
(2010) 07 AP CK 0044

In the Andhra Pradesh High Court

Case No : Election Application No. 588 of 2010 in Election Petition No. 4 of 2009

Ramesh Chennamaneni

APPELLANT

Vs

Aadi Sreenivas and Others

RESPONDENT

Date of Decision : 22-07-2010

Acts Referred:

Citizenship Act, 1955 — Section 10, 10(2), 10(3), 10(4), 10(5)
Citizenship Rules, 2009 — Rule 22, 25
Civil Procedure Code, 1908 (CPC) — Order 18 Rule 4
Constitution of India, 1950 — Article 173, 191(1)
Evidence Act, 1872 — Section 41
Representation of the People Act, 1951 — Section 100, 101, 116A, 116B, 116C

Citation : (2011) 6 ALD 4

Hon'ble Judges : G. Bhavani Prasad, J

Bench : Single Bench

Advocate : K. Rama Krishna Reddy for Y. Rama Rao, for the Appellant; M.P. Chandramouli, for Respondent No. 1, P. Ashok Goud, Assistant Solicitor General for Respondent No. 8, G.P for G.A.D for Respondent Nos. 9 to 14, M.V. Rama Rao and Ch. V. Raman, for the Respondent

Final Decision : Allowed

Judgement

G. Bhavani Prasad, J.—This petition is filed to dismiss the Election Petition No. 4 of 2009 as infructuous.

2. The parties are referred to as they are arrayed in the election petition.

3. The 1st respondent stated that on his resignation as M.L.A. (Member of Legislative Assembly) of 28-Vemulawada Assembly Constituency, a notification to that effect was issued by the Andhra Pradesh Legislature Secretariat to give effect to the resignation from 14-02-2010. A vacancy had arisen for 28-Vemulawada Assembly Constituency, which was not notified for the conduct of by-elections by the Election Commission of India in their Press Note, dated 21-06-2010, while signifying their decision to hold by-elections to fill up ten other prior vacancies. The non-inclusion of Vemulawada Constituency and

another Constituency was challenged in W.P. No. 14443 of 2010 and the High Court ordered on 30-06-2010 to hold by-elections for 28-Vemulawada Constituency and another Constituency also along with the other ten Constituencies. The election process for the said two Constituencies also had accordingly begun as announced by the Election Commission of India and while the Election Code came into force on 21-06-2010, the notification was released on 02-07-2010. The 1st respondent claimed that under the circumstances, the election petition has become infructuous and nothing survives for consideration.

4. The election petitioner resisted the request claiming that the election petition was filed and the by-election is being held under the Representation of the People Act, 1951 (for short "RP Act") and any election should be subservient to the orders of the High Court u/s 98 of RP Act, as per the general principle that all actions subsequent to the proceedings in a Court will be subject to the result thereof. RP Act had no provision enabling dismissal of an election petition as infructuous and the precedents relied on by the 1st respondent are distinguishable, as the Legislative Assembly itself was not dissolved and only a few seats, which fell vacant due to resignation, are being filled. Hence, the election petitioner desired the petition to be dismissed with costs.

5. Sri K. Ramakrishna Reddy, learned senior counsel for the 1st respondent (petitioner herein) and Sri M.P. Chandramouli, learned Counsel for the election petitioner (1st respondent herein) are heard.

6. The point for consideration is whether the election petition has to be dismissed as infructuous on the facts and circumstances of the case ?

Point:

7. The election petition was filed to declare the election of the 1st respondent as member of the Andhra Pradesh Legislative Assembly from 28-Vemulawada Constituency to be illegal and to consequently declare the election petitioner as duly elected as such member. The basis for the claim is that the 1st respondent was not qualified to be chosen to fill a seat in the Legislature of the State, as he was not a citizen of India at the relevant time. He was originally a citizen of India, who acquired the citizenship of Germany in 1993 and held Germany passport. He applied u/s 5(1)(f) of the Citizenship Act, 1955 on 31-03-2008 to register him as Indian citizen specifying his date of entry into India as 22-01-2007. He was issued a certificate of registration No. 34, dated 03-02-2009 by the Government of India, Department of Home Affairs and the same was claimed by the election petitioner to be without residing in India for one year before making an application for registration. The election petition stated various grounds to contend that the 1st respondent did not stay for the mandatory period in India and consequently, questioned the registration of the 1st respondent as an elector at serial No. 1416 of polling station No. 160 of Vemulawada Assembly Constituency. The election petitioner claimed that his objections through an advocate at the time of scrutiny of nominations were not

decided and the revision filed by him before Government of India u/s 15 of Citizenship Act, 1955 challenging the grant of certificate of registration, dated 03-02-2009, is pending. Hence, the election petition.

8. In response to the election petition to invalidate the election only on the question of citizenship of the 1st respondent, the 1st respondent filed a counter denying the allegations and contending that he was qualified to contest the election. He also pleaded that as his resignation as M.L.A. was notified on 14-02-2010 by the Legislature Secretariat, the election petition may not survive.

9. The Collector and District Magistrate impleaded as the 10th respondent contended that the action taken by him to forward the application of the 1st respondent for citizenship to the State Government was based on the material produced and submitted before him and he acted according to the procedure.

10. The Returning Officer for the election impleaded as the 14th respondent, contended that in view of the certificate of registration in force on the date of filing and scrutiny of the nomination, the 1st respondent was considered to have every right to contest the election and as no objections were received at the time of preparation of voters' list against the inclusion of the name of the 1st respondent, no objection could have been raised during the election process.

11. The 8th respondent, the Government of India represented by the Secretary for Ministry of Home Affairs, pleaded that the 1st respondent was holding Indian Passport No. K 429991 valid from 1975 to 1985 and Indian Passport No. U 044945 valid from 1985 to 1995, but voluntarily obtained German citizenship in 1993. The 1st respondent submitted an application u/s 5(1)(f) of the Citizenship Act, 1955 for citizenship of India by registration on 31-03-2008 and declared that he resided in India earlier throughout the period of 12 months immediately preceding the date of application and also declared that the particulars given in the application are true. The application, dated 31-03-2008 was forwarded by the District Collector to the Principal Secretary to the Government of Andhra Pradesh, Home (Passports) Department, who forwarded the same to the Home Ministry of the Government of India. The same was considered in accordance with law and after obtaining security clearance from the Intelligence Bureau by letter dated 21-11-2008, the details of the visits of the 1st respondent to abroad during the 12 months preceding the date of application were called for. In response, the 1st respondent stated that he did not visit any countries abroad for 12 months prior to 31-03-2008. In pursuance thereof, the Home Ministry of the Government of India directed on 01-12-2008 to register the 1st respondent as a citizen of India subject to the necessary requirements and after fulfilling the formalities, the certificate of Indian Citizenship No. 34, dated 03-02-2009 was issued in his favour. On receipt of a representation from the election petitioner styled as a revision, the details of arrival and departure of the 1st respondent into and from India were sought for and obtained from the Intelligence Bureau indicating that the 1st respondent was outside India for a substantial period of about 10 months out of 12 months preceding his application dated 31-03-2008

and the report from the authorities of the State of Andhra Pradesh is awaited. A show-cause notice was issued to the 1st respondent on 31-07-2009 to show cause as to why action under Sections 10(2)(a) and 17 of the Citizenship Act, 1955 may not be initiated against him, for which the 1st respondent gave a reply on 11-09-2009 admitting the contents of his application and contending that his journey to Berlin, Germany cannot be considered as visits to countries abroad and there is no precondition that he should spend entire one year/365 days in India before becoming eligible to make an application. As this Court is seized of the matter, the Government of India was unable to proceed further and sought for leave of the Court to constitute a Committee of Inquiry under subsections (4) and (5) of Section 10 of the Citizenship Act, 1955 and to submit the report of the Committee of Inquiry to the Court before passing appropriate orders on merits in accordance with law, as may be directed by the High Court.

12. On such pleadings, the following issues were settled for trial and determination of the election petition.

1. Whether the 1st respondent was not a citizen of India on the date of election ?
2. Whether the votes polled in favour of the 1st respondent have to be treated as thrown away and invalid votes ?
3. Whether the inclusion of the 1st respondent in the voters' list and declaring him as elected are null and void ?
4. Whether the election petition is in violation of mandatory statutory requirements and is not maintainable ?
5. Whether leave be granted to the 8th respondent to constitute a Committee of Inquiry u/s 10(4) and (5) of the Citizenship Act ?
6. Whether the election of the 1st respondent has to be declared as illegal and void ?
7. Whether the petitioner has to be declared duly elected ?
8. Whether the allegations in the election petition should be deemed to be admitted by the 1st respondent ?
9. To what relief ?

13. While the election petition was coming on for trial, E.A. No. 498 of 2010 filed by the 1st respondent for deleting respondents 8 to 14, the official respondents, from the array of respondents in the main election petition, was allowed in the absence of an objection for the election petitioner.

14. The 1st respondent also filed E.A. No. 499 of 2010 to strike off issue Nos. 1, 3 and 5 claiming that his citizenship has to be decided by the Government of India and cannot be made the subject matter of enquiry in the election petition. The communication from the Government of India with reference to the case of his citizenship of India is the subject matter of W.P. No. 3737 of 2010 before this

Court, in which an interim stay was granted and consequently, issue Nos. 1, 3 and 5 cannot be decided in the election petition and any trial on these issues in the election petition will prejudice his case before the competent authority under the Citizenship Act, 1955. The election petitioner resisted that petition claiming that the election petition is to declare the 1st respondent as not qualified to be chosen as a candidate to fill the Assembly seat on the requirement of RP Act, for which purpose evidence can be led to show that the 1st respondent is not a citizen of India and not an ordinary resident of India to be registered as an elector. The scope and ambit of the Inquiry under the Citizenship Act is totally different and hence, the application has to be dismissed.

15. In the statement of election petitioner filed as evidence in chief-examination under Order XVIII Rule 4 of the Code of Civil Procedure, the election petitioner after reiterating his case, stated that as evident from the statement of facts and circumstances, the 1st respondent by making false statements in the application, dated 31-03-2008 and its enclosures and also by suppressing the fact of his leaving India on two occasions between 22-01-2007 and 31-03-2008, obtained the certificate of registration and the statement of false facts and suppression of material facts amount to fraud vitiating the entry in the electoral roll as well making him ineligible to contest the election.

16. The election petitioner filed a number of documents relating to the election process and the issuance of the certificate of registration to the 1st respondent, the related correspondence, copies of news items and a copy of the revision petition filed by the election petitioner before the Government of India showing that he was seeking cancellation of the certificate of registration in favour of the 1st respondent on identical grounds as mentioned herein. The election petitioner seeks to mark all the 26 documents as exhibits in his evidence.

17. With the above background, the present request has to be examined and it may be noted that even before filing the written statement/it was represented by the learned Counsel for the 1st respondent on 26-02-2010 that in view of the acceptance of the resignation of the 1st respondent by the Speaker of the Legislative Assembly, the election petition becomes infructuous, which claim was contested by the learned Counsel for the election petitioner on 12-03-2010 with reference to the decision reported in *Konappa Rudrappa Nadgouda Vs. Vishwanath Reddy and Another*, claiming that the election petitioner is still entitled to be declared as elected notwithstanding the acceptance of resignation of the elected candidate and the declaration that the seat had fallen vacant.

18. It has also to be noted that a Division Bench of this Court while deciding W.P. No. 14443 of 2010 on 30-06-2010 about holding elections to this and another Assembly Constituency along with ten other Assembly Constituencies, which have fallen vacant due to the resignations of the erstwhile members, observed that:

We do not have all the facts pleaded in E.P. Nos. 4 and 14 of 2009 and therefore,

we are not able to definitely hold that such declaration in favour of election petitioners is not possible. We however hasten to add that even if only two candidates contested in the elections in April/May, 2009, for 28-Vemulawada and 29-Siricilla Assembly Constituencies, the same does not effect our conclusions because the Court in its discretion may always deny such relief contemplated under Sections 84, 98(c) and 101 of RP Act.

18. In *Vishwanatha Reddy v. Konappa Rudrappa Nadgouda* (1 supra), the Apex Court was dealing with an order holding the returned candidate to be disqualified from standing as a candidate and declaring the election petitioner to be elected to that seat, as there was no other contesting candidate, which was requested to be reviewed. the Apex Court laid down that when there are only two contesting candidates and one of them is under a statutory disqualification, the votes cast in favour of the disqualified candidate may be regarded as thrown away, irrespective of whether the voters who voted for him were aware of the disqualification. This is not to say that where there are more than two candidates in the field for a single seat, and one alone is disqualified, on proof of disqualification, all the votes cast in his favour will be discarded and the candidate securing the next highest number of votes will be declared elected. it was held that in such a case, question of notice to the voters may assume significance, for the voters may not, if aware of the disqualification, have voted for the disqualified candidate. The view taken in *Keshav Laxman Borkar Vs. Devrao Laxman Anande*, that in such an event of involvement of only two candidates when the election was set aside, there must be a fresh election and not declaration of other candidate as elected, was held to be not correctly decided.

19. The Apex Court referred to Section 53 of RP Act rendering a poll necessary, if there are more candidates contesting the election than the number of seats to be filled and making the poll unnecessary, if the number of validly nominated candidates is equal to the number of seats to be filled and opined that where the poll is held due to an erroneous order of the Returning Officer and otherwise is unnecessary, the Court would be justified in declaring those contesting candidates elected, who, but for the order, would have been declared elected. It was on that ground that the votes cast in favour of the disqualified candidate, who was regarded by the Returning Officer as validly nominated, may be regarded as thrown away, irrespective of the knowledge of or notice to the voters about the disqualification. In case where there are more than two candidates in the field for a single seat and one alone is disqualified, the Apex Court made it clear that the question, of notice to or knowledge of the voters may assume significance. The present case falls under the second category where there are more than two candidates in the field for the single seat and one alone is alleged to be not qualified to contest as a candidate. The English principle of notice to or knowledge of the voters about the disqualification being a precondition for regarding the votes polled in favour of the disqualified candidate as thrown away, considered not inapplicable in such an event, makes any declaration of the

election petitioner as elected on proof of absence of qualification of the 1st respondent to the election petition not an automatic logical consequence. It may be noted that there was no specific allegation in the material on record that the voters had notice or knowledge of the alleged want of qualification of the 1st respondent before casting their votes (except the news item published in Andhra Jyothi about the controversy about the citizenship of the 1st respondent, dated 19-03-2009, the objection raised by the advocate before the Returning Officer in this regard on 31-03-2009 and the revision filed by the election petitioner against the certificate of registration, dated 15-06-2009, which were not alleged to be a matter of common knowledge or information to all or majority of the voters in the Constituency or the voters, who voted in favour of the 1st respondent). As such, any principle governing one of the two contesting candidates for a single seat being under a statutory disqualification will or may not be applicable in the light of the law laid down by the Apex Court that the awareness of the disqualification for the voters will assume significance in case of one among more than two candidates in the field for a single seat being disqualified.

20. The Division Bench deciding W.P. No. 14443 of 2010 held that even if the elected candidate resigns during pendency of the election petition against him, election shall have to be held within a period of six months from the date of occurrence of such casual vacancy and also noted with reference to Sections 84, 98(c) and 101 of RP Act that the grant of additional relief of declaration of the election petitioner as having been elected, is not a rule and referred to Prakash Khandre Vs. Dr. Vijaya Kumar Khandre and Others, wherein it was held that if the disqualified candidate was not permitted to contest the election, then how the voters would have voted in favour of the candidate, who has secured more votes than the other remaining candidates, would be a question in the realm of speculation and unpredictability and in such a situation, declaration that election of the returned candidate is void on the ground of his initial disqualification to contest the election by itself would not entitle the election petitioner or any other candidates to be declared elected. The principle so laid down by the Apex Court appears squarely applicable to the facts on hand and if the voters who voted for the 1st respondent were to vote in similar strength in favour of any of respondents 2 to 7 in the absence of the 1st respondent, the result would have been in their favour and the election petitioner probably may not be entitled to be declared elected in the face of many speculative and unpredictable possibilities being open in such an event.

21. Though the Division Bench would not definitely hold such a declaration in favour of the election petitioner to be not possible in the absence of availability of true facts, it was specifically observed that even if only two candidates contested, the Court in its discretion may always deny such relief under Sections 84, 98(c) and 101 of RP Act and consequently, it directed conduct of by-election for this Constituency also irrespective of any possible adverse decision against the elected candidate, who since resigned, in the election petition. The election

petitioner himself in his counter affidavit to this petition admitted that there is no provision in RP Act dealing with a situation where an election is being held in a Constituency, while an election petition concerning the previous election to that Constituency is pending. The general principle that all subsequent actions in respect of the subject matter of Court proceedings will be subject to such Court proceedings attempted to be canvassed as applicable to such situations, is not shown by the authority of any precedent to be so applicable. The relief u/s 98(c) of RP Act is one of the three alternatives available to the High Court in making an order at the end of trial of an election petition and the relief that may be claimed u/s 84 which may be granted u/s 101 is permissible, only if the election petitioner or such other candidate received a majority of valid votes or would have received a majority of valid votes, but for the votes obtained by the returned candidate by corrupt practice. The election petitioner herein neither received a majority of valid votes nor did he claim the returned candidate to have obtained the votes secured by him by corrupt practices within the meaning of Section 123 of RP Act. Corrupt practices and electoral offences under RP Act were enumerated in Part VII thereof and the self-contained provisions cannot be expanded or extended by implication or inference to cover any situations not specified as corrupt practices or electoral offences by RP Act. The challenge to the election of the 1st respondent is on the ground of his being not qualified to be chosen to fill a seat in the Legislative Assembly of a State with reference to Section 5 of RP Act and Article 173 read with Article 191(1)(d) of the Constitution of India. The allegation of making false statements and suppressing the facts amounting to fraud in connection with acquisition of certificate of registration under the Citizenship Act, 1955 from the Government of India by the 1st respondent, is not covered by any corrupt practices u/s 123 or an electoral offence under Sections 125 to 136 of RP Act. While Section 101(b) does not refer even to the electoral offences under RP Act, as the right to be elected and the right to challenge an election are purely statutory creations, the provisions of such Statutes liable to be strictly and literally construed may not be susceptible to any elasticity in construing situations akin or similar to the defined corrupt practices to be also within the scope and ambit of Section 101 of RP Act enabling any declaration of the election petitioner as duly elected, even if the procurement of the citizenship certificate is found to be vitiated by any factor including fraud.

22. If so, either due to the principle laid down in *Vishwanatha Reddy v. Konappa Rudrappa Nadgouda* (1 supra) or due to the binding conclusions of the Division Bench in W.P. No. 14443 of 2010, dated 30-06-2010 or due to the statutory backdrop vis-a-vis the alleged ground of challenge to the election of the returned candidate, any legal possibility of the election petitioner being declared as duly elected in the earlier election appears too distinct and remote, if not impossible.

23. If it were so, the remaining relief capable of consideration in the event of the election petition being taken to its logical conclusion, is the declaration of the election of the 1st respondent as member of the Andhra Pradesh Legislative Assembly from 28-Vemulawada Assembly Constituency in the general elections

to the said Assembly in 2009, to be illegal and void on the ground of his being not qualified to be an elector in that Constituency or to contest the election at the relevant time. However, much before any such eventuality could materialize, the returned candidate resigned, the seat was declared to have fallen vacant and the Election Commission of India is conducting by-election in that Constituency for the remaining term of the Legislative Assembly. The election petition is, hence, claimed to have become infructuous by the 1st respondent and to be not so by the election petitioner.

24. The Apex Court dealt with the well settled practice recognized and followed in India that a Court should not undertake to decide an issue, unless it is a living issue between the parties, in *Loknath Padhan Vs. Birendra Kumar Sahu*, and pointed out that if an issue is purely academic in that its decision one way or the other would have no impact on the position of the parties, it would be waste of public time and indeed not proper exercise of authority for the Court to engage itself in deciding it. Following *Sun Life Assurance Co. of Canada v. Jervis* 1944 AC 111 , the Apex Court held that an academic question, the answer to which cannot affect the position of one party or the other or which has no bearing on some right or liability in controversy between the parties, will be unnecessary and inexpedient to be decided and the Court would properly decline to decide. With reference to the election dispute before it in that case, involving alleged disqualification of the returned candidate due to subsistence of five Government contracts with the Government of Orissa, the Apex Court held that even if it is found that the candidate was so disqualified, it would have no factual consequence, as invalidation of election after dissolution of the House would be meaningless and ineffectual and as it would have no consequences operating in future, as it is the only facts existing on the date of nomination that would have relevance. The Apex Court distinguished the cases in which allegations of corrupt practices are involved in view of Section 8-A of RP Act under which a person found guilty of corrupt practices by an order u/s 99 will incur electoral disqualification up to six years from the date of the order in that regard. The trial of an election petition must proceed to its logical end in such case, as held in *Sheo Sadan Singh Vs. Mohan Lal Gautam*, but the principle was held by the Apex Court to be not applicable to disqualification, which has no other consequence than that of making the particular election void and which does not entail any electoral disqualification for the future. In that case, in view of the dissolution of the Legislative Assembly, the Apex Court considered the question of disqualification to be purely academic and dismissed the appeal against the decision in the election petition as futile.

25. The returned candidate herein also was not alleged to have indulged in any corrupt practice within the meaning of Section 123 of RP Act and the alleged disqualification does not entail in any electoral disqualification u/s 8-A thereof. Even if the question in controversy about the legality and validity of the citizenship certificate obtained by him with reference to the subject election were to be adjudicated herein adverse to his interest, he will not be permanently

debarred from acquiring Indian citizenship in future in accordance with law and as the possibility of any adverse consequences to the 1st respondent in case of his failure in the election petition, is not regarding the right or liability in controversy between the parties in this election petition, the question may not be a living issue between the parties in the present election petition and after acceptance of his resignation, any declaration that his election was illegal or void could have no impact on the returned candidate and any exercise of continuance of proceedings in the election petition would be a futile exercise to bring back a dead issue to life.

26. Sri Chandramouli, learned Counsel for the election petitioner strenuously contended that any favourable verdict in the election petition will have far-reaching similar legal consequences to the 1st respondent including concerning about the election to the same Constituency now being held, in which again the election petitioner and the 1st respondent are among the contesting candidates with the objections against the acceptance of the nomination of the 1st respondent in the present by-election also being overruled and rejected by the Returning Officer on the question of his citizenship. If the pleas of the election petitioner herein concerning the citizenship certificate of the 1st respondent were to be upheld, the learned Counsel pleaded that the same would have an adverse impact on the 1st respondent in respect of the election in progress and even in respect of any election in future, his eligibility will be subject to his being again successful in acquiring Indian citizenship.

27. However, the principles laid down by the Supreme Court in *Satrucharla Vijaya Rama Raju Vs. Nimmaka Jaya Raju and Others*, run counter to any such possibility and the Apex Court followed the earlier decision in *C.M. Arumugam Vs. S. Rajgopal and Others*, wherein it was held that every election furnishes a fresh cause of action for a challenge to that election and an adjudication in the prior election petition cannot be conclusive in the subsequent proceeding and even if the cause of action in the earlier election petition merged in the final adjudication therein, the merger of the earlier cause of action with the decision therein cannot bar the trial of the fresh cause of action arising out of the subsequent election. Even regarding the status of a person or jural relationship of a person, the Apex Court held that an election petition u/s 80 of RP Act cannot be held to lead to an adjudication which declares, defines or otherwise determines the status of a person or a jural relation of that person to the world generally and it is merely an adjudication of a statutory challenge on the question whether the election of the successful candidate is liable to be voided on any of the grounds available u/s 100 of RP Act. The election petition was held to be not an action for establishing the status of a person or an action initiated by a person to have his status established or his jural relationship to the world generally established. A judgment in an election petition was also held to be not a judgment in rem specifically recognized by Section 41 of the Evidence Act and it was noted that the challenge to an election is only a statutory right and an election petition is not a suit of general nature or a representative action for

adjudication of the status of a person. The best status that can be assigned to the judgment in an earlier election petition was held by the Apex Court to be that it is of a high evidentiary value while considering the case of the parties in the present election petition. The Apex Court also declined to treat the decision in the earlier election petition as a judicial precedent and on the facts of that case, it had, in fact, concluded that the conclusion in the previous case was based on an appreciation of the evidence adduced in that case, which would not operate as *res judicata* and which by itself is not sufficient to rebut the evidence available in the subsequent case, based on which a finding has been rendered. Therefore, any adjudication in the present election petition either about the citizenship status of the 1st respondent or the legality and validity of the citizenship certificate obtained by him or his registration as elector, the same will be only a piece of evidence in any subsequent proceeding, which has to be decided on its own merits on the effect of the totality of the evidence in that case.

28. As already seen, on the representation/revision by the election petitioner, the Government of India had already acted to issue a show-cause notice on the information received from the Intelligence Bureau concerning the contemplated action under Sections 10(2)(a) and 17 of the Citizenship Act, 1955, for which a reply was submitted by the 1st respondent. The Government of India in its counter statement sought for the leave of the Court to constitute a Committee of Inquiry under Sub-sections (4) and (5) of Section 10 of the Citizenship Act, 1955 before passing appropriate orders on merits in accordance with law on the issue of legality and validity of the certificate of citizenship by registration issued in favour of the 1st respondent. The 1st respondent himself claimed in his affidavit in support of E.A. No. 499 of 2010 that the contemplated action by the Government of India on the show-cause notice is the subject matter of W.P. No. 3737 of 2010 pending in this Court.

29. The Citizenship Act, 1955 provides for the procedure for citizenship by registration u/s 5 and stipulated the procedure for deprivation of such citizenship u/s 10. The citizenship certificate in question is in pursuance of Section 5(1)(a) and such citizen can be deprived of such Indian citizenship under Sub-section (2) of Section 10 on being satisfied about any of the grounds under Clauses (a) to (e) and such deprivation is also subject to the satisfaction that continuance of such a person as Indian citizen is not conducive to public good under Sub-section (3) thereof. It is Sub-sections (4) to (6) of Section 10 that respectively provide for giving notice to the person concerned about the grounds of the proposed order and the right of such person to apply in the prescribed manner to have his case referred to a Committee of Inquiry and the reference to a Committee of Inquiry appointed by the Central Government in this behalf on such application and the holding of Inquiry by such Committee in the manner prescribed to submit a report to the Central Government, which shall be ordinarily guided by such report in making an order u/s 10. The Citizenship Rules 1956 provide for the manner of notice of proposed deprivation of citizenship under Rule 22 and the procedure to be followed by the Committee in Rule 25. The procedure was stated to be that

laid down in Schedule II to the Rules and the said Schedule requires the Committee to give notice of the Inquiry to the person concerned, who will be entitled to defend himself by himself or through a counsel or solicitor or some other approved person, before more than 30 days before the date of holding of the Inquiry. The person concerned has a right to furnish in writing any material information and the Committee is clothed with the powers of civil Court for the specified purpose without the restrictions concerning evidence in a Court. Any interested Government Department or Ministry of the Government of India can also be heard and the over all procedure shall be as may be determined by the Committee. Thus, the Citizenship Act, 1955, which is a consolidated Code on the acquisition and termination of Indian citizenship, provides for observance of the fundamental principles of judicial procedure and basic rules of natural justice before an Indian citizen by registration is deprived of the same. The Committee of Inquiry and the Government of India shall have to act in accordance with the prescribed statutory procedure with a reasonable opportunity to the person affected at every stage and if the present election petition is to arrive at a finding on the qualification of the 1st respondent to contest the subject election vis-a-vis his citizenship certificate, the same would, undoubtedly, result in likely prejudice to the further statutory proceedings under the Citizenship Act, 1955, even if the scope and ambit of the two enquiries is different and distinct. The evidentiary or persuasive value of the findings of fact by the High Court in the election petition can be of decisive effect under the ordinary and natural course of human conduct.

30. As the contemplated action u/s 10 of the Citizenship Act, 1955 is also the subject of W.P. No. 3737 of 2010 before this Court, any expression of opinion on the issues leading to or arising out of such action also is likely to result in avoidable prejudice in such proceedings to the parties or at least the 1st respondent. The continuance of the election petition will also raise questions of reconciling the provisions of the two Acts and any stalling of the statutory proceedings u/s 10 of the Citizenship Act, 1955 till the finality to the election petition or withholding the further proceedings in the election petition till the finality to the statutory proceedings u/s 10 of the Citizenship Act, 1955 may not be desirable. The action u/s 10 of the Citizenship Act, 1955 is also guided by consideration of public good as referred to in Sub-section (3) thereof and in that statutory and legal scenario, it appears reasonable and proper not to proceed with this election petition any further.

31. Four precedents from the Supreme Court relied on by the 1st respondent also illuminate the path to be chosen in cases of such dilemma. In Sohan Lal Vs. Asha Ram and Others, a three-Judge Bench of the Apex Court disposed of an election appeal without adjudication due to dissolution of the Assembly, fresh elections having taken place and a fresh House coming into existence notwithstanding any substantial grievance for the election petitioner, as the subsequent events rendered the litigation wholly unreal making it waste of the Court's time to consider the issues.

32. In *Kashi Nath Mishra Vs. Vikramaditya Pandey and Others*, another three-Judge Bench of the Supreme Court dismissed an election appeal as infructuous, where the term of Assembly expired by efflux of time and another election was held and another Assembly was constituted.

33. Similar was the decision of another three-Judge Bench of the Apex Court in *Romesh Vs. Ramesh K. Rana and Others*, wherein the request was for recount of votes without any allegations of commission of any corrupt practice and in the meanwhile the Assembly itself was dissolved. The Apex Court considered that nothing further survives for consideration and dismissed the election appeal.

34. To a similar effect is the decision in *Mundrika Singh Yadav v. Shiv Bachan Yadav and Ors.* Scc 211, wherein again the relief of recount was sought for, but in the meanwhile, the term of Assembly was over and fresh elections were being held. The Supreme Court considered the appeal to be infructuous, as no relief can be allowed to the election petitioner even if election appeal is allowed.

35. Though it is true that the ratio decidendi of these four precedents is not expressed elaborately, the uniform judicial approach seems to discourage any continuance of the election petitions to their logical conclusion in the absence of allegations of commission of any corrupt practice, when the Legislative Body ceased to exist or fresh elections took place or a fresh House came into existence. Though the term of Andhra Pradesh Legislative Assembly itself has not expired, the seat in question was declared to have fallen vacant on the resignation of the returned candidate and fresh by-election is being held and on application of a similar analogy, the election petition has to fail as infructuous.

36. If any declaration of the election of the returned candidate in the subject election as void has become redundant and unnecessary due to the resignation of such returned candidate and if the decision in the election petition is only of evidentiary value in any subsequent proceeding and cannot result in the declaration of the status of the 1st respondent except for the purposes of considering the validity of the subject election, any further continuance of the election petition appears to be pursuing a dead but not living issue.

37. Though no provision of the RP Act provides for a specific order of dismissal on the ground of infructuousness including in respect of the appeals before the Supreme Court under Sections 116-A to 116-C of RP Act, the Apex Court dismissed the election appeals on that ground and Section 98 of RP Act in Clause (a) provides for an order of dismissal of an election petition, of course, at the conclusion of the trial and the procedures for trial prescribed by Sections 86, 87 and other provisions of RP Act make the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits applicable as nearly as may be to the election petitions. The proviso to Section 87(1) of RP Act confers discretion on the High Court to refuse for reasons to be recorded in writing to examine any witness or witnesses, if it is of the opinion that the evidence of such witness or witnesses is not material for the decision of the petition. Recourse can be had to

the said proviso to refuse to examine any witnesses in the election petition and conclude the trial to make an order u/s 98(a) of RP Act. In that view, the High Court is not barred from taking recourse to such action, which, in fact, is the procedure adopted by the Apex Court itself in appropriate cases as illustrated by the four precedents cited above.

38. Thus, on a comprehensive consideration of the facts and circumstances of the case, the admitted developments subsequent to filing of the election petition including the resignation by the 1st respondent, its acceptance by the Speaker, the notification of the vacancy by the Legislature Secretariat and the by-election in progress in pursuance of the directions of this Court in W.P. No. 14443 of 2010, apart from the pendency of W.P. No. 3737 of 2010 on the question of the statutory action u/s 10 of the Citizenship Act, 1955 concerning the 1st respondent, make the continuance of the election petition improper and unreasonable and the election petition can be considered to have become superfluous and infructuous. It has to be accordingly dismissed without expressing any opinion on the questions in controversy in the election petition about the citizenship certificate or citizenship status or registration as elector, of the 1st respondent.

39. Hence, the petition is allowed accordingly.