
(1994) 11 AP CK 0036

In the Andhra Pradesh High Court

Case No : Writ Appeal No. 1395 of 1994

P. Ravindra Reddy and Others

APPELLANT

Vs

The Election Commission and Others

RESPONDENT

Date of Decision : 29-11-1994

Acts Referred:

Constitution of India, 1950 — Article 324, 327, 328

General Clauses Act, 1897 — Section 21

Representation of the People Act, 1951 — Section 15(2), 153, 79

Citation : (1995) 1 ALT 204

Hon'ble Judges : S.S. Ahmad, C.J;P. Venkatarama Reddi, J

Bench : Division Bench

Advocate : Seshagiri Rao, C. Kondanda Ram and R. Sudheer, for the Appellant; C.P. Sarathy and A.G. for Respondents 2 to 5, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Ahmad, C.J.—This writ appeal arises out of a common judgment dated 17th November, 1994, passed by Mr. Justice Motilal B. Naik, by which Writ Petition Nos. 20130 and 20283 of 1994 were dismissed at the admission stage.

2. In order to constitute a new Legislative Assembly for the State of Andhra Pradesh, the Governor of Andhra Pradesh issued a Notification No. 597/Elec.F/94, dated 1-11-1994 u/s 15 of the Representation of People Act, 1951 calling upon all the Assembly Constituencies of Andhra Pradesh including 163, Gorantla Assembly Constituency, to elect their members for the State Assembly.

3. This was followed by the Notification issued by the Election Commission of India u/s 30 of the Act setting out the following election programme for the Assembly elections in Andhra Pradesh:

8-11-1994 : Last date for making nomination; 9-11-1994 : Scrutiny of nominations; 11-11-1994 : Last date for withdrawal of candidature; 1-12-1994 : Date of Poll; 9-12-1994 : Counting of Votes.

4. Many persons filed their nominations for contesting the election to the State Assembly from 163, Gorantla Assembly Constituency. On 8-11-1994 a Fax Message was sent by the Chief Electoral Officer, Andhra Pradesh, to the Secretary, Election Commission of India, that he, namely, the Chief Electoral Officer, was informed by the Collector and District Election Officer, Anantapur, on phone that a complaint had been lodged with him, namely, the Collector, that the official Congress (I) candidate, Sri Siddaiah, for 163, Gorantla Assembly Constituency was kidnapped in the morning by the rebel Congress faction with the intention of preventing him from filing his nomination paper and that, he was being searched for by the police so that he could file his nomination before 3-00 p.m. on that day which was the last day for filing nominations. The Chief Electoral Officer further stated in his Fax Message that he had instructed the Collector and had also made a request to the Chief Secretary and the Director General of Police to locate the kidnapped person, namely, Sri Siddaiah, so that he could file his nomination paper before 3-00 p.m. on that day. It was also recited in the Fax Message that a more detailed report would be submitted on receipt of report from the Collector. The next day, i.e., on 9-11-1994, the Secretary, Election Commission of India, issued a Fax Message to the Chief Secretary, Government of Andhra Pradesh, saying that the message of the Chief Electoral Officer, the message of the District Election Officer and the message of the Superintendent of Police quoted in the message of the District Election Officer, did not clearly and specifically state whether Sri Siddaiah and his proposer were ultimately prevented from filing the nomination paper. The Commission also wanted to know through Fax message whether nomination papers were in the personal possession of Sri Siddaiah at the time of kidnapping, and wanted a more detailed report whether Sri Siddaiah was physically prevented from filing his nomination paper either personally or through his proposer. Thereupon, the Chief Secretary, by Fax Message dated 10-11-1994 informed the Commission that the Collector and District Election Officer, Anantapur, had reported that Sri Siddaiah did not carry the nomination paper with him at the time of Kidnapping, but he was to go to the office of the Mandal Revenue Officer, Gorantla, to obtain the blank nomination paper and after filling up the same he was to hand over the nomination papers to the Asst. Returning Officer at Gorantla, but this could not be done on account of his kidnapping and he could not reach the office of the Mandal Revenue Officer, nor could he file the nomination paper.

5. The Superintendent of Police, Sri A. Sivanarayana, IPS submitted a report about the incident of 8-11-1994 and set out therein that Sri K. Siddaiah who was a practising Advocate of Anantapur, was given Congress (I) Ticket to contest from 163, Gorantla Assembly Constituency and the sitting M.L.A., Sri Ravindra Reddy of Pamudurthi who was aspiring for Congress (I) Ticket, could not get it. He, therefore, decided to file his nomination as an independent candidate and for that purpose he and his followers assembled at the office of Mandal Revenue Officer on 8-11-1994. In the meantime, at about 1-00 p.m. on 8-11-1994, Inspector of Police, Sri Satya Sai Rural Circle, got information that Sri K.

Siddaiah, Congress (I) candidate, along with his followers, while proceeding from Anantapur to Gorantla via Puttaparthi to file his nomination paper was got abducted at about 11-30 a.m. by Sri P. Ravindra Reddy, sitting M.L.A. who could not get Congress (1) Ticket, by his men who took him and his follower Sri G. Narasimhulu, Advocate, away to unknown destination. This information was passed on to superior officers and district S.B. Control on VHF set and a case was registered as Crime No. 93/1994 Under Sections 147, 148, 342, 323, 365 and 149, I.P.C. at Police Station, Gorantla, at 1-15 p.m. on 8-11-1994. All border Police Stations were alerted and search parties were deputed to different directions. During the course of investigation, it was ascertained that Commander Jeep No. AP 04 6336 was used in abducting the Congress (I) candidate and his follower. The Jeep was traced at 1-00 a.m. on 9-11-1994 near Gorantla Town and was seized. In the meantime information was received by the police in the early hours of 9-11-1994 that both the abducted persons had reached their houses at Anantapur at about mid-night. Sri K. Siddaiah and his friend and follower Sri G. Narasimhulu were examined by the Deputy Superintendent of Police, Penukonda, and they stated that they were abducted on the instigation of Sri P. Ravindra Reddy, sitting M.L.A. by his men and were detained in the hillocks of Pamudurthi hilly area from 1-00 p.m. to 7-00 p.m., which prevented Sri K. Siddaiah from filing his nomination paper by 3-00 p.m. on 8-11-1994.

6. The above report of Superintendent of Police, Anantapur, was considered by the Election Commission of India on 10-11-1994 and being of the view that the purity of the election process was irretrievably sullied in 163, Gorantla Assembly Constituency in the State of Andhra Pradesh, and in those circumstances the result of the election in the said Constituency would not be reflective of the true choice of the electorate of that constituency, it recommended to the Governor of the State to rescind the notification dt. 1-11-1994 issued by him u/s 15(2) of the Representation of the People Act, 1951 in so far as it related to 163, Gorantla Assembly Constituency, so that the entire election process may be commenced anew in that Constituency. Acting upon the above recommendation, the Governor of Andhra Pradesh, by notification dated 11-11-1994, cancelled the notification dated 1-11-1994 issued u/s 15(2) of the Act. The notification dt. 11-11-1994 was challenged by means of two writ petitions, namely, W.P. No. 20130/1994 (N. Kristappa v. the Chief Election Commissioner and Ors.) and W.P. No. 20283/1994 (P. Ravindra Reddy v. Election Commissioner and Ors.), filed in this Court on the ground, inter alia, that the Election Commission was not vested with any power to recommend rescission of the notification issued u/s 15(2) of the Act by which the election process was initiated in the State and that, the power, in any case, had been exercised in an unfair and arbitrary manner on the biased reports of the Chief Electoral Officer, Andhra Pradesh and, therefore, its recommendation to rescind the notification dated 1-11-1994 is vitiated. The writ petitions were dismissed by a common judgment and order dated 17-11-1994, and the present appeal is directed against this judgment.

7. Sri Seshagiri Rao, appearing on behalf of the appellants has contended that rescission of a notification issued u/s 15 of the Act, by which the election process was set in motion, is not contemplated by the Act and, therefore, the Election Commission was in error in recommending to the Governor that the said notification may be rescinded. It is also contended that the Election Commission has to act within the ambit and scope of the Representation of the People Act, 1950 and the Representation of the People Act, 1951 as both the Acts have been made by Parliament under Article 327 of the Constitution and provide for all matters relating to, or in connection with elections to either House of Parliament or either House of the Legislature of a State. It is contended that the Election Commission cannot traverse beyond the scope of the aforesaid two enactments, and since recommendation to rescind the notification issued u/s 15 of the Act is not covered by any provision of the Act nor is contemplated by the Act, the impugned notification issued by the Governor in pursuance of the said recommendation was liable to be set aside and the earlier notification issued u/s 15 was liable to be restored, so that the electorate of 163, Gorantla Constituency could also exercise their franchise in the General Elections proposed to be held in December 1994 for constituting a new State Legislative Assembly.

8. The relevant provision of Article 324 of the Constitution is quoted below:

"324. Superintendence, direction and control of elections to be vested in an Election Commission:

(1) The 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 this Constitution as the Election Commission).

(2) xxxxxxxx

(3) xxxxxxxx

(4) xxxxxxxx

(5) xxxxxxxx

(6) xxxxxxxx."

9. Articles 327, 328 and 329 which are also relevant for purposes of the present case, are also quoted below:

"327. Power of Parliament to make provision with respect to elections to Legislature:

Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the

delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses."

"328. Power of Legislature of a State to make provision with respect, to elections to such Legislature:

Subject to the provisions of this Constitution and in so far as provision in that behalf is not made by Parliament, the Legislature of a State may from time to time by law make provision with respect to all matters relating to, or in connection with, the elections to the House or either House of the Legislature of the State including the preparation of electoral rolls and all other matters necessary for securing the due constitution of such House or Houses."

"329. Bar to interference by Courts in electoral matters:

Notwithstanding anything in this Constitution.

a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any Court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate legislature."

10. Learned Advocate-General appearing on behalf of the respondents, as also Sri C.P. Sarathy, appearing on behalf of the Commission, have contended that the writ petition was not maintainable on account of the bar to interference by Court created by Article 329 of the Constitution and, therefore, this appeal which is continuation of the writ petition, is also liable to be dismissed at the threshold as not maintainable. It is contended that on account of the provisions contained in Article 329 this Court need not go into the merits of the question raised in the writ petition or in this Writ Appeal, and that the appeal may be dismissed at the admission stage itself.

11. Since all the parties are represented before us, we propose to hear and dispose of the appeal at the initial stage itself as the usual exercise of first admitting the appeal and then allowing it to come up for hearing in its turn in the normal course would unnecessarily delay the disposal of a matter which requires to be disposed of at the earliest, so that the question whether the electorate of 163, Gorantla Constituency will at all exercise their right of franchise in the present election may be settled before the date of the poll which, we are informed, will be held either on 1st of December or on 5th of December, 1994. In disposing of the appeal on merits we would also, if necessary, consider the question of maintainability of the writ petition as also this appeal, at the appropriate stage of this judgment.

12. A perusal of Article 324 extracted earlier will show that the Election

Commission is clothed with very wide powers. In the matter of elections to Parliament and to the State Legislatures, as also to the offices of the President and Vice-President, it has vested in it the superintendence, direction and control of the preparation of electoral rolls. The power to conduct all the above elections is also vested in it. The Commission has also the power to advise the President or the Governor of a State, as the case may be, on the question of disqualification of any Member of Parliament or of a State Legislature. While superintendence, direction and control of the preparation of the electoral rolls and the conduct of all elections to Parliament and State Legislatures are vested in the Commission, the Parliament, under Article 327, has been given the power to make law for all matters relating to, or in connection with, election to either House of Parliament or to either House of the Legislature of a State. In exercise of the power under this Article, the Parliament has, as already pointed out earlier, enacted the Representation of the People Act, 1950 and the Representation of the People Act, 1951. But this does not mean that the Commission, on account of the aforesaid two Parliamentary enactments, is divested of its power of superintendence, direction or control of preparation of electoral rolls, or conduct of all elections to Parliament or State Legislatures, or to the offices of the President and the Vice-President of India.

13. The effect of the law made by Parliament under Article 327 or by the State Legislature under Article 328 was considered by the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, and it was laid down that:

".....Article 324 (1) vests in the Election Commission the 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 the President and Vice-President held under the Constitution. Article 324(1) is thus couched in wide terms. Power in any democratic set up, as is the pattern of our polity, is to be exercised in accordance with law. That is why Articles 327 and 328 provide for making of provisions with respect to all matters relating to or in connection with elections for the Union Legislatures and for the State Legislatures respectively. When appropriate laws are made under Article 327 by Parliament as well as under Article 328 by the State Legislatures, the Commission has to act in conformity with those laws and the other legal provisions made thereunder. Even so, both Articles 327 and 328 are "subject to the provisions" of the Constitution which include Article 324 and Article 329. Since the conduct of all elections to the various legislative bodies and to the offices of the President and the Vice-President is vested under Article 324(1) in the Election Commission, the frames of the Constitution took care to leaving scope for exercise of residuary power by the Commission in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen, or anticipated with precision. That is why there is no heading in Article 324. The Commission may be required to cope with some

situation which may not be provided for in the enacted laws and the rules. That seems to be the *raison d'être* for the opening clause in Articles 327 and 328 which leaves the exercise of powers under Article 324 operative and effective when it is reasonably called for in a vacuum area. There is, however, no doubt whatsoever that the Election Commission will have to conform to the existing laws and rules in exercising its powers and performing its manifold duties for the conduct of free and fair elections.....".

It is thus clear that the Election Commission still retains its jurisdiction as also all its plenary powers under Article 324, except in respect of matters for which specific provisions have been made in the Act made either by Parliament under Article 327, or by a State Legislature under Article 328.

14. It may be stated that in *Mohinder Singh Gill's* case (1 *supra*) election to a particular Constituency was cancelled and re-poll was ordered by the Commission, which was challenged before the Supreme Court, and the Supreme Court held that the Commission, notwithstanding the law made by the Parliament in the form of the Representation of the People Act, 1950 and that of 1951, still had the jurisdiction and the power under Article 324 to cancel an election and to order re-poll in a situation which was not fore seen by the Act and for which no provision was made therein. The Election Commission is, therefore, entitled to exercise its plenary power under Article 324 in an area not covered by the Act, or the Rules made thereunder.

15. In *A.C. Jose Vs. Sivan Pillai and Others*, it was held that when there is no Parliamentary or State legislation, or where there does exist a Parliamentary or State legislation or the Rules made thereunder but they are silent with regard to a particular situation, the Election Commission will have plenary power to give appropriate directions in respect of the conduct of election. It was also held that the Commission cannot override the express provisions in the Act, or to pass orders in direct disobedience to their mandate. The Supreme Court observed that the Commission's powers are meant to supplement, and not supplant the law. In *Election Commission of India Vs. State of Haryana*, it was laid down by the Supreme Court that the ultimate decision whether at a given time it would be possible and expedient to hold the elections must rest with the Election Commission. It was also laid down that the Election Commission has also the power to review its decision as to the expediency of holding the poll on the notified date. It was also provided that it was the duty and obligation of the Commission to keep the situation under constant scrutiny so as to adjust the decision to the realities of the ground situation, and until the elections are held the Commission has jurisdiction, for good reasons, to alter its decision to hold the poll on a particular day.

16. In view of the above decisions of the Supreme Court it is clear that the law with regard to the power of the Commission under Article 324 has not undergone any change from the date of first decision in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, till the more recent decisions on the

point.

17. We have already set out the facts leading to the issuance of the impugned notification in the earlier part of this judgment, which would show that the Commission had intervened in the matter only on being satisfied that the candidate set up by a National political party had been abducted so as to prevent him from filing his nomination paper. The Commission was of the opinion that election, if held, would not be reflective of the true will of the people and, therefore, it decided to recommend to the Governor to issue a fresh notification for cancelling the notification dated 1-11-1994 issued u/s 15 of the Act, so as to discontinue the process of election in 163, Gorantla Assembly Constituency and pave way for initiation of a fresh process of election. The abduction of a candidate is a situation which is not foreseen by any of the provisions contained in the Representation of the People Act, 1951 or the Rules made thereunder and, therefore, when the Commission recommended to the Governor of Andhra Pradesh to cancel the notification dated 1-11-1994, it purported to operate in a field which was not covered by any Parliamentary legislation. It could therefore exercise its plenary power under Article 324 for getting the process of election stalled or cancelled altogether by appropriate action.

18. Learned Counsel for the appellants has contended that once the process of election is commenced by issuing the requisite notification u/s 15 of the Act, it cannot be stopped or interfered with at any subsequent stage by any Authority including the Election Commission, as the process is irreversible under law. He has, in this connection, drawn our attention to Section 153 of the Act which provides that it shall be competent for the Election Commission, for reasons which it considers sufficient, to extend the time for the completion of an election by making necessary amendments in the notification issued by it u/s 30, or Sub-section (1) of Section 39, and has contended that if a situation as happened in 163, Gorantla Assembly Constituency occurs, the Election Commission can extend the time fixed in the notification issued u/s 30 of the Act, but it cannot altogether cancel the process of election commenced by the notification issued u/s 15 of the Act. Section 153 contains an enabling provision which empowers the Election Commission to extend the time for the completion of any election. u/s 30, or for that matter, u/s 39 of the Act, various dates constituting the election programme are fixed by the Election Commission. The purport of Section 153 is only to give power to the Commission to alter that programme by extending the time for the completion of the election. u/s 52 of the Act, a poll can be countermanded on the death of a candidate if other conditions set out in the Section are fulfilled.

19. Section 57 contemplates adjournment of poll in certain situations, while Section 58 contemplates fresh poll in case of destruction etc. of ballot-boxes. A situation arising out of abduction of a prospective candidate so as to prevent him from filing the nomination paper is not contemplated by the provisions referred to above, or any other provision in the Act. So far as the statutory provisions, to which a reference has already been made, are concerned, the Election

Commission cannot transgress over those provisions, nor can it act in defiance or disobedience or in violation of the said provisions. But, where the statutory provisions are silent, as in the case of abduction of a prospective candidate, the Commission can exercise its plenary power under Article 324 and issue appropriate directions, or make recommendation to the Governor for the cancellation of the notification requiring the Assembly constituency concerned to elect its representative. In doing so, it would not over-step any statutory provision, nor would such a direction or recommendation be in defiance thereof.

20. In view of the above situation, the learned Single Judge was, in our opinion, justified in holding that the Election Commission was justified in recommending to the Governor to cancel the notification issued u/s 30 by the impugned notification dated 11-11-1994.

21. Learned Counsel for the appellants contended that by holding that in order to overcome a situation caused by the abduction of a prospective Candidate, the Commission could recommend cancellation of the process of election, learned Single Judge has added or legislated a new provision in the Representation of the People Act which is not permissible, as laid down by the Supreme Court in *G. Narayanaswami Vs. G. Pannerselvam and Others*, and *Dhoom Singh Vs. Prakash Chandra Sethi and Others*, . In the first Supreme Court decision, it was laid down that what was not in the statute could not be supplemented, while in the second case the Supreme Court held that, on the principles of interpretation of statutes, a statute cannot be extended to meet a case for which provision has clearly and undoubtedly not been made. Both these decisions are not applicable to the particular circumstances of the present case.

22. In the instant case, we are considering the scope, width and extent of the power of the Election Commission available to it under Article 324 of the Constitution. Apart from Article 324, the Parliament by making laws under Article 327 has invested the Commission with many other powers, and we have found that, if the statute made by Parliament under Article 327 is silent with regard to a particular situation, the Commission can exercise its powers under Article 324 and issue appropriate directions. It is not a case where the source of power was available only under the Representation of the People Act, 1951 and not under the Constitution. The learned Single Judge by his decision has not added to the Parliamentary legislation, as is contended by the learned Counsel for the appellants, but has held, and in our opinion, correctly, that apart from the provisions of the Representation of the People Act, 1951, the Commission still had the power under Article 324 to issue appropriate directions in relation to the election in question. Nor has the learned Single Judge extended the provision of any statute to meet a situation for which no provision was made in the statute. Once it was noticed by the learned Single Judge that the situation as created by the abduction of the candidate was not covered by the Representation of the People Act, he immediately adverted his mind to the plenary powers of the Commission under Article 324 of the Constitution and held that, in the aforesaid

situation, the Commission could appropriately take necessary action.

23. Learned Counsel for the appellants then contended that the impugned notification has been issued with the aid of Section 21 of the General Clauses Act, and since the provisions of General Clauses Act cannot be invoked in the instant case, the notification is liable to be quashed. Elaborating his arguments, learned Counsel contended that the Governor becomes functus officio on issuing a notification u/s 15 of the Act and his powers are exhausted. The Governor having set in motion the election process cannot legally retreat his steps and interfere with the election process by issuing a subsequent notification.

24. By a notification issued u/s 15 of the Act, the Governor calls upon the constituencies in the State to elect their representatives for constituting new Assembly. Sub-section (2) of Section 15, which is the relevant provision, is quoted below:

" 15. Notification for general election to a State Legislative Assembly:

(1) xxxxxxxx

(2) For the said purpose, the Governor or Administrator, as the case may be, shall, by one or more notification published in the Official Gazette of the State on such date or dates as may be recommended by the Election Commission, call upon all Assembly constituencies in the State to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing Legislative Assembly, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that Assembly would expire under the provisions of Clause (1) of Article 172 or under the provisions of Section 5 of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be."

25. The provision contemplates that the Governor can call upon all the constituencies to elect new members either by one notification or by more than one notification. The provision also contemplates recommendation of the Commission as to the date or dates when such notifications are to be published.

26. The Representation of the People Act is a Central Act made by Parliament under which the Governor of the State, as pointed out earlier, has been given the power to issue notification calling upon the constituencies to elect new representatives. Since the power to issue notification is available under the Central Act, the provisions of Section 21 of the General Clauses Act, which is quoted below, would be available to the Governor in rescinding the notification, as it is specifically provided that:

"Where, by any Central Act or Regulation, a power to issue notifications, orders, rules, or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions, if any, to add to,

amend, vary or rescind any notifications, orders, rule or bye-laws so issued."

27. It requires no effort of interpretation to understand the meaning of Section 21 of the Act, as the provisions are clear and specific and there is no ambiguity involved. The power to issue a notification also includes the power to vary or rescind such notification provided the conditions for the exercise of that power, while issuing that notification, are complied with at the time of issuing the notification of rescission.

28. There is nothing in Section 15 or any other provisions of the Representation of the People Act which, by context or by implication excludes the avail merit of power conferred by Section 21 of the General Clauses Act. On the other hand, the exercise of power u/s 21 in a case of this nature advances the purpose of the enactment dealing with elections.

29. The notification u/s 15 was issued by the Governor on 1 -11-1994 on the recommendation of the Election Commission. The impugned notification dated 11-11-1994 by which the earlier notification was rescinded has also been issued on the recommendation of the Election Commission which was of the opinion that the kidnapping and subsequent prevention from filing nomination by Sri K. Siddaiah was proved and that, the purity of the election process had been irretrievably sullied in 163, Gorantla Constituency. Thus, all the conditions which were required to be complied with at the time of issuance of notification u/s 15 have also been complied with at time time of issuance of the impugned notification for rescinding the earlier notification.

30. Learned Counsel for the appellants referred to us to a decision of the Madhya Pradesh High Court in Thakur Vishweshwarsharan Singh Vs. State Transport Appellate Tribunal, Gwalior and Others, in which it was laid down that if an Act is brought into force by notification issued by the State Government, the latter, namely, the Government cannot cancel or modify the notification so as to repeal a provision of the Act which has been brought into force. This decision, in our opinion, does not apply to the facts of the case. In that decision certain provisions of the Motor Vehicles Act were amended which were enforced from a particular date by a Notification issued u/s 1(2) of the Act by the State Government. This notification was subsequently sought to be modified by a subsequent notification, and it was in that connection held by the Madhya Pradesh High Court that no other notification could be issued with the aid of Section 21 of the General Clauses Act, as it would have the effect of repealing the amended provision of the Act brought into force by the earlier notification.

31. In the instant case, the substantive provisions of the Representation of the People Act, 1951 are not affected, and it is only the direction issued to the constituency to elect its representative which has been withdrawn with the promise to start the election process anew in 163, Gorantla Constituency.

32. Lastly we shall advert to an argument advanced by the learned Counsel for the appellants that Sri Siddaiah was not nominated as a candidate, that he does

not come within the definition of "candidate" and therefore the powers under Article 324 of the Constitution and Section 21 of the General Clauses Act should not have been invoked to protect the interest of a non-candidate. Assuming that he is not a candidate within the meaning of the Act or the Conduct of Election Rules, undisputedly he is a person who was authorised to contest the election on behalf of a National party. The physical disability of such candidate to file nomination by reason of his abduction is certainly a factor which has inevitable bearing on the purity and fairness of election. It cannot be said that in the circumstances the power has been exercised for any extraneous purpose, particularly as the Commission had acted after obtaining full details of the incident from various sources and had proceeded in the matter only on being satisfied that the election process in 163, Gorantla Constituency had been "irretrievably sullied".

33. No other point was urged before us. Since we have found on the merits of the case that the impugned notification does not suffer from any of the defects pointed out by the learned Counsel for the appellants and we are of the opinion that the said notification was properly issued by the Governor of the State, we need not decide the preliminary objection raised by the learned Advocate-General as also by Sri C.P. Sarathy on behalf of the Election Commission that the present petition, or for that matter, the present appeal is not maintainable in view of Article 329 of the Constitution.

34. The appeal is dismissed, without any order as to costs.