
(2001) 10 AP CK 0036
In the Andhra Pradesh High Court
Case No : Writ Petition No. 17837 of 2001

P. Mallikarjuna Reddy

APPELLANT

Vs

The Secretary, State Election Commission and Others

RESPONDENT

Date of Decision : 30-10-2001

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 165(6)
Constitution of India, 1950 — Article 226

Citation : (2002) 1 ALT 89

Hon'ble Judges : B. Sudershan Reddy, J

Bench : Single Bench

Advocate : D. Sudarshan Reddy, for the Appellant; V.V. Prabhakara Rao, A.A.G. and N. Shoba, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—The petitioner is the vice-president of Atloor Mandal Parishad. He prays for issuance of an appropriate writ particularly one in the nature of Mandamus declaring the special meeting convened and held on 21-8-2001 for electing the President of Atloor Mandal Parishad as illegal and not valid. The petitioner also prays for a consequential order to set aside the whole business transacted in the said meeting including the election of the third respondent herein as the President of Atloor Mandal Parishad. In effect, the petitioner is challenging the election of the third respondent herein as the President of the Mandal Parishad.

2. Before adverting to the question as to whether the petitioner is entitled for any relief, it may be necessary to briefly notice the relevant facts:

3. The Mandal Parishad, Atloor consists of eight MPTC members. The office of the President of the Mandal Parishad is reserved in favour of the Scheduled Castes (General). The elections to the Mandal Parishad as well as to the Zilla Parishad were held on 15-7-2001. In the said elections, five MPTC members belonging to the Telugu Desham Party and three MPTC members belonging to the Congress

party were declared elected. A special meeting for election of the co-opted members was convened by the second respondent on 22-7-2001 and in the said meeting, the co-opted members were accordingly elected. The meeting for election of the President and Vice-President could not be held on 22-7-2001 for want of quorum and the same was convened on the next day as per the rules known as "A.P. Conduct of Election of Members (Co-opted) and President/Vice President of Mandal Parishad and Members (Co-opted) and Chairman and Vice Chairman of Zilla Parishad Rules" (for short "the Rules").

4. On 23-7-2001, a special meeting was held to elect the President and Vice-President and in the said meeting the name of one Smt. B. Eswaramma belonging to the Congress party was proposed and seconded by the members present at the meeting. There was no other contesting candidate. The said Smt. B. Eswaramma was accordingly declared elected as President of the Mandal Parishad. However, the election of the Vice-President could not be held on the said date.

5. For whatever reason, the said Smt. Eswaramma who was elected as President of the Mandal Parishad resigned from the office of the President on 1-8-2001 and the same was accordingly accepted by the Chief Executive Officer, Zilla Parishad, Cuddapah.

6. The second respondent herein convened a special meeting for election of the Vice-President on 3-8-2001 and the same could not be held for want of quorum. It was adjourned to 4-8-2001. However, we are not concerned for the present in this writ petition with the election of the Vice-President.

7. The second respondent convened a special meeting of Atloor Mandal Parishad for electing the President in order to fill up the casual vacancy that had arisen due to resignation of the said Smt. Eswaramma on 21-8-2001. In the said meeting, only three members of the Mandal Parishad were present. Admittedly, there was no quorum. In the said meeting, the former President Smt. Eswaramma proposed the name of the third respondent herein as a candidate for the office of the President of the Mandal Parishad and the same was seconded by one Uppathi Sreeramulu Reddy. There was no other nomination. In the circumstances, the third respondent herein was declared to have been duly elected as President of the Mandal Parishad. The same is impugned in this writ petition.

8. Sri D. Sudershan Reddy, learned counsel for the petitioner contends that the whole of the business transacted in the meeting held on 21-8-2001 in the absence of quorum is liable to be declared void. The learned counsel would contend that the special meeting held in the absence of quorum is contrary to Rule 12 of the Rules. The special meeting cannot be treated as a meeting at all in the eye of law. It is also contended that the instructions issued by the first respondent herein are not at all applicable to the facts on hand. It is further contended that the instructions issued by the State Election Commission are to

be so read inconformity with the statutory provisions.

9. In the counter affidavits filed by the Election Officer as well as the third respondent who is declared to have been duly elected as the President of the Mandal Parishad it is admitted that there was no quorum at the special meeting held on 21-8-2001. Therefore, there is no dispute whatsoever that the special meeting that was held on 21-8-2001 was without any quorum. In the circumstances, there is no difficulty whatsoever to hold that the meeting convened and held on 21-8-2001 cannot be treated as a meeting in the eye of law.

10. Rule 12 of the Rules reads thus:

12. No meeting for the conduct of election of President/Vice-President of a Mandal Parishad shall be held unless there be present at the meeting atleast one half of the number of members then on the Mandal Parishad who are entitled to vote at the election.

Provided that where the election of President/Vice-President could not be conducted in the first two special meetings convened for the purpose for want of quorum, the President or Vice-President shall be elected in the subsequent meeting/meetings convened for the purpose from among the members present without insisting for quorum.

Provided further that there the election of the President/Vice-President of a Mandal Parishad could not be conducted in the subsequent meeting/meetings also as mentioned in the aforesaid proviso, the Government shall appoint a temporary President u/s 165 (6) of the Andhra Pradesh Panchayat Raj Act, 1994.

11. A plain reading of Rule 12 of the Rules would make it abundantly clear that no meeting for the conduct of election of President/Vice-President of a Mandal Parishad shall be held unless there be present at the meeting atleast one half of the number of members then on the Mandal Parishad who are entitled to vote at the election. In the instant case, only three members of the Parishad attended the meeting. The quorum required for a valid meeting is four. It is not as if first two special meetings convened for the purpose of electing the President and Vice-President could not be held for want of quorum. A special meeting was convened to be held on 21-8-2001 in which the third respondent herein was declared to have been elected as President of the Mandal Parishad, though there was no quorum whatsoever to conduct the meeting. The meeting that was held on 21-8-2001, undoubtedly, is in contravention of Rule 12. The circular instructions issued by the State Election Commission, upon which reliance is placed by the Election Officer, are not applicable to the facts on hand. Even otherwise, those instructions are to be read inconformity with the statutory rules. The Election Commission obviously cannot issue instructions contrary to the statutory rules.

12. But the question that falls for consideration is as to whether the petitioner is entitled for any relief? Whether this court could interfere in the facts and

circumstances of the case and set aside the election of the third respondent as President of the Mandal Parishad?

13. It is required to notice that Atloor Mandal Parishad consists of eight members and out of them five members belonging to Telugu Desham Party and three members belonging to the Congress Party were declared elected. It is an admitted fact that the office of the President of Atloor Mandal Parishad is reserved in favour of Scheduled Castes (General). It is also an admitted fact that in all there are only two members belonging to the Scheduled Caste including the third respondent who is declared to have been elected as President of the Mandal Parishad. In the special meeting held on 23-7-2001 one Smt. B. Eswaramma was declared elected as President of the Mandal Parishad. She belongs to the Scheduled Caste. For whatever reason, she resigned from the office of the President necessitating to convene a special meeting for election of the President to fill up the casual vacancy. A special meeting was convened on 21-8-2001 in which the said Smt. Eswaramma herself proposed the candidature of the third respondent for the office of the President of the Mandal Parishad. It is clear from the narration of the facts that there are only two candidates available to fill up the office of the President of the Mandal Parishad. Either the said Smt. Eswaramma or the third respondent is to be elected as President of the Mandal Parishad. Smt. B. Eswaramma having been elected, not only resigned from the office of the President, but also proposed the candidature of the third respondent. It is clear that the said Smt. Eswaramma expressed her intention clearly not to continue as the President of the Mandal Parishad. The only option is to elect the third respondent as President of the Mandal Parishad. Even if another meeting is to be convened and held for the purpose of electing the President of the Mandal Parishad, the choice would be restricted to only two candidates, viz., Smt. B. Eswaramma and the third respondent. The said Smt. Eswaramma already made her intention clear not to be the President of the Mandal Parishad.

14. It is well settled that this court in exercise of its discretionary power under Article 226 of the Constitution of India would not issue futile writs. Even when some defect is found in the decision, this court is required to exercise its discretionary power with great caution and interfere only in furtherance of the public interest and not merely on making out a legal point. This court is required to keep the larger public interest in mind in order to decide whether its intervention is called for or not in the given circumstances. Mere contravention of a provision of law itself would not be enough for this court to exercise its extraordinary jurisdiction and interfere with the decision of the authority concerned. In every case, the court is bound to take all the facts and circumstances into consideration and decide as to whether it is a fit case to exercise its jurisdiction under Article 226 of the Constitution of India. This court would be well within its limits not to interfere even in case where there is a clear contravention of a provision of law, provided such contravention does not result in any public mischief.

15. In my considered opinion, any interference by this court in this matter would be a futile exercise of power by this court. The choice to elect the President of the Mandal Parishad is limited to two candidates, viz., third respondent and Smt. B. Eswaramma. One of them may have to be elected as President of the Mandal Parishad. Whatever may be the number of special meetings to be held for election of the President, the choice is restricted only amongst the said two candidates. One candidate having been elected as President tendered her resignation and proposed the name of the third respondent as a candidate for the office of the President. That was only the nomination. Obviously, there cannot be any other nomination since Smt. B. Eswaramma belonging to the Scheduled Caste proposed the candidature of the third respondent. Therefore, the election of the third respondent as President of Atloor Mandal Parishad cannot be interfered with by this court in the given facts and circumstances of the case.

16. In the circumstances, it is not necessary to go into the question as to the maintainability of this writ petition.

17. For the aforesaid reasons, the writ petition fails and shall accordingly stand dismissed. No order as to costs.