

HIGH COURT OF ANDHRA PRADESH

**Bench: Justices Subba Reddy Satti and Venkata Jyothirmai
Pratapa**

Date of Decision: 23rd May 2024

WRIT PETITION No.12059 of 2024

**CHEVIREDDY MOHITH REDDY, S/O CHEVIREDDY BHASKAR
REDDY ...PETITIONER**

VERSUS

**THE ELECTION COMMISSION OF INDIA & ORS.
RESPONDENTS**

Legislation:

Article 329(b) of the Constitution of India

Representation of the People Act, 1951

Conduct of Elections Rules, 1961

Handbook for Returning Officer, 2023

Subject: Writ Petition challenging the validity of election procedures and seeking reliefs for re-scrutiny and re-polling in the 166-Chandragiri Assembly Constituency, alleging electoral malpractices.

Headnotes:

Elections – Writ Petition for Re-scrutiny and Re-polling – Article 329(b) of the Constitution – Election Petition as Proper Remedy – Petitioner contested as MLA from 166-Chandragiri Assembly Constituency – Alleged voter suppression, ballot tampering, and

violence on polling day – Complaints to election authorities ignored – Petitioner kept in separate room during scrutiny due to law and order issues – Supreme Court held that disputes related to elections should be addressed via election petitions and not writ petitions – Writ petition dismissed for lack of maintainability. [Paras 2-18]

Constitutional Law – Article 329(b) – Bar on Court Interference – Election matters to be resolved through election petitions – Interference by courts during election process is barred – Courts to avoid interrupting the electoral process – Held that grievances related to electoral offenses should be pursued through appropriate election petitions post-election. [Paras 7-10, 12-16]

Electoral Malpractice Allegations – Scrutiny of Form 17A – Election Petition – Petitioner’s absence during scrutiny due to separate room arrangement for safety – Authorities conducted random scrutiny and found no irregularities – Memo No.18/CEO-Peshi/2024-2 issued – Petitioner’s remedy lies in filing an election petition, not a writ petition. [Paras 2, 4, 17]

Decision – Writ Petition Dismissed – High Court dismisses the writ petition citing the constitutional bar under Article 329(b) – Petitioner advised to pursue election petition for redressal of grievances – Court does not examine the veracity of electoral offense allegations. [Paras 18-19]

Referred Cases:

- K. Ratna Prabha v. Election Commission of India (2021) 4 ALO 237
- Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman (1985) 4

SCC 689

- Mohinder Singh Gill v. Chief Election Commissioner, New Delhi (1978) 1 SCC 405
- N.P. Ponnuswami v. Returning Officer, Nammakkal Constituency AIR 1952 SC 64

Representing Advocates:

Sri S. Vivek Chandrasekhar for petitioner

Sri D.S. Siva Darshan, standing Counsel, and Government Pleaders for GAD and Home for respondents

Sri S. Vivek Chandrasekhar

Sri D.S. Siva Darshan, standing Counsel; Government Pleader for GAD and Government Pleader for Home.

ORDER

This Writ Petition is filed seeking the following relief:

"... to issue any appropriate writ, order or direction, more particularly, one in the nature of Writ of ***mandamus***:

A. declaring the proceedings issued vide Memo No.18/CEO-Peshi/2024-2 dated 17.05.2024 by the Respondent No.2 being *per se* illegal, Unconstitutional 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 direct the respondents to conduct e- novo/to reschedule the scrutiny of Form 17A and other documents in 166-Chandragiri Assembly Constituency and pass such order(s) ...

B. declaring the actions of Respondents in not conducting

repolling in P.S.No.64 - Neladaanipalle Of Pakala Mandal, P.S.No.110 - Chinna Ramapuram Of Chandragiri Mandal, P.S.No.156 - Kasipentla Of Chandragiri Mandal, P.S.No.157 - Kalroad Palle of Chandragiri Mandal as illegal, Unconstitutional 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 direct the respondents to conduct repolling of P.S.No.64 -Neladaanipalle Of Pakala Mandal, P.S.No.110 - Chinna Ramapuram Of Chandragiri Mandal, P.S.No.156 - Kasipentla Of Chandragiri Mandal, P.S.No.157 - Kalroad Palle of Chandragiri Mandal and pass such order(s) ..."

2. The averments in the affidavit, in brief, are that the petitioner is contesting as a Member of Legislative Assembly (**'MLA'**) on behalf of Yuvajana Sramika Rythu Congress Party from 166 - Chandragiri Assembly Constituency (hereinafter referred to as 'Constituency'). The said Constituency was categorized to be vulnerable. Hence, the Election Commission of India has directed live web-casting of the entire Constituency, to keep a check on electoral offences. Since the very nascent stage of elections, there have been instances of commission of electoral offences and violence. One Pulivarthi Venkata Mani Prasad @ Nani, the contesting candidate of Telugu Desam Party, and his supporters, resorted to electoral offences.

b) On 13.05.2024, i.e. on the date of polling, the petitioner visited various booths, in and around the Constituency, and found that there were widespread instances of voter suppression, ballot tampering, and incidents of physical violence at several polling stations. Several complaints were sent by the petitioner through his office by way of e-mails to the respondent authorities. However, the respondent authorities turned a blind eye to such complaints. In

respect of Polling Station Nos.64, 110, 156 and 157, the atrocities and electoral offences were also brought to the notice of respondent No.4 through e-mail dated 13.05.2024. However, no action was initiated.

c) While so, respondent No.4, *vide* Roc.H/09/2024 dated 14.05.2024 informed that scrutiny of 17A and other Documents by the General Observer, 166-Chandragiri Assembly Constituency is scheduled on 14.05.2024 at 3:00 P.M. at Strong Room, School of Engineering and Technology, Sri Padmavathi Mahila Viswavidyalayam, Tirupati and requested all the contesting candidates or their election agents or authorized representatives to attend the event without fail. Accordingly, the petitioner along with his agent reached the venue at around 2:50 P.M. Many people gathered around the said area and the petitioner was seated in a different room to avoid confrontation, because of the law and order situation. The petitioner categorically stated that there are some issues, in respect of certain booths, and that he got some objections, which he wants to ventilate at the time of scrutiny. The petitioner was assured that he would be called during the scrutiny process. However, scrutiny was finished in the petitioner's absence.

d) On 18.05.2024, the petitioner questioned the respondent authorities for their inaction on the petitioner's representations, for which the authorities informed the petitioner that they had randomly verified a few booths, in which they did not find any discrepancy and hence closed the scrutiny. The report of the Returning Officer, 166-Chandragiri Assembly Constituency sent to the District Election Officer and District Collector, Tirupati, *vide* Roc.H/09/2024 dated 14.05.2024 would disclose the absence of the

petitioner at the time of scrutiny. In turn respondent No.2, Chief Electoral Officer *vide* Memo No.18/CEO-Peshi/2024-1 dated 15.05.2024, by pointing out certain anomalies, directed the Collector and District Election Officer, Tirupati to furnish a detailed report. Thereafter the Returning Officer forwarded a report *vide* Roc.H/09/2024 dated 16.05.2024, wherein it was mentioned that a few booths, randomly picked up by the Observer, were verified and data of such booths was mentioned. The respondent authorities, inspite of several complaints in respect of few booths, failed to consider and verify the same. The instructions of the Election Commission of India *vide* No.464/INST-17 A/ 2023-EPS, dated 10.06.2023 regarding scrutiny of 17A and other documents were not adhered to. Had an opportunity been given to the petitioner during the scrutiny, he would have appraised his grievance. With these averments, the above writ petition is filed.

3. Heard Sri C.V. Mohan Reddy, learned Senior Counsel assisted by Mrs. M.Aiswarya, learned counsel for the petitioner and Sri D. Avinash, learned Senior Counsel assisted by Sri D.S. Siva Darshan, learned standing counsel for respondent Nos.1 to 4.

4. Learned Senior Counsel would submit that the petitioner was denied the opportunity of ventilating the grievances at the time of 17A scrutiny. He would further submit that letter, dated 14.05.2024 addressed by the Returning Officer, to the District Election Officer and District Collector, Tirupati, would manifest that the petitioner was kept in a separate Room in view of the law and order situation. He would also submit that petitioner sent e-mails to the authorities about the electoral offences. However, the respondent authorities failed to initiate action. Learned Senior Counsel would also submit that random selection of polling booths

at the time of 17A scrutiny is contrary to the instructions of Election Commission of India. Thus, prayed to set aside the memo, dated 17.05.2024.

5. Learned Senior Counsel appearing on behalf of respondent Nos.1 to 4 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 intimation to the petitioner to be present at the time of scrutiny is only to watch the proceedings of scrutiny.

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

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

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

and ¹ (2021) 4 ALO 237 ² (1985) 4 sec 689

3. **Mohinder Singh Gill and Another v. The Chief Election Commissioner, New Delhi and Others**³.

7. In the first instance, as pointed out by learned Senior Counsel appearing on behalf of respondent Nos.1 to 4, 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 ³ (1978) 1 sec 40s 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**⁴, 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 ⁴ AIR 1952 SC 64 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 Senior Counsel appearing on behalf of the petitioner would contend that the petitioner was not given any opportunity at the time of scrutiny. The instructions/directions under 17A were not adhered to.

14. While rebutting the same, learned Senior Counsel appearing on behalf of respondent Nos.1 to 4 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 Senior Counsel appearing on behalf of the petitioner is that, though several representations were made to the authorities, no action was initiated. 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 randomly selected the polling stations and did not find any irregularities at the time of scrutiny of the documents. The Returning Officer/Observer did not recommend re-polling in any polling station in 166 - Chandragiri Assembly Constituency. After considering all these aspects, respondent No.2 issued Memo No.18/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.

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