



HIGH COURT OF ANDHRA PRADESH
THURSDAY ,THE FOURTH DAY OF APRIL
TWO THOUSAND AND NINETEEN

PRESENT

THE HONOURABLE SRI JUSTICE C.PRAVEEN KUMAR
THE HONOURABLE SRI JUSTICE M.SATYANARAYANA MURTHY
WRIT PETITION NO: 3905 OF 2019

Between:

1. D GOVINDU S/o Bheemanna, aged 29 years,
H.No 3/77, 3rd Ward, Kosigi, Kurnool district.
3. Pendekallu Eranna S/o Venkayya aged 36 years,
H.No. 3-255, 3rd ward, Kosigi, Kurnool district.

...PETITIONER(S)

AND:

1. THE ELECTION COMMISSION OF INDIA rep by its Chief Electoral
Officer, Room No.192, Ground Floor, Building No.5, A.P.Secretariat,
Velagapudi, Amaravati. 522238
2. The District Election Officer/ District Collector, Kurnool district.
4. The Tahsildar, Kosigi Mandal, Kurnool district.

...RESPONDENTS

Counsel for the Petitioner(s): KASA JAGANMOHAN REDDY

Counsel for the Respondents: AVINASH DESAI

The Court made the following: ORDER



2019:APHC:15846

**IN THE HIGH COURT OF ANDHRA PRADESH
(Special Original Jurisdiction)**

THURSDAY, THE FOURTH DAY OF APRIL
TWO THOUSAND AND NINETEEN

PRESENT

**THE HON'BLE THE ACTING CHIEF JUSTICE SRI C.PRAVEEN KUMAR
AND
THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY**



WRIT PETITION NO: 3905 OF 2019

Between:

1. Dornigeni Govindu, S/o Bheemanna, aged 29 years, H.No 3/77, 3rd Ward, Kosigi, Kurnool district.
2. Pendekallu Eranna, S/o Venkayya, aged 36 years, H.No. 3-255, 3rd ward, Kosigi, Kurnool district.

...PETITIONERS

AND

1. The Election Commission of India, rep by its Chief Electoral Officer, Room No.192, Ground Floor, Building No.5, A.P.Secretariat, Velagapudi, Amaravati. 522238
2. The District Election Officer/ District Collector, Kurnool district.
3. The Tahsildar, Kosigi Mandal, Kurnool District.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to pass orders particularly one in the nature of writ of mandamus declaring the action of the respondents locating the P.S.No.s 116 and 117 of the petitioners' Ward No. 3 of Kosigi Town to M.P.Model Elementary School (JBM) Room Nos. 2 and 3 respectively situate in Ward No. 1 of Kosigi when there are sufficient facilities within the ward/poling area as arbitrary, illegal, contrary to the list poling stations published ceoandhra website and instructions of the 1st respondent published in its manual on Polling Stations and violative of Art 14, 19, 21 of the Constitution of India and consequently direct the respondents to restore/allot the petitioner's Polling Station Nos. 116 and 117 to Adiandhra Primary School or any other facility within the polling area of the 3rd ward.

IA NO: 1 OF 2019

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents to review the location Poling stations for electors of the 3rd ward namely of Polling Stations 116 and 117 of Kosigi Town and relocate within the ward or neighboring 5th ward.

Counsel for the Petitioners: SRI KASA JAGANMOHAN REDDY

Counsel for the Respondent Nos.1 & 2: SRI AVINASH DESAI

Counsel for the Respondent No.3: GP FOR REVENUE

The Court made the following: ORDER



THE HON'BLE THE ACTING CHIEF JUSTICE C. PRAVEEN KUMAR

AND

THE HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

WRIT PETITION NO.3905 OF 2019

ORDER: *(Per Hon'ble Sri Justice M. Satyanarayana Murthy)*

This writ petition is filed by the petitioners under Article 226 of the Constitution of India, who are the residents of Kosigi Mandal, Kurnool District to issue Writ of Mandamus to declare the action of the respondents locating P.S.Nos. 116 and 117 of the petitioners' Ward No.3 of Kosigi Town to M.P. Model Elementary School (JBM) Room Nos. 2 and 3 respectively situated in Ward No.1 of Kosigi, where there are sufficient facilities within the ward/polling area as arbitrary, illegal and contrary to the list of polling stations proposed in CEO Andhra Pradesh website and instructions of the first respondent published in its manual on polling stations and violative of Articles 14, 19 & 21 of the Constitution of India and consequently to direct the respondents to restore/allot petitioners' Polling Station Nos. 116 & 117 to Adiandhra Primary School or to any other place.

Both the petitioners are the residents of Ward No.3, Kosigi, Adiandhra Primary School is still a polling booth for Ward No.3. Their names are at Sl.Nos. 278 and 395 of Polling Station Nos. 116 & 117 respectively. After the construction of Anganwadi Centre in the same compound, the capacity of the premises has increased to accommodate more number of polling stations within Ward No.3. The allocation of polling stations as per list, published by the first respondent in their website is still showing Polling Station Nos. 116 & 117 as being allotted to Adiandhra Primary School, Kosigi. But, one Sri Niranjan Reddy, the then Tahsildar who worked as a puppet in the hands of TDP in-charge candidate seems to have proposed for shifting of Booth Nos. 116 & 117 of



Ward No.3 without any notice to the local public, to M.P. Model School (JBM) of Ward No.1. He was recently transferred due to several complaints and irregularities under the instructions of Election Commission. The voters of Ward No.3 staged dharna on 28.01.2019 and 01.03.2019 and declared to boycott the election if Polling Station Nos. 116 & 117 are not shifted back to its old location. The news item was published in Sakshi Daily on 01.03.2019 and 02.03.2019. The petitioners and some of the educated youth submitted a representation to the present Tahsildar and also sent another representation to the Election Commission to restore back Polling Station Nos. 116 & 117 to its old location where there is plenty of space and additional space in Anganwadi Centre.

It is specifically contended that, exercise of vote is a fundamental right and the State is under obligation to provide free and peaceful atmosphere to exercise the right of franchise without fear. Paragraphs 1.4, 2.2 and 2.4 of the Polling Station Manual published by the Election Commission of India provide for allocation of voters among Polling Stations within the polling area and maximum distance between the polling stations. Ward No.2 is a sensitive zone and due to possible disturbances in the said part of polling area, those voters were allotted to polling station situated in Ward No.5. Whereas, the petitioners who belong to Ward no.3 allocated to Polling Station Nos. 116 & 117 of Kosigi are now being forced to pass through sensitive Ward No.2 to reach JBM School at Ward No.1, which is not warranted and not comfortable for the voters of Ward No.3. The distance from the end of the ward to the said polling station is around 1 to 1 ½ km. Therefore, it is inaccessible to the old and women voters due to hot summer.

It is further contended that, there is sufficient space within and around the polling area and there is no justification to allot the petitioners



polling station to Ward No.1. The then Tahsildar who worked as a puppet shifted Polling Station Nos. 116 & 117 of Ward No.3 to a far-off place beyond the sensitive zone is only with malafide intention to prevent voters of the locality, who are predominantly weaker sections; from exercising their franchise. Therefore, shifting of Polling Station Nos. 116 & 117 of Ward No.3 of Kosigi Town is illegal and arbitrary and prayed to issue a direction as stated supra.

Respondent Nos. 1 & 2 filed counter alleging that the petition is not maintainable, in view of the bar under Article 329(b) of the Constitution of India, as the ground urged in the petition is a ground available under Section 100 of Representation of the People Act, 1951 (for brevity 'The Act') invalidating the election and when a remedy by way of election petition is available, petition under Article 226 of the Constitution of India is not maintainable. On this ground alone, the writ petition is liable to be dismissed *in limini*.

The specific contention of the respondent Nos. 1 & 12 is that, the present Polling Station Nos. 116 & 117 of Kosigi Village of Mantralayam Assembly Constituency have been bifurcated from the earlier Polling Station No.104 of Kosigi town and rationalization of polling stations is required to be conducted whenever number of voters exceed 1200 in a polling station located in a rural area and 1400 in a polling station located in an urban area. In the present case, since the number exceeded 1200 in the earlier Polling Station 104 of Kosigi Town, rationalization was done and the old polling station was bifurcated into two Polling Station Nos. 116 & 117. It is further submitted that, as there is no possibility to accommodate another polling booth at the earlier polling station, the respondent authorities located the existing station at M.P. Model ELE School (JBM) at Kosigi Village, which is the best available building for



accommodating the villagers of Kosigi after considering all the yardsticks and norms required for setting up a polling station.

It is also contended that, since the building of the earlier polling station was dismantled and new building was constructed with two class rooms at down stairs and two rooms on the first floor, it is not possible to accommodate another polling booth at the earlier polling station which necessitated the respondent authorities to locate another best possible building to accommodate a bifurcated polling stations for Kosigi Village. The building of Anganwadi Centre is not suitable to set-up a polling station since the respondents are obligated to provide assured minimum basic facilities at every polling station like provision of ramp for differently abled persons, providing drinking water, adequate furniture, proper lighting, help desk, toilets etc. The reason for locating polling station at M.P. Model Elementary School (JBM) is justifiable and not tainted with any malafides.

Though right to vote is a constitutional right, such right cannot be stretched to contend that the petitioners also have a right to vote at their choice of polling station according to individual convenience. Therefore, mere location of a polling station at a different place does not amount to infringement of constitutional right. As there is necessity to set-up adequate polling stations, for the purpose of ensuing general elections, accordingly polling stations have been identified after taking various factors into consideration which are relevant to ensure free and fair elections.

It is submitted that, from the previous elections, there has been an increase of 10.1% of polling stations for the ensuing General Election which happened mainly due to rationalization of polling stations conducted in order to accommodate new voters who became eligible for the ensuing General elections. It is submitted that, currently the respondents authorities have set up 10,35,928 polling stations across India for ensuing



elections 2019 which figure stood at 9,28,000 for the previous elections held in 2014. It is contended that, individual comfort of the petitioners to vote in a particular station of their choice cannot be a ground to challenge the decision to shift the polling stations after in compliance of all the rules and regulations in force. However, Polling Station Nos. 116 & 117 are located within 1 km from the residential area of the voters, which is also within the prescribed norms i.e. distance to be taken into consideration for setting up a polling station. Therefore, the distance of 1 km is in accordance with the norms and on this ground, the writ petition cannot be allowed, granting relief as stated supra and prayed to dismiss the petition.

During hearing, Sri Kasa Jagannathan Reddy, learned counsel for the petitioners vehemently contended that the decision taken by the Election Commission of India at the instance of District Election Officer on mala fide recommendation is for extraneous purpose to prevent the voters of Ward No.3 to franchise their vote. At the same time, convenience of voters alone is the consideration and not the convenience of the staff of the polling stations. Therefore, when sufficient space is available in the Anganwadi Centre, respondents ought to have established the polling station in Anganwadi Centre, instead doing so, they shifted to Ward No.1, obviously for different reasons best known to them. It is also brought to our notice that the Electoral Rolls and the notification issued under Section 25 of the Act to contend that there is any amount of variation in the election list and management of polling booths to Electoral Ward No. 3 and setting up of polling booth at Ward No.1 for the Polling Station Nos. 116 & 117 and on account of illiteracy, it is difficult for them to franchise their vote undertaking journey of 1 km. Learned counsel also contended that, when it is a ground to set-aside the election, instead of awaiting till setting aside the election, the mistake crept in the process of setting up compelling circumstances can be set right at the threshold and there will



not be any difficulty in future and the parties need not cannot file election petition, as the decision on which will take years together.

Learned counsel for the petitioners placed reliance on the judgment of Supreme Court in **Kalyan Kumar Gogoi v. Ashutosh Agnihotri and another**¹, wherein, the Apex Court specifically held that, change of venue for casting votes in breach of Sections 25 & 26 of the Act is a ground under Section 100(1)(d)(iv) of the Act to set-aside the election. When the respondent issued notification in violation of Section 25 of the Act, and instead of driving these petitioners to file election petition, requested to issue a direction for restoration of polling stations in Ward No.3 of Kosigi itself. Learned counsel also placed reliance on the judgment in and judgment of Gauhati High Court in **Tazuddin Ahmed v. Dhaniram Talukdar**², wherein the Gauhati High Court also reiterated the same principle. On the strength of the principles laid down in the above two judgments, learned counsel for the petitioners requested to allow the writ petition, issuing a direction declaring the action of the respondents in setting up Polling Station Nos. 116 & 117 in Ward No.1 of Kosigi Mandal, as illegal and consequently to restore the polling booths to Ward No.3 of Kosigi Mandal including the voters to exercise their franchise without any fear.

Per contra, Sri Avinash Desai, learned counsel for the respondents 1 & 2 contended that, the writ petition itself is not maintainable, for the simple reason that an election petition would not lie if polling stations were allegedly shifted without following the procedure contemplated under Section 25 of the Act, it is a ground to set-aside the election under Section 100(1)(d)(iv) of the Act, the writ petition is not maintainable in view of the bar under Section 329(b) of the Act.

¹ (2011) 2 SCC 532
² AIR 1959 Gau 128



Yet, another contention raised by the learned counsel for the respondents 1 & 2 is that, there is lot of procedure prescribed for publication of draft notification of polling calling for objections and issue of publication of final notification of polling stations. The respondents strictly adhered to the guidelines issued by Election Commission of India in Handbook for Returning Officer, February 2019, Document 23 – Edition I. When the respondents 1 & 2 followed procedure prescribed under law, this Court cannot examine the legality of the decision except the procedure that was adopted by the authorities considering the procedure in passing the order. Therefore, this Court cannot issue any Writ of Mandamus exercising power under Article 226 of the Constitution of India.

Learned counsel for the respondents 1 & 2 further submitted that there is no sufficient accommodation to accommodate two polling stations within Ward No.3 in terms of the norms fixed by the Election Commission with reference to plinth area, to accommodate Electronic Voting Machines and VVPATs and other equipment in the polling stations, besides accommodating the election agents, polling agents, officers including the employee to identify the voters, besides the minimum amenities like toilets, drinking water etc. The Anganwadi Centre is a small building consisting of two rooms and plinth area of each room is about 150 sq.ft approximately which is not sufficient to accommodate polling stations and not in accordance with the norms of Election Commission of India. Therefore, as there was no option for the respondents to shift Polling Station Nos. 116 & 117, the District Election Officer has set up Polling Station Nos. 116 & 117 in Ward No.1 which is hardly at a distance of less than one kilometre, as admitted by the petitioners and it would not cause any inconvenience to the voters. So far as the difficulty to pass through Ward No.2, the election officials should provide necessary protection including police patrol.



Therefore, it is also not a ground to issue any direction for shifting Polling Station Nos. 116 & 117 to Ward No.3, as sought for by these petitioners and prayed for dismissal of the writ petition.

Considering rival contentions, perusing the material available on record, the points that arise for consideration are as follows:

- 1) *Whether the petition under Article 226 of the Constitution of India is maintainable when the ground urged in the petition is a ground to set-aside the election, in view of Section 100(1)(d)(iv) of the Act?*
- 2) *Whether respondents 1 & 2 followed procedure prescribed under Section 25 of the Act and the guidelines issued by Election Commission of India in exercise of powers under Section 324 in setting up Polling Station Nos. 116 & 117 Ward No.1 of Kosigi Mandal, for franchising votes by voters of Ward No.3. If, not whether a direction be issued to restore Polling Station Nos. 116 & 117 in Ward No.3 of Kosigi Mandal and set-up the polling stations at the convenience of the petitioners and other voters of Ward No.3?*

POINT NO.1:

Admittedly, the writ petition is filed under Article 226 of the Constitution of India, challenging the action of the respondents in setting up Polling Station Nos. 116 & 117 in Ward No.1 for the voters of Ward No.3 on various grounds referred supra. During argument, learned counsel for the petitioner Sri Kasa Jaganmohan Reddy while reiterating the arguments raised in the writ petition, would draw attention of this Court that non-compliance of Section 25 of the Act r/w Rule 15 of the Conduct of Election Rules, 1961 (for short 'The Rules') is a ground to set-aside the election under Section 100(1)(d)(iv) of the Act and placed reliance on **Kalyan Kumar Gogoi v. Ashutosh Agnihotri**



and another (referred supra) and **Tazuddin Ahmed v. Dhaniram Talukdar** (referred supra).

In **Kalyan Kumar Gogoi v. Ashutosh Agnihotri and another** (referred supra), a notice was published inviting nominations from eligible candidates to contest the Assm State Legislative Assembly Election for 116 Dibrugarh Constituency and there were irregularities in shifting polling stations and the Apex Court held in paragraphs 11, 12 and 13 as follows:

“The first question to be considered is whether there had been or not a breach of the Act and the Rules in the conduct of the election at this constituency. It is hardly necessary for this Court to go over the evidence with a view to ascertaining whether there was or was not a breach of the Act and the Rules in the conduct of the election concerned. Having read the evidence on record, this Court is in entire agreement with the decision of the learned Single Judge that by the change of venue of casting votes, breach of the provisions of Sections 25 and 56 of the Act read with Rule 15 of the Rules of 1961 was committed by the officials who were in charge of the conduct of the election at this constituency.

This shows that the matter is governed by Section 100(1)(d)(iv) of the Act. The question still remains whether the condition precedent to the avoidance of the election of the returned candidate which requires proof from the election petitioner, i.e., the appellant that the result of the election had been materially affected insofar as the returned candidate, i.e., the respondent No. 2, was concerned, has been established in this case.

This Court finds that the learned Judge has recorded a finding that cogent and reliable evidence should be adduced by an election petitioner when election of the successful candidate is challenged on the ground of breach of provisions of Section 100(1)(d)(iv) of the Act. The contention advanced by Dr. Rajiv Dhavan, learned counsel for the appellant, that the test of either broad probabilities or the test of sufficiency of evidence should be applied while deciding the question whether the result of the elected candidate is materially affected or not cannot be accepted”

Similar view was expressed by the Guwhati High Court in **Tazuddin Ahmed v. Dhaniram Talukdar** (referred supra). The Delhi High Court in **Bharat Bhushan v. Ved Prakash**³ wherein the polling station was shifted and wrongly included in 33-Rohtas Nagar, New Delhi in the list of polling

³ AIR 1978 Delhi 199



stations notified on 30.05.1977. But, the High Court in paragraph 34 concluded that, Section 25 of the Act which makes provision for providing the polling stations in the constituency, does not lay down any limitation of time for publishing a list showing the polling stations. It does not contain any limitation for any amendments or corrigendum to the list published or any restriction of time to make amendments. Power conferred on the District Election Officer was exercisable from time to time, unless a different intention appears, as and when an occasion arises.

Therefore, in view of the principles laid down by the Apex Court, Gauhati High Court and Delhi High Court, it is abundantly clear that non-compliance of Section 25 of the Act r/w Rule 15 of the Rules is a ground to set-aside the election under 100(1)(d)(iv) of the Act and it is not in controversy.

In view of the discussion in the earlier paragraphs, it is appropriate to decide whether the writ petition is maintainable, when Section 25 of the Act r/w Rule 15 of the Rules is not complied it is a ground to set-aside the election under Section 100(1)(d)(iv) of the Act.

Article 329(b) of the Constitution of India created an embargo to pass any orders when the election process is commenced. Time and again, right from 1954, in **Ponnuswami v. Returning Officer, Namakkal Constituency**⁴ case the Apex Court succinctly held that the Courts cannot interdict the process of election by any orders. Clause (b) of Article 329 of the Constitution of India excludes the jurisdiction of the Courts to entertain any matter relating to 'election' which can be questioned only by an election petition under the law prescribed by the appropriate Legislature i.e Chapters II-III of the Act. Hence, a suit for setting aside an

⁴ [1952] 1 SCR 218



election would not lie. 'Election Process' in this context means the entire process culminating in a candidate being declared elected and is not confined to the final result. By reason of this clause, the following matters cannot, therefore, be challenged by a suit; the only remedy would be an election petition, which includes acceptance or rejection of a nomination paper by a Returning Officer, any matter which arises while the elections are in progress i.e. at every stage from the time of the issue of the notification appointing a date for nomination till the results are declared and correctness of the electoral roll, except on the ground of contravention of Article 173 of the Constitution. Therefore, alleged violation of Section 25 of the Act r/w Rule 15 of the Rules at best is a ground to question the election under Section 100(1)(d)(iv) of the Act.

In **Mohinder Singh Gill v. Chief Election Commissioner**⁵ the Apex Court (5 Judges) held that, Article 324 of Constitution of India deals with Constitution of Election Commission and its role. Election Commission having power of superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of the President and Vice-President held under the Constitution. Therefore, the Election Commission is entitled to issue necessary directions in contingency. The words "superintendence, direction and control" empowers the "Election Commission to act in contingencies not provided for by law and to pass necessary orders for the conduct of the election.". The power conferred on Election Commission under Article 324 (1) of Constitution of India is a residuary power relating to electoral process, in areas unoccupied by legislation, which empowers the Commission to issue all directions necessary for the purpose of conducting smooth, free and fair

⁵ AIR 1978 SC 851



elections. The opening words “superintendence.....conduct of all elections” include powers as well as duties. Apart from powers conferred by the Representation of the People Act and the Rules made thereunder the Election Commissioner has ample powers under Article 324(1) itself, to make appropriate orders as to conduct of election i.e. cancellation of poll and ordering repoll, according to exigencies in particular areas.

Maintainability of writ petition under Article 226 of the Constitution of India is also discussed by the Apex Court in the above judgment, and held that, Article 329(b) is a blanket ban on legal proceedings including a petition under Article 226 to challenge electoral steps taken by the Election Commission and its officers for carrying forward the process of election starting from the notification by the President under Section 14 of the Act to its culmination in the formal declaration of the result of the election. The only remedy to challenge the legality of such steps is an election petition to be presented after the election is over, ‘calling in question the election’. No remedy is provided at any intermediate stage, even though the dispute relates to a step anterior to the holding of the election, such as nomination. Hence, even though an error of law relating to a mandatory provision is committed in the election process at any stage prior to the declaration of the result, the High Court under Article 226 cannot interfere with the process of election; the remedy to rectify such error, at that stage, lies before the Election Commission. The Supreme Court also made it clear that, if the petitioner seeks any remedy which would not be available in the election petition, a petition under Article 226 might possibly lie after the completion of the election.

Therefore, in view of the law declared by the Constitutional Bench of the Apex Court in the judgments referred supra, including the decisions relied on by the learned counsel for the petitioners, non-compliance of



Section 25 of the Act r/w Rule 15 of the Rules is a ground to question the election under Section 100(1)(d)(iv) of the Act. In such case, the mistake, if any committed is only during the progress of the election process and that would give rise to an election petition and consequently the writ petition under Article 226 is not maintainable, in view of the law declared by the Apex Court in the judgments referred supra. Therefore, this Court cannot grant any relief to interdict the process of election indirectly. Hence, we find that, in view of the bar under Section 329(b) of the Constitution of India, no relief can be granted in the writ petition. Accordingly, the point is answered against these petitioners and in favour of the respondents.

P O I N T N O . 2

The other ground raised by the learned counsel for the petitioners is that, though sufficient accommodation is available to locate Polling Station Nos. 116 & 117 in Ward No.3, the respondents set-up polling station at Ward No.1 and the voters have to pass through Ward No.2 which is a disturbed area, though sufficient accommodation is available in Anganwadi Centre, constructed in the same premises of Adiandhra School in Ward No.3, which is in contravention of the guidelines issued by the Election Commission of India for setting up polling stations. Learned counsel has drawn attention of this Court to downloaded electoral roll Assembly Constituency, 145 – Mantralayam, Kurnool District to show that, in the electoral roll against Kosigi, for voters – G. Ramulamma and M. Venkata Lakshmi, the polling station was MP Model Elementary School (Aadi Andhra) School, North Wing, Kosigi and MP Model Elementary School (Aadi Andhra) School South Wing, Kosigi respectively. But, whereas, in the official notification issued under Section 25 of the Act, the polling station is at MP Model Elementary School (JBM), Room No.3, Kosigi. As there is lot of discrepancy in the official voter electoral list and



notification issued under Section 25 of the Act, it may lead to confusion in the display of voters to franchise their votes and they will be deprived of their constitutional right.

Learned counsel for the petitioners also referred to the guidelines issued by the Election Commission known as Manual on Polling Stations January 2016, Document 1 – Edition 1 in support of his contentions. At the same time, the Election Commission of India also issued guidelines for setting up of polling stations for voters in Handbook for Returning Officer, February 2019, Document 23 – Edition I.

Clause 2.1 deals with general procedure to be followed for identifying polling stations, it is extracted for better appreciation hereunder:

Clause 2.1.1 says that, according to Section 25 of the Representation of the People Act 1951, the District Election Officer (DEO) is responsible for the provision of polling stations and the publication of the list of polling stations.

Clause 2.1.2 stipulates that, the electoral rolls are prepared part wise. Generally, there is one polling station corresponding 2.1.2 to a part. Sometimes, there can be more than one polling station for a part. For example, in some areas, there are separate polling stations for men and women. Similarly, if the number of voters is large, there can be main and auxiliary polling stations in the same part. In such cases, where there are more than one polling stations in a part, the electoral roll is still printed part wise. However, in the marked copy of the electoral roll which is given to the Presiding Officer at the time of poll, names of those voters who are not allowed to vote in that polling station are struck off.

According to Clause 2.1.3 the polling stations are set up more or less on a permanent basis to cover well-defined polling areas. Change of polling stations may become necessary for several reasons. The list of polling stations should have the approval of the Commission. Any modification (except change in nomenclature, when the building is not changed) requires the approval of the Commission. If the same list is proposed to be adopted, no fresh approval of the Commission is necessary and Commission should be intimated accordingly and/or wherever modifications are proposed, the Commission's approval must be obtained.



For identifying fresh list of polling stations, separate procedure is prescribed in Clause 2.2.1, and the procedure is as follows:

2.2.1 The fresh lists should be drawn up bearing in mind the following instructions:

a) The optimum number of polling stations to be set up in an Assembly Constituency should be determined by dividing the total number of voters in the constituency by 1000. This number will be an average for both the rural and the urban constituencies. However, the Commission's instruction is to provide a polling station in the constituency by 1000. This number will be an average for both the rural and the urban constituencies. However, the Commission's instruction is to provide a polling station for every village having more than 300 voters, provided there is a suitable building for it.

b) A polling station should be provided for a well-defined polling area, normally covering not more than 1200 electors in rural areas and 1400 electors in urban areas.

c) As far as practicable, the polling station should have a minimum area of 20 sq. meters so that there is no congestion inside the polling station.

d) Halls/rooms should be well-lit and should ideally have two doors, so that one door can be used as the 'entrance' and the other as the 'exit' for the smooth and orderly conduct of poll.

e) Polling stations should be set up in such a manner that ordinarily, no voter is required to travel more than two kilometres to cast his vote. In sparsely populated hilly or forest area, this rule may have to be relaxed; in such cases to ensure that voters may not have to walk unduly long distances, polling stations may be set up for a smaller number of voters than the usual. Due consideration should be given to the topography and the ease of travel for voters.

f) In urban areas, not more than four polling stations and, in rural areas, not more than two polling stations should be located in the same building as far as possible, in order to avoid overcrowding and to facilitate maintenance of law and order.

g) If the polling station is for both men and women, there should be separate queues for them. For every man entering the polling station, two women should be allowed. The old, infirm, pregnant women and differently abled persons should be allowed to enter the polling station without having to stand in the queue. When separate polling stations are provided for men and women of a particular polling area, these should, as far as possible, be located in the same building.



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h) As far as possible, the polling station should be set up within the polling area. If a suitable building is not available in the area, then it may be set up outside the polling area but as near to its own area as possible.

i) Where the polling area for a polling station comprises a number of villages, the polling station or stations should ordinarily be located in the village, which has the largest number of voters. However, if another village is more centrally located or has distinctly better facilities, it can be chosen as the location of polling station in preference to the village with the largest number of voters.

j) Due consideration should be given to the existing obstructions like hills, forests, rivers, jungles, etc. For instance, no polling area should contain villages on either side of a big river; but where the village itself is divided by a river or stream it should not be split up for polling purpose unless there are special reasons.

k) Setting up a polling station in a temporary structure should be avoided, in view of the expenditure of erecting it and further risk of fire, storm, etc. l) All villages in one polling area should fall in one administrative unit like one police station, firka, patwari circle etc. All polling areas within the constituency should be covered in the proposed polling stations. No area in the constituency should be left out.

m) As far as possible, polling stations should be located in schools (Government or aided) and other Government or Semi-Government institutions, as the furniture and equipment required would be available there and could be made use of without any extra cost to the State.

n) The location of the polling stations in private buildings or premises should generally be avoided; but where this becomes unavoidable, written consent of the owner should be taken. In case the owner refuses to give written consent, the buildings should be requisitioned under Section 160 of RP Act 1951 if necessary. The private building so requisitioned should be at the disposal of the Returning Officer at least 24 hours before the commencement of the poll and for the period required for the poll. The building and the area around it, up to a radius of two hundred meters, should be under the control of the Presiding Officer. No watch and ward or other personnel connected with the owner, whether armed or unarmed, should be allowed to remain either at the polling station or within a radius of two hundred meters around it. The security arrangement at the polling station and within the above area on the poll day will be the responsibility entirely of the State Police under the control of the Presiding Officer. Further, after nominations are filed, it should be ensured that the owner of such private building is not a contesting candidate or a known sympathizer or worker of any of the candidates at the election.



o) No polling station should be located in police stations, hospitals, temples or places with religious significance

p) There should be no political party office within 200 meters of a polling station.

q) As far as possible, the polling stations should be set up on the ground floor of a building to facilitate voting for aged and disabled electors. Ramps should be installed for the use of such electors.

r) Electricity, drinking water and separate toilet facilities for men and women should be available as far as possible.

s) The actual site of each polling station should be chosen carefully in advance and materials, structures, fittings etc, necessary to set up a polling station complying with the requirements of law and practical convenience should be arranged.

Clause No.2.2.6 deals with Auxiliary Polling Stations. The procedure prescribed therein is as follows:

2.6.1 Before every revision of electoral roll, polling stations should be rationalized based on additions expected in the roll so that after the final publication, polling stations in urban areas do not have more than 1400 voters and polling stations in rural areas do not have more than 1200 voters. This will obviate the need to set up auxiliary polling stations on the eve of the polls. However, in case, it does become necessary, auxiliary polling stations should be set up subject to following conditions:

a) Auxiliary polling stations shall have the same serial number as that of the original polling station, but with a suffix "A", "B", etc.

b) As far as practicable, the auxiliary polling stations shall be located in the same building or premises as that of the original polling station.

c) The auxiliary polling station may be located in a separate building only when unavoidable owing to non-availability of suitable rooms. But it shall be within the same area as that of the original polling station. d) Separate serial number shall not be given to an auxiliary polling station even if it is located in a separate building. It shall have the same serial number as that of the original polling station and its auxiliary polling station may be having the electors shown in the same part of the electoral roll.

Clause 2.7 prescribes procedure for listing of polling stations, Clause 2.8 stipulates procedure for publication of the list of polling stations in draft. According to Clause 2.8.1, under Section 25 of the Act,



1951, the District Election Officer is required to provide sufficient number of polling stations for every constituency, the whole or greater part of which lies within his jurisdiction, with the prior approval of the Election Commission. According to Clause 2.8.2, it should not ordinarily be difficult to decide the district in which the greater part of a constituency lies. Where, however, a Parliamentary constituency comprises, say, eight Assembly Constituencies and four of them lie in one district, and the remaining four in another district it may not be so easy to ascertain the district in which the greater part of the constituency lies. In such a case the Chief Electoral Officer should decide the question with reference to the location of the headquarter of the Returning Officer of the constituency, the number of voters of that constituency in different parts in the different districts or of the population of those parts and communicate the same to the District Election Officers of the districts concerned. The District Election Officer, of the district in which, according to the Chief Electoral Officer, the greater part of the constituency lies will then be responsible for the provision of polling stations for the entire Parliamentary Constituency. According to Clause 2.8.3, it is also possible that in the case of a Parliamentary Constituency most of the component Assembly constituencies may fall in one district and a portion or portions may fall in another district or districts. In such cases, the polling stations provided by the District Election Officer of the other district or districts should be adopted in whole by the District Election Officer of the district in which the major part lies as the polling stations for the Parliamentary Constituency for which he is required to provide polling stations. According to Clause 2.8.4 After the draft list has been prepared on the lines indicated above, the District Election Officer/Returning Officer should publish the draft, for general information in the language or languages of the electoral roll for the constituency, for general information, inviting objections and



suggestions by a specified date, allowing a period of not less than seven days. The notice regarding publication of the draft list of polling stations and places at which it can be inspected should also be given in the local newspapers and written objections or suggestions invited for consideration. According to Clause 2.8.5, Copies of the lists should be supplied to the local branches of all recognized political parties and to the sitting members of the House of the People and Assembly Constituencies concerned or to ex-members of the House of the People or the Legislative Assembly in case the House of the People, or the Legislative Assembly stands dissolved. As per Clause 2.8.6 says that, the District Election Officer should thereafter call the party representatives and legislators for a meeting and discuss the draft list and the suggestions received about the same. Any bonafide person intending to be a candidate who wishes to take part in the discussions at this meeting should also be allowed to do so and Clause 2.8.7 says that, the District Election Officer should then take his decision on suggestions, amend the draft list where necessary and finalize the draft list of polling stations for the constituency. He should then forward it, along with the map to the Commission, through the Chief Electoral Officer of the State, along with the scrutiny sheet and the certificate in the forms prescribed in Annexure 4 and 5.

Clause 2.9 deals with final publication of the list of polling stations and the procedure stipulated for final publication is as follows:

2.9.1 The District Election Officer for an Assembly Constituency shall publish the list of polling stations provided by him, with the previous approval of the Election Commission, by making a copy thereof available for inspection on CEO website and displaying a notice in the form given in Annexure 6 at his office and at the office of ERO of that constituency. The DEO shall also, as far as practicable, make a copy of the relevant parts of the list together with the notice in the form appended available for inspection at the office of the Collector/District Magistrate/Subdivisional Magistrate / Revenue Divisional Officer / Judges and Munsif Courts / Prant Officer



/ Tahsildar / Amildar / Deputy Tahsildar / Sub-Registrar / Police Stations / Mauzadars or Sarpanches or Union / Panchayat Ghars / Union Boards / District Board / Municipal Committee / Notified Area Committee, and at such other places and in such other manners as he may consider necessary and suitable. On such publication, the list shall be the list of polling stations for that constituency.

2.9.2 The District Election Officer can correct only printing or clerical mistakes, if any, after such publication.

2.9.3 It shall not be necessary for the Returning Officer of a Parliamentary Constituency to publish the list, a second time, except at his office, in case where elections are being held simultaneously to the House of the People and the Legislative Assembly. He should, however, do so in the case of single election to the House of the People. 2.9.4 The entries in columns 4, 5, 8, 9 and 10 of Annexure 3 and the entries at the bottom of the list relating to the total number of voters, the total number of polling stations and the average number of voters per polling station, should be deleted before the final publication of the list.

2.9.5 The list of polling stations for an Assembly Constituency shall be published in the language or languages in which the electoral roll for that constituency is published.

Every modification as a result of variation in the number of voters within the polling area allotted to a polling station, consequent on the revision of electoral rolls, should be reported to the Commission for information. Changes in the location of polling stations arising out of shifting to new buildings or sites may become necessary, where the owner of the building or site originally proposed for a polling station has since become a contesting candidate or has strong sympathies for such candidate or political party, or because of the building being affected by any natural calamity. All such changes should be reported to the Commission for approval. Once the lists are approved, requests from political parties and individuals for shifting of the polling stations from one village to another or from one site to another should be considered, only in extremely exceptional cases where there are overriding

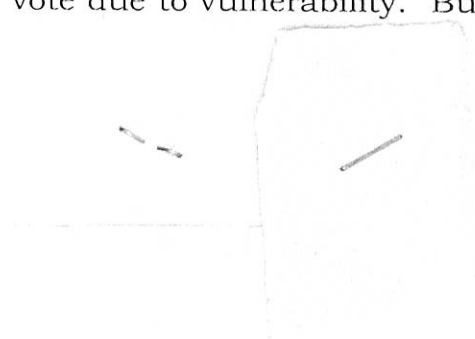


considerations of public convenience for the change proposed. If the District Election Officer/Returning Officer is satisfied, he should consult other political parties and contesting candidates and then only make his recommendations to the Commission in the matter. District Election Officer should, on no account, make any change in the location of polling stations already approved by the Commission, without its prior approval, as any change may ultimately result in the election being declared void. Where changes become inevitable and have to be made, such changes should be referred to the Commission for prior approval. The changes should be fully publicized and all contesting candidates and political parties, etc., be informed in writing. (vide Clause 2.10).

In view of the procedure prescribed by Election Commission of India, in the Handbook for Returning Officer, February 2019, Document 23 – Edition –I, only in extreme circumstances, the District Election Officer can take steps for change of polling stations, if satisfied in consultation with the political parties and contesting candidates and make a recommendation to the Election Commission for such change. The District Election Officer cannot take unilateral decisions in the matter of shifting of polling stations. Even in case of any inevitable shift of polling station, the District Election Officer cannot take any steps, except with the prior approval of the Election Commission.

In view of the guidelines referred above, it is appropriate to consider the contentions of the petitioner.

The first difficulty expressed by the petitioners is that, Ward No.2 is a vulnerable area and it is difficult for the voters to pass through Ward No.2 to franchise their vote due to vulnerability. But, on this ground shift





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of Polling Station Nos. 116 & 117 to Ward No.3, is not possible as there is no sufficient accommodation strictly in terms of the guidelines issued by Election Commission of India to locate atleast one polling station as the available accommodation in Anganwadi Centre is not sufficient, since the prescribed minimum plinth area must not be less than 20 sq.mtrs. But, the learned counsel for the respondents 1 & 2 contended that its plinth area of Anganwadi Centre consisting of two rooms is less than the prescribed limits by Election Commission. Even if Ward No.2 is a vulnerable area, the Election Commission has to take steps in terms of Clauses 2.4 which deals with special provisions for vulnerable sections and Clause 2.5 which deals with prevention of intimidation to the voters of vulnerable sections of electorate -vulnerability mapping. When the District Election Officer took necessary steps, vulnerability is not a ground to issue direction for shifting Polling Station Nos. 116 & 117 from Ward No.1 to Ward No.3.

The other ground raised before us is that, the aged voters and women voters cannot travel for one kilometre to franchise their votes due to hot summer. As per the norms of Election Commission of India, polling station shall not be at a distance of more than two kilometres. But, the distance between Polling Station Nos. 116 & 117 and residential area of Ward No.3 is less than one kilometer. Therefore, the distance of one kilometre is not a ground to issue direction.

At the end, it is contended that there is confusion with regard to polling stations as per final electoral rolls and notification issued under Section 25. The electoral roll produced before us shows some discrepancy. But, it is not known whether the electoral rolls produced before this Court is final electoral roll notification or preliminary electoral roll notification. If, for any reason, there is any discrepancy, respondents 1 & 2 can be

directed to rectify the mistakes in the electoral rolls and polling stations in terms of the guidelines issued by the Election Commission of India immediately. But, that would not give rise to any cause for shifting Polling Station Nos. 116 & 117 from Ward No.1 to Ward No.3 where there is no suitable accommodation for setting up polling stations.

It is also brought to the notice of this Court by the learned counsel for the respondents 1 & 2 that, in the polling stations, not less than 7 persons have to be accommodated who shall be the employees, besides election agents of different political parties contesting for the office of Member of Legislative Assembly, and Parliament besides supporting staff like attenders etc. Apart from that, electricity is the prime requirement. But, according to the information, Anganwadi Centre has no electricity connection and in such case, it is impossible to set up polling station in Anganwadi Centre by installing EVMs and VVPATs. Besides the above problems, there are some perennial problems, viz., lacking basic amenities like drinking water, toilets, ramps etc. Therefore, the Election Commission took a decision that Anganwadi Centre is not feasible to accommodate Polling Station Nos. 116 & 117 at Ward No.3 of Kosigi Village and such order cannot be interfered by this Court while exercising power under Article 226 of the Constitution of India, since the jurisdiction of this Court is limited to examine the correctness of the procedure followed in taking decision to locate Polling Station Nos.116 & 117 at Ward No.1 of Kosigi Village and not the decision taken by the authorities.

The power of judicial review under Article 226 is not directed against the decision, but is confined to the decision making process. Judicial review is not an appeal from a decision but a review of the manner in which the decision is taken. The Court sits in judgment only on the correctness of the decision making process and not on the correctness of



the decision itself. In the 'decision-making process', if the Court, tribunal or authority deciding the case, has ignored vital evidence and thereby arrived at erroneous conclusion or has misconstrued the provisions of the relevant Act or misunderstood the scope of its jurisdiction, the Constitutional power of judicial review by the High Court under Articles 226 & 227 of the Constitution of India can be invoked to set right the errors and prevent gross injustice to the party complaining. (vide. **H.B. Gandhi v. Gopinath & Sons⁶ and Style (Dress Land) v. Union Territory, Chandigarh⁷**).

A similar question came up for consideration before the Division Bench of erstwhile High Court of Andhra Pradesh with regard to change of polling stations from one station to another in **Challa Ramakrishna Reddy v. Returning Officer, Banaganapalli and others⁸** wherein the Division Bench held that, "The contention raised in this case is with regard to shifting of polling station Nos.37, 39 and 40 in Koilkuntla Assembly Constituency. Previously, these three polling stations were located at Gramachavadi, Panchayat Satram (Eastern Wing) and Panchayat Satram (Western Wing), but now they have been shifted to Room No.3, VIII B Class, Room No.5, VII A Class and Room No.5 VIII A Class of ZPHS respectively in Owk Village. The question relating to location of polling stations is purely a question of fact and is within the exclusive purview of the authorities conducting the elections, and it is not for this Court to adjudicate upon the said aspects, and in fact the said aspects are not justiceable, more so in a petition under Article 226 of the Constitution of India."

⁶ (1992) Supp (2) SCC 312

⁷ (1999) 7 SCC 89

⁸ 1999 (5) ALT 800

Since, the judgment rendered by the Division Bench of erstwhile High Court of Andhra Pradesh is binding on this Court, in view of the law declared in **M. Subbarayudu v. The State**⁹. In view of the law laid down in the above judgment, we hold that writ petition is not maintainable.

Therefore, the Court must confine its jurisdiction to examine the decision making process and not to the legality of the decision, since this Court while exercising power of judicial review under Article 226 cannot sit in an appeal against the decision of an authority. If, this principle is applied to the present facts of the case, it is difficult to accept the contention of the learned counsel for respondents 1 & 2. However, it is left open to the respondents to take steps for amendment by issuing errata or by issuing corrigendum to final list of electoral rolls or notification issued under Section 25 of the Act immediately, if any error or mistake crept in.

In view of our foregoing discussion, we do not find any ground to grant relief to these petitioners. Consequently, the petition is liable to be dismissed.

In the result, the writ petition is dismissed. No costs.

Consequently, miscellaneous applications pending if any, shall stand dismissed.

⁹AIR 1955 AP 87

//TRUE COPY//

Sd/- I.NAGA LAKSHMI
 ASSISTANT REGISTRAR

File
 SECTION OFFICER

One Fair Copy to the Hon'ble the Acting Chief Justice Sri C.PRAVEEN KUMAR
 (For His Lordship's Kind Perusal)

One Fair Copy to the Hon'ble Sri Justice M.SATYANARAYANA MURTHY
 (For His Lordship's Kind Perusal)

To,

1. The Chief Electoral Officer, Election Commission of India, Room No.192, Ground Floor, Building No.5, A.P.Secretariat, Velagapudi, Amaravati. 522238
2. The District Election Officer/ District Collector, Kurnool District.
3. The Tahsildar, Kosigi Mandal, Kurnool District.
4. 9 L.R. Copies.
5. The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.
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8. One CC to SRI. KASA JAGANMOHAN REDDY, Advocate [OPUC]
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HIGH COURT

DATED: 04/04/2019

OC

2/5/19

ORDER

WP.No.3905 of 2019

Rs.39500

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DISMISSING THE WRIT PETITION
WITHOUT COSTS.

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CG

9/4/19