



***HONOURBLE SRI JUSTICE D.V.S.S. SOMAYAJULU**

+ W.P.No. 5470 of 2021

% 25.03.2021

Smt. Ch.Sujatha,
W/o Ch.Ramesh, Tirupathi,
Chittoor District.

... Petitioner

Vs.

\$ The State Election Commission
M.G.Road, Vijayawada and 4 others.

... Respondents

! Counsel for the petitioner : Sri V.R.N.Prashanth

! Counsel for the Respondents : Sri N.Ashwani Kumar, SC for SEC
Sri Venkateswarlu Nimmagadda
Sri K.Krishna Reddy.

> Head Note:

? Cases referred:

¹ 1993 (4) SCC 175

² (2002) 5 SCC 294

³ AIR 1995 AP 212

⁴ 1995 (1) ALT 204

⁵ 2004 (3) ALD 196

⁶ 1952 SCR 218

⁷ 1978 (2) SCR 272

⁸ 1984 (3) SCR 74

**HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU****W.P.No.5470 of 2021****ORDER :**

This writ petition is filed questioning the order dated 04.03.2021 passed by the 1st respondent by which he suspended the election process to Ward No.7 of Tirupathi Municipal Corporation with immediate effect.

The petitioner is a candidate who is contesting for the Ward No.7 of Tirupathi Municipal Corporation. She along with the 5th respondent have filed their nominations. The scrutiny of the nominations were completed on 14.03.2020. However, due to the Covid-19, elections were postponed. Thereafter, proceedings dated 15.02.2021 were issued by which it was clarified that the electoral process from the stage of withdrawal of candidates would be resumed. It is submitted that the 5th respondent appears to have lodged a complaint stating that her signature was forged on a withdrawal form and based upon the said complaint, cognizance was taken and the matter was investigated. However, the 3rd respondent had noted that the Returning Officer against whom the complaint was made was not involved and that one D.Murali Naidu- an Election Agent committed the offence. It is submitted that even if the forgery was committed by a third party, the entire election cannot be stalled. Hence, the writ petition.

For the petitioner, Sri V.R.N.Prashanth argued the matter and pointed out that the initial complaint that was given by 5th respondent was against the Returning Officer. He drew the



attention of the Court to complaint dated 03.03.2021. He also points out that in the FIR that was finally lodged by the 5th respondent, the name of the accused is not shown. He argues that this is a clear discrepancy in the procedure and that the 5th respondent has utilized the opportunity to make allegations. The letters of the Commissioner, Tirupathi Municipal Corporation (respondent No.3) are also highlighted by the learned counsel in which it is clearly asserted that the withdrawal form was submitted by the Election Agent of the 5th respondent and that the Returning Officer had followed the procedure stipulated under the Act and the instructions given by the 1st respondent. Learned counsel points that the video footage was also examined by the 3rd respondent before they informed the same to the 2nd respondent. Learned counsel also argues that assuming for the sake of argument that forgery had taken place, it is a matter to be established by pleading and proof during the course of election petition in a Tribunal and that the 1st respondent did not have the power to suspend the election process. He argues vehemently that the 1st respondent does not have the power of “adjudicating” electoral disputes. It is his contention that whether a forgery was committed or not is a matter of investigation by the Police and a matter of proof during trial in an Election Tribunal. He points out that even if the Police submitted a report that an offence has been committed, still the same has to be established in a Court of law. Therefore, learned counsel argues that on the basis of surmises and mere conjectures, the entire electoral process cannot be stalled. He argues that it is for the election Tribunal alone to conclude that an offence was in



fact committed and the said offence had resulted in the withdrawal of the nomination. Learned counsel also drew the attention of this Court to an earlier order passed by this Court in W.P.No.5113 of 2021 and Batch dated 03.03.2021 to argue that this Court has already held that a matter of fraud in an election is a matter of pleading and proof and can be established in a duly constituted election Tribunal as per the Act.

In reply to this, Sri N.Venkateswarulu appearing for the 5th respondent relies upon the counter affidavit filed and argues that the last date of withdrawal of nominations in this case was 03.03.2021. On that day, the 5th respondent found that her name is not in the list of valid candidates. When she questioned the Returning Officer, she found that her candidature was withdrawn by somebody who was said to be the election agent. Learned counsel drew the attention of this Court to the affidavit filed, wherein it is asserted that the 5th respondent never appointed any Election Agent and that by forging her signature, her nomination was withdrawn.

Learned counsel points out that thereafter she approached the police authorities and lodged FIR.No.77 of 2021. It is stated that she has named one D.Murali Naidu as an accused in the complaint. However, it is mentioned that in the FIR that is lodged, the name of the accused was not mentioned and that the accused column in the FIR was shown as empty/blank. It is her contention that with the active connivance of the 4th respondent, a forged letter was submitted as if she has withdrawn her nomination. Allegations are also made against the 4th respondent. It is



reiterated that no person was appointed as an election agent by her. Learned counsel for the 5th respondent also highlights the fact that the Police have started the investigation and the same has progressed. Therefore, he submits that this is a matter which needs to be established and until the same is done, the 5th respondent cannot be said to have actually “withdrawn” from the election. He argues that fraud vitiates the process.

For the State Election Commission, Sri N.Ashwani Kumar appears. He points out that the alleged discrepancies in the original complaint and the FIR are not very material and that it is a matter of investigation. He submits that an FIR is not an encyclopedia and the alleged discrepancies are small. He relies upon the letters addressed by the 3rd respondent to respondent Nos.1 and 2, wherein it is mentioned that the Superintendent of Police was addressed to file an FIR against the Election Agent. He draws the attention of the Court to the unnumbered para 3 of the letter, wherein the 3rd respondent has clearly taken the stand that basing on the report of the Returning Officer and the video footage, the Superintendent of Police should be addressed to file an FIR against the Election Agent, who has submitted the withdrawal form with forged signatures as alleged by the candidate. The learned standing counsel also relies upon a letter dated 06.03.2021 addressed by the Superintendent of Police, Tirupathi to respondent No.1. It is mentioned therein that statement of five witnesses were already recorded; that notices were served on the authorities for proof of the documents along with visuals, video footage etc. The subsequent signatures are also forwarded to the Forensic Science



Laboratory for comparison etc. Learned standing counsel, therefore, submits that even as on date, the matter is under investigation.

As far as the power of the Election Commission is concerned, learned standing counsel argued that purity of electoral process has to be preserved by the 1st respondent. He points out that the letters filed by the petitioner show that there is a serious complaint about the submission of withdrawal form with a forged signature. The assertion of the 5th respondent in the counter affidavit that she did not appoint an election agent at all is also a factor highlighted by the learned standing counsel. It is his contention that in view of the seriousness of the allegation, this is a fit case in which the purity of election process is sought to be preserved by the 1st respondent. He submits that there is no provision under the relevant law dealing with a case of such nature namely forgery of signatures in the withdrawal form of a candidate. Therefore, he submits that in the absence of a law on the subject, the 1st respondent had acted correctly and has taken the step of postponing the election for the purpose of maintaining the purity of the election. Learned standing counsel relies upon the leading judgments of the Hon'ble Supreme Court of India in ***Digvijay Mote v. Union of India***¹ and ***Union of India v. Association for Democratic Reforms and others***² for arguing that purity of election process should be preserved at any cost. Relying on these two judgments, learned counsel argues that when the power is

¹ 1993 (4) SCC 175

² (2002) 5 SCC 294



exercised for a germane reason and is based upon some material, the Court should not interfere and should allow the 1st respondent a free hand. He points out that other than stating that there is an effective alternative remedy and that these are matters of pleading and proof, no law has been cited which is contrary to these two judgments. In his compilation, he has also filed other case law but he essentially relies upon ***N.Kristappa v. Chief Election Commissioner***³ which was upheld in ***P.Ravindra Reddy v. The Election Commission***⁴. He also relies upon another Division Bench judgment of A.P.High Court in ***Kanchupati Nageswara Rao v. Alla Anjaneya Reddy***⁵. Learned standing counsel argues that in this case also basing on FIR etc., elections were stopped and the Division Bench of this Court upheld the same. Therefore, it is his contention that the 1st respondent has exercised his power for genuine and germane reasons. It is his contention that there is no mistake in the decision making process and as such, the order passed should be upheld.

Consideration by the Court:

This Court after hearing of the learned counsel is of the opinion that in view of the case law, the 1st respondent is the sole repository of the power for the period of the elections. The words superintendence, control and directions of an election were held to be words of wide amplitude given wide power to the 1st respondent to ensure a free and fair election. A number of earlier decisions of

³ AIR 1995 AP 212

⁴ 1995 (1) ALT 204

⁵ 2004 (3) ALD 196



the highest Courts of the land have clearly held that in any areas left unoccupied by the law/legislation, the 1st respondent has the power to act as the situation demands. Article 324 of the Constitution has been held to be the reservoir of power and the 1st respondent has been held to be sole repository of the power. It is also settled law that the holding of a free and fair election is the ultimate constitutional objective. The law is too well settled to be repeated here.

This Court from the last few months has been hearing such matters. In the earlier writ petition, namely WP.No.5113 of 2021 and batch, this Court held that fraud is a matter of pleading and proof. In that case, the Court interfered because the 1st respondent herein directed the District Collectors, Returning Officers to look into the issue of fraud, forced withdrawals etc., and submit a report within two days. This Court was of the opinion in those matters that the District Collectors/Returning Officers are not competent to go into this issue and decide the same more so within the time frame stipulated. In those cases, this Court was also dealing with candidates who were elected unanimously in view of the withdrawal of their opponents and also duly elected. The process was almost completed.

In the case on hand, there are a few distinguishing features.

(a) the election/poll was still not held.

(b) a complaint has been lodged as required by the Cr.P.C., before the competent Police Station. It is the Police, who have set the law into motion by beginning an investigation into the subject.



(c) the 5th respondent has taken a positive stand that she has not appointed an Election Agent at all. The question, therefore, is who is the person, who has submitted the withdrawal form. Apart from that, it is also asserted that she did not sign any withdrawal form. The correctness of this allegation has to be examined. The Police have already stated that they are in the process of investigating the same and that the reports from the forensic laboratory etc., are awaited. Even the letters addressed by the 3rd respondent to respondent Nos.1 and 2 make it very clear that the FIR should be lodged against the Election Agent.

In the opinion of this Court, the specific stand taken by the 5th respondent that she has not appointed an Election Agent and that somebody has forged her signature to withdraw her nomination is a matter of serious concern if it is true.

The vehement argument of the learned counsel for the petitioner is that the 1st respondent cannot take a role of adjudicatory authority and decide an issue like this. He contends that there is no discretion vested in the 1st respondent to postpone an election on the basis of a complaint or FIR. However, a reading of the case law that is submitted, particularly, in **N.Kristappa's** case (3 supra), shows that in this case the learned single Judge was dealing with the election of Gorantla Assembly Constituency. 08.11.1994 was the last date for making nomination. 09.11.2014 was the last date for scrutiny. 11.11.2014 was the last date for withdrawal of candidates and 01.12.1994 was the date on which a poll was to be held, if necessary. A candidate of a political party was abducted on the morning of 08.11.1994 and was freed on the



next day i.e. on 09.11.1994. Because of the kidnap, this candidate could not file his nomination papers on 08.11.1994. Based upon this incident of abduction and the reports thereon, the State Election Commissioner recommended that the entire election process should be rescinded. The Governor of Andhra Pradesh accordingly issued the notification on 11.01.1994 rescinding the entire election for this constituency. This action of the Governor was challenged in the high Court of Andhra Pradesh. The learned single Judge upheld the action on the ground of purity of elections by his order dated 17.11.1994. This order was challenged before a Division Bench in WA.No.1395 of 1994. The decision in the Writ Appeal is reported in **P.Ravindra Reddy's** case (4 supra). The Division Bench upheld the order passed by the learned single Judge holding that the abduction of a candidate and his being prevented from filing his nomination has "irretrievably sullied" the electoral process.

Similarly, in **Kanchupati Nageswara Rao's** case (5 supra), the election to the Office of the President of Mandala Parishad was postponed on the ground that the spouse of an MPTC member was kidnapped. Another complaint was given stating that an MPTC member who was scheduled to vote was also kidnapped. These complaints of kidnap prior to the election led to the impugned order being passed on 12.02.2004 postponing the elections. This was questioned in the writ petition. In this case also, the District Collector called for a factual report from Superintendent of Police, Prakasam District. The said report was received on 12.02.2004. In addition, the Election Commissioner called for a report from the



District Collector, which was received on 11.02.2004. Based on these reports, the decision to postpone the elections was taken. The learned single Judge set aside the order of postponement. The matter was taken to the Bench. The Bench upheld the suspension and ultimately came to the conclusion that there was sufficient material before the Election Commissioner to record his satisfaction that the situation was not conducive for holding an election in a free, fair and peaceful manner.

These two cases substantially answer the argument of the learned counsel for the petitioner that the 1st respondent is assuming the role of an 'adjudicatory authority' and deciding whether there is a fraud/forgery etc. In the opinion of this Court, at this stage, it cannot be said that the 1st respondent has entered into an 'adjudicatory' role. The question that has to be seemed is whether the impugned order is passed for an extraneous reasons or if there is some material available, before the 1st respondent to come to the conclusion that he did. In ***N.Kristappa's*** case (3 supra), the kidnap was on 08.11.1994 and the last date for filing nominations was 09.11.1994. The Election Commissioner had before him the report of the Superintendent of Police apart from a case registered under the various provisions of law. Basing on the same, the elections were postponed. The order was upheld by the single Judge. He clearly held that after considering the leading judgments in ***N.P.Ponnuswami v. Returning Officer***⁶ and

⁶ 1952 SCR 218



Mohinder Singh Gill v. The Chief Election Commissioner⁷ that the State Election Commissioner has the authority to invoke its plenary powers for issuing such a direction in cases of abduction of a candidate and his failure to file a nomination. The election process was held to be ‘sullied’.

In para 32 of **N.Kristappa’s** case (3supra), it was held as follows:

“32. As discussed above, in the overall object of achieving the purity of the election process to remain intact, I am not persuaded to hold that the first respondent has acted arbitrarily or with any mala fide intention while recommending the Governor of Andhra Pradesh to rescind the election process insofar as it relates to 163-Gorantla Assembly Constituency of Anantapur District. The second question is accordingly, answered.”

The Division Bench while considering the appeal against this order of the single Judge also considered Articles 324, 329 of the Constitution of India and the law on the subject including **Mohinder Singh Gill’s** case (7 supra). It also relied upon **A.C.Jose v. Sivan Pillai**⁸ to reiterate the position that whether the law is silent, the Election Commissioner has the plenary power to give appropriate directions. In para 32 it was held that the physical disability of a candidate to file a nomination by reason of his abduction is a factor which has a bearing on the purity and fairness from election. Therefore, the Division Bench upheld the

⁷ 1978 (2) SCR 272

⁸ 1984 (3) SCR 74



action of the Election Commissioner in rescinding the election holding that the election process in Gorantla Constituency has been irretrievably sullied. The Court was satisfied that the State Election Commission has sufficient material before it. Even in the Division Bench judgment of ***Kanchupati Nageswara Rao's*** case (5 supra), the Division Bench held that there was sufficient material before the Election Commissioner to come to a conclusion about postponement of the election.

If the present case is seen against the backdrop of the law on the subject (which deal specifically the cases of abduction and prevention), this Court is of the opinion that there was sufficient material before the 1st respondent to make the recommendation. The 5th respondent has gone on record and stated that she has not appointed an Election Agent and that her signature has been forged by somebody claiming to be her election agent. The entire sequence of events therefore has to be investigated and established. The 3rd respondent in the letters addressed to the 1st and 2nd respondents directed the registration of the FIR also. The FIR was in fact registered on 04.03.2021 and the report indicates that witnesses were examined and FSL report is awaited. The alleged discrepancies in the report and the FIR are not very material at this stage, particularly, to hold that the 5th respondent made an incorrect complaint etc. It is settled law that FIR is not an encyclopedia of all the facts. The law is very well settled. The purity of the electoral process is something that must be preserved at any cost. This is a constitutional goal. All the judgments of the Hon'ble Supreme Court of India on this subject are clear and



uniform. A free and fair poll is the ultimate objective of the entire electoral process. If the allegations of respondent No.5 are found to be true, it was definitely have 'sullied' the electoral process and its purity. If not, the election can be held on another day. Public good always outweighs individual good/need.

In the cases relied upon by the 1st respondent basing on complaints of abduction, one election was rescinded and another election was postponed. These judgments are binding on this Court. In this case, the 2nd respondent directed that the election should be suspended.

In that view of the matter, this Court is of the opinion that the 1st respondent had adequate material before him to come to a conclusion based on the complaint of respondent No.5; the FIR etc.

This Court hope that this matter will be investigated and concluded quickly. This Court holds that the 1st respondent had sufficient material before him to take a decision and accordingly, the writ petition is dismissed. No order as to costs.

As a sequel, the miscellaneous petitions, if any shall stand dismissed.

D.V.S.S.SOMAYAJULU,J

Date : 25.03.2021
Note: L.R.Copy be marked.
KLP