

(1994) 11 AP CK 0015

In the Andhra Pradesh High Court

Case No : Writ Petitioner No's. 20130 and 20283 of 1994

N. Kristappa

APPELLANT

Vs

Chief Election Commissioner and others

RESPONDENT

Date of Decision : 17-11-1994

Acts Referred:

Constitution of India, 1950 — Article 226, 32, 324, 324(1), 324(6)

General Clauses Act, 1897 — Section 21

Representation of the People Act, 1951 — Section 14, 15, 15(2), 153, 30

Citation : AIR 1995 AP 212 : (1995) 1 ALT 121

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : S. Ramachandra Rao and C. Kodanda Ram, for the Appellant; C.P. Sarathy, Advocate General, for the Respondent

Judgement

1. In these two Writ Petitions, subtle but interesting proposition of law has fallen for consideration before this Court and, therefore, these two Writ Petitions are disposed of by a common judgment.

2. Writ Petition No. 20130/94 is filed by a Telugu Desam Party candidate and petitioners in Writ Petition No. 20283/94 are the independent candidates who have filed their nominations to 163-Gorantla Assembly Constituency of Ananthapur District in Andhra Pradesh State.

3. The facts which emanate from these two Writ Petitions are as under :-

4. The notification for General Elections to the Legislative Assembly for the State of Andhra Pradesh in terms of Clause (2) of Section 15 of the Representation of the People Act, 1951 (hereinafter referred to as "the Act") was issued by the Governor of Andhra Pradesh in Notification No. 597/ Elec. F/94, General Administration (Elec. F) Department, dated 1-11-1994 calling upon all the Assembly Constituencies in the State to elect members in accordance with the provisions of the Act. After the issuance of Election Notification by the Governor of Andhra Pradesh, the election process in the State is set in motion. As per the

Election Notification, 8-11-1994 is the last date for making nominations, 9-11-1994 is the date for scrutiny of the nominations, 11-11-1994 is the last date for the withdrawal of the candidatures, 1-12-1994 is the date on which a poll, if necessary, shall be taken, 9-12-1994 is the date of counting of votes and 13-12-1994 is the date before which the election shall be completed in the aforementioned 163-Gorantla Assembly Constituency.

5. While so, one Sri Siddaiah, a candidate of Congress-I, is said to have been abducted in the morning of 8-11-1994 by his rival group with an intention to prevent him from filing his nomination papers. Said Siddaiah was freed on the next day i.e., on 9-11-1994. The resultant effect of the said abduction is that said Siddaiah could not file his nomination papers on 8-11-1994 which is the last date for filing the nominations.

6. Intimation was sent to the first respondent by the second respondent vide Fax Message No. 1360/L. & O. 1/94-2, dated 10-11-1994 about the incident of abduction of said Siddaiah. The second respondent further intimated to the first respondent that he instructed the District Collector, Anantapur District -- third respondent herein and requested the Chief Secretary and District Superintendent of Police, Anantapur to locate the abducted person before 3.00 p.m. on 8-11-1994, which was the last date of filing nomination papers. The Election Commission directed the Chief Secretary of Andhra Pradesh State and Chief Electoral Officer of Andhra Pradesh through Fax Message dated 9-11-1994 to ascertain whether Sri Siddaiah and his proposer were ultimately prevented from filing nomination papers and whether the nomination papers were in personal possession of Siddaiah at the time of his alleged abduction. The information sought by the first respondent was furnished by the other respondents. Basing on the information available the first respondent was of the view that the purity of the election process has been irretrievably sullied in 163--Gorantla Assembly Constituency in the State of Andhra Pradesh and in the given circumstances the result of the election in the said constituency cannot reflect the true choice of the electorate of the constituency. Therefore, the first respondent in exercise of the powers conferred under Article 324 of the Constitution of India and under Sections 30 and 153 of the Act read with Section 21 of the General, Clauses Act, 1897 has recommended to the Governor of Andhra Pradesh that he be pleased to rescind the aforesaid notification No.597/Elec. F/94-1, General Administration (Elec. F) Department, dated 1-11-1994 issued by him u/s 15(2) of the Act, in so far as it relates to calling upon the said 163-Gorantla Assembly Constituency to elect its member to the Andhra Pradesh Legislative Assembly so that the entire election process in the said constituency can be commenced anew in all respects. Pursuant to the recommendations of the first respondent, the Governor of Andhra Pradesh issued the notification dated 11-11-1994 rescinding the notification No.597/Elec. F/94-1, General Administration (Elect. F.) Department, dated 1-11-1994 in so far as it relates to calling upon 163-Gorantla Assembly Constituency to elect its member of the Andhra Pradesh Legislative Assembly, so that the entire election process in the said constituency can be commenced anew

in all respects in the said constituency.

7. Aggrieved by the said notification dated 11-11-1994 issued by the Governor of Andhra Pradesh rescinding the notification dated 1-11-1994 insofar as it relates to 163-Gorantla Assembly constituency, these two Writ Petitions are filed.

8. The bone of contentions of Sr. S. Ramachandra Rao, learned counsel for the petitioner in W.P. No. 20130/-94 and Sri Seshagiri Rao, learned Senior Counsel appearing on behalf of Sri C. Kodanda Ram, counsel for the petitioner in W. P. No. 20283/94 are on two folds. Firstly, it is contended that the first respondent is not vested with any powers for recommending rescission of election notification insofar as it relates to 163-Gorantla Assembly Constituency when once the election process is set in motion. Secondly, the first respondent has exercised power unfairly and in an arbitrary manner based on the biased reports of the second respondent and as such, the action of the respondent in recommending to the Government of Andhra Pradesh to rescind the notification dated 1-11-1994 insofar as it relates to 163-Gorantla Assembly Constituency, is vitiated. The further contention made on behalf, of the petitioners is that in the absence of any specific provision either in the Representation of the People Act, 1951 or under any rule to meet the contingency of this nature, the first respondent is not clothed with any power to recommend for rescission of election to 163-Gorantla Assembly Constituency.

9. To meet these contentions, the learned Advocate General, representing respondents 2 to 4 justified the action of the respondents in issuing notification dated 11-11-1994 rescinding the notification dated 1-11-1994 insofar it relates to the election of 163-Gorantla Assembly Constituency. The learned Advocate General contended that when a candidate of a particular political party was not allowed to file even his nomination papers, the electorates of that constituency are denied of an opportunity of electing the candidate of their choice. Despite this, if the election process is allowed to continue in a contingency of this nature, the Advocate General contended that, such an election cannot reflect the true choice of the electorate of the constituency.

10. Sri C. P. Sarathy, learned counsel appearing on behalf of the Chief Election Commissioner -- first respondent herein has raised preliminary objections on the question of maintainability of these Writ Petitions in view of the bar under Article 329 of the Constitution of India and contended that the present Writ Petitions are to be thrown at the threshold itself. The further preliminary submissions made by Sri C. P. Sarathy, learned counsel for the respondent No. 1 are that without issuing notice to the first respondent, no election petition could be filed and no ex parte order could be passed. The learned counsel also defended the action of the first respondent in recommending to the Governor of Andhra Pradesh to rescind the election notification dated 1-11-1994 insofar as it relates to 163-Gorantla Assembly Constituency is concerned. Sri C, P. Sarathy, learned counsel for the first respondent further contended that when a candidate of a particular political party was abducted and was prevented from filing his nomination

papers, and notwithstanding the said fact, if election process is allowed to be completed in the said constituency, the purity of election process would disappear and therefore, justified the action of the first respondent in this regard.

11. I have heard at length the arguments of Sri S. Ramachandra Roa, learned counsel for the petitioner in W.P. No. 20130/94 and Sri Seshagiri Rao, learned Senior Counsel representing Sr. C. Kodanda Ram counsel representing the petitioners in W. P. No. 20283/94 and Sri C. P. Sarathy, learned counsel for respondent No. 1 and the learned Advocate General, appearing on behalf of respondents 2 to 4 and also Sri K. Rama-krishna Reddy, learned Advocate who has been asked to assist this Court as amicuscurae.

12. Two questions prominently emanate from the above submissions, for consideration before this Court, viz.,

(1) Whether the first respondent is vested with the power to recommend the Governor of Andhra Pradesh to rescind the election Notification insofar as it relates to 163-Gorantla Assembly Constituency is concerned ? And

(2) Whether the action of the first respondent would amount to arbitrary exercise of power attributable to mala fides ?

13. The election process for State Assemblies as well as Parliamentary Constituencies is contemplated under the Representation of the People Act, 1950 and 1951 (for short "the Act"). The election process for the respective State Assemblies is set in motion by the issuance of notification u/s 15(2) of the Act by the Governor/ Administrator of respective States. Thereupon, other requirements have been prescribed in terms of various provisions of the Act to be complied with for conducting elections. The entire election process is manned by a competent agency called "Election Commission". Article 324 of the Constitution of India postulates the superintendence, direction and control of election to be vested in an "Election Commission". Clause (1) of Article 324 specially deals with the power of superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission referred to in the Constitution as "Election Commission."

14. Clause (6) of Article 324 provides the President or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Clause (I).

15. Thus, Article 324 of the Constitution of India makes provisions for a Centralised Election machinery. The Election Commission is empowered to issue all necessary directions for the purpose of conducting smooth, free and fair elections.

16. Article 329(b) of the Constitution of India postulates the bar to interference by Courts in electoral matters. The embargo imposed under Article 329 barring interference and the power of Election Commission under Article 324 have been extensively considered by the Supreme Court of India in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, and *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, .

17. Dealing with the powers of the Election Commission under Article 324, the Supreme Court of India in the decision cited supra, has held :

"Functions as referred to in Article 324(6) include powers as well as duties. It is incomprehensible that a person or body can discharge any functions without exercising powers. Powers and duties are integrated with function. The Chief Election Commissioner has to pass appropriate orders on receipt of reports from the returning officer with regard to any situation arising in the course of an election and power cannot be denied to him to pass appropriate orders. Moreover, the power has to be exercised with promptitude. Whether an order passed is wrong, arbitrary or is otherwise invalid, relates to the mode of exercising the power and does not touch upon the existence of the power in him if it is there either under the Representation of the People Act or the rules made in that behalf or under Article 324(1).

The Commission is entitled to exercise certain powers under Article 324 itself or its own right, in an area not covered by Representation of the People Act and the rules... It is true that in exercise of powers under Article 324(1) the Election Commission cannot do something impinging upon the power of the President in making the notification u/s 14 of the Representation of the People Act. But after the notification has been issued by the President, the entire electoral process is in the charge of the Election Commission and the Commission is exclusively responsible for the conduct of the election without reference to any outside agency. There is no limitation in that where the law made under Article 327 or the relevant rules made thereunder do not provide for the mechanism of dealing with a certain extraordinary situation, the hands of the Election Commission are tied and it cannot independently decide for itself what to do in a matter relating to an election. The Election Commission is competent in an appropriate case to order re-poll of an entire constituency where necessary. It will be an exercise of power within the ambit of its functions under Article 324".

18. The authoritative pronouncements of the Apex Court referred to above undoubtedly, lay down that the Election Commission is sufficiently clothed with the power though not vested under the Act, but even by invoking the plenary powers conferred on it under Article 324 and issue appropriate directions for the conduct of free and fair elections in a given case.

19. Having regard to these pronouncements of the Apex Court, I am not persuaded to hold that the Election Commission is not vested with the power to issue directions rescinding the election notification of 163-Gorantla Assembly

Constituency.

20. The first question is. Accordingly answered.

Now, the next question that falls for consideration is whether the Chief Election Commissioner, the first respondent herein, while recommending the rescission of election process in the 163-Gorantla Assembly Constituency has acted arbitrarily and such an action could be attributable to mala fides?

21. The pillars of democracy rest on the system of free and fair elections to the Assembly or to the Parliamentary constituencies. The will of the people is expressed through their elected representatives. To ensure free and fair election, a special machinery is provided to man the election process. Article 324 makes provision for a centralised electoral machinery. Necessary legislation have been enacted in the nature of Representation of the People Act, 1950 and 1951. Once the entire election process has been brought under the purview and control of the Election Commission, an authority constituted under Article 324, it is the responsibility of that authority to device ways and means for conduct of free and fair elections wherever necessary.

22. In the State of Andhra Pradesh, notification for conduct of elections to the State Assembly was issued by the Governor of Andhra Pradesh on 1-11-1994. The election process is set in motion by the issuance of notification and the last date for filing nominations is fixed as 8-11-1994. Aspirants who wished to contest elections representing various political parties also were to file their nominations on or before the said date. Sri Siddaiah said to be the nominee of the Congress-I party, was to file his nomination on 8-11-1994. Circumstances indicate that he was abducted and was prevented from filing his nomination papers on the said date i.e., 8-11-1994. The process of scrutiny and withdrawal was subsequently completed and the final list of contesting candidates was also announced. As I said earlier, the pillars of democracy rest on the election process by people participating in electing the representatives of their choice, peaceful and conducive atmosphere is warranted for the people to exercise their franchise without fear or favour.

23. Instances are glaring when the election process is thwarted by musclemen by booth-capturing and destroying ballot boxes. At times, when a candidate of certain recognised political party dies during the election process, election to the particular constituency is countermanded. When natural calamity occurs, polling is re-scheduled. The Representation of the People Act has met these contingencies by incorporating necessary provisions in the Act. No provision is contemplated either in the Representation of the People Act or the rules made thereunder to meet a contingency arising out of a situation where a candidate has been abducted and prevented from filing his or her nomination papers. And therefore, in the absence of any specific provision to meet a contingency of this nature, the Election Commission invokes its plenary power vested in it under Article 324 of the Constitution of India.

24. Here is a case where a candidate of a political party has been abducted by the rival group and was prevented from filing nomination papers. The resultant effect is that Sri Siddaiah the abducted candidate could not file his nomination on the last date of filing nominations i.e., on 8-11-1994. In a situation where candidates representing political parties are prevented from filing nomination papers and if the election process is allowed to be completed, could see that election process be called free and fair? And whether the results of such an election would truly reflect the will of the people of that particular constituency ? This is a million dollar question. When a candidate of a political party is prevented from filing his nomination by certain elements, would the guillible electorate of 163-Gorantla Assembly Constituency be free to exercise their franchise. It is not the case that the electorate enmasse exercise their franchise in favour of one candidate only. It is immaterial to which party a candidate belong to. But the electorates are handicapped in chosing a candidate of their choice when some candidates are whisked away from the arena of contest. In this view of the matter, what is to be seen is whether purity in electoral process could be achieved. When candidates are abducted and prevented from filing nominations, could it be presumed that ordinary voter would be free to exercise his franchise in favour of a candidate of his choice. These are all some of the ground realities and Courts cannot ignore these realities.

25. The object of providing a Centralised Election Machinery is only in such direction to ensure purity in electoral process. In a contingency of this nature, could it be said that the first respondent is helpless and has to be a silent spectator? To my mind, the first respondent is not without power to remedy the situation. Article 324(1) of the Constitution of India confers powers of superintendence, direction and control on the Election Commission. The Election Commission is entitled to exercise certain powers under Art. 324 itself on its own right, in an area not covered by Representation of the People Act and the Rules. In this case, the first respondent on the basis of the reports received from respondents 2 and 3, in exercise of plenary powers vested in him under Art. 324 . of the Constitution of India read with Ss. 30 and 153 of the Representation of the People Act, 1951 has recommended the Governor of Andhra Pradesh State to rescind the election process insofar as it relates to 163-Gorantla Assembly"Constituency, with a promise that the election would be commenced afresh.

26. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned ,and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The argument advanced by Sri S. Ramachandra Rao counsel for the petitioner in W.P. No. 20130/94 and Sri Seshagiri Rao, learned senior counsel appearing on behalf of the petitioner's counsel Sri C. Kodanda Ram in W.P. No. 20283/94 that the first respondent has acted arbitrarily and with a mala fide intention in canvassing for the cause of a particular political party is not acceptable to; this Court. The action of the first respondent in recommending the rescission of election process

in 163-Gorantla Assembly Constituency cannot be looked in isolation in respect of a particular, political party's point of view, but has to be looked in the overall facts and circumstances of the case. In the given circumstances, the first respondent felt that the purity of the election process has been irretrievably sullied in 163-Gorantla Assembly Constituency and if the election process is allowed to be completed in the said constituency, it cannot reflect the true choice of the electorate of the Constituency. Therefore, no mala fides could be attributed to the first respondent inasmuch as he recommended rescission of the election process in 163-Gorantla Assembly Constituency as the circumstances are not conducive to allow the election process in the said constituency. After all, the first respondent did not rescind the election process in 163-Gorantla Assembly Constituency once for all. It is made clear in the notification issued by the Governor of Andhra Pradesh, dated 11-11-1994 that election process in the said constituency would be commenced anew. Therefore, I see no force in the contention of Sri S. Ramachandra Rao, learned counsel for the petitioner in W.P. No. 20130/94 that the electorate of 163-Gorantla Assembly Constituency are denied from exercising their franchise. The rescission of election process in the said constituency is not without valid reasons inasmuch as a candidate of a political party was abducted and prevented from filing his nomination papers. The first respondent felt that in the given circumstances, it is not conducive to allow the election process to go on as the atmosphere is vitiated and the election if allowed to continue, would not reflect the true choice of the electorate. In all probability, election process to 163-Gorantla Assembly Constituency, is deferred for the time being in view of the volatile situation prevalent in the said Assembly constituency.

27. Situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Art."324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor mala fide, not arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation. More is not necessary to specify; less is insufficient to leave unsaid. Article 324 of the Constitution of India, to my mind, operates in areas left unoccupied by legislation and the words "superintendence, direction and control"as well as "conduct of all elections" are the broadest terms. When a high functionary like the Election Commissioner is vested with wide powers, the law expects him to act fairly and legally. Article 324 is geared to the accomplishment of free and fair elections expeditiously. Moreover, discretion vested in a high functionary may be reasonably trusted to be used properly, not perversely. If it is misused, certainly the Court has power to strike down the act.

28. It is relevant to extract the words of Lord Denning, which are instructive :

"Law does not stand still. It moves continually. Once this is recognised, then the task of the Judge is put on a higher plane. He must consciously seek to mould

the law so as to serve the needs of the time, must not be a mere mechanic, a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect-thinking of the structure as a whole building for society a system of law which is strong, durable and just. It is on his work that civilised society itself depends."

29. The words of Lord Denning are so inspiring and pragmatic. The Courts are to be pragmatic in adjudicating a dispute by consciously seeking to mould the law so as to serve the needs of the time.

30. The facts and circumstances of the case on record, undoubtedly, disclose that the purity of election process was irretrievably sullied in 163-Gorantla Assembly Constituency at the threshold itself as a candidate of a political party was abducted and prevented from filing his nomination papers. Therefore, in my view, the action of the first respondent in recommending the rescission of election notification dated 1-11-1994 insofar as it relates to 163-Gorantla Assembly Constituency cannot be held to be exercising of power arbitrarily and with a mala fide intention.

31. The Supreme Court has, time and again, held that the actions or directions in conduct of elections in a free and fair manner shall be left to the Election Commission and Courts shall not, ordinarily, interfere in an order passed by the Election Commission, unless it is brought to the notice of the Courts that the Election Commission has exercised the power which it was not vested with, or it acted in arbitrary manner.

32. As discussed above, in the overall object of achieving the purity of the election process to remain intact, I am not persuaded to hold that the first respondent has acted arbitrarily or with any mala fide intention while recommending the Governor of Andhra Pradesh to rescind the election process insofar as it relates to 163-Gorantla Assembly Constituency of Anantapur District. The second question is accordingly, answered.

33. In the view I have taken, I do not find any merits in these two writ petitions and they are accordingly dismissed at the stage of admission itself.

34. Since I have dismissed these two writ petitions, I do not propose to go into the arena of preliminary objections raised by the learned counsel for the first respondent on the question of maintainability of the writ petitions in the light of Art. 329 of the Constitution of India.

35. Before parting with this judgment, this Court places its appreciation on record for the valuable assistance rendered by Sri K. Ramakrishna Reddy, Advocate of this Court as amicus curiae in this case.

36. Petitions dismissed.