

HON'BLE SRI JUSTICE S.V.BHATT

W.P.No.3182 OF 2015

ORDER:

The petitioner prays for Mandamus declaring the action of 4th respondent in taking action pursuant to show cause notices No.SCB/Cantt.Board Elections/2014-15/9 dated 17.12.2014, No. SCB/Cantt. Board Elections/2014-15/43 dated 29.12.2014, No. SCB/Cantt.Board Elections/2014-15/55 dated 30.12.2014, No. SCB/Cantt.Board Elections/2014-15/65 dated 31.12.2014, No.SCB/Cantt. Board Elections/2014-15/70 dated 01.01.2015 and No.SCB/Cantt.Board Elections/2014-15/78 dated 02.01.2015, as illegal, unconstitutional and amounts to refusing to exercise the jurisdiction vested in him.

The petitioner and the 5th respondent herein contested election for Ward No.6 in the Secunderabad Cantonment Board Elections 2015. The 4th respondent is the Returning Officer. The date of election is 11.01.2015. On 13.01.2015, the result was declared. The 5th respondent was the successful candidate as Ward Member, Ward No.6 and the petitioner was defeated. On 12.02.2015, the writ petition is filed complaining inaction by 4th respondent in logically concluding the show cause notice dated 17.12.2014. The writ prayer refers to a series of notices issued by the 4th respondent.

For the purpose of disposal of the writ petition, reference to one of the notices dated 17.12.2014 is sufficient and it reads as follows:

“No.SCB/Cantt.Board Elections/2014-15/9 Dated: 17.12.2014

To

Shri K.Pandu Rangam Yadav,

s/o Shri Balram,

H.No.1-8-31 (P.No.8), Seetharampuram, B'pally, Secbad.

Sub: Secunderabad Cantonment Board Elections, 2015 - Violation of Model Code of Conduct – Show Cause notice issued – Explanation called for – Reg.

“It has been brought to the notice of the undersigned that you have violated the Model Code of Conduct by using Political Party Names, Symbols, Political Party Colours and also advertising the Nationalized Political Parties/State recognized Political Parties image by using photographs of the head of the party leaders and directly or indirectly

influencing the voters during canvassing which tantamounts to your carelessness and gross negligence to the rules and regulations prescribed by the law.

In view of the above, you are hereby directed to explain the reasons and to show cause immediately, as to why should not be disqualified from contesting in the elections. If it thinks fit, declare such person to be disqualified from being a candidate in Cantonment Board for a period not exceeding five years.”

The 5th respondent, it is admitted, has filed reply to the notices issued from time to time.

On receipt of notice, the 4th respondent filed counter affidavit and opposed the maintainability of writ petition and secondly it is contended that the 4th respondent after receipt of explanation from 5th respondent and on being satisfied with the reply, dropped further action. The reply of 4th respondent is as follows:

“I further humbly submit that, it is true that I have issued several show cause notices to the unofficial 5th respondent similar to other candidates who were contesting for the remaining Wards of the Secunderabad Cantonment Board. In those show cause notices which were filed as Ex.P1 to P6 were issued are in the nature of general instructions to all the contesting candidates including the 5th respondent whereby stating that, the 5th respondent has violated the Model Code of Conduct by using political party name, symbols, colours and images of the political party and photographs of Head of the Party Leader and hence, directed the 5th respondent to explain the reasons to the show cause notices served. In response to the show cause notices, the 5th respondent submitted an explanation to all the show cause notices and one such explanation was filed as Ex.P7 wherein, he gave clarifications to the show cause notice and denied the contents of show cause notice and wherein he has clarified that the MLAs and M.Ps and Minister are participated in the process of election campaign and have not violated any model code of conduct and even referred the judgment of Hon’ble Supreme Court decided in case of Union of India Vs. Associations for Democratic Reforms and another and further clarified that there is no authentication of Code of Conduct for Cantonment Board Elections and the same was not recognized and further clarified that he has not violated any Code of Conduct prescribed for Board Elections.

I submit that thereafter all the routine complaints and information pertaining to Board Elections were kept in a separate file and after thorough verification of news gathered through print and electronic media I come to know that,

some of the Ministers, MLAs and MPs of Ruling TRS Party have participated in the Election Campaign of 5th respondent in their individual capacity by following Point No.34 of the Code of Conduct hence, there is no violation of Code as alleged by the writ petitioner. Since

I have satisfied with the replies to the show cause notices issued by the 5th respondent, I closed the issue and permitted the

5th respondent to participate in the election and accordingly, he has participated in the election and he was declared as elected since he got highest votes than other contesting candidates and the election results were published in the Gazette of India under Notification SRO-01(6) dated 11.02.2015 and as a Member of Ward No.VI.”

From the above, it is contended that the writ against the alleged inaction is misconceived and secondly if the petitioner, for any reason, is aggrieved, the election petition is maintainable.

The learned counsel appearing for the petitioner by placing reliance upon the Model Code of Conduct contends that the grievance canvassed in the writ petition is not a matter for election petition. The 4th respondent if had taken action in time, the object of the Model Code of Conduct is achieved and the inaction is a matter for consideration under Article 226 of the Constitution of India.

As already noticed, show cause notices were issued

and explanations were received by 4th respondent. The reasons shown or reply is found to be plausible by 4th respondent, and he did not take further action in the matter. The inaction complained against show cause notice is misconceived. It is not in dispute that the election result can be the subject matter of election petition before a competent Civil Court. Firstly, that the ground of inaction is misconceived and secondly that the remedy of election petition against all grievances including the subject matter of writ petition is maintainable. In the opinion of this Court, the prayer fails for the above two reasons.

The writ petition is, accordingly, dismissed. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

S.V.BHATT, J

31st March, 2015

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