

(2003) 10 AP CK 0038

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 22277 and 22293 of 2003

Manga Ram Murthy and Others

APPELLANT

Vs

District Collector and Others

RESPONDENT

Date of Decision : 29-10-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 1 ALD 181

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

Bench : Single Bench

Advocate : M.S.N. Prasad, for the Appellant; Government Pleader for Irrigation, for the Respondent

Final Decision : Dismissed

Judgement

V.V.S. Rao, J.—The four petitioners in W.P. No. 22277 of 2003 are residents of Chandruni Cheruvu village. They filed the writ petition seeking a declaration that the action of the respondents in not including their names in the voters' list of Chanaruni Cheruvu Water Users Association (WUA), Gudur, Warangal District as illegal, arbitrary and contrary to the provisions of the A.P. Farmers' Management of Irrigation Systems Act, 1997 ("the Act"). They also seek a consequential direction to include their names in the voters' list of Chandruni Cheruvu WUA, Gudur.

2. The case of the petitioners in brief is as follows. The petitioners claim that they are owners of agricultural lands in various survey numbers. They also claim that they are cultivating the land under the ayacut of Chandrum Cheruvu minor irrigation tank situated at Gudur village. They allege that they are members of the WUA. Since there was no election for WUA, a temporary panel of members constituted by the executive committee was approved by the Revenue Divisional Officer, Narsampet, by an order dated 12-1-2003. The second petitioner's name was also included as one of nominated territorial constituency members.

3. The second respondent issued a public notice of election to fix territorial constituency of Chandruni Cheruvu WUA. The election is scheduled on 23-10-2003. When the voters' list was released, the names of the petitioners were not included. The petitioners brought it to the notice of the second respondent that they requested to include their names in the voters' list, in vain. Therefore, they filed the present writ petition.

4. In W.P. No. 22293 of 2003, the sole petitioner is a resident of Guduru village in Warangal District, He claims that he owns an extent of Acs.2.14 gts. in Sy.No. 515 of Guduru village under the ayacut of minor irrigation tank known as Kodicheruvu in Guduru village. When the voters list was released on the eve of elections to Kodicheruvu Water User Association to be held on 23-10-2003, the petitioner's name was not included. He alleges that he brought it to the notice of the second respondent, in vain. Therefore, he filed the writ petition contending that as he is an ayacutdar his name should be included in the voters list.

5. When the writ petitions came up for admission on 22-10-2003, as the election is scheduled on 23-10-2003, learned Government Pleader for Irrigation was directed to get instructions. Today, the matter was heard at length. Learned Counsel for the petitioners submits that the petitioners own land and they are cultivating the same in the ayacut of Chandruni Cheruvu village. Therefore, as per Section 3 of the Act they are deemed to be members of the WUA.

6. They also contend that all the members of the WUA should be included in the voters' list and non-inclusion of their names would defeat their democratic right to participate in the election. Therefore, they seek a direction from this Court to include their names and allow them to participate in the election.

7. Learned Government Pleader for Irrigation submits that A.P. Farmers Management of Irrigation Systems Act, 1997 as well as A.P. Farmers Management of Irrigation Systems (Delineation and Formation of Water Users Associations) Rules, 2003 ("the Rules") provide for procedure for preparation of electoral rolls and conduct of elections. A person who is aggrieved by any discrepancies in the voters' list, is required to file objections. The petitioner filed objections on 20-5-2003, When their representation was not considered and the final voters' list was prepared, they have a right of appeal under Rule 10 of the Rules, They have not availed the remedy of appeal for inclusion of their names. The question raised is one of disputed fact, which cannot be adjudicated in Writ Petition. Therefore, he would urge on the eve of election scheduled on 23-10-2003, the writ prayer cannot be granted.

8. To appreciate the controversy, it is necessary to refer to the provisions of Act and the Rules. So as to ensure optimum utilization of water, equitable supply and distribution and improvement of agricultural production, the Government thought of bringing an enactment in 1997, The Government also thought that water will be best utilised by promoting farmers' participation if they are united as organisation and entrust them the management and utilization of irrigation

system. Therefore, the A.P. State Legislature enacted A.P. Farmers' Management of Irrigation Systems Act, 1997 (Act No. 11 of 1997). The said Act was amended subsequently by Act No.7 of 2003 which came into force with effect from 25-9-2002 (when precursor Ordinance was promulgated). The Act contains VII Chapters and 43 Sections. Chapter I deals with, farmers organisation. Chapters III, IV, V and VI deal with objects and functions of the farmers organisations, resources, offences and penalties, settlement of disputes etc. Chapter VII contains miscellaneous provisions regarding records, audit, recovery of dues, meetings etc.

9. "Irrigation system" is defined in Section 2(p) as to mean major, medium and minor irrigation system for harnessing water for irrigation and other allied uses from Government offices or Corporation sources which include reservoirs, open head channels, diversion systems, anicuts, lift irrigation schemes, tanks, wells and the like. "Corporation" is A.P. Water Resources Development Corporation constituted under the Andhra Pradesh Water Resources Development Corporation Act, 1995. Explanation to Section 2 gives the meaning of the term "major irrigation system", "medium irrigation system and minor irrigation system" Section 2(i) defines "farmers organisation" as to mean and include three types of associations/ committees. These are--

(i) water users association at the primary level consisting of all the water users as constituted u/s 3;

(ii) distributory committee at the secondary level constituted u/s 5; and

(iii) project committee at the project level, as constituted u/s 7;

10. In these writ petitions, we are concerned with farmers organisation at primary level known as Water Users Association (WUA). Sections 3 and 4 of the Act essentially deal with delineation of water users area and constitution of an association and election of members of the managing committee including President and Vice-President of Water Users Association. These provisions read as under.

3. Delineation of water users' area and constitution of association :--(1) The District Collector may by notification and in accordance with the rules made under this Act, in this behalf delineate, every command area under each of the irrigation systems on a hydraulic basis which may be administratively viable and declare it to be a water users' area for the purpose of this Act:

Provided that in respect of the command area under the minor and lift irrigation systems, the entire command area may, as far as possible, form a single water users' area.

(2) Every water users' area shall be divided into territorial constituencies, which shall be six in minor irrigation systems and twelve in major and medium irrigation systems.

(3) There shall be a water users' association called by its local distinct name for every water users' area delineated under Sub-section (1).

(4) Every water users' association shall consist of the following members namely:-

(i) all the water users who are land holders in a water users area.

Provided that where both the owner and the tenant are land holders in respect of the same land, the tenant;

Provided further that any person who is in lawful possession and enjoyment of the land under a water source, on proof of such possession and such enjoyment in a crop year, may claim membership notwithstanding whether he is a recorded land holder or not, in which case the Water Users Association shall not refuse the membership of such person for the purposes of this Act, and such person shall be liable to pay the water charges and the fees as may be prescribed as if he is a land holder under a water source,

(ii) all other water users co-opted in a water users' area;

(iii) members specified in Clause (i) and (ii) shall constitute the general body for a water users association;

(iv) a person eligible to become a member of more than one territorial constituency of a water users association under Clause (i) shall be entitled to be a member of only one territorial constituency and he shall exercise his option thereof as prescribed; and

(v) members specified in Clause (i) shall alone have the right to vote.

4. Election of President, Vice-President and Members of the Managing Committee of Water Users Association :--(1) There shall be a Managing Committee for each Water Users Association comprising members of the Territorial Constituencies as specified in Sub-section (2) of Section 3, elected directly by the "Water Users as specified in Clause (i) of Sub-section (4) of Section 2 of the Act from their respective Territorial Constituencies.

(2) The Managing Committee for Water Users Association shall be a continuous body, with one third of its members thereof retiring every two years as specified in Sub-section (3).

(3) The term of the office of the members of the territorial constituencies shall, if not recalled or removed or disqualified under the provisions of the Act shall be six years from the date of first meeting of the Managing Committee appointed by the Commissioner:

Provided that at the first election, all the territorial constituency members shall be elected at one time, out of which one third of the members thereof shall retire as soon as may be on the completion of two years, another one third members shall retire after completion of four years, and the remaining one third shall

retire after completion of six years in office and their terms of retirement shall be decided by drawal of lots,

(4) The term of office of all the territorial constituency members elected subsequent to the first election against the vacancies of retirement, as specified in Sub-section (3) shall be of six years, if not recalled or removed or disqualified under the provisions of the Act.

(5) The District Collector shall cause arrangements for the election of a managing committee consisting of one member from each of the territorial constituencies of a Water Users area by a simplified election procedure in the manner prescribed:

Provided that for the reasons to be recorded in writing the Government may, from time to time, postpone the elections.

(6) The District Collector shall also cause arrangements for the election of a President and a Vice-president of the managing committee from among the members of the managing committee of the water users association, in the manner prescribed:

Provided that for the reasons to be recorded in writing the Government may, from time to time, postpone the elections,

(7) If at an election held under Sub-section (5) and (6), the President or the Vice-President or the members of the territorial constituencies of water users association are not elected, fresh elections shall be held in the manner prescribed.

(8) The President and the Vice-President of the managing committee of water users association shall, if not recalled or removed or disqualified by the provisions of the Act, be in office for a period of two years from the date of election or his tenure as member of territorial constituency, whichever is earlier.

(9) The term of office of the President, Vice-President and the members of managing committee of all the water users associations formed, subsequent to ordinary election, shall also expire at the time at which it would have expired if he had been elected at the ordinary election, be reckoned from the date as appointed by the Commissioner, as specified in Sub-section (3).

(10) The managing committee shall exercise the powers and perform the functions of the water users association.

11. It is the District Collector as defined in Section 2(g) who may pass orders delineating every command area (area irrigated or capable or being irrigated from a command area under each irrigation system on hydraulic basis which may be administratively viable and declared accordingly for the purpose of the Act. Even/ water users" area shall be divided into territorial constituencies. There shall be six territorial constituencies in minor irrigation systems and twelve in major and medium irrigation systems. All the water users who are landholders in such area shall be members of WUA known by its local distinct name for every

water users area delineated under Sub-section (1). In case a tenant is cultivating, he shall become tenant and not landholder. Similarly, if a person/farmer owns land, and it falls into two water users area, he can become member of one WUA. So, what is important is, a person should be a landholder in water users area. If the person is not in lawful possession and enjoyment of the land under water source, whether he is recorded as a landholder or not, the association shall not refuse membership of such person. When a person who is in possession and enjoyment of the land during a crop year, he shall automatically become member and shall be liable to pay water charges and fees as may be prescribed by WUA.

12. Section 4 of the Act, as seen above, deals with procedure for conducting election of President and Vice-President and members of the managing committee of the WUA. A managing committee consists of six members in the case of Water Users Association minor irrigation system and in the case of WUA in a major and minor irrigation system, a managing committee shall consist of twelve members. The President and Vice-President shall be elected from among the members of the managing committee of WUA in the manner prescribed. The election is also conducted in the manner prescribed and all the members of the territorial constituency shall hold office for a period of six years from the date of first meeting of the managing committee appointed by the Commissioner (who is appointed by the Government u/s 33 of the Act).

13. Sections 5 and 6 deal with delineation of project area and constitution of distributory committee and election of President, Vice-President and constitution of managing committee. Sections 7 and 8 deal with similar matters in relation to project committee.

14. Section 10 of the Act provides for procedure for recalling ere Chairman/Vice-Chairman of managing committee and/or President or Vice-President of WUA and distributory committee. Section 10(1) is to the effect that when motion of recall of the Chairman or President or Vice-Chairman or Vice-President or a member of the committee is proposed, it may be made by giving a written notice signed by not less than one-third of the members of the total members of the farmers organisation (either WUA, distributory committee or managing committee). If the motion is carried with the support of the members present and voting at a meeting of the general body specially convened for the purpose, the competent authority (Engineering) shall remove the person against whom motion is sought to be moved. Section 14 deals with disqualification of candidates or members from being chosen as member of managing committee or Chairman/Vice-Chairman, President or Vice-President. Chapter III (Sections 16 to 21) provides objects and functions of water users association, distributory committee and project committee. Chapter V deals with offences and penalties. Chapter VI contains two sections. Section 26 lays down that any dispute or difference as to the constitution, management, powers of the committee of the farmers organisation, managing committee, the members of the managing committee or

WUA or two or more WUA distributory committees, project committees shall be determined in the manner prescribed. Section 27 provides for appeal to designated officer against any order passed by the authorities u/s 14.

15. Section 43 empowers the State Government to make rules to carry out functions. After coming into force of the Act, Government of Andhra Pradesh made A.P. Farmers Management of Irrigation Systems Rules, 1997 vide orders in G.O. Ms. No.45, Irrigation and Command Area Development (CAD-IV) Department, dated 30-4-1997. These Rules provide for modalities for the delineation of command area, preparation of landholders list, voters list and water users list, procedure for conducting election, procedure for recall and elections. Rule 7 provides that elections to the office of the Chairman, Vice-Chairman, members of the farmers organisation shall be conducted in accordance with the procedure specified in the Election Manual appended to the Rules. The Election Manual contains detailed procedure for conducting elections to the farmers organisation. However, these Rules were superseded by two sets of separate Rules to which a reference will be made later.

16. In exercise of the powers conferred u/s 43 read with Sections 4, 6 and 8, the Government made Rules vide G.O. Ms. No. 131, I&CAD (CAD-IV) Department, dated 8-9-1997 called A.P. Farmers Management of Irrigation Systems (Election Tribunals in respect of Water Users Associations, Distributory Committees and Project Committees) Rules, 1999. As per Rule 3 of these rules, no election held under the provisions of the Act shall be called in question except by an election petition presented either to the District Judge in the case of Water Users Association, Senior Civil Judge in the case of Distributory Committees and Junior Civil Judge in the case of project committees. These Rules were also superseded and adjudication of election disputes is covered by new set of Rules.

17. Rule 12 of the Election Tribunal Rules empower the election tribunal to declare the election of a discharged Candidate to be void inter alia on the ground that returned candidates were not qualified or were disqualified and that the result of the election insofar as it concerns a returned Candidate has been materially affected, (i) for improper acceptance of his nomination; or (ii) by any election offence committed in the interest of the returned candidate by neighbour with the connivance of the returned candidate; (iii) or by improper acceptance, refusal or rejection of any vote, acceptance of any vote is void or by any non-compliance with the provisions of the Act, or any rules or orders made under the Act. Under Rule 15, election tribunal is also competent to declare any returned candidate as not elected and also order fresh election. Therefore, even if somebody contends that the provisions of the Act or provisions of the rules made under the Act are violated in conducted election to WUA or distributory committee or project committee, the matter has to be agitated before the election Tribunal constituted under the Act and the rules.

18. The rules made in G.O. Ms. No. 45, dated 30-4-1997, to which a reference has already been made, are comprehensive rules dealing with delineation of

command area of irrigation systems and conducting elections to various farmers organizations. The election procedure is provided by Rule 7 thereof read with the election manual appended to the Rules. Rule 4 deals with preparation of landholders' list, voters' list and other water users list.

19. To encounter the difficulties in the implementation of the Act the State Legislature amended the Act initially by Ordinance No. 10 of 2002 which became A.P. Farmers Management of Irrigation Systems (Amendment) Act, 2003. The Act as amended by Act No. 7 of 2003 brought radical changes. Sections 3, 5 to 8, 10 to 21 and Section 28 among others of the parent Act were amended. Section 4 which deals with the election of the President, Vice-President and members of the managing committee of WUA was substituted by new Section (Section 4 as amended is already extracted supra).

20. It was visualized that the Rules made in G.O. Ms. No.45, dated 30-4-1997 dealing both delineation of water users areas and elections for these associations were not in consonance with the amended provisions of the Act. Therefore, the Rules in G.O. Ms. No. 45, dated 30-4-1997 were superseded and two new sets of rules were promulgated vide G.O. Ms. No. 20, Irrigation & Command Area Development [Department, dated 20-2-2003 and vide G.O. Ms. (P) No. 47, Irrigation & Command Area Development Department, dated 4-4-2003. The statutory rules made vide former Government Order are known as A.P. Farmers Management of Irrigation Systems (Delineation and Formation of Water Users Association) Rules, 2003 (hereafter called "the Delineation Rules"). The Rules known as A.P. Farmers Management of Irrigation Systems (Conduct of Elections) Rules, 2003 (hereafter called "the Election Rules") were made vide the latter Government Orders. In the present case, this Court is mainly concerned with the non-inclusion of the petitioners in the voters list which is dealt with by Delineation Rules.

21. A reference has been made supra to some of the salient features of the Act. Nevertheless, be it noted that under the Act, the Chief Engineer of Irrigation & Command Area Development Department, the Commissioner, the Competent Authority (Agriculture), Competent Authority (Engineering) and the District Collector are the main authorities who shall discharge the functions in implementing the Act and the Rules. Under the Delineation Rules, the District Collector is empowered to authorise the Revenue officials not below the rank of Deputy Tahsildar to discharge functions under the Act and the Rules. Similarly, under the Election Rules, the District Collector can authorise an officer not below the rank of Deputy Tahsildar to be the Authorised Officer for the purpose of Election Rules.

22. The Delineation Rules empower the District Collector to delineate the command area of irrigation systems within the District (Rule 3), the areas of operation for the purpose of forming WUAs which shall have distinct names. Rule 4 deals with delineation of WUAs in the command area irrigation systems. Rules 6 and 7 respectively deal with delineation of distributory areas for constitution of

distributory committees and project areas for the purpose of constituting project committees. Rule 5 gives right of appeal to the Commissioner against any order passed by the District Collector delineating the command area in the irrigation system and/or forming farmers' organizations. In sum and substance, minor irrigation systems, distributory tanks, diversion channels, lift irrigation schemes, wells and other smaller irrigation systems shall form into one water users area and to ensure administrative viability, the area of operation of each water users area shall be within the limits of village or contiguous villages constituted in a Mandal as far as possible.

23. When the District Collector delineates command area or water users area for the purpose of constituting project committees, as the case may be, draft command area map or such of the water users area demarcating the boundaries of territorial constituencies which shall be prepared in Form "A" appended to the Rules. Such maps are to be displayed together on the notice board of the Gram Panchayat and Mandal Parishad for information of the landholders. Within a period of seven days, objections can be filed against delineation of water users area or territorial constituency-wise voters list. After receiving the objections, within two days, the District Collector or the officer nominated by the District Collector shall conduct a summary enquiry and if necessary make changes or modifications wherever necessary in the maps or sketches duly recording reasons therefor. Thereafter, a final map or sketch shall be displayed immediately in the office of the Gram Panchayat and in the Mandal Parishad in Form "AA" by the District Collector or by the officer nominated by him. A person aggrieved may prefer appeal to the Commissioner within seven days from the date of display/passing orders by the District Collector. Under Rule 8, the Government is conferred with the power either suo motu or on an application to any person interested to call for the records from the District Collector to satisfy themselves as to the legality, propriety or correctness of the decision. It is also competent to the Government to modify, annul or reverse or reconcile any order passed by the Commissioner. The Government is also competent to review its own order if passed in ignorance of the provisions of the Act and the rules.

24. It is for the Government to delineate command area for the purpose of constituting distributory committees under the major irrigation systems. A distributory area may contain five or more contiguous water users area and not more than twelve (12) such areas. Under Rule 7, the Government is empowered to delineate project areas in the project committees for the purpose of constituting project committees. In either of these two, the Government has to keep in mind operational viability and has to consult the District Collector concerned.

25. Rule 9 of the Delineation Rules deals with preparation of landholders list, voters' list and other water users list. The same has considerable bearing on these petitions, and reads as under.

9. Preparation of landholders list. Voters list and other Water Users List :--(1) All

the water users who are landholders and in case where both the owner and the tenant are landholders in respect of the same land, the tenant and any person who is in lawful possession and enjoyment of the land under a water source in a crop year have the right to vote in the elections to Water Users Association.

(2) The District Collector shall prepare or cause to be prepared by the authorized officer, the list of landholders in form "B" on the basis of Adangal/Pahani duly including all the persons who are in lawful possession and enjoyment of the land under a water source, on proof of such possession and such enjoyment in a crop year. On the basis of the list as so prepared, he shall prepare or cause to be prepared territorial constituency-wise voters list in form "D" consisting of those landholders who have completed eighteen years of age as on the date of issue of notification for conducting elections in a water users area for electing the members of the managing committee of the water users association.

(3) The District Collector shall also prepare or cause to be prepared a list of all other water users in form "C" which shall include the landholders or the tenants on the basis of records of rights in a non-notified area to be co-opted as members. The lists prepared under Sub-rule (2) shall be displayed on the notice board of the office of the concerned Gram Panchayat and the Mandal Parishad.

(5) Before finalizing the lists mentioned in Sub-rules (2), (3) and (4) above, the District Collector shall invite objections against inclusion of any name or names in form "G", for incorporation of any name or names in form "F", and for deletion of any name or names in form "H" within a week of display under Sub-rule (4).

(6) After receiving the objections if any, the District Collector or the authorized officer shall consider all such objections within a week and finalise such lists, by appending the names to be deleted or incorporated, at the end of the each list and a final notice thereof shall be published in form "I" in respect of voters list and be made available for verification.

(7) Each landholder in the Water Users area shall have one vote only irrespective of his land holding in the said area.

(a) In case, a landholder has land in more than one Territorial Constituency of a water user area the landholder shall opt for one constituency by giving a declaration as specified in Form "E" to the Authorised Officer.

(b) In case no such option is exercised by the landholder, the Authorised Officer shall allot his vote to the constituency in which the landholder holds the maximum extent of land; where such land held is the same in two constituencies any of the constituency may be allotted.

(8) The lists prepared under Sub-rule (2) shall be revised three months before the commencement of the elections in the manner prescribed.

26. A plain reading of Rule 9 of the Delineation Rules reveals the following. All the water users have a right to vote in the election to WUA. To begin with, the District Collector or Authorised Officer shall prepare the list of landholders on the

basis of Adangal/Pahani duly including all the persons who are in lawful possession and enjoyment of the land under WUA if such persons are in possession and enjoyment of the land in a crop year. Based on such list in Form "B" appended to the Rules, the Authorised Officer shall then prepare territorial constituency-wise voters list in Form "D". All the landholders who have completed 18 years of age as on the date of issue of notification for conducting elections shall be included in the voters list. A separate list in, Form "D" shall be prepared which consists of the landholders or the tenants in a non-notified area. The lists prepared in Form "B" and Form "D" as per Rule 9(2) of the Rules shall then be displayed in the notice board of the office of the Gram Panchayat and Mandal Parishad. Anybody objecting the inclusion of any name or names and request for inclusion or deletion of name shall be made in the prescribed Form "D" appended to the Rules. Any objection made to the District Collector or the Authorised Officer shall be considered and final voters' list prepared by appending the names to be deleted or incorporated at the end of the list. A final notice in Form "I" in respect of voters' list shall be made available for verification. The lists prepared in Form "B" and Form "D" may be revised three months before the commencement of the election in the manner prescribed.

27. The procedure for preparation of landholders' list is contained in Rule 9 of the Rules. It also provides for making objections to the District Collector. If any order is passed either accepting or rejecting the name of any landholder. Rule 10 provides for appeal. Where the Authorised Officer is the Mandal Revenue Officer, an appeal is provided to the Revenue Divisional Officer or the Sub-Collector, A second appeal is provided against the order of the Revenue Divisional Officer or the Sub-Collector to the District Collector, The Commissioner, Command Area Development Department, is given revisional power relating to correction of voters' list,

28. A reading of Section 3 of the Act and Rule 9 of the Delineation Rules together discloses that every landholder under a water users area does not automatically become a member of WUA and he has no right to be included in the voters' list. A farmer to be a member, to be included in the voters' list, must satisfy four conditions namely -(i) he should be owning agricultural land drawing water for the purpose of irrigation from a water source in an area notified u/s 3(1); (ii) such farmer must have completed 18 years of age as on the date of notification for conducting elections; (iii) a farmer must have been included in the list of landholders in Form "B" prepared under Rule 9(2) of the Rules based on the evidence that such farmer has been in possession and enjoyment in a crop year. To say in other words, if a farmer though owns land in a notified water users area but has not cultivated the land in a crop year shall not be included in Form "B" and as a necessary corollary shall not be included in the voters list in Form "D"; and (iv) a landholder who has land in more than one territorial constituency of water users area shall be included in one territorial constituency as per the option exercised by such farmer and if the option is not exercised, the authorized officer shall allot the vote to the constituency in which the landholder holds

maximum extent of land. Furthermore, a land holder should not incur any disqualification enumerated in Section 14 of the Act.

Under the Rules made vide G.O. Ms. No. 45, dated 30-4-1997, election to the office of inter alia WUA shall have to be conducted in accordance with the Election Manual appended to the Rules. As noticed above, the Rules made vide G.O. Ms. No. 45, dated 30-4-1997 were superseded and new set of rules known as A.P. Farmers Management of Irrigation Systems (Conduct of Elections) Rules, 2003, were made vide G.O. Ms. No. 47, Irrigation and Command Area Development (CAD.IV) Department, dated 4-4-2003. The Rules deal with administrative machinery for conducting elections, method and manner of election to WUAs in major, medium and minor irrigation systems, election process, election procedure, method of polling etc. The Rules also provide the method of elections to distributor/committees and project committees.

29. The Rules in Chapter X provide for settlement of election disputes by filing an election petition before the election tribunal. Rules 148 to 162 which deal with election disputes replaced the Election Tribunal Rules made earlier vide G.O. Ms. No. 140, dated 8-9-1997. Rule 159 empowers the election tribunal to declare the result of the election as void insofar as the same materially affects the returned candidate inter alia on the ground that there is non-compliance with the provisions of the Act or the Rules made thereunder.

30. A perusal of various provisions of the Act, Delineation Rules and Election Rules along with the statement of objects and reasons and the preamble of the Act would show that the anxiety and endeavour of the Legislature is to make WUAs, distributory committees, project committees broad-based. It is for this reason that Section 3 of the Act and Rule 9 of the Delineation Rules lay down that all the farmers who are landholders in the water users area shall be entitled to vote. All the farmers having land under the ayacut of irrigation system in a crop year automatically become members of the WUA. The first and second provisos to Sub-section (3) of Section 3 of the Act provide for exceptions in which event a farmer cannot be treated as a member of WUA though he owns land. These are - (i) if the land is in possession of a tenant, it is the tenant who becomes the member of WUA; (ii) if the landholder is not in possession and enjoyment of the land in a crop year, he cannot seek membership of WUA; and (iii) a farmer can become member of the territorial constituency in one WUA provided he is not already a member of a territorial constituency.

31. Rule 9 of the Delineation Rules contains elaborate procedure which would show that at every stage the District Collector or Authorised Officer should take abundant care not to deny membership to any farmer who satisfied the conditions laid down in Section 3 of the Act read with Rule 9(1) of the Delineation Rules. The law also provides for raising objections at the time of publication of provisional list of landholders and voters' list. A person aggrieved by any order of the Authorised Officer is given the right to avail appeal and also revision.

32. In the background facts and the relevant provisions of the Act and the Rules, two questions would arise. Whether, on the eve of elections to Water Users Associations, the writ petitions are maintainable? Secondly, whether the petitioners, as contended by the learned Government Pleader, cannot maintain the writ petitions because they failed to avail the remedy provided under the Rules at the time of publication of voters' list?

33. The first point for consideration should not detain us longer. The law is well settled. I would make a reference to a few cases decided by the Supreme Court and this Court in support of the view that in matters of elections, ordinarily, the High Court would not interfere in the matter. It is also well settled that in matters of delimitation, division of wards and division of constituencies, remedy under Article 226 of the Constitution of India is not a proper remedy.

34. In *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, a Constitution Bench of the Supreme Court considered the effect of Clause (b) of Art, 329(b) on the exercise of power by the High Court under Article 226 of the Constitution. The Supreme Court held that Article 329(b) must be read as complementary to Clause (a) of the Article which bars jurisdiction of the Court which regard to such law as may be made under Articles 327 and 328 of the Constitution relating to the delimitation of the constituencies or allotment of seats to such constituencies. It was held as follows:

...If Part XV of the Constitution is the code by itself i.e., it creates rights and provides for their enforcement of a special Tribunal to the exclusion of all Courts including High Courts, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject matter of contest before the High Courts and thereby upset the time schedule of the elections. The reasonable view seems to be that Article 329 covers all "electoral matters."

The apex Court summed up law as under:

(1) Having regard to the important functions which the legislature have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible accordingly to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.

(2) In conformity with the principle, the scheme of election law in this country as well as England is that no significance should be attached to anything which does not affect the "election", and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question, they should be brought up before a special Tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress.

35. In *Meghraj Kothari Vs. Delimitation Commission and Others*, , a Constitution Bench of the Supreme Court held that orders passed by the Delimitation Commission under the Delimitation Commission Act, 1962, cannot be challenged in a Court of Law in view of Article 329(a) of the Constitution of India. The Supreme Court further observed as follows:

Counsel for the appellant also drew our attention to the judgment of this Court in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, . There the Court had to consider the effect of Section 105 of the Representation of the People Act, 1951 (Act XLJII of 1951) which provided that "every order of the Tribunal made under this Act shall be final and conclusive". The contention there put forward was that this provision put an order of the Tribunal beyond question either by the High Court under Article 226 of the Constitution or by the Supreme Court in appeal therefrom. It was further submitted that the intention of the Legislature was that the decisions of the Tribunals were to be final on all matters whether of fact or of law, and they could not be said to commit an error of law when acting within the ambit of their jurisdiction. They decided what the law was. This submission was turned down by this Court and it was observed after referring to *Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others*, that "the Court laid down in general terms that the jurisdiction under Article 226 having been conferred by the Constitution, limitations cannot be placed on it, except by the Constitution itself.

In this Case we are not faced with that difficulty because the Constitution itself provides under Article 329(a) that any law relating to the delimitation of constituencies etc. made or purporting to be made under Article 327 shall not be called in question in any Court. Therefore an order u/s 8 or 9 and published u/s 10(1) would not be saved merely because of the use of the expression "shall not be called in question TV any Court." But if by the publication of the order in the Gazette of India it is to be treated as law made under Article 327, Article 329 would prevent any investigation by any Court of law.

36. In *P. Mastanaiah Vs. Delimitation Commissioner, New Delhi and Others*, , a Division Bench of this Court held that when the Delimitation Commission constituted under the Delimitation Commission Act, 1962 has followed the procedure prescribed under the Act, particularly that referred to in Section 9(2) and determined the question of allotment of reserved seats after hearing public representations and objections, its act cannot be called in question in a Court of law. In *Mastanaiah's* case (*supra*), the appellant challenged the notification of the Delimitation Commission u/s 10 of the 1962 Act. Prior to the impugned notification, Gudur, Suiurpet and Venkatagiri, each had one reserved seat for Scheduled Castes. By the impugned notification, the Delimitation Commission, instead of assigning or allotting one reserved seat to Gudur, allotted the same to Sarvepalli, which had a general population of 1,33,140 and a Scheduled Caste population of 30,483 in comparison to the Scheduled Caste population of 32,481 out of general population of 1,27,566 in Gudur, A learned single Judge of this

Court dismissed the writ petition. The main challenge was with regard to change in the allotment of reserved seat to Sarveoaili in preference to Gudur, which had a higher population of Scheduled Castes. The learned single Judge took the view that the notification u/s 10(2) of the Delimitation Act has force of law under Article 329 of the Constitution, which gives immunity to the delimitation law. The specific contention on behalf of the appellant was that the reservation of seats is not allotment of seats within the meaning of Article 329 of the Constitution and, therefore, the notification by the Commission can be called in question under Article 226 of the Constitution. Adverting to this question, this Court observed as follows:

It is undisputable that when an Authority has been constituted under an Act the provisions of which have not been challenged, and that Authority has followed the procedure prescribed, particularly that referred to u/s 9(2) of the said Act and having heard the public representations and objections, determined the question, its acts cannot be called in question unless it can be said that it has not taken into consideration the factors specified in Section 9 or its decisions are arbitrary,

37. In *Pradhan Sangh Kshetra Samiti, Jabalpur v. State of U.P.* AIR 1985 All. 162, a Division Bench of the Allahabad High Court declared certain provisions of U.P. Panchayat Raj Act, 1947 as amended by U.P. Act 9 of 1994 after coming into force of the Seventy-Third Constitution (Amendment Act, 1992 as ultra vires Article 243(g) and other provisions of the Constitution. Before the Division Bench of Allahabad High Court inter alia the issues that were urged are that the guidelines or circulars issued by the State Government for the establishment of Gram Panchayats have been violated; that Gram Panchayats have been reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and Women on the basis of alphabetical order contrary to the principle of rotation envisaged by the Constitution; that villages with more SC, ST population have been reserved for BCs; that the seats were not reserved in accordance with the proportion of population of reserved classes; that villages with negligible percentage of SC, ST, BC population were reserved and that the electoral list was not prepared in accordance with law etc. It was also contended before the Division Bench of Allahabad High Court that reservation of the posts of Pradhans or Panchayat members in favour of BCs was made though there was no relevant information regarding the population figures available with the State Government. This was pointed out by the Allahabad High Court and a reading of paragraph 135 of the judgment shows that the Court indicated that unless the BC population figures collected by the Government are verified by a open debate on the floor of the Legislature or by the State Election Commissioner, the same cannot be basis for making reservation for BCs. The State of U.P. was, therefore, compelled to cancel the election notification, but the State carried the matter in appeal before the Supreme Court, which reversed the Judgment of Allahabad High Court.

38. In *State of U.P. and others etc. Vs. Pradhan Sangh Kshetra Samiti and*

others etc., , Supreme Court reversed the judgment of Allahabad High Court. The Supreme Court held that constitution of village Panchayats, division of Panchayat area into wards, allotment of seats etc., relates to delimitation of constituencies and allotment of seats to such constituencies and in view of the provisions of Clause (a) of Article 243O of the Constitution (Part IX as amended by Seventy-Third Amendment Act) and, therefore, the High Court's approach in adjudicating the issues regarding reservation in favour of SCs, STs and BCs is objectionable. The Supreme Court held:

What is more objectionable in the approach of the High Court is that although Clause (a) of Article 243O of the Constitution enacts a bar on the interference by the Courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any Panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them.

39. The Supreme Court then referred in detail to (Meghraj) case (supra) and further held as follows:

If we read Articles 243C, 243-K and 243O in place of Article 227 and Sections 2(kk), 11-F and 12-3B of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged nor the Court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievances although the challenge was made after the notification for the election was issued on 31.8.1994.

40. In *Lakshms Charan Sen v. A.K.M, Hassan Uzzaman* AIR 1985 SC 1233, case the Supreme Court was dealing with the question whether preparation and publication of electoral rolls is within the scope of the expression "election" which occurs in Clause (b) of Article 329(b) of the Constitution. The contention canvassed was that the High Court had no jurisdiction to entertain the writ petition by reason of Article 329(b) and that the election process which had already begun should not have been interfered with by the High Court. Even if the claims and objections by prospective voters are not finally disposed of which might be in contravention of the law, still the election process cannot be arrested and has to be held on the basis of electoral roll which is in force on the last date for making nominations. In paragraph 24 of the majority Judgment, the law declared by the Supreme Court is as follows:

..... In the light of the conclusion recorded by us that the petitioners have

not made out any case for the grant of relief claimed by them, it is unnecessary for us to decide the question whether the expression "election" which occurs in Article 329(b) comprehends the preparation and publication of electoral rolls. Besides as indicated by us in the order dated March 30, 1982, the view which we took was that though the High Court was justified in entertaining the writ petition and issuing a rule therein since, the writ petition apparently contained a challenge to several provisions of Election Laws, it was not justified in passing any order which would have the effect of postponing the elections which were then imminent..... Very often, the exercise of jurisdiction, especially the writ jurisdiction, involves questions of propriety rather than of power. The fact that the Court has the power to do a certain thing does not mean that it must exercise that power regardless of the consequences.

41. In *Gujarat University v. N.U. Rajguru* AIR 1998 SC 66, the Supreme Court considered the question whether it is permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution over-passing the machinery designated by Gujarat University Act for determination of the election dispute. The Supreme Court held:

It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental or common law right instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution by-passing the machinery designated by the Act for determination of the election dispute. Ordinarily, the remedy provided by the statute must be followed before the authority designated therein. But there may be cases where exceptional or extraordinary circumstances may exist to justify by-passing the alternative remedies.

42. In *Anugrah Narain Singh and Another Vs. State of U.P. and Others*, , Apex Court considered the question of maintainability of writ petition under Article 226 having regard to the provisions of Article 243ZG. In that case, the election notification dated 11-10-1995 issued by the State of U.P. was challenged before the Allahabad High Court. The Lucknow Bench of the Allahabad High Court dismissed the writ petition on the ground that in view of the bar imposed by Article 243ZG of the Constitution, the writ jurisdiction of the Court could not be invoked to stall the election process. Another case was filed on similar grounds and another Division Bench, of Allahabad High Court took a contrary view and directed that elections should not be held according to the schedule. Before the High Court, "basically, the challenge appears to be about reservation of seats in favour of SCs, STs and BCs in the municipal areas/ The Supreme Court considered the question whether a writ petition is maintainable after the issue of

election notification. The Court also considered the question whether delimitation or" wards m municipalities and allotment of such wards to SCs, STs BCs cannot be challenged in view of Clause (a) of Article 243ZG. Relying in the judgment in Uzzaman case, the question qua Clause (b) of Article 243ZG was answered as follows:

The answer must be emphatically in the affirmative. The oar imposed by Article 243G is twofold, Validity of laws relating to delimitation and allotment of seats made under Article 243ZG cannot be questioned in any Court. No election to a municipality can be questioned except DV an election petition, Moreover, it is well settled by now that if the election is imminent or well under way, the Court should not intervene to stop me election process. If this is allowed to be done, no election will ever rake place because someone or the other will always find some excuse to move the Court and stall the elections

43. Dealing with the question of reservation of wards for SCs, STs and BCs, the Supreme Court held that a law providing for such delimitation and reservation of seats is a law made under Clause (6) of Article 243T of the Constitution and further held as follows:

Moreover, the U.P. Act of 1959 was amended to make it consistent with the provisions of Part IX-A of the Constitution. "Population" was defined in Section 2(53-A) to mean "population as ascertained at the last preceding census of which the relevant figures have been published". This is identical to the definition given in Article 243-P(g). Section 32 which deals with delimitation, inter alia, provides that the State Government shall by order determine the number of seats to be reserved for Scheduled Castes, Scheduled Tribes, Backward Classes and for women. Section 7 lays down that in every Corporation, seats snail be reserved for Scheduled Castes, Scheduled Tribes and Backward Classes, There is a second proviso to Section 7 which lays down that the figures of Backward Classes are not available, their population may be determined by carrying out a survey in the manner prescribed by the rules. These provisions come within the ambit of the phrase "any law relating to the delimitation of the constituencies and allotment of seats to such constituencies". The validity of this law cannot be challenged because of the protection given by Article 243ZG of the Constitution. Therefore, the question whether the survey made by the State Government to ascertain the figures of persons belonging to Backward Classes was lawful or not cannot be raised in any Court.

44. In C. Subrahmanyam Vs. K. Ramanjaneyullu and Others, , the Supreme Court considered the question whether Article 226 of the Constitution of India can be invoked to challenge an order directing repoll made during the process of election. It was held:

The impugned order was made by the High Court in a writ petition under Article 226 of the Constitution of India filed to challenge an order directing repoll made during the process of election. The first question was whether the writ petition

should have been entertained in view of the remedy of election under the Act. The High Court took the view that the main point for decision was whether the order directing repoll is in violation of Section 231 of the Andhra Pradesh Panchayat Raj Act, 1994. Having taken this view, the High Court proceeded to say that a reference was made to a provision of the Constitution in that order and, therefore, the writ petition would lie and the impugned order was quashed for violation of Section 231 of the Act.

In our opinion, the main question for decision being the non-compliance of a provision of the Act which is a ground for an election petition in Rule 12 framed under the Act, the writ petition under Article 226 of the Constitution of India should not have been entertained for this purpose.

45. The principles of law regarding judicial review in election matters are well-settled. These principles in brief may be summarised as under:

(i) If the election law creates rights and provides for enforcement by a Special Tribunal, ordinarily, a writ petition cannot be maintained questioning election process including preparation of voters' list;

(ii) When an election dispute is considered, it must be kept in mind that the right to vote, contest or dispute the election is neither fundamental right nor a common law right, but is a right regulated by statutory provisions. It is therefore not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution of India by-passing the machinery designated by the Statute must be followed before the authority designated therein;

(iii) When the election process is set in motion by issuing election notification, all the disputes including illegalities, irregularities and improprieties allegedly committed by the election authorities in preparing the voters list, conducting elections, counting votes, etc., should be brought before a Special Tribunal by means of an election petition and writ petition is not proper remedy;

(iv) In exercise of powers under Article 226 of the Constitution this Court cannot ordinarily interfere in election matters whatever be the illegality alleged when once the election process is commenced by issuing a direction to include the names of certain voters, delete certain voters and/or undertake the exercise of preparation of voters list afresh;

(v) Even if the claims and objections by prospective voters are not finally disposed of and even if the objections are justified as to the allegations of contraventions of law, still the election process cannot be arrested. The elections must be allowed to go on on the basis of electoral list which is in force on the date of making nominations;

(vi) Even if there, is non-compliance with the provisions of the Act, Rules or Orders made under the Act, the dispute has to be brought before the duly constituted Election Tribunal. Even in such an event, the Election Tribunal can interfere with the result of the election only when it materially affects the result

of the returned candidate.

46. I have already referred to Chapter X of the Election Rules which provides for settlement of election disputes. Rule 159 reads as under:

159. Election offences:--(1) If in the opinion of the Election Tribunal--

(a) that on the date of his election, a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Act or Rules;

(b) that any election offence as defined in Chapter IX-A of the Indian Penal Code, 1860 has been committed by a returned candidate or his election agent or by any other person with consent of the returned candidate or his election agent;

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, insofar as it concerns a returned candidate has been materially affected;

(i) by the improper acceptance of any nomination; or

(ii) by any election offence committed in the interest of the returnee candidate by an agent other than his election agent, with the connivance of :he returned candidates; or

(iv) by the improper reception, refusal or rejection of any vote, or the reception of any vote which is void; or

(v) by any non-compliance with the provisions of the Act, or any Rules or Orders made under the Act;

the Election Tribunal shall declare the election of the returned candidate to be void.

(2) If the Election Tribunal holds the returned candidate guilty under Clause (1) (b) and clause 1(d) (ii) of this Rule, the Election Tribunal shall in addition to declaring the election of the returned candidate as void, shall also declare that the returned candidate shall be disqualified to contest in any elections under this Act, for a period of six years from the date of the order.

47. Therefore, even if a contention that acceptance of the votes of ineligible persons or non-inclusion of eligible persons in the voters" list is proved or a contention is raised that the provisions of the Act, Rules or Orders have been contravened, still it is for the Election Tribunal to declare the result of the election void only if it materially affects the result of the returned candidate. Therefore, every lapse on the part of the authorities in preparation of voters" list is not a ground to interdict the election in exercise of extraordinary powers under Article 226 of the Constitution. Therefore, the writ petitions cannot be entertained. Be it also noted that even in election petitions, the mere pleading and proof that improper votes were accepted or votes were rejected improperly, unless and until the election petitioner proves that such improper acceptance or improper

rejection of votes would have materially affected the result of the returned candidate, the Election Tribunal cannot interfere in the matter. As held by Supreme Court in various decisions an election process including preparation of voters' list, division of constituencies cannot be challenged in a writ petition. First point is answered accordingly.

48. The second question also need not detain us longer. Though a submission is made by the learned Counsel for the petitioners that the petitioners filed objections before the Mandal Revenue Officer, they do not deny that at the time of publication of draft voters lists, they have not filed any objections. Further they waited pretty long to approach this Court without availing the remedy of appeal under Rule 10 of the Delineation Rules. Whatever be the called for, perceived illegality or impropriety, no interference is called for. However, this Court only observed that the District Collector and Authorised Officer should always adhere to the Rules at the stage of notifying the water users area and at the stage of preparation of voters' list so that the principles of democracy are adhered to if elections are conducted to a body at the grass root level. In these writ petitions, however, no relief can be granted. It is, however, open to the petitioners to avail the remedy available under Chapter-X of the A.P. Farmers Management of Irrigation System (Conduct of Elections) Rules, 2003.

49. In the result, for the above reasons, the writ petitions fail and are accordingly dismissed at the admission stage.