



**HIGH COURT OF ANDHRA PRADESH**  
TUESDAY ,THE ELEVENTH DAY OF APRIL  
TWO THOUSAND AND TWENTY THREE

**PRESENT**

**THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI**

**WRIT PETITION NO: 41689 OF 2022**

**Between:**

1. RAVURI MURALI KRISHNA S/o.(late) Venkata Reddy,  
Hindu, Male, Age-46 years, Occ- Advocate,  
R/o. H.No.2/126, Near Ramalayam,  
27th Ward, Chodimella,  
Eluru Municipal Corporation, ELURU.

**...PETITIONER(S)**

**AND:**

1. THE UNION OF INDIA Represented by its Secretary,  
Department of Legal Affairs,  
4th Floor, A-Wing, Shastri Bhavan, New Delhi.
2. The A.P.State Election Commission, 1st Floor, New HODs Building,  
M.G.Road, Vijayawada-520010. Rep by its Secretary.
3. The District Collector/ The District Election Authority, West Godavari  
District, Now Eluru District office at Eluru.
4. The Eluru Municipal Corporation, Office at Near Badeti Chowk, Eluru. Rep  
by its Commissioner,
5. The Station House Officer, Eluru Rural Police Station, Eluru. West  
Godavari District.
6. Bathina Vijaya Kumar, S/o.Nageswara Rao,  
Hindu, Male, Age- 53 years,  
Occ- Corporator of Division No.27,  
R/o. H.No.4-1, Near Bypass Road,  
Chodimella, 27th Division, Eluru.

**...RESPONDENTS**

**Counsel for the Petitioner(s): SOMA RAJU YELISETTI**

**Counsel for the Respondents: N HARINATH**

**The Court made the following: ORDER**



**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

**WRIT PETITION NO. 41689 OF 2022**

**JUDGMENT:-**

1) Heard Sri. Y. Soma Raju, learned Counsel for the Petitioner, Sri. Viswanath Challa, Advocate appearing for Sri. S. Vivek Chandra Sekhar, learned Standing Counsel for Respondent Nos. 2 and 3 and Ms. Shilpa, Advocate, appearing for Respondent No.6.

2) This petition under Article 226 of the Constitution of India is filed for Writ of *Mandamus* with respect to the inaction of the Respondents in not considering the Petitioner's complaint, dated 18.07.2022, as also for a direction to the Respondent Nos. 2 to 4 to take appropriate action on the Petitioner's complaint.

3) The prayer in the Writ Petition, is as follows:

*".....pleased to issue a writ, order or direction more particularly one in the nature of writ of mandamus to declare the inaction of the Respondents in not considering the Petitioner Complaint dt. 18/07/2022 as illegal, arbitrary, contrary to law, violation of principles of natural justice, violation of Articles 14, 19(g) and consequently direct to the Respondents to consider the*



*Petitioner Complaint dt. 18/07/2022 and take appropriate action against the Respondent No 6 in accordance with law and to pass.....”*

4) The Petitioner’s complaint related to the election of the 6<sup>th</sup> Respondent for the post of Corporator of Ward No.27 in Eluru Municipal Corporation, Eluru, in the elections conducted in the year 2020.

5) The Petitioner’s case is that, the 6<sup>th</sup> Respondent was not eligible to contest the election, as criminal cases were pending against him, but without disclosing those cases he filed false affidavit and contested the election and was elected as Corporator.

6) Learned Counsel for the 6<sup>th</sup> Respondent submits that the 6<sup>th</sup> Respondent had no knowledge of the registration of those criminal which have already been closed. As such, there was no suppression of facts.

7) Learned Counsel for the 6<sup>th</sup> Respondent further submits that the complaint given by the Petitioner is not a statutory complaint for which direction cannot be given in



the exercise of power under Article 226 of the Constitution of India.

8) I have considered the submissions advanced and perused the material on record.

9) The Petitioner is a voter and in affect is challenging the election of the 6<sup>th</sup> Respondent by filing the complaint before the Respondent Nos. 2 to 4 and the writ petition is filed for direction to those respondents to decide such complaint.

10) Section 71 of the Andhra Pradesh Municipal Corporation Act, 1955, [**Act**] provides as under:

***“Presentation and Trial of Election Petition***

***71. (1) Election Petition:*** - [x x x] *No election held under this Act shall be called in question except by an election petition which shall be presented in such manner as may be prescribed.*

*(2) An Election petition calling in question any election may be presented on one or more of the grounds specified in clauses (i) and (ii) of section 79 and section 80 to the Election Tribunal by any candidate at such election or any voter, within two*



*months from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and the dates of the election are different is the later of those two dates.*

*[Provided that the period from the date on which an election petition can be filed under this sub-section to the date of the constitution of an Election Tribunal under Section 75, shall be excluded for purpose of computing the period of two months under this sub-section.]”*

11) Thus, Section 71 of the A.P. Municipal Corporation Act, 1955, provides for challenge to the election by an election petition to be presented in the manner prescribed. As per Sub-Section (2), the election can be challenged by any candidate at such election or even by a voter. The period of limitation and its computation is also prescribed for filing election petition by Sub-Section (2) read with the proviso.

12) It would be apt to refer the following judgments on the point of maintainability of a writ petition with respect to the challenge made to an election.



13) In **K.K. Shrivastava And Others Vs. Bhupendra Kumar Jain And Others**<sup>1</sup>, the Hon'ble Supreme Court held as under:

*“3. It is well settled law that while Article 226 of the Constitution confers a wide power on the High Court there are equally well settled limitation which this Court has repeatedly pointed out on the exercise of such power. One of them which is relevant for the present case is that where there is an appropriate or equally efficacious remedy the Court should keep its hands off. This is more particularly so where the dispute relates to an election. Still more so where there is a statutorily prescribed remedy which almost reads in mandatory terms. While we need not in this case go to the extent of stating that if there are exceptional or extraordinary circumstances the Court should still refuse to entertain a writ petition it is perfectly clear that merely because the challenge is to a plurality of returns of elections, therefore a writ petition will lie, is a fallacious argument. It is important to notice what the High Court has overlooked that the period of limitation prescribed by the rules is 15 days and if writ petitions are to be entertained long afterwards it will stultify the statutory provision.....”*

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<sup>1</sup> (1977) 2 Supreme Court Cases 494



14) In **Gujarat University Vs. N.U. Rajguru and Others**<sup>2</sup>, the Hon'ble Apex Court held as under in para 6:

*“It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum provided by the statute. While considering an election dispute it must be kept in mind that the right to vote, contest or dispute election is neither a fundamental or common law right instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the jurisdiction of the High Court under Article 226 of the Constitution by-passing the machinery designated by the Act for determination of the election dispute. Ordinarily the remedy provided by the statute must be followed before the authority designated therein. But there may be cases where exceptional or extraordinary circumstances may exist to justify bypassing the alternative remedies.....”*

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<sup>2</sup> 1987 (Supp) Supreme Court Cases 512



15) In ***Umesh Shivappa Ambi And Others Vs. Angadi Shekara Basappa And Others***<sup>3</sup>, also the Hon'ble Apex Court held that "*it is now well settled that, once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and the High Court will not ordinarily interfere with the elections under Article 226 of the Constitution.*"

16) Thus, the law is well settled that though the remedy by way of election petition to challenge the election is only an alternative remedy and is not an absolute bar to the entertainability of the writ petition, but ordinarily this Court will not entertain the writ petition and would keep its hands off, except in exceptional or extraordinary circumstances, leaving it to the Petitioner to avail the equally efficacious alternative statutory remedy by way of election petition.

17) The Petitioner had the remedy, to challenge the election of the 6<sup>th</sup> Respondent, by an election petition

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<sup>3</sup> (1998) 4 Supreme Court Cass 529





under the Act, in the manner prescribed and within the period of limitation prescribed by the Act.

18) The challenge to the election by way of a complaint, is not the remedy nor the procedure prescribed by the Statute, which can be only by an election petition. The Petitioner's complaint is also dated 18.07.2022, whereas the election was conducted in March 2020.

19) Though, in the Writ Petition there is no challenge to the election of the 6<sup>th</sup> Respondent, but indirectly a direction is being sought to decide the Petitioner's complaint relating to the challenge of election of the 6<sup>th</sup> Respondent.

20) Any direction to the Respondents to consider the Petitioner's complaint, would be contrary to the statutory provisions, as the Petitioner has not filed any election petition but the complaint is filed which is not statutory in nature. Mandamus cannot be issued to the Respondents who have no authority to consider the complaint to challenge the election.

21) In the result, the Writ Petition is **dismissed**.



No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, shall also stand closed.

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**RAVI NATH TILHARI, J**

Date: 11.04.2023

**Note:**

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B/o.

SM/KBN...



**THE HON'BLE SRI JUSTICE RAVI NATH TILHARI**

**WRIT PETITION NO. 41689 OF 2022**

**Date: 11.04.2023**

SM/KBN