

(2011) 04 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 9737 of 2011

Vallabhaneni Das and P.V.V. Krishna Rao

APPELLANT

Vs

The State Election Commission and The Chief Executive Officer

RESPONDENT

Date of Decision : 13-04-2011

Acts Referred:

Andhra Pradesh Conduct of Election of Member (Co-opted), President and Vice-President of Mandal Parishad and Member (Co-opted), Chairperson and Vice-Chairperson of Zilla Parishad Rules, 2006 — Rule 13(1)
Andhra Pradesh Panchayat Raj Act, 1994 — Section 14(1), 14(5), 153(3), 153(6)
Constitution of India, 1950 — Article 226

Citation : (2011) 5 ALD 614

Hon'ble Judges : Noushad Ali, J

Bench : Single Bench

Advocate : C. Raghu, for the Appellant; V.V. Prabhakara Rao, for Respondent No. 1, GP for Panchayat Raj for Respondent No. 2 and G. Elisha, SC for ZPPs, for the Respondent

Final Decision : Dismissed

Judgement

Noushad Ali, J.—Heard Sri C. Raghu, learned Counsel appearing for the Petitioners as well as Sri V.V. Prabhakar Rao, learned Counsel appearing for Respondent No. 1, the learned Government Pleader for Panchayat Raj and Rural Development appearing for Respondent No. 2, and Sri G. Elisha, learned Standing Counsel appearing for Respondent No. 3 and with their consent, the writ petition is being disposed of at the admission stage.

2. This writ petition has been filed to declare the notification No. 20/SEC-B1/2010-71 , dated 2.4.2011 issued by the 1st Respondent-State Election Commission for conducting election to the casual vacancies to the offices of President and Vice-President of Mudinepalli Mandal Parishad in Krishna District, as arbitrary, illegal and without jurisdiction.

3. The Petitioners were elected as members of Mandal Parishad Territorial

Constituencies of Singarayapalem and Mudinepalli Mandals of Krishna District in the year 2006. In the said election, the Member elected from Peddapalaparru Mandal Parishad Territorial Constituency and the 1st Petitioner herein were elected as President and Vice-President, respectively, of Mudinepalli Mandal. However, the incumbent President was earlier removed in "No Confidence Motion" moved against him. He subsequently resigned as Member of the Peddapalaparru Mandal Parishad Territorial Constituency. Therefore, a vacancy has arisen in respect of Peddapalaparru Mandal Parishad Territorial Constituency. Similarly, the Member elected from Guraja Mandal Parishad Territorial Constituency also resigned. Subsequently, the 1st Petitioner also resigned to the office of Vice-President. Therefore, vacancies in respect of the said Mandal Parishad Territorial Constituencies have also arisen, besides the vacancies to the offices of President and Vice-President.

4. The 1st Respondent-State Election Commission proposed to fill up the vacancies so caused in respect of Peddapalaparru and Guraja Mandal Parishad Territorial Constituencies by issuing notifications dated 3.11.2010 and 24.3.2011, respectively. However, since no nominations were filed, the said vacancies could not be filled up. Notwithstanding the said vacancies, the impugned notification has been issued to fill up the vacancies to the office of the President and Vice-President of Mudinepalli Mandal Parishad. The Petitioners have therefore filed the present writ petition for the aforesaid relief.

5. The Petitioners have challenged the impugned notification mainly on two grounds-(1) that unless the vacancies in respect of two Mandal Parishad Territorial Constituencies viz. Peddapalaparru and Guraja Mandals are filled up, no elections can be held for filling the offices of President and Vice-President of Mudinepalli Mandal Parishad Territorial Constituency; and (2) that as the earlier election was held in the year 2006 the term of which would come to an end by 22.7.2011, no election can be conducted as regular elections would be held within a period of six months.

6. On the other hand, Sri V.V. Prabhakar Rao, learned Counsel appearing for Respondent No. 1 would contend that a duty is cast upon the Election Commission to fill up the casual vacancies within a period of six months as per the mandate prescribed in Sub-section (6) of Section 153 of the Andhra Pradesh Panchayat Raj Act, 1994 (for brevity "the Act") and Rule 13(1) of the Andhra Pradesh Conduct of Election of Member (Co-opted), President and Vice-President of Mandal Parishad and Member (Co-opted), Chairperson and Vice-Chairperson of Zilla Parishad Rules, 2006 (for brevity "the Rules") issued in G.O.Ms. No. 173, Panchayat Raj and Rural Development (Elec. & Rules), dated 10.5.2006. The learned Counsel would submit that once the notification is issued, no interference is warranted by this Court under Article 226 of the Constitution of India.

7. I have considered the rival contentions and examined the relevant provisions of the Act and the Rules made thereunder.

8. Section 153(6) of the Act reads as follows:

153. Election, reservation and term of office of President and Vice-President:

(1)to(5)....

(6) Any casual vacancy in the office of the President or Vice-President shall be filled within a period of six months from the date of occurrence of the vacancy by fresh election under Sub-section (3) and a person elected as President or Vice-President in any such vacancy shall hold office only so long as the person in whose place he is elected would have been entitled to hold office if the vacancy had not occurred.

Rule 13 of the Rules reads as follows:

13. Filling up of casual vacancies (President and Vice-President, Mandal Parishad):

(1) Every casual vacancy in the office of President or Vice-President of Mandal Parishad shall be filled up within a period of six months from the date of occurrence of such vacancy in accordance with the Rules in this part.

(2) The notice of date and hour of the meeting in which the election to fill up a casual vacancy in the office of President or Vice-President of Mandal Parishad is to be held shall be given in Form-V to members at least three clear days in advance of such meeting. The meeting shall be presided over by a gazetted officer of the Government authorized by the District Collector in this behalf.

9. A plain reading of the said provisions of the Act would show that whenever a casual vacancy arises in the office of the President or Vice-President, it shall be filled within a period of six months from the date of occurrence of the said vacancy by fresh election and a person so elected shall hold office only for the residual period. Rule 13 of the Rules also prescribes that such a casual vacancy shall be filled within a period of six months from the date of occurrence of vacancy in accordance with the rules provided in this regard.

10. Learned counsel for the Petitioners, however, by drawing the attention of this Court to Sub-section (5) of Section 14 of the Act insofar as a casual vacancy in respect of the office of Sarpanch of a Gram Panchayat, which provides that no casual vacancy in the office of Sarpanch shall be filled within six months before the date on which the ordinary election of the Sarpanch under Sub-section (1) is due, would submit that by implication, the provision of Section 153(6) also should be understood as barring to hold election to the post of President and Vice-President of a Mandal Parishad Territorial Constituency within a period of six months before the ensuing elections.

11. I am of the considered view that the language employed in Sub-section (5) of Section 14 of the Act is different from the language employed in Sub-section (6) of Section 153 of the Act. While there is a mandate, subject of-course to the directions of the Commissioner, that casual vacancy in the case of Sarpanch should not be filled within six months before the date of ordinary election of the

Sarpanch under Sub-section (1) of Section 14 is due; however, the language employed in Section 153(6) is couched in mandatory terms to hold election to the casual vacancy in the case of President and Vice-President.

12. It is well settled that wherever the language is plain, the same shall be given effect to and this Court cannot by inference or otherwise supply its own words. Further, the intention is very clear from the fact that new incumbent would hold office only for the residual period, which makes it clear that notwithstanding the term left over, election could be held to the office of President or Vice-President.

13. I am also not in agreement with the contention of the learned Counsel for the Petitioners that unless the vacancies in respect of Peddapalaparru and Guraja Mandal Parishad Territorial Constituencies are filled, no election can be conducted to the office of President and Vice-President of Mudinepalli Mandal Parishad Territorial Constituency; for the reason; firstly, that the Election Commission has given reasons that in response to the earlier notification to fill up the casual vacancies, nobody came forward to participate in the election; and secondly, merely because there are some vacancies in the Mandal Parishad Territorial Constituencies, it is inconceivable to keep the offices of President or Vice-President of the Constituencies vacant. If the said contention of the learned Counsel for the Petitioners is accepted, in a given case, there may not be any President and Vice-President at all. As an illustration, if in a given case, there is a vacancy as on today and steps are taken to fill up the said vacancy; and if the said vacancy is filled up, and by the time the elections are held for election of President and Vice-President, in the meantime if the vacancies arise in other Mandal Parishad Territorial Constituencies, then the vacancies remain unfilled eternally and consequently no election at all can be held to the office of President and Vice-President. Therefore, I am of the view that both the contentions, which are raised challenging the impugned notification dated 2.4.2011, are untenable.

14. In that view of the matter, I am not inclined to go into the question as to whether the writ petition is maintainable at this stage of notification. In the circumstances, the writ petition is devoid of merits and the same is liable to be dismissed.

15. Accordingly, the writ petition is dismissed. No order as to costs.