

(1990) 11 AP CK 0034
In the Andhra Pradesh High Court
Case No : Writ Petition No. 9028 of 1990

Neelam Prakasam

APPELLANT

Vs

The District Collector (Panchayat Wing) and Another

RESPONDENT

Date of Decision : 15-11-1990

Acts Referred:

Conduct of Elections Rules, 1978 — Rule 4, 50(1), 7, 8
Constitution of India, 1950 — Article 226

Citation : (1991) 1 ALT 398

Hon'ble Judges : Neeladri Rao, J

Bench : Single Bench

Advocate : L. Nageswara Rao, for the Appellant;

Final Decision : Dismissed

Judgement

Neeladri Rao, J.—The Office of Sarpanch of Kasipadu in Pedakurapadu Mandal was reserved for SC during fourth ordinary elections held in March, 1988. The petitioner and R-2 contested for the same and R-2 was declared elected. R-2 is only a Christian and the certificate issued by the Upadesi, Kasipadu RCM Association would clearly establish it and hence he was not qualified to contest for the office of the Sarpanch of the Kasipadu, contends the petitioner. When he made a representation to R-1, the District Collector (Panchayat Wing) praying for setting aside the election of R-2 on the ground that he falsely represented that he belongs to SC, the latter directed the Mandal Revenue Officer, Pedakurapadu to make an enquiry. It is submitted for the petitioner that the Mandal Revenue Officer made an enquiry and found the petitioner as belonging to the Christian community and thus he does not belong to SC Community. Then petitioner made a representation dated 27-2-89 to R-1 praying for immediate action. By Proceedings in L. Dis. No. 11785/89 dated 11-10-89 R-1 informed the petitioner that he cannot interfere in the matter as the petitioner failed to raise any objection at the time of scrutiny of nominations and that he did not file the Election Petition questioning the election of R-2. There was no response from R-1

when he made another representation dated 31-10-89. Then this Writ Petition was filed praying for declaration that the action of R-1 in not setting aside the election of R-2 as Sarpanch is arbitrary and illegal, and for a consequential direction to R-1 to declare the election of R-2 as Sarpanch as void.

2. Rule 4(1) of Conduct of Election Rules, 1978 (for short "the Rules") lays down that the nomination of every candidate for election either as a member or Sarpanch shall be made in Form-II. Rule 4 (7) of the Rules envisages that in case of every nomination fixed in respect of reserved seat for SC or STs, a further declaration in Form-II shall be made before Village Assistant or any other officer not below the rank of Mandal Revenue Officer by the candidate. In the electoral rolls, the social status of R-2 was referred to as SC. He had also given a declaration that he belongs to SC as provided under Rule 4 (7) when his nomination was filed.

3. Rule 7 of the Rules lays down that after the time specified for the receipt of nomination papers, on the date fixed for that purpose the Election Officer shall publish a list in Form III of all nominations received with a notice that the nomination papers will be taken up by the Election Officer for scrutiny at the specified place on the date appointed. Rule 8 (2) of the Rules says that the Election Officer shall examine the nomination papers and decide all objections which will be made at the time to any nomination and may either on such objection or on his motion, after summary enquiry if any as he thinks necessary reject any nomination on any of the grounds referred to under (i) to (iv) of Rule 8 (2). If the candidate does not belong to any of the SC community in regard to nominations received for seat reserved for SC, the same can be rejected on the ground referred to under Rule 8(2) (iv). Rule 50(1) of the Rule of the Rules is to the effect that save as otherwise provided no election held under the Act whether of a member, Sarpanch, or Upa-Sarpanch of a Gram Panchayat shall be called in question except by Election Petition presented in accordance with the Rules. One of the grounds on which the election can be set aside is on the ground that the result of the election has been materially affected by improper reception of a nomination paper as envisaged under Rule 60 (c) of the Rules.

4. It is manifest from the above provisions that if the Officer of Sarpanch is reserved for SC, a declaration has to be made at the time of filing of nomination that the candidate belonged to SC Community and if that declaration is false, an objection to that effect can be raised at the time of scrutiny of nominations and if the Election Officer was satisfied in regard to such objection, the nomination can be rejected. Even if such an objection was not raised at the time of scrutiny of the nominations, still after the result was declared, the election petition as contemplated under Rule 50(1) can be filed by contending inter alia that the elected candidate did not belong to SC Community for whom the office of Sarpanch was reserved and if the same was substantiated by necessary evidence, election can be set aside on that ground alone. Thus the contention which is raised in this WP is a contention that can be raised in the Election

Petition. It further shows that the election of Sarpanch can be called in question only by presenting an Election Petition. Hence R-1 was right in not taking action in pursuance of the representation made by the petitioner. It is only the election court but not R-1, the Collector, Panchayat Raj who can set aside the election of Sarpanch.

5. Hence this Writ Petition is liable to be dismissed. Accordingly it is dismissed at the admission stage.