
(1999) 04 AP CK 0066
In the Andhra Pradesh High Court
Case No : CRP No. 678 of 1999

N. Madanna and Others

APPELLANT

Vs

M. Siva Nagi Reddy and Others

RESPONDENT

Date of Decision : 16-04-1999

Acts Referred:

Constitution of India, 1950 — Article 11, 22, 22(2), 22(3), 66(2)

Citation : (1999) 3 ALD 330 : (1999) 3 ALT 269

Hon'ble Judges : B.S. Raikote, J

Bench : Single Bench

Advocate : Mr. A. Chandraiah Naidu, for the Appellant; Mr. T. Niranjan Reddy, for the Respondent

Judgement

1. This revision petition is filed by the original plaintiffs challenging the judgment and order dated 24.11.1998 passed by the II Additional District Judge, Kurnool in C.M.A.No.24/1998. By the impugned order, the lower appellate Court has reversed the order passed by the Principal Junior Civil Judge, Kurnool dated 3.8.1998 passed on I.A.No.1423/1998 in O.S.No.419/1998.

2. I have to note at this stage itself that the plaintiffs have filed a suit in O.S.No.419/1998 for injunction along with I.A.No. 1423/1998. On this I.A., they prayed for an injunction against defendants 1 and 2, restraining them from interfering with the discharge of the functions of the petitioners as duly elected office bearers of Kodumur Taluk unit of N.G.O.'s Association, pending trial of the suit. The Principal Junior Civil Judge allowed the said I.A.No. 1423/1998 by granting an order of injunction as prayed for. Being aggrieved by the said order, defendants 1 and 2 have preferred an appeal in C.M.A.No.24/1998. By the impugned order, the II Additional District Judge, Kurnool has set aside the order of the Principal Junior Civil Judge Kurnool, by dismissing the I.A.No.1423 of 1998. It is these circumstances, the plaintiffs have Filed the present C.R.P.

3. The learned Counsel appearing for the petitioners strenuously contended that the impugned order of the lower appellate Court is illegal and without jurisdiction

and is liable to be set aside. He further submitted that the Petitioners are duly elected on 8.2.1998 as per the results declared by the Returning Officer on that day. It is only with political reasons, the State Unit of N.G.Os' Association has decided to dissolve the Kodmur N.G.O.'s Association, without even following the principles of natural justice. He further submitted that, at any rate, the State Unit has no power or authority to pass the order of dissolution, which was not even communicated to the petitioners. He further submitted that, when the election is declared, if any person is aggrieved, such person has to resort to Article 85 of the Constitution of Association, by filing an election dispute and the State Unit of the association absolutely has no power or authority to pass the order dated 3.6.1998. He further submitted that the said order has not even been communicated to the petitioners, who are duly elected members of the committee and such an action of the respondent No. 2 is highhanded and arbitrary, and it is also one without jurisdiction. Therefore, on the basis of such an order, neither the defendants 1 and 2, nor even the alleged ad hoc committee has any authority to interfere with the discharge of the functions by the petitioners and other duly elected members and in these circumstances, if an injunction is not granted, the petitioners would be put to great loss and hardship. Moreover, neither the State Unit, nor the District Unit has any power or authority to remove the elected body, except by filing an election dispute in terms of Article 85 of the Constitution of the Association.

Therefore, the impugned order is liable to be set aside.

4. On the other hand, the counsel appearing for the respondents strenuously supported the impugned order. He submitted that there were irregularities in the election held on 8.2.1998, in which the petitioners are elected. At any rate, the Returning Officer declared results of more than the required number, therefore, the election has been rightly set aside by the State Unit under Article 22(3) of the Constitution of the Association. The petitioners could not have filed the suit, without challenging the proceedings of the State Unit dated 3.6.1998. He further submitted that a show cause notice was sent under certificate of posting to the President and Secretary of the elected Body and they have not filed any objection. He further submitted that notices were not required to be sent to all the elected members and it is enough if the notices were sent to the President and Secretary of the elected Body. He further submitted that at any rate, the petitioners have not availed of the opportunity given to them and the State Unit has the power to pass an order dissolving the elected body under Article 22 (2) and (3) of the Constitution of the Association, and if at all there is any election dispute, it is for the petitioners to approach the election authority as per Article 85 of the Constitution of the Association. He further submitted that without challenging the order of dissolution passed by the State Unit, the present suit is not maintainable and in these circumstances, the lower appellate Court has rightly allowed their appeal and dismissed the application for injunction. This order does not call for interference at the hands of this Court.

5. Having regard to this controversy, I have to see whether the plaintiffs - petitioners are entitled for injunction.

6. In order to appreciate the rival contentions, I have to note few admitted facts of this case. It is not in dispute that as per the calendar of events published by the State Unit, the Returning Officer conducted the elections and declared the petitioners and other members, who were made as defendants 3 to 23, as duly elected as the President, Vice-President, Secretary and Executive Members of the Kodumur unit of N.G.Os" Association. It is stated that the District Unit filed a complaint before the State Unit alleging that the elections were not properly conducted. It is the further case of the State Unit that after receiving the complaint from the District Unit, a show cause notice dated 14.3.1998 was sent to the President and Secretary of the elected body under certificate of posting and as there was no reply from them, ultimately an order was passed by the State Unit on 3.6.1998. I think it appropriate to extract the entire order of the State Unit dated 3.6.1998 as under :-

"To

The President, A.P.N.G.Os" Association, Kurnool District Branch, Kurnool.

Comrade,

Sub :-Elections-Elections to the APNGOs Association - Taluk Units., of Yemmiganur and Kodumur-irregular conduct of elections dissolution of elected bodies and appointment of Ad hoc Committee - Reg.

Ref :- 1. Election Officer's proceedings dt. 11.1.98 of the Yemmiganur Taluk Unit.

2. Proceedings of the Election Officer of the Kodumur taluk unit dated 8.2.98.

3. Your letter dated 6.4.98.

4. Your letter dated 3.6.98.

With reference to your letters cited we wish to inform that the matter has already been discussed in the State Executive Meeting held on 7.4.1998 at A.P.N.G.Os. Home, Hyderabad under the agenda of "any other subject" and after thread-bear discussions, it. was unanimously resolved to cancel the elections held to Yemmiganur and Kodumur Taluk units on 11.1.98 and 8.2.98 respectively, since the Election Officers have erred in notifying the number of posts to be filled in by election contravening Article 66(2) of the Constitution.

Hence, it is also resolved to dissolve and to conduct elections afresh as per the Constitution and Election Rules duly constituted an Ad hoc committee, for a period of three months to conduct elections and look after the affairs of the above Taluk units; duly cancelling the aforesaid elections forthwith.

You are therefore requested to cancel the Elections and constitute an Ad hoc Committee for smooth functioning of the organization as per the provisions of the Constitution and Election rules of the APNGOs Association in vogue. The Ad

hoc Committee should invariable conduct the elections within three months for smooth functioning of the said Associations.

Yours comradely, Sd/- (K. Ananda Mohan)

From the reading of the above letter, it is clear that the State Unit appears to have resolved to hold fresh elections on the ground that Election Officer has erred in notifying the number of posts to be filled in by the elections, contravening Article 66(2) of the Constitution of the Association and accordingly directed the District Branch to cancel the elections and constitute an Ad hoc Committee for smooth functioning of the association with a further direction to the Ad hoc Committee to conduct fresh elections within three months. In substance, the election has been set aside by the State Unit. Even the copy of the show cause notice filed in the case before me does not indicate under what provisions, the impugned proceedings were issued. However, it is contended before me by the learned Counsel appearing for the defendants 1 and 2 that, the State Unit exercised that power under Article 22 (2) and (3) of the Constitution of Association. Article 22 of the Constitution of the Association reads as under :-

"Article 22:

Without prejudice to the generality of the foregoing provisions, and in the interest of maintaining discipline among the cadres, the President of the Association shall have power.

1. a. To interpret the constitution between meetings of the Executive Committee. His interpretation shall be conclusive and in full force and effect unless reversed or changed by the State Executive Committee.

b. To adopt such measures and take such decisions as may be necessary to deal with emergent matters affecting the interests of the Association and report to the State Executive Committee for ratification.

2. To conduct enquiry or order an enquiry, if satisfied, that a situation has arisen when an orderly functioning of a Branch/City Centre/Spl Branch/Unit, is rendered difficult or impossible and to deal with all such emergent matters, he shall exercise all the powers of the State executive under Art.11 and 22(3).

3. Without prejudice to the generality of the foregoing provisions and in the interest of maintaining discipline among the cadres, the State Executive shall have power.

(a) To take such measures as may be necessary, including the dissolution of the Branch/City Centre/Spl Branch/Unit as the case may be to protect the interests of the Association and preserve the Unity of members. In case of dissolution, the State Executive Committee shall have the power to appoint a committee with one or more members to manage the affairs of such Branch or City Centre or Spl. Branch or Unit for a specific period, and to reconstitute the Branch/City Centre/Spl. Branch/Unit as and when necessitated. The committee so appointed

under this Article shall work under the control and superintendence of the State Association and it shall have all the powers of an elected body.

(b) To suspend, debar or expel or take such other action as deemed fit after providing reasonable opportunity, if after an enquiry by the President or his nominee, it is established, that the Office Bearer or Member has acted in contravention of provisions of the Constitution or against the interests of the Association.

Explanation :

1. Acting against the interest of the Association shall include misappropriation of Association funds, malicious propaganda, disrespect to decisions and directives of the Association and its elected office bearers.

2. In exercising the powers conferred under this Article, the President shall act in consultation with the Secretariat or such of the members of the Secretariat present at the Head Quarters of the Association."

From reading of the above Article, I find that in the interest of "maintaining discipline among the cadre", the President of the association of the State unit/ is empowered to take appropriate action against the body or a member of the unit or District Branch or Unit Branch, including the power to dissolve the body itself, if the indiscipline is such that, such District Branch or State Unit cannot be continued. The explanation makes it clear that the act of indiscipline or acting against the interest of the Association include, misappropriation of Association funds, malicious propaganda, disrespect to the decisions and directives of the Association and its elected office bearers.

While taking action, the President shall act in consultation with the Secretariat or such of the members of the Secretariat present at the headquarters of the association. Prime facie, this provisions would not enable the State Unit to set aside the election duly conducted by the Returning Officer. For setting aside any election, an election dispute is contemplated under Article 85 of the Constitution of the Association, before a competent authority. From this it follows that, if there is any election dispute alleging irregularities in the election, the power that can be exercised is only the authority provided under Article 85 of the Constitution of the Association, which reads as under :-

"Any dispute touching the Constitution, working financial position, and elections of the Association, shall first be heard and disposed of in the following manner.

I. Disputes other than elections :-

..... (not applicable)

II. Election disputes :-

Nature of dispute Appeal Review

Disputes pertaining to Units, Branches, City Centre and Spl. Branches and other

Election Disputes

Election Tribunal State E.C.

Any appeal shall be preferred within 60 days from the date of the Communication to the appellant of the decision : but the appellate authority may admit an Appeal preferred after the said period, if it is satisfied that the appellant has sufficient cause of not preferring the Appeal within the said period. Review within 30 days from the date of disposal of Appeal can be preferred before the authority competent if aggrieved with the appellant authority's decision.

While disposing of any appeal under this Article, the appellant authority may, after giving the parties an opportunity for making their representations, pass such order thereon, as that authority may deem fit. The appellate authority may pass such interim orders pending decision on the appeal as the authority may deem fit.

The decision of the State Executive shall be final."

From this Article, it is clear that regarding alleged irregularities in the election, only remedy competent to any person aggrieved is the election dispute. And if that is so, the election cannot be set aside by the State Unit by exercising its alleged power under Article 22 of the Constitution of the Association. In this view of the matter, the only irresistible conclusion, for the time being, would be that such a proceedings issued by the State Unit dated 3.6.1998 is prima facie one without jurisdiction, and accordingly the resultant position would be that the elected body would be entitled to discharge its functions entrusted to it. It is not in dispute that after election, the petitioners and other members were administered oath of office and accordingly the election officer handover all the records to them. If that is so, the State Unit cannot make any attempt to interfere with their discharging of the functions as such, since they are entitled to hold the office, until their election is set aside by the competent authority under Article 85 of the Constitution of the Association. It is an established principle of law that the democratically elected body should be normally allowed to function in accordance with the duties entrusted to it under the Constitution of the Association. In this view of the matter the petitioners have got prima facie case for grant of injunction, since, admittedly they are all duly elected members as per the results declared by the Returning Officer and the balance of convenience is the also in their favour.

7. From the reading of the orders of both the Courts below, I find that the Court of the first instance considered all these important aspects of this case and ultimately granted an order of injunction. But the appellate Court set aside the order on a cryptic ground that the petitioners have not challenged the proceedings dated 3.6.1998 passed by the State Unit proposing to dissolve the elected body, without considering whether the State Unit has any such power or authority at all and also without considering whether there is prima facie case for the petitioners or whether the balance of convenience is there in their favour.

8. The show cause notice dated 14.3.1998 proposed to set aside the election for the alleged violation of Articles 66 and 67 of the Constitution of the Association," but the said show cause notice does not mention what that alleged violation is. However, it is stated that the paid up members of Kodumnr unit are less than 500 and, therefore, they could not have elected four general body secretaries, treasurers, etc. It is further contended that when the number of paid up members are less than 500, no department shall have three office bearers and in the instant case, three members have been elected from Medical Department, therefore, Article 66 is violated. These are the matters to be decided in an election dispute if somebody aggrieved challenges that election. Whether paid up members are more or less, how many members are entitled to be elected and whether any person is elected excess of the quota fixed, etc., all these aspects have to be gone into only in the election dispute. It is not in dispute that the members now elected are according to the posts notified in the election notification. But it is stated by the learned Counsel for the respondents that election notification has itself notified excess posts. All these allegations also have to be gone into only in an election dispute and for these reasons, the State Unit cannot set aside the election of any duly elected member or body or can it dissolve it. I have come to these conclusions only for the purpose of prima facie case, in order to find out whether the plaintiffs are entitled to an order of injunction or not, leaving it open to be considered all these issues in detail in the trial of the suit.

9. It is now brought to my notice that on the basis of the apprehension that the elected body would be dissolved, the petitioners have filed the present suit on 14.6.1998. According to them, the proceedings of the State Unit dated 3.6.1998, marked as Ex.R-6 in the suit, were not communicated to them even as on today. As against this, the Counsel appearing for the respondents contended that it was not necessary for the State Unit to either issue show cause notice or communicate the order to all the elected members and it was enough if the President and Secretary of the elected body are intimated with that order. But from the nature of the order, I find that, the election of all the elected members is set aside and in these circumstances, prima facie show cause notice would be necessary to every member, before such a drastic action of setting aside the entire election is taken by the State Unit. At any rate, having regard to these circumstances, it is clear that the petitioners were not communicated with that order, as on the date of filing of the suit. Even now it is open to the petitioners to challenge the same by amending the plaint in the suit.

10. For the above reasons, in my opinion, the order of the lower appellate Court cannot be sustained and the petitioners are entitled to injunction, as held by the Trial Court in 1. A.No.1423/1998 and accordingly, I pass the order as under :

11. The revision petition is allowed and the impugned order of the lower appellate Court is hereby set aside and the order of the Trial Court in I.A.No.1423/ 1998 is restored. It is further made clear that even if the ad hoc

committee has assumed office, it shall handover the same to the elected body within ten days from today, subject to the final judgment in the suit. No costs.

12. Office is directed to communicate this order to the Ad hoc committee of the A.P. State N.G.Os. Association, Kodmur Taluk unit, Kurnool District within three days from today.