
(2004) 12 AP CK 0024

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 23099 and 23106 of 2004

Sanaga Balakrishnaiah

APPELLANT

Vs

State Election Commissioner and Others

RESPONDENT

Date of Decision : 21-12-2004

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 11
Constitution of India, 1950 — Article 243O

Citation : (2005) 1 ALD 522 : (2005) 1 ALT 754

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : P. Krishna Reddy, for the Appellant; K.G.K. Prasad and Government Pleader, for Panchayat Raj and Rural Development, for the Respondent

Final Decision : Dismissed

Judgement

L. Narasimha Reddy, J.—In these two writ petitions, notifications issued to conduct elections to fill the casual vacancies in the Gram Panchayats of Mutyalampadu of Nellore District and Narsipatnam of Visakhapatnam District are assailed. Though the election notification, as such, is not challenged in W.P. No. 23099 of 2004, arguments are advanced canvassing the validity of the same after it was made known to the petitioner herein.

2. Elections to both the Gram Panchayats were held in the year 2001. Sri M. Subbar amir eddy was elected as Sarpanch of Mutyalampadu Gram Panchayat died on 18.6.2004. One Chellayamma was elected as Sarpanch of Narsipatnam Village died on 20.4.2004. The State Election Commission initiated steps to fill these vacancies as well as the vacancies in other Gram Panchayats through out the State in accordance with the provisions of the A.P. Panchayat Raj Act, 1994 (for short "the Act"). The necessary notifications were issued on 9.12.2004 notifying the election programme.

3. W.P. No. 23099 of 2004 is filed by an elector of the Gram Panchayat. According to him, the revision of electoral roll was undertaken, in pursuance of a

notification issued by the District Collector on 6.7.2004, and according to the programme fixed there under the final revised electoral roll would emerge only on 1.1.2005 and it is impermissible to hold elections before that date. It was alleged that in the electoral roll published for the recent general elections, several names were deleted and steps have been initiated for revision of the electoral roll for 132 Gudur Assembly Constituency in which Mutyalampadu Gram Panchayat is situated. A writ of mandamus is sought for a direction to the respondents to conduct the election to fill the casual vacancy of Sarpanch only after the final electoral list is published, in pursuance of a notification dated 6.7.2004 issued by the Collector.

4. The grievance of the petitioner in W.P. No. 23106 of 2004 is that her name has been omitted from the voters' list without any basis and though she has submitted an application dated 17.11.2004 for inclusion of her name, no steps have been taken thereon. She alleges that she intends to contest to the office of the Sarpanch of Narsipatnam Gram Panchayat, for which by-election is proposed to be conducted.

5. On behalf of the respondents, counter-affidavits are filed. It is stated that the election notifications were issued only after electoral rolls for the Gram Panchayat were revised in accordance with Section 11 of the Act and A.P. Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules 2000 (for short "the Rules"). It is stated that once an election notification is issued, it is impermissible to stall the elections. It is further contended that the electoral rolls were published on 10.11.2004 and an opportunity was given to the affected parties for submission of their claims, either for inclusion or exclusion of names in the voters' list, and that all the eligible claims have been attended to. It is further alleged that the revision of electoral roll for all the assembly constituencies in general is a different exercise and has nothing to do with the holding of present elections.

6. Sri P. Krishna Reddy, learned Counsel for the petitioner in W.P. No. 23099 of 2004, submits that the State Election Commission directed summary revision of electoral rolls in the State of Andhra Pradesh, through its order dated 2.6.2004, and in pursuance of the same, the District Collector, Nellore issued a Circular dated 6.7.2004 notifying various stages of such revision. According to him, the programme is to commence from 1.7.2004 and end with 3.1.2005 with the publication of final electoral rolls. He submits that u/s 11 of the Act, the same revision would apply for the purpose of holding the elections to the offices of Sarpanch including a casual vacancy thereof and in that view of the matter the whole election process is vitiated.

7. Supplementing these arguments, Sri P. Prabhakar Reddy, learned Counsel for the petitioner in W.P. No. 23106 of 2004, submits that the petitioner has been trying her best to get her name included in the electoral roll and despite her application dated 17.11.2004, no orders have been passed thereon. He submits that even while publishing the electoral roll for Gram Panchayat, it was indicated

that claims for inclusion or exclusion of names would be entertained, and in that view of the matter, no final and valid electoral list can be said to have been published as yet.

8. Learned Government Pleader for Panchayat Raj, on the other hand, submits that an independent revision of electoral rolls was undertaken by the competent authorities for the purpose of holding elections to fill the casual vacancies and that it has nothing to do with the general revision Of electoral rolls for the assembly constituencies. He contends that the concept of draft and final voters" list does not apply to the electoral rolls for a Gram Panchayat, in view of the amendment to the Act through Act No. 26 of 2000. He contends that once an election notification is issued, it cannot be interfered and the only course open to the petitioners is to avail the remedy provided for under the Act.

9. The Act provides for election of Sarpanch and members to a Gram Panchayat. Whenever a casual vacancy occurs for such offices, the State Election Commission is empowered to conduct elections to fill such vacancies. Before any election is held, whether to fill up a casual vacancy or in general, preparation and publication of electoral roll is mandatory. Sub-section (2) of Section 11 of the Act makes it clear. According to sub-section (1) thereof, such part of the electoral roll for the Assembly Constituency, as relates to the village or any portion thereof comprising the Gram Panchayat, shall constitute the electoral roll for that Gram Panchayat concerned. Any revisions effected to the same under Sections 22 and 23 of the Representation of People Act 1950 (for short "the R.P. Act") upto the date of election notification shall enure for the benefit of the elections to the Gram Panchayat also.

10. For the purpose of revising the electoral rolls for the Gram Panchayat, the State Election Commission is conferred with the power to prescribe the qualifying date and whenever the electoral roll is published duly undertaking such revisions, it shall remain in force till it is revised and published.

11. The State Election Commission proposed to hold the elections to fill all the casual vacancies of Sarpanchs or members in the State. Accordingly, it issued a notification dated 29.10.2004 directing the District Panchayat Officers of the districts concerned to prepare and publish the voters" list of the respective Gram Panchayats, on 10.11.2004. 1.1.2005 was prescribed as qualifying date for preparation and publication of such voters" list. It is not in dispute that the respective Panchayat Officers have published such lists on 10.11.2004.

12. The contention of the petitioner in W.P. No. 23099 of 2004 is based on a similar notification issued by the State Election Commission on 2.6.2004. It was for the purpose of general revision of electoral rolls of all the Assembly Constituencies. That process was undertaken under the provisions of the R.P. Act. The preparation of voters" list u/s 11 of the Act cannot be equated to the one under the R.P. Act. The procedure and parameters differ substantially. By making a reference to the process of revision of voters" list under the R.P. Act,

which is halfway through, it is sought to be urged that till the same is completed, no elections can be held. u/s 11 of the Act, the electoral roll prepared for an Assembly Constituency is made applicable for holding elections to Gram Panchayats also. The revision of electoral rolls under the Act on the one hand, and the R.P. Act on the other, differ substantially from each other. Section 11 of the Act, which provides for publication of a draft electoral roll, has been amended by omitting the word "draft". Only one publication is contemplated under the amended Section 11 of the Act. There is some force in the contention of the petitioners that once claims are permitted after publication of a voters' list, it has to be treated as draft and the final roll can be said to have emerged only after a revised list is published, duly taking into account the claims of the affected parties. Further, though the word "draft" was omitted, from Section 11 of the Act, the corresponding changes were not brought about in the rest of that provision or the Rules. That, however, is besides the issue for the present. As of now, the law provides for the publication of only one list and the same has to be accomplished on 10.11.2004. The fact that claims were entertained subsequent thereto and the claim of the petitioners was not accepted does not have any impact on the validity of the election notification. There is nothing in the Act or the Rules, which mandates that an electoral roll has to be published once again after considering the claims of the persons for inclusion or exclusion of their names in it. In that view of the matter, it cannot be said that there is any material irregularity in the election notifications.

13. Further, a clear bar is imposed under Article 243O of the Constitution of India against interference in the election to the Gram Panchayats, except by way of election petitions, as provided for under the law made by the State Legislature, namely the Panchayat Raj Act.

14. In that view of the matter, the writ petitions are dismissed. There shall be no order as to costs.