



HIGH COURT OF ANDHRA PRADESH
TUESDAY ,THE SIXTEENTH DAY OF MARCH
TWO THOUSAND AND TWENTY ONE

PRESENT

THE HONOURABLE SRI JUSTICE D.V.S.S.SOMAYAJULU

WRIT PETITION NO: 4428 OF 2021

Between:

1. AVUTU SIVAPARVATHI W/o. Sambu Reddy
Aged about 58 years,
R/o. H.No.8-22, Chinaparimi Village,
Guntur District - 522 313, A.P.

...PETITIONER(S)

AND:

1. THE STATE ELECTION COMMISSION Rep.by its Commissioner,
1st Floor, New HODs Building,
Indira Gandhi Municipal Stadium, M.G. Road, Vijayawada - 522 010, A.P.
2. The State of Andhra Pradesh, rep by its Principal Secretary, Panchayat
Raj Department, Secretariat Buildings, Velagapudi, Amaravati, Guntur
District, A.P.
3. The District Collector , Guntur, Guntur District, Andhra Pradesh.

...RESPONDENTS

Counsel for the Petitioner(s): G R SUDHAKAR

Counsel for the Respondents: N ASHWANI KUMAR

The Court made the following: ORDER



***HON'BLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ WRIT PETITION Nos.4154; 4168; 4334; 4428; 4475; 4497;
4590; 4796 and 4823 of 2021

% **16th March, 2021**

W.P.No.4154 of 2021

A.T.RatnaSekhar Reddy

... Petitioner..

AND

\$ The State Election Commission and 2
others.

... Respondents.

! Counsel for the Petitioners

: Sri C.V.Mohan Reddy
Sri Vivek Chandra Sekhar

^ Counsel for the 1st& 2nd respondents

: Sri N. Ashwani Kumar,
Standing Counsel for SEC

^ Counsel for the 3rd respondent

: Government Pleader for
Panchayat Raj

^ Counsel for the 4th respondent

: Sri T. Vishnu Teja

^ Counsel for the 5th respondent

: Sri E. SambasivaPratap

< Gist:

> Head Note:

? Cases referred:

- 1) (1984) 2 SCC 656
- 2) (2007) 1 ALD 265
- 3) (2001) 6 ALD 136
- 4) (1996) 4 ALD 1241
- 5) (1970) 3 SCC 147
- 6) (2013) 10 SCC 1
- 7) (2020) 6 SCC 548
- 8) 1995 (1) ALT 204
- 9) (2004) 3 ALD 196

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU****WRIT PETITION Nos.4154; 4168; 4334; 4428; 4475; 4497;
4590; 4796 and 4823 of 2021****COMMON ORDER:**

With the consent of all the appearing counsels the Writ Petitions themselves were taken up for hearing. The lead was taken by Sri C.V. Mohan Reddy, learned Senior Counsel appearing for Sri Vivek Chandra Sekhar, learned counsel for the petitioner in W.P.No.4154 of 2021.

In all the Writ Petitions the challenge is the same. It is against the order dated 18.02.2021, by which State Election Commission sought to review the unanimous elections in the State of Andhra Pradesh for the Panchayat, ZillaParishad etc. The proceedings dated 18.02.2021 (which was issued by the State Election Commission) gave a direction to the District Collectors to enquire into the cases of forced withdrawals etc., of nominations from contestants, who have given a clear complaint along with some cogent material. The State Election Commission has issued this order basing on the complaints said to have been received by it from various corners of the State.

Learned Senior Counsel who takes the lead points out that last date for withdrawals of the candidate was 14.03.2020. The elections were however postponed due to Covid and later the process was resumed in 2021. He points out that the petitioner in this case is issued a Form-10



certifying that he is elected. Later a formal declaration of results was also issued on 14.03.2020 in Form-29 declaring the petitioner as elected. The contention of the learned Senior Counsel is that the State Election Commission becomes *functus officio* after this and he does not have the power to take any action.

He relies upon the Andhra Pradesh Panchayat Raj (Conduct of Election) Rules-2006 (in short "Rules-2006") and draws the attention of this Court to the entire procedure stipulated from Rules 4 to 16. By taking the Court through the Rules, learned Senior Counsel argues that this is a self-contained code on this aspect. Rule 16 (2) of Rules 2006, which is relied upon by the learned Senior Counsel is as follows:

"16(2) If there is only one validly nominated candidate, the Returning Officer shall forthwith declare such candidate is duly elected in Form X send the same to the State Election Commission, Election Authority and the District Election Authority."

Therefore, he argues that as per Rule 16 (2) the Returning Officer has no choice but to immediately declare an election if there is one candidate elected and send it to the election authority. He also draws the attention of this Court to Rule 63, which states that as soon as after a candidate has been declared under Rule 16 (unanimous) or after contest under Rule 62 a Certificate of Election in Form-29 "shall" be given. He submits that thereafter if anybody is aggrieved for



any reason whatsoever he / she has to file Election Petition under Section 233 of the Panchayat Raj Act. Learned Senior Counsel, while denying the veracity and correctness of the complaint argues that the Election Tribunal does not have the power to declare an election as void and that any person aggrieved by an election has to approach the Tribunal. He draws the attention of the Rules framed in 1995 for the Election Tribunals. Relying upon **A.C. Jose v Sivan Pillai and Others**¹ learned Senior Counsel argues that the State Election Commission cannot act contrary to the Statute / Rules. He submits that only if the Statute / Rule is silent the State Election Commission can act as per the situation.

Relying upon the counter affidavit he submits that basing on some material, dated 16.03.2020, which is not produced in original but is referred to in the affidavit, the State Election Commission wanted to act contrary to the statute. He submits that what mentioned in the affidavit cannot be treated as evidence. He also points out that in **PalamandaPrabhakar and Ors., v State Election Commission, Hyderabad, AP and Ors.**,² and **KayatiJayapal Reddy v State Election Commission and Another**³ learned Judges of this Court held that the proper remedy in such cases is an Election Petition only. He points out that in all the Districts neutral election observers were

¹ (1984) 2 SCC 656

² (2007) 1 ALD 265

³ (2001) 6 ALD 136



also appointed and that the absence of any report from them clearly indicates that there are no complaints warranting interference. He reiterates that the State Election Commission can exercise its plenary powers only if the statute or the Rule is silent. Relying upon the language in the Rules, particularly Rule 16 of Rules-2006, which states that the results should be declared “forthwith” and Rule 63 which states “as soon as maybe after a candidate has been declared”, the learned Senior Counsel argues that the State Election Commission has no option but to declare a candidate as ‘elected’. No review is possible as per him for any reason by the State Election Commission.

In W.P.No.4168 of 2021 Sri V.R.N.Prasanth argues that there is no complaint with regard to the petitioners or their wards and constituencies before the State Election Commission. The counter talks of certain threats in Kurnool and Kadapa only, but not in Chittoor to which the petitioners belong. He also argues that the power of superintendence and control vested with the State Election Commission cannot extend to “adjudication of disputes”. He also states that as per the settled law if fraud, coercion etc., are relied upon they should be pleaded clearly and proved. This is a matter to be considered by a competent Court only. In all other aspects he relies upon the submissions of the learned Senior Counsel.



In W.P.No.4428 of 2021, Sri G.R. Sudhakar, learned counsel argues that merely because there are number of unanimous elections it cannot be a ground to set the clock back. He submits that a District Collector cannot decide the issues of fraud, coercion etc., which are alleged and it needs a full-fledged Court trial to decide such serious issues of fact. He argues that only on the basis of mere complaint results are held back.

In W.P.No.4475 of 2021 Sri Shiva Prasad Reddy appears and argues. He adopts the arguments of the learned Senior Counsel and others, who preceded him and ultimately states that the State Election Commission has a taken a prejudiced stand in this matter.

Sri V.R.ReddyKovvuri, learned counsel appears for the petitioner in W.P.No.4497 of 2021. He adopts the arguments of the learned Senior Counsel. He states that there is no specific complaint in the petitioner's case. He argues that after Form-10 is issued only the formality of issuing a declaration of election is left. He relies upon ***PalamandaPrabhakar case*** and ***Visakhapatnam Port Trust, rep. by Chairman, Visakhapatnam v YellappaAppalanaidu⁴*** to argue that the State Election Commission cannot now again seek an investigation into the facts.

⁴ (1996) 4 ALD 1241



In W.P.No.4796 of 2021 Sri B. Satyanarayana appears. He also adopts the argument of the learned senior counsel for the petitioner.

Learned Advocate General appears for the State. According to him the State Election Commission did not have adequate and proper material to make an empirical study and come to an objective decision that fraud, coercion etc., were used to coerce the candidates. It is his contention that the data and the complaints are not disclosed even as on date to enable this Court to appreciate that the State Election Commission had the data which necessitated the action. Merely because there were some unanimous elections, learned Advocate General submits that, it cannot be said that they were induced by fraud etc. He also draws the attention of this Court to Rule 99 of the Rules, 2006 and the proviso which clearly states that the State Election Commission shall not entertain any petition relating to elections that may arise from the time of calling of the nomination till the declaration of results. He points out that such cases are to be decided by a Court of competent jurisdiction only. Relying upon Section 233 of the Panchayat Raj Act he says that any election can be questioned by an Election Petition alone. Therefore, he urges that this Court should interfere and direct the parties concerned to approach an Election Tribunal if they have a grievance.



For the State Election Commission Sri N. Ashwani Kumar, learned standing counsel appears. He points out that the State Election Commission cannot be a mute spectator when allegations of fraud, coercion etc., are made. It is his contention that the power of superintendence, control, directions etc., extend to this issue also. As a Constitutional authority, learned standing counsel submits that the State Election Commission was bound to act. Alternately and without prejudice to his prior submission he contends that if para 13 of the impugned order is taken out of consideration, rest of issues that are raised in the impugned letter can be looked into. He points out that the District Collectors were given an opportunity to collect data with regard to complaints from the public. Ultimately, the learned standing counsel submits that the scope of the enquiry can be limited to the genuine complaints and the actions that were taken by the officers and staff. In such cases, it is his contention that the enquiry would facilitate free and fair elections at least in the immediate future. He points out that the facts that emerge can be used to improve the election procedure in order to achieve the constitutional goal of free and fair poll. He reiterates that the State Election Commission was not biased and was only interested in seeing free and fair election.

For the implead petitioner(I.A.No.4 of 2021 in W.P.No.4154 of 2021) Sri E.SambasivaPratapappears and states that there are unprecedented threats on the ground



and the State police are also not acting despite the complaints and on the contrary are taking actions against the complainants. Therefore, he submits that the petitioner had no choice but to join this Writ, in order to bring this Court's notice that the unruly and high handed behavior of their opponents. He argues that a free and fair election is a constitutional goal and that the power of 'superintendence' is not an empty word and should be held to cover these areas also. The enquiry, according to him is limited to prove the situation. Relying upon the Rule 7 of Rules-2006 he argues that the State Election Commission can alter the election programme if the situation warrants.

Sri T.VishnuTeja, learned counsel for another implead petitioner (I.A.No.3 of 2021 in W.P.No.4154 of 2021) states that his client was an abducted candidate, who was prevented from filing nomination. Therefore, he contends that the petitioner has *locus standi* to file the application. He also argues that the enquiry that has been commenced should not be stopped and that depending on the finding and the conclusions appropriate action can be taken to ensure a free and fair election.

In I.A.No.2 of 2021 in W.P.No.4168 of 2021 Sri NimmagaddaVenkateswarulu appears for the implead petitioner. He argues that the petitioners were prevented from filing the nomination. An FIR was also registered in this



case but he argues that a very small percentage of complaints were actually registered by the police and that the rest are ignored by the police. Only when a VIP like a former MLA etc., are involved the police are registering the complaints, but in cases of others they are not even registering the complaints as per him. So he contends that the complaints available before this Court or the State Election Commission are a very very small percentage of the actual issue. He also submits that the enquiry should go on.

Sri C.V.Mohan Reddy, learned senior counsel argues in rejoinder that an Election Petition can be filed even by an elector or a candidate. He relies upon Rule 2 of 1995 Rules to state that even an elector can challenge the election. Relying upon Section 211 (2) learned senior counsel argues that corrupt practices include threats to the candidates or to an elector. The definition of an undue influence according to him includes the issues raised. He also argues that the whole letter issued by the State Election Commission must be set aside.

CONCLUSIONS:

The implead applications I.A.No.2 of 2021 in W.P.No.4168 of 2021; I.A.No. 3 and 4 of 2021 in W.P.No.4154 of 2021 are allowed. The office is directed to carry out the amendments.



This Court after hearing all the learned counsel has to say at the outset that it is perturbed and disturbed by the submissions made and the allegations which are expressed by the implead petitioners. This Court at this stage while entertaining a Writ under Article 226 of the Constitution is, however, not in a position to pronounce on the truth or otherwise of these various complaints. The fact however remains that the conduct of free and fair election is not merely an empty platitude but is a judicially recognized constitutional goal. On more than one occasion, including the judgments in ***RampakaviRayappaBelagali v B.D.Jatti and Ors.***⁵and ***People's Union For Civil Liberties and Another v Union of India and Another***⁶,the Hon'ble Supreme Court of India has held that the purity of the election process should be preserved and that free and fair polls are necessary.

As far as the power of the State Election Commission is concerned the law is well settled. It is the reservoir of power as far as the elections are concerned. If the statute or the rules are silent the State Election Commission can exercise the powers it has in order to ensure the free and fair poll. Decisions can be taken depending upon the fact situation and appropriate direction can be issued as the situation demands. However, in the case on hand the main issues raised broadly

⁵ (1970) 3 SCC 147

⁶ (2013) 10 SCC 1



are (a) threats, coercions etc., which are used against the potential candidates by which they were prevented from filing their nominations and (b) coercing the candidates to withdraw their nominations. Some allegations were also made about forgeries, false signatures etc., being used to withdraw filed nominations. These lead to unanimous elections being declared in the districts. The State Election Commission therefore decided to look into these forced/under duress withdrawals. It gave an opportunity to the candidates to submit complaints along with documentary data etc., before the Collector and District Election Authorities. In paragraph-13 the Commission has also decided to authorize the Collectors and the District Election authorities to revive the candidature of those who were subjected to forced withdrawals. The avowed objective of the State Election Commission is admirable and laudable. But the fact remains that in the present cases the rule position is against the State Election Commission's interference at this particular stage. The proviso to Rule 99 of the Rules, 2006 clearly states the State Election Commission "shall not" entertain any petition relating to elections that may arise from the time of calling of nomination till the declaration of results. Such cases shall be decided by the Court having competent jurisdiction. The present proviso carves out an exception to the Rule in 99 (1) which gives final authority to the State Election Commission to take a decision on any question as to interpretation of



Rules. The present proviso curtails and also explains the limitations on the power of the State Election Commission. It clearly states that all such cases should be decided by the Court of competent jurisdiction only. Therefore, even if the State Election Commission is of the opinion that the allegations of fraud, coercion, threats etc., are worth investigating, in the opinion of this Court, it does not have the power to interfere with the declaration of results or their formal announcement. Once the election is completed, as per Section 233 of the 1994 Act, it is only a Court / Election Tribunal that can decide the dispute. Sri E. Sambasiva Prathap relied upon ***Dravida Munnetra Kazhagam v Secretary, Governor's Secretariat and Others***⁷ and argued that the State Election Commission has the power. The argument looks appealing but in view of the settled legal position and the rules applicable to the dispute, this Court has to hold that the State Election Commission does not have the power to issue the instructions to the Collectors to conduct a *de novo* enquiry after the election process is completed. Further, allegations of fraud, coercion, duress etc., are matters which require clear and cogent evidence. In the opinion of this Court it is only the trained judicial mind of a judicial officer that can best determine these issues. Learned Senior Counsel Sri C.V. Mohan Reddy and V.N. Prasanth both rely upon **AC Josecase (1 supra)**. In the conclusions it was

⁷ (2020) 6 SCC 548



clearly held that when there is no legislation or rule, the Commission is free to act, but where the Act or the Rule are present, the Commission cannot override the Act or the Rules. The Judgment of the learned single Judge of this Court in ***PalamandaPrabhakar*** case (**2 supra**) is also cited. In this case also the District Collectors received reports of forged electoral forms etc. The learned Single Judge after considering the entire law on the subject came to the conclusion that the State Election Commissioner cannot take over the enquiry of disputed questions of fact and that it cannot assume the role of an adjudicatory body to go into the factual controversy, which have to be decided in an Election Petition. It was clearly held that after the declaration of the results and on the ground where complaints of large scale forgery etc., were received by the District Collectors, the State Election Commission cannot interfere. In the Division Bench Judgement of ***P. Ravinder Reddy v Election Commission***⁸, the last date for withdrawal was 11.11.1994. A candidate was kidnapped on 08.11.1994. He was traced on 09.11.1994. The Superintendent of Police gave a report on this by 10.11.1994. Thereafter the State Election Commission recommended that the election should be rescinded. Similarly in the case of ***K. Nageswara Rao v A.Anjaneya Reddy***⁹ the Division Bench found that the election meeting was to be held on 16.02.2004. Complaints of kidnapping

⁸ 1995 (1) ALT 204

⁹ (2004) 3 ALD 196



were received on 11.02.2004 and on 12.02.2004 the election meeting was postponed. Thus, in both these decisions the State Election Commission acted before the 'Election' was deemed to be completed. The action was upheld. In the present cases the enquiry was directed to be held after the nominations were withdrawn etc., resulting in a unanimous election. Thus the present cases are different.

This Court, therefore, has no hesitation to hold that while the idea and the endeavour behind the impugned letter are laudable the legal position is currently against the State Election Commission in these cases. Even if such complaints result in a tangible conclusion of fraud etc., this Court is of the opinion that the State Election Commission does not have the power to interfere and to set aside the election etc. This power is only given to the Election Tribunal constituted under the law. In fact, the Rule 66 proviso prohibits the State Election Commission from entertaining any complaint till the declaration of the results. Therefore, in the light of the case law that is cited and the legal position as it exists, these controversial questions cannot be decided by the State Election Commission or by the District Collectors etc., after the election process is over and formal declarations are given/about to be given.

During the course of submissions, the learned standing counsel for the State Election Commission argued that if para



13 of the letter is taken out of consideration, the rest of the letter which merely suggests that 'information should be gathered' can be used to set right the procedural difficulties or practical difficulties in order to ensure a free and fair election. This is in the opinion of this Court is permissible. If the data gathered by the State Election Commission would be useful for future guidance / future elections such an enquiry can be proceeded with. The permission given by this Court for continuation of the enquiries in such cases is only for the purpose of enabling the State Election Commission to gather information for identifying areas for improvements, for eliminating shortfalls and if necessary to proceed against the officers and staff, who did not act as expected of them in the conduct of free and fair election. Such action against the officers can however be as per the prevalent rules / regulations only. This data and enquiry can be utilized by the State Election Commission for itself or for onward transmission to the Central Election Commission or to the Legislatures / Parliament for amending of the laws, rules etc. This is being suggested since time and again the Hon'ble Supreme Court of India has held that a free and fair election is the foundation of democracy. The Highest Court has also clearly disapproved of officers / staff who do not discharge their duties in an unbiased manner. In order to achieve this objective, the information that is so gathered in the State of



Andhra Pradesh by the State Election Commission can be utilized.

As far as the individual cases are concerned, it is held that the order dated 18.02.2021, particularly, in so far as it relates to the “revisiting and reviving the candidates of those affected contestants” is set aside. There shall be a direction that the election of such candidates which were held back so far shall be immediately declared / certified as per Rule 16 and Rules 62 to 64 of the Conduct of Election Rules, 2006. It is open for their opponents to contest the same by filing appropriate proceedings in the Court / Tribunal constituted under the law.

For all the above reasons, the batch of Writ Petitions are allowed. There shall be no order as to costs.

Consequently, the miscellaneous applications, pending if any, shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: 16.03.2021

Note: LR Copy to be marked
B/o
SSV



HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

**WRIT PETITION Nos.4154; 4168; 4334; 4428; 4475;
4497; 4590; 4796 and 4823 of 2021**

Date:16.03.2021

SSV