

(1954) 12 AP CK 0017
In the Andhra Pradesh High Court
Case No : Writ Petition No. 231 of 1954

Viswanadhuni Venkatakondayya

APPELLANT

Vs

Election Commissioner, Kanigiri and Others

RESPONDENT

Date of Decision : 16-12-1954

Acts Referred:

Constitution of India, 1950 — Article 326
Representation of the People Act, 1950 — Section 19

Citation : AIR 1955 AP 109

Hon'ble Judges : Satyanarayana Raju, J

Bench : Single Bench

Advocate : S.C. Venkatapathi Raju, for V. Vedanthachari, for the Appellant; Vepa P. Sarathy, for Addl. Govt. Pleader, A Raghavaiah and P. Babulu Reddy, for the Respondent

Judgement

(1) This is an application under Art. 226 of the Constitution to call for the records in O.P. No. 14 of 1953 on the file of the Election Commissioner, Kanigiri and to issue a Writ of Certiorari quashing the order therein dated 22.3.1954.

(2) At an election held on 17.3.1953 for the membership of the Panchayat Board of Kanigiri V. Ward, the petitioner, respondent 2 and two others were the contestants. The petitioner was declared elected as having secured the majority of the votes polled at the election.

(3) Respondent 2 filed an election petition O. P. No. 14 of 1953 for a declaration that the election of the petitioner is null and void. The Election Petition set out various irregularities, corrupt practices and illegalities, but the important allegation made in the petition was that the petitioner did not attain the competent age to be an elector entitled to vote or stand for election and that, therefore, the petitioner's election must be set aside.

(4) The Election Commissioner, Kanigiri recorded evidence and on a consideration of the evidence adduced before him reached the conclusion that there is no

satisfactory and positive evidence to show that he was born on 31.3.1931, but that on the other hand there is documentary evidence to show that the petitioner was born on 31.3.1933, and that the date of birth of the petitioner is 31.3.1933.

The Election Commissioner carefully considered the legal contentions raised before him with regard to the finality of the entries made in the electoral rolls with reference to the material provisions of the Representation of the People Act, the Local Board Act, the Village Panchayats Act and other statutory enactments and came to the conclusion that in the absence of a prohibition which precludes him from questioning the validity or conclusiveness of the electoral rolls under the Village Panchayats Act and the rules made thereunder, respondent 2 was entitled to attack the same before the Election Commissioner. He, therefore, held that respondent 2 was entitled to raise the question that the petitioner had not the requisite age to be a voter. In the result, he set aside the election of the petitioner as null and void and directed a fresh election for the said Ward.

(5) Mr. Vedanthachari, the learned counsel for the petitioner contended that an entry made in the Elector roll is final and conclusive and the only remedy of a person aggrieved is to apply for revision of the elector roll and subject to any revision to be made by the elector authority, the electoral roll is final and conclusive.

(6) Here it is necessary to refer to the relevant provisions of the Constitution, the Representation of the People Act and the Village Panchayats Act.

(7) Article 326 of the Constitution runs thus :

"The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage, that is to say, every person who is a citizen of India and who is not less than twenty-one years of age on such date as may be fixed in that behalf by or under any law made by the appropriate legislature and is not otherwise disqualified under this Constitution or any law made by the appropriate legislature on the ground of non - residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election."

The article provides that election to the House of the People and to the Legislative Assembly of a State shall be on the basis of unqualified adult suffrage, that is to say, every citizen of India, male or female, who is not less than 21 years of age and is not otherwise disqualified under this Constitution or by any law of the appropriate legislature on the grounds specified in this article shall be entitled to be registered as a voter.

For the conditions of actual registration, we must go to the Representation of the People Act (43 of 1950) and Ss. 19 to 21 thereof provide for the conditions of registration of a person as a voter.

(8) Section 19 of the Representation of the People Act (43 of 1950) so far as is material runs thus :

"Subject to the foregoing provisions of this Part, every person who.....

(a) X X X (b) was not less than 21 years of age on the qualifying date, shall be entitled to be registered in the electoral roll for that constituency".

On a reading of the provisions of Art. 326 of the Constitution and S. 19, Representation of the People Act, it is manifest that a person before he can be registered as a voter must NOT be less than 21 years of age on the qualifying date.

(9) Reference may also be made to the relevant provisions of the Madras Village Panchayat Act, 1950. Section 12 (2) of the Madras Village Panchayat Act (10 of 1950) provides :

"Every person whose name is included or who is qualified to be included in that part of the electoral roll for any territorial constituency of the Madras Legislative Assembly which relates to the village or any portion thereof, shall be entitled to be included in the electoral roll for the Panchayat and no other person shall be entitled to be included therein.

EXPLANATION I : Where in the electoral roll of any territorial constituency of the Madras Legislative Assembly, there is no distinct part relating to the village, the following persons shall be entitled to be included in the electoral roll for the Panchayat --

(a) all persons who are entered in such roll under the registration area comprising such village and whose addresses as entered in such roll are situated in such village.

(b) all person who are qualified to be included in such roll under the registration area aforesaid and who reside in such village".

Section 13 of the said Act provides for qualifications of candidates.

"No person shall be qualified for election as a member of a Panchayat unless his name appears on its electoral roll".

Section 14, 15 and 16 enumerate the disqualifications.

(10) Both parties have relied upon a decision of the Supreme Court of India in -- Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others, .

In that case, the Supreme Court was dealing with the validity of an election for the Legislative Assembly Constituency and the question for consideration was whether that election was void under S. 100 (1) (c), Representation of the People Act. Their Lordships of the Supreme Court held that the electoral roll was conclusive as to the qualification of the elector except where disqualification was expressly alleged or proved. Their Lordships considered the provisions of S. 100 (2) (c) which provided that-

"Subject to the provisions of sub-s. (3) if the Tribunal is of opinion

X X X X X X X X X X X (c) that the result of the election has been materially affected by the improper reception or refusal of a vote or by the reception of any vote is void, or by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act or of any other Act or rules relating to the election or by any mistake in the use of any prescribed form, the Tribunal shall declare the election of the returned candidate to be void".

and held that a case of this description comes under sub-s. 2 (c) of S. 100 and not under sub-s. (1) (c) of the section, as it really amounts to holding an election without complying with the provisions of the Constitution and that is one of the grounds specified in cl. (c) of sub-s. (2).

The learned counsel for the petitioner contends that there is no provision analogous to S. 100 (2) (c) in the Village Panchayats Act or the rules made thereunder and that, therefore, the reasoning of the decision of the Supreme Court does not apply. It is true that the judgment of the Supreme Court proceeded on the construction of the provisions of S. 100 (2) (c).

(11) Section 13, Madras Village Panchayats Act which is extracted above provides that no person shall be qualified for election as a member of a Panchayat unless his name appears on its electoral roll and S. 12 (2) provides that every person whose name is included or who is qualified to be included in that part of the electoral roll for any territorial constituency of the Madras Legislative Assembly which relates to the village or any portion thereof, shall be entitled to be included in the electoral roll for the panchayat and the electoral rolls for the Legislative Assembly are prepared on the basis of the provisions contained in Ss. 19 to 21, Representation of the People Act. Under S. 19 of that Act a person must not be less than 21 years of age before he can be registered. The qualifications as to age must be held by necessary intendment to be an essential requisite even in the case of a person who is qualified to vote or stand for election as a member of the Panchayat.

It is no doubt true that the electoral roll must be regarded as final and conclusive, except in cases where persons are prohibited from standing for election by any statute. In other words, the rule is conclusive as to the qualification of an elector, except where disqualification is expressly alleged or proved. On a review of the evidence, the Election Commissioner came to the finding that the petitioner was below 21 years of age at all material times. The propriety of this finding of fact, which is based on an appreciation of the evidence is not open to challenge before this Court.

(12) The fact that no objection was taken to the nomination of the petitioner before the Returning Officer at the time of the scrutiny will not make any difference. The Returning Officer is bound to take the entry in the electoral roll as conclusive, but it is not certainly final. It is open to the Election Commissioner on the evidence placed before him to come to the conclusion, that the candidate was not qualified at all, he having been below 21 years of age at the time of the

nomination and at the time of the election and also at the time when his name was included in the electoral roll. Therefore, I am of opinion that the election of the petitioner must be set aside.

In the view I have taken, no interference under Art. 226 is called for and this Writ Petition is, therefore, dismissed with costs.

(13) Petition dismissed.