

(1984) 01 AP CK 0010
In the Andhra Pradesh High Court
Case No : Writ Petition No. 8569 of 1983

Voothla Raghaviah and Others

APPELLANT

Vs

Andaru Prasada Rao and Others

RESPONDENT

Date of Decision : 17-01-1984

Acts Referred:

Andhra Pradesh Co-operative Societies Rules, 1964 — Rule 22(2)(d), 22(2)(e)
Mysore Town Municipalities Act, 1951 — Section 27(3)

Citation : AIR 1984 AP 267

Hon'ble Judges : Jeevan Reddy, J

Bench : Single Bench

Advocate : J. Eswara Prasad, for the Appellant; A.L. Narayana Rao, for the Respondent

Final Decision : Allowed

Judgement

Jeevan Reddy, J.—The question in this writ petition is whether the requirement of 15 clear days' notice prescribed by Cl. (d) of sub-rule (2) of R. 22, Andhra Pradesh Co-operative Societies Rules, 1964, is mandatory, and whether an election held with a shorter notice is liable to be declared void. Clauses (d) and (e) of R. 22 (2), as they stood at the relevant time, read as follows:--

(d) The election shall be held at a general meeting of the society convened for the purpose, of which not less than fifteen clear days' notice shall be given to the members. The Election Officer, referred to in sub-rule (1) shall preside over the meeting and conduct the election.

(e) The notice of the general meeting shall be sent to the members by any of the following modes, namely:--

(i) by local delivery; or

(ii) by post under, certificate of posting.

In this case, the notice contemplated by Rule 22 (2) (d) was prepared and

posted on 6-6-1981. prescribing the date of election as 21-6-1981. The learned District Munsif has recorded as finding that all these notices were received by almost all the members on 8-6-1981, inasmuch as the intervening day, i.e. 7-6-1981, was a Sunday. The learned District Munsif has set aside the election on the ground that the notice so issued, does not give fifteen clear days" notice as required by clause (d) and that, inasmuch as the said clause is mandatory, the election held contrary thereto must be declared to be void. Though several other contentions were raised by the election petitioners (respondents 1 to 4 in this writ petition), all of them were negatived, and have not been agitated before me.

2. In computing the fifteen clear days, it is not in dispute that both the date of issuance, as well as the date of election, should be excluded.

3. Clause (d) required that "not less than fifteen clear days" notice shall be given to the members". One question is: what is the meaning of the expression "given"? Does it signify the date of despatch by post under certificate of posting, which is permitted by clause (e), or whether it means the date of actual receipt of the notice by the members? Learned counsel for the respondents (election-petitioners) contends that the expression "given" means the date of receipt of the notice by the members and not the date of despatch, while the contention of the learned counsel for the petitioners is that, inasmuch as clause (e) permits the sending of notices by post under certificate of posting, the expression "given" in Cl. (d) must be understood as the date on which the notices are posted. Learned counsel for the respondents (election-petitioners) relies upon the decision of Amareswari, J. in W.P. No. 2648/78, dated 4-9-1978. Reported in 1978 A.P. High Court Notes, wherein the learned Judge held that the expression "given" means the date of receipt of the notice, or a reasonable opportunity of receiving the notice. The learned Judge purported to follow the decision of the Supreme Court in K. Narasimhiah Vs. H.C. Singri Gowda, and certain other decisions. However, it is unnecessary for me to express any opinion on this question, for the reason that, even if the said expression is understood as meaning the date of despatch of notice by post under certificate of posting, even then the notice issued in this case does not give fifteen clear days" notice, as required by clause (d).

4. It is true, that, on a prima facie reading of clause (d), it appears to be mandatory; but on a closer consideration, it has to be held that it is not. The use of the Word "shall" is not conclusive, though it may be one indication of the requirement being mandatory. Whether a provision is mandatory or directory is to be decided in the context of each given case having regard to the object behind the Rule and the consequences that are likely to follow, and all other attendant circumstances.

5. In Purker's "conduct of Parliamentary Elections" (1970 Edition), the following statement of law occurs at page 127:--

No election shall be declared invalid by reason of any act or omission by the

Returning Officer or any other person in breach of his official duty or in breach of P.E.R. (Parliamentary Election Rules), if it appears to the Tribunal having cognizance of the question, that the election was conducted substantially in accordance with the law, and that the act or omission did not affect the result of the election; (Representation of the People Act, 1949 of U.K.).....If the requisite length of notice be not given, and it is not shown that the result of the election has been affected, the election may, it seems, be held..... but if the required number of days between any two distinct acts (such as the nomination and the poll) is not allowed, or if the day on which any particular act is required to be done is miscalculated or misstated, and the notice of election is so defective as to be in the opinion of the Court calculated to mislead the electors, and thus to have affected the result, the election will be declared void. An insufficient notice of election has been held not to be remedied by the acquiescence or agreement of the candidates and electors

(Emphasis added)

In *Corpus Juris Secundum*, Vol. 29, the following statement of law occurs in paragraphs 76 and 77:--

76. Time and place of Holding: Time and place are of the substance of an election and it is essential to the validity thereof that it be held at the time and place Provided by law.

Time and place are of the substance of every election, and as a rule it is essential to the validity of an election that it be held at the time and in the place provided by law, and if it is not so held, the eligibility of the candidates voted for will not help the matter

77. Time: Time is an essential element of a valid election. The time for holding an election must be fixed in advance either by law or by the officer or officers empowered by law to appoint the time, and when no special length of time is required it must be a reasonable time Statutes specifying the date of holding an election are ordinarily regarded as mandatory, and no election can be held at any other time except under valid and applicable statutes providing for special elections, and an election held on another day than that fixed by the legislature is void, unless its holding at a different date is compelled by a Court of competent jurisdiction. However, statutes prescribing the time for holding an election will be considered as directory where such a legislative intent appears from their general scope and policy. So statutes providing for the calling of elections within a specified period have been, held directory as have also statutes providing for periodical elections in municipalities. Also a mistake of the officer, by whom the preliminary steps for holding a local election must be taken, in calling it for the wrong day will not necessarily be fatal if it appears that the election was fairly and honestly conducted, and that no voter was deceived by the error.....

(Emphasis added)

6. In *K. Narasimhiah Vs. H.C. Singri Gowda*, , the question arose whether the requirement of three clear days' notice for holding a special general meeting, required by S. 27(3) , Mysore Town Municipalities Act, is mandatory, and whether the proceedings of a meeting held with a shorter notice should be declared to be void on that account. The Supreme Court held that the said requirement is not mandatory, for three reasons, viz., (a) the object of giving the notice is to make it possible for the Councillors to so arrange their other business as to be able to attend the meeting, and the period of notice is taken by law to be sufficient for the said purpose; (b) the Act contemplated even a lesser period than three clear days, in case Where such a meeting is to consider some matter of great urgency; and (c) Section 36 of the said Act provided that "no resolution of a Municipal Council or any Committee appointed under this Act shall be deemed invalid on account of any irregularity in the service of notice upon any Councilor or member, provided that the proceedings of the Municipal Council or Committee were not prejudicially affected by such irregularity."

7. In *W.P. No. 2648/78*, dated 4-9-1978, reported in 1978, A.P. High Court Notes, at page 343 Amareswari, J., held that the requirement of fifteen clear days' notice prescribed by R. 22 (2)(d) is only directory, but not mandatory.

8. In this case, it is not complained, or found that, on account of a shorter notice. any of the respondents (election-petitioners), or the voters, were prejudiced in any manner. This is not a case where the election has been held on a day other than the one notified. This is a case where the very fixing of the date was erroneous. In all probability, the Election Officer, did not properly understand the meaning of the expression, "not less than fifteen clear days" notice shall be given to the members", and hence committed a mistake in fixing the date of poll. It is equally significant to notice that no one complained of for said erroneous fixing of the date, before the date of poll, either before the Election Officer or before any Court or Authority. (sic) another consideration relevant in this behalf is the well accepted rule of interpretation stated in *Dattatreya Moreshwar Pangarkar Vs. The State of Bombay and Others*, in the following words:

When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done

9. Now let me examine the question at issue, in the light of the above statements of law, decisions and facts: The first aspect to be noticed is the object behind the Rule, which provides fifteen clear days' notice. Clause (f) of R. 22 (2) provides the matters which such notice should contain, viz., the number of vacancies to be filled by election; the area on the constituency from which members are to be elected; the qualifications, if any, specified in the bye-laws,

for eligibility for membership of the committees; the name of the Election Officer, the date, place and hours between which nomination papers will be received; the date on which scrutiny will be held; and the date, place and hours between which the polling will take place. The fifteen days" interval is prescribed to ensure that all these things are done during that period and that, there is also sufficient time for the candidates to carry on their election campaign. Indeed, according to sub-clause (iv) of clause (f), there must be seven clear days" interval between the last date for filing the nomination papers and the date of poll -- and it is not alleged in this case that the said requirement was not complied with. It is quite probable that the seven clear days" interval prescribed by sub-clause (iv) of clause (f) of R. 22 (2) may be termed as mandatory, because that is the minimum period given for the candidates to carry on their election campaign, to hold meetings, if necessary, or to otherwise convince the members of the merits of their candidacy. But, I am unable to hold that fifteen clear days" notice prescribed by clause (d) of R. 22 (2) must be held to be mandatory. As already stated, it is not even alleged that any particular prejudice has been caused either to the respondents (election-petitioners), or to any other voters on account of the said noncompliance. It would also be seen that the prejudice that would be caused to the society as such will be far greater if the election is set aside, than the infraction involved.

10. As already pointed out, Amareswari, J., has also taken a similar view.

11. Mr. A.L. Narayana Rao, the learned counsel for respondents 1 to 4, however, placed reliance upon a decision of the Nagpur High Court in AIR 1955 35 (Nagpur) to contend that the requirement in clause (d) should be construed as mandatory. The Nagpur High Court was considering a Rule, which provided that "any member of a Municipal Committee who desires to move a motion of no-confidence in the President of the Committee, shall give notice of such a motion in writing to the President at least ten days before moving it". The question was whether the expression "at least ten days before moving it" was mandatory or directory. The Bench held it to be mandatory. With great respect to the learned Judges, I am unable to follow their view, more particularly in view of the subsequent decision of the Supreme Court in K. Narasimhiah Vs. H.C. Singri Gowda, as also the decision of a learned single Judge of this Court, which is normally binding upon me. Moreover, I find that the learned Judges have not examined the object behind the said Rule before holding that it is imperative.

12. For the above reasons, it must be held that the requirement of fifteen clear days" notice in clause (d) of R. 22(2) is not mandatory, but only directory, and inasmuch as no prejudice is said to have been caused on account of the said infraction, the election cannot be declared to be void.

13. The writ petition is, accordingly, allowed and the judgment of the learned District Munsif is quashed. No costs. Advocate's fee Rs. 100/-.