
(2000) 03 AP CK 0098
In the Andhra Pradesh High Court
Case No : WA No. 19005 of 2000

Syed Meiraj

APPELLANT

Vs

Election Officer and Commissioner, Sherilingampalli, R.R.
Dist.

RESPONDENT

Date of Decision : 07-03-2000

Acts Referred:

Andhra Pradesh Municipalities (Decisions of Election Disputes) Rules, 1967 — Rule 10
Andhra Pradesh Municipalities Act, 1965 — Section 326
Constitution of India, 1950 — Article 226, 243
Hyderabad Municipal Corporation Act, 1955 — Section 79(2)

Citation : AIR 2000 AP 369 : (2000) 3 ALD 127 : (2000) 2 ALT 793 : (2000) 3 APLJ 110

Hon'ble Judges : M.S. Liberhan, C.J.; T. Ch. Surya Rao, J

Bench : Division Bench

Advocate : Ms. Archanabharati, for the Appellant; Mr. V.V. Prabhakar Rao, SC for EC, for the Respondent

Judgement

M.S. Liberhan, C.J.

1. The appellant who is one of the aspirants to contest to the ward membership in the ensuing municipal elections filed his nomination papers for ward number 8 of Serilingampally Municipality in Rangareddy District. Returning Officer, on scrutiny rejected the nomination. Rejection of nomination was impugned in writ petition, which was dismissed on the ground of jurisdiction. Having been aggrieved by the impugned order dated 2-3-2000 passed by a learned single Judge of this Court in a Batch of writ petitions the appellant seeks to file the present writ appeal.

2. This appeal will not detain us any longer in as much as the situation obtaining in this case is squarely covered by specific provisions in the Constitution and the judgments of the Apex Court. Article 243-ZG is apposite here to be considered and reads thus:

"243-ZG. 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 Article 243-ZG shall not be called in question in any Court:

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

3. Coming in the realm of Part IX-A of the Constitution dealing with the Municipalities, this provision mandates that the election to any Municipality shall be called in question only by an election petition, indicating thereby that the jurisdiction of the Courts is taken away. Part IX and Part IX (A) have been added to the Constitution by Constitution 73rd and 74th Amendments respectively in the year 1992. Article 243-O is akin to Article 243-ZG and that provision deals with the elections to the Gram Panchayats.

4. In an identical problem, when his nomination papers for election to the Madras Legislative Assembly were rejected upon scrutiny, the appellant Mr. N. Punnuswamy, eventually approached the Apex Court and the Apex Court in its authoritative pronouncement by a Constitution Bench of that Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , held thus:

"The law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, one while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution (the ordinary jurisdiction of the Courts having been expressly excluded), and another after they have been completed by means of an election petition. Any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special Tribunal and should not be brought up at an intermediate stage before any Court. Under the election law, the only significance which the rejection of a nomination appears to have consists in the fact that it can be used as a ground to call the election in question. Article 329(b) was apparently enacted to prescribe the manner in which and the stage at which this ground, and other grounds which may be raised under the law to call the election in question, could be urged. It follows by necessary implication from the language of this provision that those grounds cannot be urged in any other manner, at any other stage and before any other Court".

The Court further held in Para 7 thus:

The word "election" has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire procedure to be gone through to return a candidate to the Legislature. The use of the expression "conduct of elections" in Article 324 specifically points to the wide meaning, and that

meaning can also be read consistently into the other provisions which occur in Part XV including Article 329(g). The term "election" may be taken to embrace the whole procedure which consists of several stages and embraces many steps, whereby an "elected member" is returned, whether or not it be found necessary to take poll. It is not used in a narrow sense.

Rejection or acceptance of a nomination paper is included in the term "election".

5. It is axiomatic from the above excerpt that the filing of nomination paper, its scrutiny and its rejection would come in the process of election. Article 329(b) is in pari materia with Article 243-ZG and Article 243-O. In umpteen number of judgments including the one referred to supra, the expression "election" has been defined. It is needless to dilate this order by quoting all the judgments in view of the judgment rendered by a 6 Judge Bench in N.P. Punmtswami's case (supra).

6. According to Rule 10-C of the Decision of Election Disputes, 1967 the election becomes void if in the opinion of the Election Tribunal the result of the election has been materially affected by any irregularity in respect of a nomination paper or by the improper reception or refusal of a nomination paper or vote or by non-compliance with the provisions of the Act or the Rules made thereunder. The said rules have been framed in exercise of the powers conferred u/s 326 of the A.P. Municipalities Act, 1965. Section 79(2)(c) of the Hyderabad Muncpal Corporation Act makes the Rules for Decision of Election Disputes, 1967 framed by the State Government in exercise of the powers conferred u/s 326 of the Municipalities Act, 1965 applicable to elections being conducted under the Hyderabad Muncpal Corporation Act, 1955. It is obvious from the said provision that the improper refusal of a nomination paper is one of the grounds which vitiates the election.

7. In a recent judgment reported in Anugrah Narain Singh and Another Vs. State of U.P. and Others, while considering the new provisions of Article 243-ZG held as follows:

"The bar imposed by Article 243-ZG is two-fold. Validity of laws relating to delimitation and allotment of seats made under Article 243-ZG cannot be questioned in any Court. No election to a Municipality can be questioned except by an election petition. Moreover, it is well settled by now that if the election is imminent or well underway, the Court should not intervene to stop the election process. If this is allowed to be done, no election will ever take place because someone or the other will always find some excuse to move the Court and stall the elections."

8. Even otherwise also it is well-established law and the first principle in election law is that right to contest the election or right to vote is neither a fundamental right nor an equitable right. It is a statutory right, which can be exercised in accordance with the statutory procedure provided therefor. The only remedy for violation of the statutory right is to avail of the relief provided by the statute. There is no substantial injustice involved to call for interference in the election

process during the progress of the election so as to involve the power of Article 226 of the Constitution.

9. The learned single Judge after going through all the precedents on the point has ultimately come to the conclusion that the writ petitions are not maintainable including the one being impugned before us in view of the specific provisions of Article 243-ZG and the law laid down by the Apex Court. The learned single Judge has observed that rejection of nomination, refusal to accept the nomination papers and non-acceptance of nomination papers are all grounds giving rise to an election petition, which is an efficacious remedy and the election process cannot be interfered with at each and every step of election process which commences from the moment the constituency is called to elect till the declaration of the election results.

10. The only prayer made by the learned Counsel for the appellant is that it is an exceptional case and that of all the nominations that have been pending before the Returning Officer any one nomination belonging to the appellant has been rejected, consequently in exercise of the powers under Article 226 of the Constitution of India, the Court shall interfere and direct the Returning Officer to accept the nomination of the appellant. Reliance has been placed in this regard by the learned Counsel upon the judgment of this Court reported in A.Y.N. Pathekar v. Municipal Corporation of Hyderabad 1986 (1) APLJ 138. A single Judge of this Court held that when the nomination paper was delivered to the Returning Officer at 3-10 p.m., instead of 3.00 p.m., due to the heavy rush in the office of the Returning Officer it was a technical defect not of substantial character and would not justify the rejection of the same, and therefore, the writ petition under Article 226 of the Constitution was maintainable. The mandatory provisions of the Constitution perhaps have not been brought to the notice of the learned single Judge. The provisions of Article 243-O and 243-ZG have been added to the Constitution far subsequent to the said judgment. For the above reasons the said judgment is no more a good law having been rendered per incuriam.

11. In the light of the above observations, the appeal is dismissed. No costs.