

(2001) 07 AP CK 0106

In the Andhra Pradesh High Court

Case No : Writ Petition No. 13507 of 2001

Yarramsetty Venkata Satyanarayana

APPELLANT

Vs

Election Officer, Mandal Parishad, Pedana, Krishna District
and others

RESPONDENT

Date of Decision : 13-07-2001

Acts Referred:

Andhra Pradesh Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules,
2000 — Rule 6
Andhra Pradesh Panchayat Raj Act, 1994 — Section 11, 2(34), 22, 23

Citation : (2001) 5 ALD 153 : (2004) 7 ALT 176

Hon'ble Judges : S.B. Sinha, C.J;V.V.S. Rao, J

Bench : Division Bench

Advocate : Mr. C. Raghu, for the Appellant; Additional Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Sinha, C.J.—In this writ petition the petitioner questions an order dated 1-7-2001 issued by the 1st respondent herein whereby and whereunder his nomination for the post of member, Mandal Parishad Territorial Constituency, Chennur village (for short "MPTC") had been rejected on the ground that his name had been deleted in the voters" list of Chennur village.

2. The petitioner contends that his as also the names of his family members were included in the voters" list. Chennur MPTC is located within Malleswaram Assembly Constituency. As his as also the names of his family members had been deleted he preferred an appeal as a result whereof proceedings were initiated before the 2nd respondent culminating in an order dated 20-6-2001 in terms whereof the Mandal Revenue Officer had been instructed to include his name as also the names of his family members. Allegedly, their names have been included.

3. In this aforementioned situation a contention has been raised that the 1st

respondent acted illegally in issuing the impugned order.

4. The question which arises for consideration in this writ petition is as to whether the 2nd and 3rd respondents have the requisite jurisdiction to issue directions to include the names of the petitioner and his family members in the voters' list.

5. It is not in dispute that nomination for MPTC can be filed only in terms of the provisions of the A.P. Panchayat Raj Act, 1994 (for short "the Act"). Section 11 of the said Act which provides for preparation and publication of electoral roll for Gram Panchayat is in the following terms:

Preparation and publication of electoral roll for a Gram Panchayat :--(1) The electoral roll for Gram Panchayat shall be prepared by the person authorised by the State Election Commissioner in such manner by reference to such qualifying date as may be prescribed and the electoral roll for the Gram Panchayat shall come into force immediately upon its publication in accordance with the rules made by the Government in this behalf. The electoral roll for the Gram Panchayat shall consist of such part of the electoral roll for the Assembly Constituency published under the Representation of the Peoples Act (Central Act 43 of 1950) as revised or amended under the said Act, upto the qualifying date, as revised or amended under the said Act, upto the qualifying date, as relates to the village or any portion thereof:

Provided that any amendment, transposition or deletion of any entries in the electoral roll, or any inclusion of names in the electoral roll of the Assembly Constituencies concerned, made by the Electoral Registration Officer u/s 22 or Section 23, as the case may be, of the Representation of the Peoples Act, 1950, upto the date of election notification, for any election held under this Act, shall be carried out in the electoral roll of the Gram Panchayat and any such names included shall be added to the part relating to the last ward.

Explanation :--Wherein the case of any Assembly Constituency there is no distinct part of the electoral roll relating to the village, all persons whose names are entered in such roll under the registration area comprising the village and whose addresses as entered are situated in the village shall be entitled to be included in the electoral roll for the Gram Panchayat prepared for the purposes of this Act.

(2) The electoral roll for a Gram Panchayat -

(a) shall be prepared and published in the prescribed manner by reference to the qualifying date-

(i) before each ordinary election; and

(ii) before each casual election to fill a casual vacancy in the office of the Sarpanch and member of a Gram Panchayat; and

(b) shall be prepared and published in any year, in the prescribed manner, by

reference to the qualifying date, if so directed by the State Election Commission:

Provided that if the electoral roll is not prepared and published as aforesaid, the validity or continued operation of the said electoral roll, shall not thereby be affected.

(3) The electoral roll published under sub-section (1) shall be the electoral roll for the Gram Panchayat and it shall remain in force till a fresh electoral roll for the Gram Panchayat is published under this section.

(4) The electoral roll for the Gram Panchayat shall be divided into as many parts as there are wards so that each part consists of the voters residing in the concerned ward and for this purpose the electoral roll may be rearranged if such rearrangement is found necessary.

(5) Every person whose name appears in the part of the electoral roll relating to a ward shall subject to the other provisions of this Act, be entitled to vote at any election which takes place in that ward while the electoral roll remains in force and no person whose name does not appear in such part of the electoral roll shall vote at any such election.

(6) No person shall vote at an election under this Act in more than one ward or more than once in the same ward and if he does so, all his votes shall be invalid.

Explanation :--In this section, the expression "Assembly Constituency" shall mean a constituency provided by law for the purpose of elections to the Andhra Pradesh Legislative Assembly.

6. What is, therefore, significant, is that the electoral roll must be prepared in such manner by reference to such qualifying date as may be prescribed. "Qualifying date" has been defined in Section 2(34) of the Act to mean:

In relation to the preparation and publication of every electoral roll under this Act, means the first day of January of the year in which it is so prepared and published.

7. Ex facie, therefore, the order passed by the 1st respondent, dated 1-7-2001 is legal. The petitioner had preferred an appeal there against which was marked as Appeal No.9 of 2001. By an order dated 2-7-2001 the said appeal has been rejected. The Revenue Divisional Officer, Bandar in his order dated 20-6-2001 in relation to the petitioner stated:

The native place of the applicant is Chennuru village of Pedana Mandal. He possesses more than Ac. 18-00 cts of land in this village. He also owns a pucca building. Some portion of the building was given on rent to run a Convent. Some portion is given for running Cooperative Bank. Still some part of the building is used for the applicant's residential purpose, the applicant along with his wife and son normally resides at this place. However, for time being he temporarily resides at Machilipatnam for the studies of his son. On verification it is found that his name was not enrolled in the Electoral Roll of 89 Machilipatnam Assembly

Constituency earlier his name was deleted from the voters list of Chennuru against which the applicant filed an appeal which was negated by the appellate authority. Aggrieved with this, he moved the Office of Chief Electoral Officer, A.P., Hyderabad who in turn remanded the case to the Collector, Krishna. The Collector, Krishna endorsed the applicant vide 2nd read to file an application before the Electoral Registration Officer, Bandar Division, Hence the applicant filed form 6 claim. Invoking the provisions u/s 23 of Representation of Peoples Act, 1950 I the undersigned, hereby allow the claim of the applicant and order to include his name in part No.1 of 88 Malleswaram Assembly Constituency.

8. The said order, therefore, was not in existence as on the qualifying date as is required in terms of Section 11 of the Act. Section 11 provides that the Electoral Roll for the Legislative Assembly must be corrected. A voters' list would be prepared in terms of the electoral rolls prepared for the purpose of Legislative Assembly election. For the said purpose, rules have been framed by the State known as A.P. Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules, 2000. Rule 6 of the said rules reads thus:

Procedure for lodging claims and objections :--All omissions of names in any part of the roll or objections to any entry in the roll, at any point of time after its publication under Rule 5, shall be settled only after a suitable amendment to the relevant entry in the electoral roll of the Legislative Assembly Constituency, based on which the Gram Panchayat roll was prepared. Anybody wishing to prefer a claim for inclusion or deletion of any name in the roll or any objection in respect of any entry in the roll so published, shall submit a proper claim or objection under the provisions of the Registration of Electors Rules, 1960 made under the Representation of the Peoples Act, 1950 (Central Act 43 of 1950), to the Electoral Registration Officer of the concerned Legislative Assembly Constituency. Subject to the provisions of Section 11 of the Act, and based on the orders of the Electoral Registration Officer of the Assembly Constituency on such claims and objections, the District Panchayat Officer shall carry out consequential amendments in the Gram Panchayat electoral roll. In case of any clerical or printing error or both, or when the entries deviate from the particulars of the Assembly Electoral Roll, the District Panchayat Officer may cause such errors rectified, so as to bring it in conformity with the particulars of the Assembly Electoral Roll concerned. However, the District Panchayat Officer shall not resort to suo motu revision of the rolls by way of deletions or additions or modifications.

9. A bare perusal of the aforementioned rule leaves no manner of doubt that the Mandal Revenue Officer has no power to correct an electoral roll prepared for the purpose of holding Legislative Assembly election as such an order can be passed by Electoral Registration Officer.

10. The said rule further in no uncertain terms provides that objections as to errors contained in the draft rolls must be filed in the prescribed form and within the time prescribed therefore. It is, therefore, evident from what has been

noticed hereinbefore that the Mandal Revenue Officer acted illegally and without jurisdiction in directing inclusion of the names of the petitioner and his family members. Such direction having been issued without any authority in law must be held to be a nullity. In that view of the matter the impugned orders are unassailable.

11. For the reasons aforementioned, there is no merit in the writ petition which is accordingly dismissed. There shall be no order as to costs.