

(1995) 09 AP CK 0072

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17738 of 1995

Velagapudi Venkateswara Rao

APPELLANT

Vs

The District Collector and Election Authority under the A.P. Co-operative Societies Act and Others

RESPONDENT

Date of Decision : 07-09-1995

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1995) 3 ALT 148

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : M.V. Ramana Reddy and M. Ravindranath Reddy, for the Appellant; Government Pleader for Respondents 1 to 5 and Y. Rama Rao, for the Respondent

Final Decision : Dismissed

Judgement

Motilal B. Naik, J.—The petitioner, who is a contesting candidate for the post of President to the Primary Agricultural Co-operative Credit Society, Kondagatlamallela, Vemsoor Mandal, Khammam district, filed this writ petition seeking a direction to quash the entire election process pertaining to the election of President of the said Co-operative Society, which was completed on 30-7-1995.

2. The case of the petitioner is that the election to the Managing Committee as well as to the office of the President was scheduled to be held by 30-7-1995. Third respondent, having been appointed as Election Officer, issued notification on 15-7-1995. The territorial jurisdiction of the area of operation was divided into twelve constituencies, each constituency being allotted roughly 419 votes. The date of nomination was 20-7-1995 and the polling was directed on 30-7-1995, if there was contest. It is alleged that polling for the office of the President, scheduled on 30-7-1995, was completed by 2-00 P.M. Soon after that, counting of votes was also commenced. During the course of counting, it was found, some votes were missing from the box of the 5th constituency relating to the election of the President. Some of the votes, meant for 5th constituency, were found in

the boxes kept for constituency Nos. 6,9,10 and 11. The Election Officer seems to have also found about 150 ballot papers, meant for the presidential elections allotted to the 5th constituency, missing and those votes were found in other ballot boxes kept for other constituencies. He seems to have published a notice stating that due to theft of some ballot papers pertaining to 5th ward, elections, are postponed. He seems to have displayed the said notice in the notice board and also communicated the copies of the said notice to the Election Authority, Deputy Election Authority, District Co-operative Officer and the Divisional Co-operative officer. It is alleged that on 1-8-1995 the counting agent of the petitioner by name Mr. J. Sanjeeva Reddy also made a representation to the Deputy Election Authority pointing out illegalities and irregularities that were committed during the course of poll and requested him to conduct fresh polls. The Election Officer also seems to have lodged a complaint with the Sub-Inspector of Police, Vemsoor on 3-8-1995 stating that ballot papers bearing Nos. 105601 to 105750 relating to the presidential elections from the 5 th constituency were stolen away by some persons and requested him to take action against the culprits, who in turn, registered a case in Cr. No. 33 of 1995 and filed a case before the Judicial Magistrate of First Class, Sattupalli.

3. While things stood thus, it is stated, the petitioner came to know from a notice dated 31-7-1995 served on Mr. Puchakayala Ranga Reddy, member elected from 11 th constituency, (sic) a meeting of the committee on July, 1995 at 11-00 A.M. for election of the office bearers other than the President. In that notice it is shown as if the 6th respondent was declared to have been elected to the post of President and other members elected to the constituencies. On 4-8-1995 the said notice was served on Mr. P. Ranga Reddy.

4. It is in this background, it is contended, that though elections were postponed on 30-7-1995 by the Election Officer and notice to that effect was also displayed in the notice board, no valid elections could have been completed and the 6th respondent could not have been elected to the post of President. It is stated that in order to suit the interest of ruling party, the entire election process has been managed in such a way as if the 6th respondent is elected, in these circumstances, the petitioner approached this Court seeking a declaration that the action of the third respondent in declaring the 6th respondent as the President of the Primary Agricultural Co-operative Credit Society, Kondagatlamallela, Vemsoor Mandal, Khammam District on 31-7-1995 under Rule 22(8)(g) of the A.P. Co-operative Societies Rules and the Action of the respondent Nos. 1 and 2 in not taking any action against 3rd respondent as arbitrary and illegal and also violative of provisions contemplated under Rule 22(7)(n) of the A.P. Co-operative Societies Rules and further seeks a direction to the respondents to hold elections to the society afresh.

5. When the matter came up for admission, notice was directed before admission enabling the Government Pleader to place relevant material before this Court. On 17-8-1995, learned Government has placed the relevant record. Apart from the

learned Government Pleader placing relevant record, 6th respondent has also made his appearance through his learned Counsel Mr. Y. Rama Rao and has also filed counter refuting the allegations made by the writ petitioner.

6. In the counter filed by the 6th respondent, it is categorically stated, that the so called 150 ballot papers, which were stolen away by some un-social elements, were not polled at all excepting 18 ballot papers found in 6th, 9th, 10th and 11th constituencies. In this background, the Election Officer, on 30-7-1995 issued first notification postponing the publication of results of the elections only, though counting had taken place. It is stated that a mistake had crept in the said notification indicating that election itself is postponed. That mistake was clarified immediately by another notification that the declaration of results were postponed on account of pressure brought on the third respondent, who is election officer, by the contesting parties. It is stated that there are no irregularities, as alleged by the petitioner. It is stated that election process has been set in motion, poll took place on 30-7-1995, counting was also completed on the same day and only at the time of declaring poll results, some unsocial elements interrupted and, therefore, declaration of results was postponed for the time being.

7. On behalf of Election Officer, counter has also been filed. It is stated by the learned Government Pleader that the mistake as to the first notification indicating postponement of elections, has been rectified immediately. On the very next day i.e., on 31-7-1995, by publishing another notification pointing out that since he has no power to postpone the election results, the election results were declared on 31-7-1995. In the said notification, it has also been clarified that due to pressure brought on him and in a state of confusion, it has been indicated as "elections are postponed" instead of "declaration of election results postponed".

8. Pursuant to the notice before admission, third respondent-Election Officer was also present before this Court when the matter came up for hearing. This Court tried to ascertain the developments from the third respondent and tried to know the background of the events which have taken place leading to issuance of first notification on 30-7-1995 through which it is indicated that elections were postponed. Third respondent-Election Officer stated before me in the Court that a mistake has crept in the first notification dated 30-7-1995, but the same has been clarified in the second notification dated 31 -7-1995. It is stated by him that he was under tremendous pressure and, therefore, he had, by mistake, indicated as if elections were postponed, though declaration of election results were postponed. It is categorically denied in the counter filed by the third respondent, the poll was not stopped resorting to Rule 22(7)(n) of the Co-operative Societies Act (sic. Rules). It is also stated that out of 150 ballot papers, only 18 votes had been polled. However, 18 votes polled were not taken into account for the purpose of declaring results.

9. In the background of these allegations and counter submissions, is it

warranted for this Court under Article 226 of the Constitution of India to adjudicate this dispute and hold that the entire election process is illegal and to declare that the 6th respondent is not properly elected?

10. Learned Counsel appearing on behalf of the sixth respondent has placed reliance on a decision rendered by the Supreme Court in *S.T. Muthusami Vs. K. Natarajan and Others*, and Anr. decision rendered by a Division Bench of this Court in *M.A. Sami Khan v. The District Collector, Hyderabad* 1992 (1) An.W.R. 679 and contended that when once the election process is set in motion, the only remedy available to the party aggrieved is, by way of election petition before the Tribunal constituted for this purpose u/s 61(3) of the A.P. Co-operative Societies Act. Learned Counsel for the sixth respondent as well as learned Government Pleader appearing for the Election Officer further stated that catena of decisions in the recent times, in election matters, have been to the effect that when once election process commences, this Court shall not ordinarily adjudicate election disputes under Article 226 of the Constitution of India. It is stated by the learned Government Pleader that the discrepancy, as pointed out by the petitioner, has been clarified by the Election Officer and, therefore, the statement of the Election Officer has to be believed by the Court. It is stated that there is no irregularity, as alleged by the petitioner, and as such, the relief sought for by the petitioner cannot be granted. The margin of votes polled in favour of the sixth respondent is more than 81 as against the votes polled in favour of the petitioner. It is categorically stated that the petitioner was present throughout counting of votes and as such, he cannot harp upon some technicalities and seek quashing of entire election process.

11. To meet these contentions, Sri M.V. Ramana Reddy, learned senior Counsel appearing for the petitioner has placed reliance on a decision rendered by a Division Bench of this Court in *R. Venugopal v. District Collector, Medak* 1988 (2) ALT 211 : 1988 (1) APLJ 418. and contended that para 9 of the decision of the Division Bench makes it abundantly clear that in case of serious and fundamental errors, the remedy under Article 226 of the Constitution of India is always available to the aggrieved party. Emphasizing the view taken by the Division Bench in its judgment at para-9, it is contended by Sri M.V. Ramana Reddy, that this is a fit case, for this Court to interfere in the election process and declare the whole election process as null and void and consequently set aside the election of 6th respondent as President of the Society and further direct the respondents to hold fresh elections.

12. A catena of decisions on this line makes it clear that when elections are commenced either under the Local Bodies Act or under the Co-operative Societies Act or for that matter, under any other Act, Courts have held that the aggrieved party has an effective remedy by way of election petition in the proper forum constituted for this purpose. Section 61(3) of the Co-operative Societies Act, enables the party to seek recourse in the event of any grievance, by way of election petition, concerning the election process. The Tribunal, before whom the

election petition is filed, is competent to adjudicate all the issues including that of irregularities either disallowing the objections or not taking into account the valid votes polled in favour of a particular candidate or any other contingency which arises out of election process.

13. It is no doubt true that a division bench of this Court in a decision (3) cited supra, at para 9 has observed that in case of serious and fundamental errors committed during the election process, the remedy under Article 226 of the Constitution of India is also available. In the said para 9 of the judgment, the penultimate sentence says:

"We are emphasizing this aspect only to show that it is not as if there is no remedy whatsoever in case serious and fundamental errors are committed in the process of election."

As could be seen from the penultimate sentence of para 9 of the judgment, the Division Bench intended to say that aggrieved party could approach this Court also. This has to be understood, to say, that this Court is not ousted of the jurisdiction under Article 226 of the Constitution of India, but normally the election disputes are to be adjudicated by the competent Election Tribunal constituted for this purpose.

14. It has been the experience of this Court that during election process, the officials connected with the electioneering work are under tremendous pressure. At times, the officials are threatened with dire consequences, including threat to their lives. When the pressure is so high, the Election Officer tries to ease out of the tension prevailing at that particular time. In such a situation, the officers are bound to commit certain mistakes. In this case, the election officer, though on 30-7-1995 through his first notification indicated postponement of elections, immediately after recovering from coma, on 31-7-1995 has clarified it by way of another notification indicating the notice to read as "postponement of declaration of election results, but not postponement of elections." It is stated in the counter of third respondent that the petitioner was present throughout the process of counting, which fact is not denied by the petitioner. Therefore, I am of the view, that this mistake of the Election Officer during the election process shall not enure to the benefit of the petitioner for seeking a declaration that the entire election process is vitiated.

15. As has been held by series of judicial pronouncements, the petitioner is also entitled to challenge the election process by way of election petition u/s 61 (3) of the Co-operative Societies Act. It is open to him to raise all such issues, which are available to him, and once the forum takes upon adjudicating the issue, would naturally adjudicate on each issue and decide the dispute on merits.

16. The Division Bench in the decision (3) cited supra, no doubt, holds out a case in favour of the aggrieved party where grave and serious irregularities committed during the election process, for approaching this Court under Article 226 of the Constitution of India. In my view, the facts in issue are not so grave warranting

interference under Article 226 of the Constitution of India. The margin of voting polled by the sixth respondent is over 81 votes as against the votes polled in favour of the petitioner. As far as the stolen votes are concerned, a complaint has rightly been lodged with the concerned police. In the counter filed by the third respondent, it has been categorically stated that from out of 150 ballot papers stolen by hooligans, only 18 were used as votes. These 18 votes have also not been considered in favour of either party.

17. On an overall consideration of the facts and circumstances of the case and having regard to the view I have taken, I do not think that this is such a case for this Court to adjudicate the dispute under Article 226 of the Constitution of India and accordingly the writ petition is dismissed. No costs.

18. However, the petitioner is entitled to raise the election dispute before the Tribunal. Once the election petition is filed, the Tribunal, on service of notices on the contesting respondents, shall dispose of the same within a period of four months from the date of such service of notices.