

(1960) 03 AP CK 0020

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1153 of 1959

Mocherla Venkataraya Sarma

APPELLANT

Vs

Y. Sivarama Prasad and Others

RESPONDENT

Date of Decision : 09-03-1960

Acts Referred:

Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 — Section 36, 36(1), 37
Constitution of India, 1950 — Article 226

Citation : AIR 1961 AP 250

Hon'ble Judges : P. Chandra Reddy, C.J.; Sanjeeva Row Naidu, J

Bench : Division Bench

Advocate : K.V. Raghunadha Reddy and B. Balamukunda Reddy, for the Appellant; B. Manawala Chowdary, G. Bhaskara Rao, Advocate-General and 2nd Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Chandra Reddy, C.J.—The Chairman and the Vice-Chairman of the Krishna Zila Parishad were called upon by an order of this court dated 29th December 1959 made at the instance of a member of Artamur Panchayat within the limits of Bantumilli Panchayat Samithi to show why an information in the nature of quo warranto should not be exhibited against them to show by what authority they were holding these offices.

2. The grounds of application were that the election of the Chairman and the Vice-Chairman was held before the constitution of the zilla Parishad and that the notice issued by the Collector of the District for holding the meeting for their election did not satisfy the requirements of Rule 4 of the Andhra Pradesh (Conduct of Election of President and Vice-President of Panchayat Samithis or Chairman of Zilla Parishad) Rules, 1959,

3. A few facts material for the purpose of this enquiry need mention. The Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959 (hereinafter referred

to as the Act) was enacted by the State Legislature in 1959 and the assent of the Governor was obtained on the 18th September 1959 and the Act came into force on 2nd October 1959, By notification dated 29th October, 1959, all the Zilla Parishads in the State of Andhra Pradesh were to be constituted with effect from 1st December 1959, the Krishna Zilla Parishad being one such.

In spite of this notification fixing 1st December as the date for the constitution of the Parishads, the election of the Chairman and Vice-Chairman of the Krishna Zilla Parishad was held on 30th November 1959, the composition of the Parishad having been completed by 28th November 1959. Thus, the election of the Chairman and the Vice-Chairman was held a day prior to the constitution of the Parishad. It is this defect that has been mainly responsible for the filing of this information in the nature of quo warranto.

4. The first point that calls for decision is whether the election of the Chairman and the Vice-Chairman held on 30th November 1959 was defective by reason of its being opposed to the terms of the Act. For an appraisal of this question, it is necessary to refer to the notification issued by the Government on 29th October, which is in these terms:

"The Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, -- 1959 -- Constitution of Zilla Parishad. (G. O. Ms. No. 1010, Planning and Development (Samithi-1) 27th October 1959.)

In exercise of the powers conferred by Subsection (i) of Section 36 of the Andhra Pradesh Panchayat Samithis and Zilla Parishads Act 1959 (Andhra Pradesh Act XXXV of 1959), the Governor of Andhra Pradesh hereby constitutes with effect from the 1st day of December 1959 a Zilla Parishad for every district in the State of Andhra Pradesh."

5. It is immediately plain that what the notification contemplated was the constitution of the Parishads and not the functioning of the Parishads from 1st December 1959 as contended on behalf of the Government. The constitution and the composition of Zilla Parishads are provided for in Section 36 of the Act.

6. We will pause here to read Section 36 in so far as it is relevant for the present enquiry,

"(1) The Government may, by notification, constitute a Zilla Parishad for a district with effect from such date as may be specified therein.

(2) Every Zilla Parishad shall, by the name of the District for which it is constituted, be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property and to enter into contracts and may, by its corporate name, sue and be sued.

(3) Every Zilla Parishad shall consist of the following members, namely:--

xx xx xx"

7. It is seen that the Parishad is to be constituted with the members enumerated therein. Then follows the election of the Chairman and Vice-Chairman.

8. The machinery for this election is set up In Section 37. That section, omitting again the unnecessary portions, runs as follows:--

(1) There shall be a chairman and a vice-chairman for each Zilla Parishad who shall be elected by the members of the Zilla Parishad from among themselves:

Provided that the District Collector shall not be elected as chairman or vice-chairman.

* * * * *

9. A combined reading of these two sections makes it abundantly clear that the election of the Chairman and vice-Chairman could take place only after the constitution of the Parishad. The Government appointed 1st December 1959 as the date for the constitution of the Parishad. In other words, as already pointed out, preliminary elections were to be over before that date. It was thereafter only that the election of the Chairman and Vice-Chairman could be held.

As already remarked, we are unable to agree with the contention advanced on behalf of the Government that 1st December 1959 was the date from which the Parishad should function. We do not think that the expression "constitution of the Parishad" used in the notification connotes the functioning of the Parishad. It follows that the election of the Chairman and the Vice-Chairman on 30th November 1959 was not regular,

10. The only controversy that survives is whether this irregularity in the holding of the election of the Chairman and the Vice-Chairman would warrant the granting of the rule. At the outset we must say that we cannot accede to the theory propounded on behalf of the Government that the relator having no personal interest in the matter could not exhibit this information against, the chairman and the vice-chairman. If it is argued on behalf of the Government that the petitioner has no locus standi to seek (be jurisdiction of the Court for this purpose.

In our opinion, an information would lie even at the instance of a relator who has no personal interest in the matter. Information in the nature of quo warranto could be filed in the case of Municipal Corporations or Local Boards on the relation of private parties. It is open to a private individual to bring it to the notice of the Court that a person who is disqualified to hold an office is still holding it. A person who is not legally entitled to hold an office should not be permitted to hold it.

11. In the words of Tindal C. J. which were extracted with approval by Lord Hailing in H. v. Speyer and R. v. Cassel, (1916) 1 KB 595 :

".....this proceeding by information in the nature of quo warranto will lie for usurping any office, whether created by charter alone, or by the Crown, with the

consent of Parliament, provided the office be of a public nature, and a substantive office, not merely the function or employment of a Deputy or servant held at the will and pleasure of others. The test to be applied is whether there has been usurpation of an office of a public nature and an office substantive in character that is, an office independent in title."

12. Therefore it is competent for a voter or a member of any of the local bodies to invoke the jurisdiction of this court for the issue of information in the nature of quo warranto. Consequently, the proceedings could be entertained by this Court for the purpose for which its jurisdiction is invoked.

13. This leads us to the question whether the jurisdiction of this court should be exercised in a case like this. As pointed out by Tindal C. J. in deciding whether the information should be refused or whether the rule should be granted, the test is whether there has been usurpation of an office; in other words whether there is a legal disability to hold the office by or a legal prohibition against a person occupying a particular place. It is not argued before us that the persons elected as Chariman and Vice-Chairman were in any way disqualified to be elected as Chairman and Vice-Chairman. But all that is urged is that the elections instead of being held after 1st December 1959 took place a day prior to the proper constitution of the Parishad, Could it be posited that this amounted to usurpation of the place by the Chairman and Vice-Chairman? In our opinion, the answer is in the negative. It is admitted that nil the formalities were observed before the election took place and no defect other than the one pointed out has vitiated the conduct of the elections. In the circumstances, we find it difficult to characterise the holding of the offices by the two respondents as usurpation. It is to be remembered, that these very persons could be elected after 1st December 1959. As observed by Lord Hewart, C. J, in (1916) 1 KB 595 at p. 612 :--

"If the irregularity in the appointment of an office held at pleasure could be cured by immediate re-appointment, the Court in the exercise of its discretion would doubtless refuse the information, but if, as in this case, any reappointment would be illegal, I cannot see any sound reason why the court should not permit the matter to be brought before it."

14. To the same effect are the remarks of Lush J. occurring at page 631, He observed:--

"Under those circumstances the Court would not make an order ousting them from their office, as the existing defect if there is one, could be cured, and they could be re-appointed."

15. In this case, there is no impediment in the way of these two persons being elected again as Chairman and Vice-Chairman. That being so, this is not a fit case for the exercise of our jurisdiction under Article 220 of the Constitution.

16. It should be borne in mind that these writs are not issued as a matter of course but only as *ex debito justitiae*. In this connection, we will do well to

remember what Bose, J. observed in *Sangram Singh Vs. Election Tribunal, Kotah, Bhurey Lal Baya*, at p. 429) His Lordship observed:--

"That, however, is not to say that the jurisdiction will be exercised whenever there is an error of law. The High Courts do not, and should not, act as Courts of appeal under Article 226, Their powers are purely discretionary and though no limits can be placed upon that discretion it must be exercised along recognised lines and not arbitrarily and one of the limitations imposed by the Courts on themselves is that they will not exercise jurisdiction in this class of case unless substantial injustice has ensued, or is likely to ensue. They will not allow themselves to be turned into Courts, of appeal or revision, to set right mere errors of law which do not occasion injustice in a broad and general sense, for, though no Legislature can impose limitations on these constitutional powers, it is a sound exercise, of discretion to hear in mind the policy of the Legislature to have disputes about these special rights decided as speedily, as may be. Therefore, writ petitions should not be lightly entertained in this class of case."

17. It is not alleged that the holding of election a day prior to the constitution of the Parishad has resulted in injustice or hardship either to the rate-payers or to the Zilla Parishad. It has not put the Parishad to any unnecessary expenditure or prejudiced the rights of any member of the Parishad or of the constituent Panchayat Samithis or Panchayats. It is not pretended that persons who were disqualified or who were not entitled to take part in the election had participated therein. As already mentioned, the only defect that is pointed out is that the election had taken place a day prior to the constitution of the Parishad. That being so, there will be no justification for us to grant the rule as prayed for.

18. Another complaint against this election is that Rule 4 of the relevant rules has been infringed in regard to election in that five clear days' notice was not given to the members of the Panchayat Samithi. That rule says:--

"(1) Notice of the date and hour of such meeting shall be given in the form appended to these rules to the members of the Panchayat Samithi at least five clear days previous to the day of the meeting."

19. If the rule had stood alone, there would have been substance in the contention raised on behalf of the petitioner. But there is Sub-rule (2) which vests discretion in the Collector to shorten the duration of the notice. Sub-rule (2) recites:

"In the case of urgency, the Collector may convene a meeting referred to in Rule 3 on giving a shorter notice than that specified in Sub-rule (1)."

20. There is, therefore, ample jurisdiction in the Collector to give short notice. That apart, it is only a member of the Parishad that could make this ground of attack against the election and not a person who is unconnected with the Parishad. It must be mentioned here that no objection was taken by any of the members of the Parishad either on the ground that the election should not take

place before 1st December 1959 or on the ground of want of proper notice. In fact, all the members, without any protest participated in the election.

The inference is obvious that the unsuccessful candidates have set up the present petitioner with a view to have the election challenged. This is not to say that it was not competent for the petitioner to bring to the notice of the Court about any irregularity in the conduct of the election. Be that as it may, we do not think that there will be any justification to comply with the request of the petitioner to allow him to exhibit information, against the Chairman and Vice-Chairman of the "Krishna Zilla Parishad, in the nature of quo warranto.

21. In the result the petition is dismissed, but, without costs.