

HIGH COURT OF ANDHRA PRADESH**Bench: Justices Subba Reddy Satti and Venkata Jyothirmai Pratapa****Date of Decision: 23rd May 2024**

WRIT PETITION No. 12066 of 2024

Ambati Rambabu, ... Petitioner**Versus****Election Commission of India and four others ... Respondents**

Subject: Petition challenging the election process and requesting the conduct of fresh polls due to alleged irregularities.

Headnotes:

Election Law – Writ Petition challenging election process – Dismissal on grounds of non-maintainability – Petitioner contested in the 2024 General Elections as an MLA candidate from the YSR Congress Party – Allegations of electoral offences and collusion between election staff and Telugu Desam Party personnel – Petitioner sought fresh polls in specific polling stations – Court found that the proper recourse for election disputes is through an election petition as per Article 329(b) of the Constitution of India and not through a writ petition under Article 226 – Writ petition dismissed. [Paras 1-19]

Jurisdiction and Maintainability – Article 329(b) – Interpretation – Election disputes to be adjudicated via election petition – High Courts barred from interfering in election processes while they are ongoing – Only after the conclusion of the election process can disputes be raised. [Paras 7-12]

Election Commission Directives – Legal standing – Directions issued by the Election Commission to Chief Electoral Officers – Binding but not equivalent to law – Violation of such directions does not invalidate election results – Remedies available through election petitions, not writ petitions. [Para 14-15]

Decision – Dismissal of Writ Petition – Court held the petition as not maintainable under Article 329(b) – Petitioner advised to pursue election disputes through appropriate proceedings after the election process – No adjudication on the truthfulness of allegations – Petition dismissed without costs. [Paras 18-19]

Referred Cases:

- K. Ratna Prabha v. Election Commission of India,
- Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman,
- Mohinder Singh Gill and Another v. The Chief Election Commissioner, New Delhi and Others,
- N.P. Ponnuswami v. Returning Officer, Nammakkal Constituency,

Representing Advocates:

Sri L. Sai Manoj Reddy and Sri Mohammed Abdul Basith for petitioner Sri D.S. Siva Darshan, Government Pleader for Election Commission, and Sri S. Vivek Chandrasekhar, standing counsel for respondents

ORDER

(per Subba Reddy Satti,J)

This Writ Petition is filed seeking the following relief:

“... to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the action of the 2nd Respondent in issuing proceedings vide Letter No.19/CEO-Peshi/2024-2 dt.17.05.2024, as illegal, unlawful, arbitrary, violative of principle of natural justice and Articles 14 & 21 of the Constitution of India apart from being violative of provisions of the Representation of the Peoples Act, 1951, Conduct of Elections Rules, 1961 and Handbook for Returning Officer, 2023 and consequently set aside the same by directing the respondents to consider the petitioner’s representation dt. 18.05.2024 by conducting a comprehensive enquiry in accordance of the Act, 1951 and to conduct

fresh polls in polling station Nos.236, 237, 253 and 254 of 98Sattenapalli Assembly Constituency.”

2. The averments in the affidavit, in brief, are that the petitioner has contested in the General Election-2024, as a Member of the Legislative Assembly ('MLA') on behalf of Yuvajana Sramika Rythu Congress Party from 98-Sattenapalli Assembly Constituency (hereinafter referred to as 'Constituency'). On the polling date, several electoral offences took place in polling station Nos. 236 and 237 of Narnepadu village, Muppalla Mandal; polling stations Nos.253 and 254 of Dammalapadu Village, Muppalla Mandal and polling station Nos.193 and 197 of Chimalamarri Village, Nakarikallu Mandal of 98, Sattenapalli Assembly Constituency. Petitioner made representation to the District Election Officer, on 13.05.2024. However, the authority has not initiated any action. Therefore, the petitioner made another representation dated 14.05.2024 to the Chief Election Officer. b) Further, on 13.05.2024, at polling stations Nos.236 and 237 of Narnepadu village and polling stations Nos.253 and 254 of Dammalapadu village, election staff colluded with the personnel from Telugu Desam Party (hereinafter referred to as 'TDP') and committed electoral offences. The unlawful activities were recorded in the web cameras installed in the polling stations. At polling stations Nos.193 and 197, Chimalamarri Village, Nakarikallu Mandal, polling was halted in the afternoon due to unavoidable circumstances and disturbances, and polling was resumed after official polling hours. The Returning Officer is duty-bound to look into the allegations made against the polling staff as per Handbook for Returning Officers, 2023. The Returning Officer shall report the procedural errors to the Election Commission as per Section 58 of the Representation of the People Act, 1951 (for short 'the Act'). The irregularities were committed after the stage of Form 17A scrutiny. Without considering the same, respondent No.2 issued proceedings dated 17.05.2024. Thus, prayed to set aside the proceedings dated 17.05.2024 and to take comprehensive inquiry and fresh polling in station Nos.236, 237, 253 and 254 of 98-Sttenapalli Assembly Constituency.
3. Heard Sri Sumanth, learned Counsel representing Sri L. Sai Manoj Reddy, learned counsel for the petitioner and Sri D. Avinash Desai, learned Senior Counsel assisted by Sri D.S. Siva Darshan, learned standing counsel for the respondent Nos.1, 4 and 5.
4. Learned counsel for the petitioner would submit that the election staff colluded with the personnel of TDP and committed serious irregularities. He

would also submit that in view of the serious allegations against the staff, calling for a report from the Officer is a futile exercise. He would also submit that the authority did not consider the complaints objectively.

5. Learned Senior Counsel appearing on behalf of the respondent Nos.1, 4 and 5 would submit that the writ petition, itself, is not maintainable in view of Article 329(b) of the Constitution of India. He would submit that the agent of the petitioner was present at the time of scrutiny. However, nothing was stated about the alleged incidents. He also would submit that none of the officers complained about irregularities as alleged by the petitioner.

6. At the hearing, the following judgments were relied upon:

1. K. Ratna Prabha v. Election Commission of India,

2. Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman and

3. Mohinder Singh Gill and Another v. The Chief

4. Election Commissioner, New Delhi and Others.

7. In the first instance, as pointed out by learned Senior Counsel appearing on behalf of the respondent Nos.1, 4 and 5, Article 329 of the Constitution of India, bars interference by the Courts in election matters. Article 329 of the Constitution of India reads thus:

“(a) The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

8. Thus, clause (b) of Article 329 of the Constitution of India unequivocally declares that no election to either House of Parliament or the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

9. In **K. Ratna Prabha's** case (referred to supra), the Division Bench of this Court observed as follows:

13. Part VI of the Act of 1951 deals with disputes relating to elections. Chapter II of the said Part provides for presentation of election petitions to the High Court. Section 80 of the said Act provides no election shall be called in question except by an election petition presented in accordance with the provisions of this Part.

14. The aforesaid constitutional scheme read with the provisions of the Act of 1951 makes it amply clear that any dispute relating to election would be amenable to adjudication by way of an Election Petition instituted under the provisions of the Act of 1951 and not otherwise. The aforesaid constitutional scheme has been repeatedly interpreted by the Apex Court as a 'lakshmana rekha' which the High Courts even under the prerogative writ jurisdiction would be loathe to cross. In fact in *Mohindar Singh Gill v. The Chief Election Commissioner, New Delhi*, V.R. Krishna Iyer, J, in his inimitable style described the constitutional provision as the "Great Wall of China" which no Court would ordinarily breach.

10. While addressing recourse available to the contesting candidates, in case, the Election Commission fails to discharge its duty in the course of an election process, it was observed as under:

"... In the face of electoral malpractices would the High Court by a presumptive superiority of Article 226 of the Constitution of India be justified to ignore the constitutional bar under Article 329 (b) and jump into the fray or would it be prudent for the Court to permit the election process to be concluded and leave the allegations of booth capturing/tampering/fake voting open to be decided in a properly instituted Election Petition? We are of the view, the latter would be a prudent course to adopt in the factual matrix of the case."

11. The process of Election commences from the initial notification and culminates in the declaration of the return of a candidate.

12. In **N.P. Ponnuswami v. Returning Officer, Nammakkal Constituency**, the Hon'ble Apex court observed as under:

"16.

- (1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted.
- (2) In conformity with this principle, the scheme of the election law in this country as well as in England is that no significance should be attached to anything which does not affect the “election”; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the “election” and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress.
13. Learned counsel for the petitioner would submit that as per the Handbook of Returning Officer, 2023, Returning Officer is obligated to take action whenever irregularities/unlawful activities are reported.
14. Learned Senior Counsel appearing on behalf of the respondent Nos.1, 4 and 5 would contend that the instructions given by the Election Commission of India to the Chief Election Officers would bind the Election Officers. However, it will not give a cause of action to the candidates. In support of the said proposition, learned Senior Counsel relied upon **Lakshmi Charan Sen’s case (referred to *supra*)** wherein it was observed as follows:
22. One of the questions which was debated before us and to which we must now turn, is whether the directions given by the Election Commission to the Chief Electoral Officers have the force of law under the Acts of 1950 and 1951. There is no provision in either of these Acts which would justify the proposition that the directions given by the Election Commission have the force of law. Election laws are self-contained codes. One must look to them for identifying the rights and obligations of the parties, whether they are private citizens or public officials. Therefore, in the absence of a provision to that effect, it would not be correct to equate with law, the directions given by the Election Commission to the Chief Electoral Officers. The Election Commission is, of course, entitled to act *ex debito justitiae*, in the sense that, it can take steps or direct that steps

be taken over and above those which it is under an obligation to take under the law. It is, therefore, entitled to issue directions to the Chief Electoral Officers. Such directions are binding upon the latter but, their violation cannot create rights and obligations unknown to the election law. To take a simple example, if the Election Commission issues a directive to a Chief Electoral Officer to invite leaders of political parties for a meeting to consider their grievances pertaining to the electoral roll, the failure to hold such a meeting cannot be equated with the failure to comply with the provision of a law. Leaders of political parties who were asked to be invited by the Election Commission cannot challenge the process of election on the ground that the directive issued by the Election Commission was violated by the Chief Electoral Officer. The question is not whether the directions issued by the Election Commission have to be carried out by the Chief Electoral Officers and are binding upon them. The plain answer is that such directions ought to be carried out. The question is whether, the failure on the part of the Chief Electoral Officer to comply with the directions issued by the Election Commission furnishes any cause of action to any other person, like a voter or a candidate, to complain of it. We are of the opinion that the directions issued by the Election Commission, though binding upon the Chief Electoral Officers, cannot be treated as if they are law, the violation of which could result in the invalidation of the election, either generally, or specifically in the case of an individual. In the instant case, the Chief Electoral Officer carried out faithfully the directions issued by the Election Commission. But, even if he had not, he could not be accused of disobeying a law.

15. Thus, as seen from the expression of the Hon'ble Apex Court, the direction issued by the Election Commission of India though binds the Chief Electoral Officers, they cannot be treated as if they are law, violation of which would result in invalidation of the election either generally or specifically in the case of an individual.
16. The other contention of learned counsel for the petitioner is that the authorities did not properly consider the representation made by the petitioner. In this regard, the Division Bench of this Court, in **Ratna Prabha's** case, while addressing the issue as to whether the Election Commission was justified in declining to act on the representations of the petitioners therein, observed as under:

“... in our considered opinion, would fall within the domain of an election dispute amenable to adjudication in an Election Petition and not otherwise. Bar for entertaining an election dispute under Article 226 of the Constitution of India is not a self imposed restriction like existence of alternate statutory remedy. It is a constitutional bar engrafted under Article 329(b) of the Constitution which is prefaced with a non obstante clause. Hence, Article 329(b) of the Constitution prevails over the powers of the High Court under Article 226 of the Constitution of India. It is only in exceptional cases, the Court may entertain petition under Article 226 of the Constitution of India after commencement of the election process provided the Court's intervention does not interrupt, obstruct or protract the election proceedings and the judicial scrutiny cannot await the conclusion of the election process.”

17. The case at hand, in the election process, the authorities did not find any irregularities at the time of scrutiny of the documents. The Presiding Officers of the respective Polling Stations have not mentioned occurrences of any incidents except stating that in Polling Station No.98, poll was interrupted for one hour, and later restored. The returning Officer/Observer did not recommend re-polling in any polling station in 98-Sattenapalli Assembly Constituency. After considering all these aspects, respondent No.2 issued Memo No.19/CEO-Peshi/2024-2 dated 17.05.2024.
18. Given the above discussion and settled law, we do not find any merits in this writ petition. The writ petition is liable to be dismissed as not maintainable.
19. Accordingly, this writ petition is dismissed without costs at the stage of admission.

It is made clear that we have not gone into the truthfulness, genuineness or otherwise of the allegations of electoral offences, canvassed as justification for re-scrutiny. It is open to the petitioner to canvass such issues in appropriate proceedings, in accordance with law, if so advised.

Pending miscellaneous applications, if any, shall stand closed.

