
(2001) 03 AP CK 0084
In the Andhra Pradesh High Court
Case No : EP No. 4 of 1998

T. Venkataram Reddy

APPELLANT

Vs

Kimidi Kala Venkata Rao and others

RESPONDENT

Date of Decision : 28-03-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16, Order 7 Rule 11
Conduct of Elections Rules, 1961 — Rule 71(3), 73, 79, 80

Citation : (2001) 3 ALD 376 : (2001) 3 ALD 358 : (2004) 7 ALT 541

Hon'ble Judges : Ramesh Madhav Bapat, J

Bench : Single Bench

Advocate : Mr. E. Ella Reddy, for the Appellant; Mr. M.P. Chandramouli, Mr. Krovvidi Narasimham, Mr. K.N. Jwala, Mr. Bathula Venkateswara Rao, Mr. M. Venkata Ramana Reddy, Counsels and Advocate-General, for the Respondent

Judgement

1. This election petition was filed by one T. Venkataram Reddy against the respondents. It was averred by the election petitioner that in the biennial elections to the Council of States in 1998 from the Andhra Pradesh Legislative Assembly for filling six seats on 27-3-1998, the petitioner herein and the respondents No.1 to 6 contested for the same. The petitioner herein contested as a candidate from the Indian National Congress. Respondents 1 and 3 to 6 contested on behalf of the Telugu Desam Party. Respondent No.2 herein contested on behalf of the Communist Party of India. Mr. C. Venkateshan, the 7th respondent herein was the Returning Officer.

2. It is further stated that the petitioner herein got 41 first preferential votes. The 7th respondent, who is an activist of the Telugu Desam Party after his retirement, as a Secretary to the A.P. Legislative Assembly, is obliged to the Telugu Desam Party, especially to the present Chief Minister who re-appointed him and extended his term atleast three times, apart from the 7th respondent having been earlier Secretary of the Telugu Desam Party. Hence, for all purposes, it must be deemed that the 7th respondent is a Telugu Desam Party functionary and consequently bent upon helping the candidate put up by the Telugu Desam

Party. Apart from the allegations made against the 7th respondent, many other allegations were made by the petitioner herein.

3. On presentation of the election petition, notice was issued to the respondents. Respondents filed counter.

4. After appearing, the 1st respondent filed application No.1346 of 1998 under Order 6, Rule 16 and Order 7, Rule 11 of the CPC praying to strike out the pleadings in Paras 5 to 18 from the election petition. Then counter was filed to this application. On considering the rival contentions raised by the parties, this Court by an elaborate order dated 19-2-1999 struck out the pleadings for various reasons as narrated in the said order. The only point left out in the election petition was regarding the procedural irregularities alleged to have been committed by the 7th respondent herein. Therefore, the point for determination was framed as under:

"Whether the election petitioner proves that the procedure of counting the preferential votes as adopted by respondent No.7 is illegal?"

5. On this issue, parties were allowed to lead evidence. The petitioner examined himself and also examined one G. Venkata Reddy as PW2 who was his counting agent. On behalf of respondent No.1, one J. Venkateswariu who was the counting agent for the 1st respondent, gave oral evidence as RW1. One Ram Reddy, S/o. Narayana Reddy gave evidence as a witness for the 7th respondent.

6. As stated earlier, the controversy is limited to the extent of the procedural irregularities alleged to have been committed by the 7th respondent and, therefore, the parties to the election petition led the evidence only to that extent.

7. The evidence of T. Venkataram Reddy discloses that he contested the election for the Council of States which was held on 27-3-1998 on Indian National Congress, whereas respondent Nos.1, 3, 5 and 6 contested the election on behalf of the Telugu Desam Party. 2nd respondent contested the election with the ticket of CPK., and the 7th respondent was the Returning Officer. The total strength of the Assembly was 294. The effective strength was 290. All the Members of the Assembly were to exercise their franchise. 1st respondent secured 40 votes. 2nd respondent secured 43 votes. 3rd respondent secured 41 votes. 4th respondent secured 42 votes. 5th respondent secured 41 votes. 6th respondent secured 40 votes. The petitioner secured 41 votes. One vote was declared invalid on the ground that it was initially marked in favour of the 5th respondent and scored out against in favour of the petitioner.

8. It is further stated by the petitioner that 171 surplus points were found in the parcel of the 2nd respondent. Surplus points were divided by 42 on the ground that one vote was exhausted. It is further deposed that as per the contention of the petitioner, surplus points of 171 ought to have been divided by 43. If surplus points had been divided by 43, the value of each ballot paper comes to 3.9. The petitioner further deposes that, that is the rule provision. He states in the

evidence that he does not remember how many ballot papers were transferred in favour of the 1st respondent. He also states that if the surplus points of 171 had been divided by 43, he would have been declared elected. The petitioner produced Annexure-B along with the election petition to show the effect of dividing 171 surplus votes by 43. It is also alleged to have been supplied to the 7th respondent. Transfer sheet is marked as Ex.A2. Ex.A2 consists of five sheets. According to the petitioner, the Returning Officer committed the following irregularities. (1) The Returning Officer invalidated one vote marked in favour of the petitioner, in which first preference was given to him, (2) The Returning Officer divided the surplus points by number of unexhausted votes instead of dividing first preference votes secured by each candidate, (3) The transfer of votes was not done according to the preference marked, (4) Even the exhausted votes were counted in favour of the continuing candidates, i.e., the respondent No.1, (5) In the third round of counting, the ballot papers were not shown to the petitioner, and (6) The Returning Officer did not adhere to the counting Rules but adopted of his own. The Rules of his own means the Rules made by the Speaker. The petitioner produced the copies of the Rules framed by the Hon"ble Speaker for conduct of elections. They are filed as Annexure-D and now marked as Ex.A3. According to the version of the petitioner, the above irregularities materially affected the result of the election. The percentage of difference between the petitioner and the 1st respondent is 0.003. Therefore, it was prayed by the petitioner that the election petition be allowed, the election of the 1st respondent be set aside and the petitioner be declared elected. This witness was cross-examined at length.

9. The petitioner led the evidence of G. Venkata Reddy as PW2, He was the counting agent of the petitioner. He deposed practically on the same lines as it was deposed by the petitioner herein. Therefore, it is not necessary for me to narrate the entire evidence given by PW2.

10. The 1st respondent led the evidence of his counting agent J, Venkateswarlu. 1st respondent is the really contesting respondent in this case. The evidence of RW1 shows that after the polling was over, the Returning Officer counted the number of votes polled. There were in all 290 votes polled. Out of them one vote found invalid. He states that it was shown to all the counting agents and the candidates who were present in the hall. For each candidate, there were two counting agents. The said vote was invalidated because the first preference vote was cast in favour of two candidates. Remaining 289 votes were segregated as per the first preference vote given to each candidate. While segregating and separating, ballot papers were shown to all the candidates and the agents. The candidates who secured the requisite number of first preference votes were declared as elected. In terms of points, for one to get elected, one must secure 4129 points. In the first round the 2nd respondent got 4300 points and, therefore, he was declared elected. It means that the second respondent got 171 surplus points. These surplus points were to be distributed among other candidates. The 2nd respondent got 43 first preference votes in all. On scrutiny

of 43 ballot papers, it was noticed that one voter did not cast vote of second preference or any other preference. Therefore, that vote was treated as exhausted vote. Remaining 42 votes were treated as unexhausted votes. In order to ascertain the value of each unexhausted vote, the surplus of 171 was divided by 42. The value of each vote was worked as four. Fractions were omitted.

11. The witness further deposes that in the second round, counting was done to ascertain how many votes were cast in favour of each of the remaining candidates. From out of 42 unexhausted votes, which were multiplied by four, the value was arrived for each vote. In that process, the candidates who secured more than 4129 points were declared elected. In the second round, respondents No.3 and 5 got more than 4129 points and, therefore, they were elected.

12. It is further stated by the witness that in the first round itself, a candidate named Y. Venkata Rao had secured 42 preferential votes and he secured 4200 points. After deducting the required number of points, that is 4129, surplus of 71 points were distributed among the candidates adopting the procedure as stated for the second preference votes. The witness deposes that even in the third round, the same procedure was adopted and, therefore, it is said by the witness that all the Rules for counting were strictly observed. 13. On behalf of the 7th respondent, Ram Reddy gave evidence as RW2. He was assisting the Returning Officer Mr. S.D. Kamalakar, who retired from service. He has deposed on the same lines as deposed by Mr. J. Venkateswarlu. Therefore, it is not necessary to give the details given by him.

14. With this evidence on record, learned Counsel Mr. Sudershan Reddy appearing on behalf of the petitioner herein submitted that one first preferential vote which was counted in favour of the petitioner was declared invalid illegally. Therefore, it was contended that recounting must be done.

15. While replying the aforesaid arguments, learned senior Counsel Mr. E. Manohar appearing on behalf of the 1st respondent, submitted at the Bar that the evidence on record discloses that the invalid votes containing first preference was given to the petitioner and C. Ramachandraiah, the 5th respondent herein, and thereafter the name of the 5th respondent.

16. Therefore, it was rightly rejected as invalid vote. My attention was drawn to Rule, 73(2) (b) of the Conduct of Elections Rules, 1961, which reads as under:

"73(2) A ballot paper shall be invalid on which-

(a) x x x x x x x x x x

(b) the figure 1 is set opposite the name more than one candidate or is so placed as to render it doubtful to which candidate it is intended to apply"

17. Admittedly one vote which was declared as invalid was cast in favour of the petitioner and the 5th respondent. Therefore, it was rightly rejected. Moreover, it is seen from the evidence on record that the petitioner is a qualified man and his

two agents were present while the counting process was going on. According to the evidence of the respondents, the invalid votes were shown to all the candidates and their respective agents who were present in the hall meant for counting. The petitioner herein never raised any such objection before the 7th respondent and it is for the first time that this objection was raised in the election petition. Therefore, this Court is not inclined to entertain any such objection for recounting of votes. Moreover, when a doubt arises regarding the validity of vote, it has to be rejected. There is no rule to divide the value of the same to both candidates by 50% : 50%, as argued by the learned Counsel Mr. Sudershan Reddy appearing on behalf of the petitioner herein.

18. PW1, the petitioner, was present during counting. He deposed that first preference was marked in favour of the petitioner and the 5th respondent. He did not depose before this Court that the vote cast in favour of the 5th respondent was subsequently scored off. The evidence and the pleading on this point are totally inconsistent. Therefore, this Court has no hesitation in dismissing the contention raised by the learned Counsel for the petitioner.

19. The next contention raised by the learned Counsel for the petitioner is that evaluation of surplus of the 2nd respondent who secured 43 votes at four points is not correct and it should have been three. The said contention has no merits. Rule 79 of the said Rules deals with transfer of surplus. Under Rule 79(4)(d) of the Rules, the value of each paper shall be arrived by dividing the surplus by the total number of unexhausted papers. The definition of unexhausted paper is given in Rule 71(8) of the Rules as a ballot paper on which a further preference is recorded for a continuing candidate. Rule 71(3) of the Rules defines exhausted paper as a ballot paper on which no further preference is recorded for a continuing candidate.

20. As far as the ballot paper which was declared as invalid on which the first preference votes were given to two persons, no second preference or any other preference was given in the said ballot paper. Therefore, that was an exhausted paper as defined under Rule 71(3) of the Rules.

21. The 2nd respondent got 43 votes, out of which in one vote there was no further preference indicated to any other candidate. Hence it was treated as exhausted paper. Remaining 42 papers were unexhausted as they contain further preference.

22. It was submitted by the learned Counsel for the petitioner that the surplus 171 should have been divided by 43. If the surplus had been divided by 43 then the value would have worked out as three points. This allegation is not supported by any Rule or authority.

23. The next contention which was raised by the petitioner herein is that the 7th respondent should have stopped counting after the third round and declared the petitioner elected. But there is no Rule which stipulates declaration for the last seat until the surplus are transferred. Therefore, this contention also cannot be

accepted. There is no Rule to the effect that when there are surplus, the same has to be transferred to the continuing candidate. Vide Rule 71(1) of the Rules, continuing candidate means any candidate not elected and not excluded from the poll at any given time.

24. When the petitioner and the 1st respondent were continuing candidates, the surpluses of the 5th and the 6th respondents have to be transferred to both of them. The exclusion of the candidate lowest on the poll is dealt with by Rule 80 of the Rules. Rule 80 states that if after all surpluses have been transferred as provided under Rule 79, the number of candidates elected is less than the required number, then the lowest on the poll shall be excluded. Rule 80 is a complete answer to the contention raised by the petitioner herein.

25. Considering the above factual and legal position, this Court is of the considered view that there was no procedural illegality committed by the 7th respondent so as to favour the Telugu Desam Party Candidate. Hence, the election petition is dismissed. Costs of the election petition fixed at Rs.2,500/- (Rupees Two thousands Five Hundred Only).