

(2006) 06 AP CK 0045

In the Andhra Pradesh High Court

Case No : W.P.M.P. No's. 15941 and 15942 of 2006 in Writ Petition No. 12835 of 2006

Telugu Desam Party

APPELLANT

Vs

State Election Commission and Others

RESPONDENT

Date of Decision : 27-06-2006

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1944 — Section 210
Constitution of India, 1950 — Article 243
Criminal Procedure Code, 1973 (CrPC) — Section 149

Citation : (2006) 4 ALT 655

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : S. Ramachandra Rao and K.R. Prabhakar, for the Appellant; Nuti Rama Mohana Rao, V.V. Prabhakar for Respondent No. 1 and G.P., for Home Respondent Nos. 2 and 3, for the Respondent

Judgement

P.S. Narayana, J.—Sri Nuti Rama Mohana Rao takes notice on behalf of the first respondent. G.P. for Home takes notice on behalf of respondents 2 and 3. The Telugu Desam political party, the main opposition party in the State of Andhra Pradesh had approached this Court for issuance of suitable directions. The relief prayed for in the writ petition is for issuance of an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus directing the respondents to conduct the impending Local Body elections scheduled to be held on 28-6-2006 and 2-7-2006 after affording necessary protection to the petitioner party candidates and after satisfying themselves through the reports of the concerned and other higher officials about the atmosphere in the electoral place and ensure that the same are free from fear and terror and pass such other suitable orders.

2. The interim reliefs prayed for in the W.P.M.Ps are as hereunder:

W.P.M.P. 15941 of 2006 is filed praying for a direction to the respondents to

direct their subordinates not to take oppressive steps such as arresting or threatening the petitioner party candidates or their supporters on the eve of impending Local Body elections pending disposal of the above writ petition and pass such other suitable orders.

W.P.M.P. 15942 of 2006 is filed praying for a direction to the authorities to give the petitioner party candidates such necessary protection so as to enable them to function and participate in the election process pending disposal of the above writ petition and pass such other suitable orders.

3. The counsel who had taken notice on behalf of the respondents requested time to file counter-affidavits in detail in answer to several allegations made in the affidavit filed in support of the writ petition. Sri S. Ramachandra Rao, learned Counsel representing the petitioner however would maintain that the Local Body Elections are scheduled to be held on 28-6-2006 and 2-7-2006 and inasmuch as the first phase would commence tomorrow morning at 7.00 a.m., there is urgency in the matter and hence appropriate orders may be passed on the W.P.M.Ps. Sri S.Rama Chandra Rao, the learned Counsel representing the petitioner would maintain that this is an extraordinary situation where the opposition party in the State of Andhra Pradesh had approached this Court by making serious allegations which would clearly go to show that free and fair poll in the Local Body Elections would not be possible. The learned Counsel also had drawn the attention of this Court to several representations made to the first respondent on the inaction on part of the first respondent in relation there to. The learned Counsel also incidentally had referred to certain news items and the contents thereof. The counsel by drawing the attention of this Court had specifically referred to Paras 7,8 and 9 of the affidavit filed in support of the writ petition and had explained certain events. Further, the learned Counsel also had drawn the attention of this Court to the series of incidents, which had happened through out the State in different districts. Specific reference was made by the learned Counsel to Para-12 of the affidavit filed in support of the writ petition wherein it was stated that "it is unfortunate that Sri Meenakshi Naidu, Ex. M.L.A., informed me personally that 2,000 supporters of Telugu Desam Party in Adoni Assembly Constituency and other places in Kurnool District were served with notices signed by local Sub-Inspector of Police asking the recipient to exercise his vote and sit at home. Sri Naidu further informed that Telugu Desam Party workers are booked in binding over proceedings to prevent them and put them under threat to exercise their franchise". The learned Counsel while further narrating and elaborating the submissions had taken this Court through Para-15 of the affidavit filed in support of the writ petition and had specified nine instances referred to in the said Para. The learned Counsel also had pointed out in relation to the forcible withdrawals, which had been specified as 1 to 14 at Page 21 of the affidavit filed in support of the writ petition. Further specific allegations were made in relation to how representations were made to the first respondent and how no proper action in this regard had been initiated. Specific stand was taken that the present elections became mockery of democratic

process. The learned Counsel also pointed out the instances of violation of the Code of Electoral Conduct and the relevant paras in relation there to. The learned Counsel also highlighted what in fact had happened in Pulivendula Mandal. The counsel also had drawn the attention of this Court to Para -16 wherein the representation dated 21 -6-2006 had been specifically referred to. Para 18 also was referred to wherein the representation dated 9-6-2006 had been specified. Several details had been narrated and ultimately the counsel would conclude that in the facts and circumstances of the case inasmuch as the Election Commission- the first respondent is not carrying on its constitutional duties as ordained by Article 243K of the Constitution of India. This Court as Constitutional Court may have to protect the interest of the petitioner so as to safeguard the free and fair elections in the ensuing Local Body Elections.

4. Sri Nuti Rama Mohana Rao, learned Counsel representing the first respondent had placed material before this Court and had referred to the representations received by the first respondent and the immediate action, which had been taken by the first respondent-State Election Commission. The learned Counsel also would submit that the news items, which are relied upon need not be seriously considered and the allegations made in the affidavit filed in support of the writ petition also are not sustainable allegations. While further elaborating the submissions, the learned Counsel had drawn the attention of this Court to Section 210 of the A.P. Panchayat Raj Act, 1994 and would contend that inasmuch as by virtue of the said provisions read along with Article 243K of the Constitution of India, the whole responsibility of conduct of free and fair elections being on the shoulders of the first respondent, the first respondent is discharging the duties to the utmost ability and inasmuch as the first respondents carrying on with the duties in accordance with law, this Court need not issue any directions whatsoever inasmuch as the first respondent also is a constitutional functionary. The learned Counsel also would maintain that u/s 149 of the Code of Criminal Procedure, the police are entitled to initiate appropriate action and if the police cannot take proper measures there cannot be any proper, free or fair poll. In the light of the same, merely because certain notices had been issued by the police when the police are entitled to resort to the same as per the provisions of the Code of the Criminal Procedure, prima facie, the same cannot be found fault. While making certain submissions relating to the violation of the code of conduct and discipline during the relevant period, the learned Counsel also cited certain examples where serious action had been initiated by the first respondent-State Election Commission. Hence, the counsel would maintain that it is not as though the first respondent-State Election Commission is sleeping over its constitutional duties and hence no further interim directions need be passed at the stage and if an opportunity is given, a counter-affidavit in detail would be filed in answer to the allegations made in the affidavit filed in support of the writ petition. Sri Nuti Rama Mohana Rao also had maintained that the first respondent to maintain transparency had been convening media conferences every day in this regard.

5. The learned Advocate General had drawn the attention of this Court to the

relevant paras of the pleadings. The learned Advocate General made certain submissions relating to how the pleading should be and also had pointed out that a polit bureau member of this political party had sworn to this affidavit filed in support of this writ petition. Several of the facts appear to be hearsay in nature and the clear particulars had not been furnished. The particulars and details, which had been furnished, appear to be vague and on the strength of such allegations, no directions, can be issued. The learned Advocate General also would maintain that inasmuch as by virtue of Section 210 of A.P. Panchayat Raj Act, 1994, the whole State machinery at present being at the disposal of the first respondent, the first respondent is duty bound to see that the elections are held in a free and fair manner. The learned Advocate General also commented that the news items prima facie cannot be looked into since it is more in the nature of hearsay and if the news items are excluded the other representations which are available on record may not be sufficient to make interim orders at this stage and hence opportunity may be given to file counter affidavits by meeting the allegations made in the affidavit filed in support of the writ petition.

6. Heard the learned Counsel.

7. Article 243K of the Constitution of India dealing with the elections to the Panchayats, the commencing portion itself reads as hereunder:

The Superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. Sub-section (2) proviso specifies that the Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of a High Court and the conditions of service of the State Election Commissioner shall not be varied to his disadvantage after his appointment

8. This constitutional status conferred on the first respondent is again reiterated by virtue of certain provisions of the A.P. Panchayat Raj Act, 1994 as well. It is also needless to say that the functions of the State Election Commission virtually being in pari materia with that of the Election Commission of India, the provisions of Article 324 of the Constitution of India also may be referred to in this context. The duties in relation there to had been specified in A.C. Jose v. Sivam Pillai. There cannot be any quarrel or controversy relating to the status of the first respondent. Here is an extraordinary situation where the main opposition political party had moved this Court making several complaints in the affidavit filed in support of the writ petition. Certain submissions no doubt were made that the polit bureau member may not have direct knowledge and in that view of the matter the pleading is defective. A polit bureau member is expected to know the affairs of the party. In that context, a person who is having knowledge about the affairs of the political party concerned had sworn to this affidavit filed in support of the writ petition. On a careful scrutiny of several of the allegations made in the affidavit filed in support of the writ petition, the

question now before this Court is that for the reason that no counter affidavits are filed, these allegations are to be totally disbelieved or this Court to be prima facie satisfied that there appears to be an element of truth in what is stated in the affidavit filed in support of the writ petition in the facts and circumstances of the case.

9. It is true that some material is placed by the first respondent to convince this Court that whenever a complaint or representation is made to the first respondent, proper action had been initiated by forwarding to the concerned District Collectors or otherwise. It is also stated before this Court that to maintain transparency, the media conferences are being conducted by the first respondent each and every day almost. This may be true and this Court is not inclined to go into these aspects at this stage. It is not in controversy that the polling is going to commence tomorrow even as per the statement made by the counsel for the first respondent at 7.00 a.m. As can be seen from the bunch of notices which" had been placed before this Court served on different persons u/s 149 of the Code of Criminal Procedure, this Court prima facie is satisfied that a particular officer had thought of issuing such mass notices for extraneous reasons and not for justifiable reasons. It may be true that the police officers are having powers of investigation, it is equally true that certain preventive measures also can be taken by the police under different provisions of the Code of Criminal Procedure, this Court is not inclined to express any further opinion except stating that prima facie in the light of what had been stated at Para 12 of the affidavit filed in support of the writ petition, it can be said that all is well.

10. It is true that several representations in this regard were made and all the representations are filed before this Court. The representations dated 26-6-2006, 21-6-2006, 18-6-2006, 9-6-2006, 9-6-2006 and 24-6-2006 and the date of filing of the representations also had been furnished. It is also pertinent to note that these representations are made to the first respondent by responsible persons holding either political offices or otherwise. Hence, this Court is not inclined to disbelieve the stand taken by the petitioner especially in the light of the series of allegations, which were made in the affidavit filed in support of the writ petition. It is no doubt true that an opportunity to be given to other parties to answer these allegations. Hence, this Court is expressing only a prima facie opinion relating to the scene. The next question is whether in the light of such serious allegations made by the opposition party in the State, the directions which are prayed for in the M.Ps. to be granted or not to ensure free and fair elections. It is no doubt true that several law and order problems would arise. It is very difficult to give sweeping or general directions in this regard since free and fair poll would mean to all contesting candidates. May be to the candidates of the ruling party or the different opposition parties contesting the Local Body Elections, Protection may be necessary for all the candidates depending upon the facts and circumstances of a particular area depending upon several local factors as well. This Court is expressing this view for the reason that certain of the political parties, in experience, it can be seen would be strong in certain areas, certain of

the political parties may be strong in certain areas. Where a particular political party is strong in particular area, it will try to over power the other political parties. We are functioning in a multi-party democratic system. So many forces would be operating. It may be true that while maintaining the law and order situation, the police may be exceeding the limits, the police excesses are made serious allegations of attack and repeated allegations are made in almost all the paras of the affidavit filed in support of the writ petition. Taking the overall picture into consideration, this Court is of the considered opinion that inasmuch as the first respondent is constitutionally bound to discharge the duties to have free and fair poll this Court thus expresses the hope that in the light of the observations made by this Court, the first respondent will take all care and caution as ordained by the Constitutional provisions and see that the Local Body Elections are conducted in a free and fair manner.

11. Recording this hope, the W.P.M.Ps. are being disposed of. It is needless to say that the genuine request which would be made by all the candidates belonging to all the political parties contesting the Local Body Elections including the candidates belonging to the petitioner to be considered in accordance with law.