads Act. Sub-rule (3) of R. 36 reads as follows:

"If there are two or more candidates an election shall be held by show of hands and votes taken of the members present at the meeting"

2. The contention of the petitioner is that the said rule is unconstitutional as it offends Art. 19(1)(a) of the Constitution. The argument proceeds on the footing that the right to vote is a right falling under Art. 19(1)(a) which guarantees to every citizen the right to freedom of speech and expression and that the right to vote by secret ballot is implicit in the said right to freedom of speech and expression guaranteed under art. 19(1)(a) and that the method of voting prescribed by sub-r. (3) of R. 36 by show of hands violates the right guaranteed under art. 19(1)(a) But , we are unable to agree with this submission. Assuming that the right to vote falls within the right to freedom of speech and expression under Article 19(1)(a). The method or manner by which the said right to vote

should be exercised cannot fall within the provisions of Art. 19(1)(a). The right to vote is conferred by the statute and it is open to the legislature to prescribe by the Act or by the rules made thereunder the manner or method by which the said right can be exercised.

3. So far as sub-r. (3) of R. 36 is concerned it is framed by the competent rule making authority in exercise of the statutory powers conferred by the main Act. Therefore the rule is intra vires the powers of the rule making authority. The only question raised is. Whether it violates the right to freedom of speech and expression guaranteed under Article 19(1)(a). As already mentioned by us. We are unable to agree with this submission that the right to vote by secret ballot falls within the right to freedom of speech and expression under Art. 19(1)(a). No authority of any High Court or of Supreme Court has been brought to our notice holding that the right to vote by secret ballot is a fundamental right falling under Art. 19(1)(a).

4. Sri. V. T. M. Prasad relying upon certain passages of eminent American authors sought to contend that the right to vote by secret ballot is one of the basic principles of democracy and that prescribing any other mode or method for exercising the vote would violate the principles of democracy. But we do not think the provisions of sub-r. (3) of R. 36 can be struck down mainly on the ground that it is not in consonance with the opinions expressed by the learned or eminent authors what is relevant for the purpose of this case is to see whether the impugned rule is ultra vires or unconstitutional . we have already held that the rule is well within powers of the rule making authority. So far as the unconstitutionality of the rule is concerned, we do not think the right to vote by show of hands violates the provisions of art. 19(1)(a). On the other hand the sub-rule preserves the right of a voter to vote and proceeds to prescribe said vote has to exercised the method prescribed is by show of hands and we do not think this method prescribed in any way contravenes the provisions of art. 19(1)(a).

5. For the foregoing reasons we do not find any merit in the contentions urged on behalf of the petitioner . The writ petition fails and is dismissed but in the circumstances without costs. Advocate"s fee Rs. 200/-

6. Petition dismissed.