

*** HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**

+ CIVIL REVISION PETITION No.1961 OF 2015

% 16-06-2015

A.P.Arya Vysya Mahasabha rep.by its President.

..PETITIONER

VS.

\$ Mutyapu Sudershan and others.

..RESPONDENTS.

! Counsel For The Petitioner: M/s.K.M.Mahender Reddy

^ Counsel For Respondents: Sri Prabhakar Peri

< Gist :

> Head Note :

? CITATIONS :

1. 2001 (5) ALD 705 (FB)
2. 2003 (3) ALD 153
3. AIR 2004 Andhra Pradesh 310
4. 2002 (6) ALT 268
5. (2011) 13 Supreme Court Cases 774
6. (2001) 8 Supreme Court Cases 509
7. (1978) 2 S.C.R. 272
8. AIR 1985 SC 1233
9. 1996 AIR 1595
10. 2008 (1) ALT 36
11. AIR 2012 SC 1727
12. 2014 (2) ALD 101

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ORDER:

The respondent No.2 in I.A.No.17 of 2015 in E.O.P.No.1 of 2015 on the file of Vacation Civil Judge (District Judge), Nizamabad preferred this revision under Article 227 of Constitution of India (Constitution) challenging the ex parte ad-interim injunction dated 12-05-2015 by the Vacation Civil Judge (District Judge), Nizamabad.

The respondents 1 and 2 herein were the petitioners and the present petitioner is the 2nd respondent in the main petition and they will be hereinafter referred as arrayed before the trial Court for convenience of reference.

The petitioners filed E.O.P No.1 of 2015 under Section 23 of Societies Registration Act and filed I.A.No.17 of 2015 for grant of ad-interim injunction, restraining the respondents 1 and 2 from holding election, complaining certain irregularities.

The specific allegations made in the affidavit filed by the respondents are that the petitioners are life members of the Society and the term of State Body, District Body, Mandal Level Bodies are for two years and that all the District Body members are the voters for the election of District body. All village and mandal elected members have to participate in the election of District. Mandal and City bodies have to be elected as per the bye-laws only. As per Rule-14 of Bye-laws of A.P.Arya Vysya Mahasabha, District Bye-Laws (Bye-laws), Mandal

and City bodies will be expired on 30th November i.e. after expiry of three years. While the matter stood thus, the Mandal and City level bodies election was not completed. But without completing election of Mandal and City level members, the District Level Committees informed the Mandal and City level members have to participate in the election of District Level Committee. Thus, holding election of the District Level committee is irregular.

It is further contended that some of the members filed O.P.No.741 of 2015 on the file of Chief Judge, City Civil Court, Hyderabad on similar ground and Chief Judge, City Civil Court passed interim injunction in I.A.No.743 of 2015.

Finally it is contended that the District Level Committees also facing similar problem as village, city bodies, as they are not formed. So far voters list is also not prepared by date. Hence holding of District Body Election by 13-05-2015 by respondent No.2 with the respondent No.3 and their associates is not proper and the same is null and void.

Upon hearing the argument of counsel for the petitioners, the Vacation Civil Judge-cum-District Judge, Nizamabad passed exparte-ad interim injunction dated 11-05-2015 restraining the respondents 2 and 3 from holding election for the District Body of Nizamabad.

Aggrieved by exparte ad-interim injunction order passed by the Vacation Civil Judge, Nizamabad, the present Revision is preferred under Article 227 of Constitution raising several contentions. The major contentions are that when the election process is commenced, it cannot be stopped by granting any interim injunction. It is further contended that as per Rule No.27 of Bye-laws alternative remedy is available to the aggrieved party and without exhausting said alternative remedy available under bye-laws, the petition is not maintainable.

The 1st petitioner suppressed the factum of filing nomination and withdrawing the same and thereby, he has no locus standi to file main election petition.

It is further contended that as Rule 18 of Bye-laws, the election shall be held once in two years on or before 31st January for the office of District President, whose term is for two years, which expire by 31st January. Clause-4 of the same rule further says that if elections are not completed for Mandal and Town, District Council members due to any reasons, the District President Election should be held compulsorily as per rules and bye-laws. If elections are not conducted in time, the Mahasabha will take responsibility to conduct District President elections. Any member wantonly should not trouble or stop the process of District President elections, due to reason of non-receipt of election schedule report etc., Therefore, any failure to complete the election of village, City, Mandal, levels is not a ground to stop the election for the District Level Committee of Arya Vysya Maha Sabha.

Finally, it is contended that the petitioners approached the Court just 24 hours before proposed date of election and that in case election is stopped by prohibitory order of injunction, the respondents before the trial Court will be put to inconvenience for the reason that the period was over by 31st January and completed elections in majority of Districts of Telangana Area for the office of District Level committees. In the separate affidavit filed by the respondents 1 and 2 before the Court specifically pleaded that the committee has to scrutinize the applications of the students and sign on their applications to extend financial assistance and admission into the hostels. If this injunction is made absolute, the ultimate suffers are the students who are to be admitted in the hostels and finally prayed to set-aside exparte ad-interim injunction order passed by the Vacation Civil Judge-cum-

District Judge, Nizamabad in I.A.No.17 of 2015 in E.OP.No.1 of 2015.

Learned counsel for the revision petitioner herein Sri K.M.Manohar Reddy would submit that when once election process is started, it cannot be stopped by obtaining prohibitory order of injunction and that too without availing remedy available under Rule 27 of Bye-laws of Arya Vysya Maha Sabha, the respondents 1 and 2 herein are not entitled to file election petition before the District Judge under Section 23 of Societies Registration Act. He also contended that the Revision is maintainable against the exparte ad-interim injunction and placed reliance on full Bench judgment of this Court in **G.V.Ranga Rao and another v.A.P.State Electricity Board Engineers Association**^[1] and another judgment of **Viswender Arya and Others v.Arya Pratinidhi Sabha and Others**^[2].

Per contra, learned counsel for the respondents 1 and 2 herein, Sri Prabhakar Peri, contended that the Revision itself is not maintainable in view of Division Bench Judgment of this Court in **Innovative Pharma Surgicals v.Pigeon Medical Devices Pvt. Ltd., and others**^[3] and apart from that, there is clear violation of bye-laws of District Level Committee of Arya Vysya Mahasabha and without completing election for Mandal, Village and City level bodies, the election of District Level Bodies cannot be held for the reason that they have to participate in the election for District Level Committee and the voters list prepared by the petitioners herein is not in accordance with bye-laws. Therefore, the injunction granted by the Vacation Civil Judge-cum-District Judge, Nizamabad cannot be interfered with.

Considering rival contentions, perusing the order under challenge and other connected material, the points that arise for consideration are:

1. **Whether Revision petition under Article 227 of**

Constitution is maintainable against ad-interim injunction granted by the Vacation Civil Judge-District Judge, Nizamabad in I.A.No.17 of 2015 in E.O.P.No.1 of 2015?

2. **Whether holding of election be interdicted by granting interim prohibitory order of injunction under Order 39 Rules 1 and 2 of C.P.C. when election process is started, if so, the order passed by the Vacation Civil Judge-cum-District Judge, Nizamabad be sustained?**

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POINT No.1:

The first and foremost contention raised by the counsel for the respondents 1 and 2 herein and the petitioners before the trial Court is that the Revision petition against the order passed under Order 39 Rules 1 and 2 is not maintainable, except in extraordinary circumstances and placed reliance on a judgment of Innovative Pharma Surgicals (supra 3), the Division bench of this Court while deciding similar issue held in para No.15 as follows:

“ In fact, we have never expressed any doubt as to the maintainability of the appeal and are of the view that the appeal against an ad interim injunction is maintainable under Order 43 Rule 1(r) C.P.C.”

But while discussing the material on record with reference to other judgments in para No.24 of the said judgment, the Division Bench held as follows:

“The immediate remedy that is available to the opposite party in case of issuing temporary injunction without issuing notice is under the provisions of Order 39 Rule 4 C.P.C. which enables the Original Court to vary or set aside or discharge the ex parte order. In the light of the above provisions and also the legal propositions, no appeal lies, as a matter of course, against an ex parte order, except in extraordinary circumstances or the rarest of the rare cases where the order is perverse or bias or suffers from lack of jurisdiction, but it is not the case of the petitioner.”

Even if the principle laid down in para No.24 of the Judgment is applied, the Division Bench of this Court categorically held that no appeal lies and never held that no revision lies under Article 227 of

Constitution. Even other wise, the Division Bench itself concluded that in extraordinary circumstances or in the rarest of rare cases the order can be challenged by filing an appeal, where the order is perverse or bias or suffers from lack of jurisdiction. Earlier in the other judgment of this Court in **Hyderabad Cricket Association, Secunderabad and others v. Cambridge Cricket Club and others**^[4], a single judge of this Court who is one of the member of Division Bench in judgment cited (supra 3) held that the appeal is not maintainable.

Learned counsel for the revision petitioner herein would draw attention of this Court to a judgment cited (supra 1), wherein full bench of this Court in para No.31 held as follows:

“From the discussions made hereinbefore, there is no manner of doubt that no appeal is maintainable in this Court under Order 43 Rule 1 of C.P.C. and there cannot be any doubt that a revision petition shall be maintainable.”

The same is referred in later judgment of single judge of this Court in judgment cited (supra 2) in support of his contention that the revision is maintainable under Article 227 of Constitution, when the order passed by the trial Court is illegal exercise of discretion.

Article 227 of Constitution of India conferred power of superintendence over all the Courts and tribunals throughout the territories in relation to which it exercises jurisdiction. Under Article 227 of Constitution the High Court can exercise discretion when inferior courts assumes jurisdiction erroneously in excess of power, when refuses to exercises jurisdiction, when found an error of law apparent on the face of record, when violated principles of natural justice, when inferior Court exercised its authority arbitrarily or capriciously, when arrived any finding perversely or based on no material or a patent or flagrant error in procedure, when order resulting in manifest injustice.

In the instant case, the order of the trial Court granting *ex parte* ad interim injunction during pendency of the petition, however limiting the same to a limited period is illegal exercise of discretion by the trial Court in flagrant violation of settled principles of law in catena of judgments. Therefore, this Court can exercise jurisdiction under Article 226 of Constitution and since law laid down by the Division Bench of this Court in judgment cited (supra 3) has no direct application to the facts of the present case. On the other hand, in view of full bench Judgment of this Court, the revision under Article 227 of Constitution is maintainable. Accordingly, the point No.1 is answered in favour of revision petitioner and against the respondents 1 and 2 herein.

POINT No.2:

One of the main contentions before this Court is that once election process is started the election cannot be interdicted by granting any injunctive relief under Order 39 Rule 1 C.P.C. In the instant case, the revision petitioner herein started election process, voters list was finalized and election officer published voters list and election was schedule to be held on 25-04-2015, called for nominations and dates for scrutiny and withdrawal was 26-04-2015 and fixed the date of polling as 13-05-2015. When voters list is prepared and election schedule was fixed, it can be said that the election process is commenced.

The election process commences when schedule is fixed as per the law declared in the judgment of **Supreme Court Bar Association v.**

B.D.Kaushik^[5]. In the said judgment it is held as follows:

60. “ Further the appellants had rightly pointed out to the learned Judge that election process had already started and, therefore, injunction, as claimed, should not be granted. Since 1952 this Court has authoritatively laid down that once election process has started the courts should not ordinarily interfere with the said process by

way of granting injunction. The argument advanced by the appellants that election process having started, the injunction should not be granted is dealt with by the learned Judge by holding that in the present case the plaintiffs have not prayed for injunction against the election process.

61. *This Court has no doubt at all that the injunction granted by the learned judge has propensity to intervene and interfere with the election process which had already started. Apart from the prayers claimed in the applications filed under Order 39 Rules 1 and 2 read with Section 151 C.P.C. the Court could not have ignored the effect of granting an injunction. If the injunction granted by the learned Judge had not been stayed by this Court, the office bearers of SCBA would have been required to prepare a new voters list as if unamended Rule 18 was in operation and the exercise undertaken by them for preparing voters list in the light of the amended Rule 18 would have been of no consequence. Thus, the injunction claimed by the respondent-plaintiffs which had very wide repercussions on the elections, which were to be held in the year 2003, should not have been granted by the learned Judge.*

62. *The impugned order is also liable to be set aside on yet another ground. Though the suits were not filed in a representative capacity, the injunction is granted by the court restraining the appellants from implementing the resolution dated 18-02-2003 in respect of all advocates and not in respect of two advocates only who have filed Civil Suits Nos 100 of 2003 and 101 of 2003 respectively. A perusal of the plaint in the two suits make it more than clear that suits are not filed in a representative capacity. In the plaint, individual rights to vote at the election of the Executive Committee of SCBA is claimed. Even if extremely good cause was made out by the respondent-plaintiffs of the two suits, the relief could have been confined only to the two respondent-plaintiffs and a relief granting blanket injunction restraining the appellants from implementing the resolution dated 18-02-2003 amending Rule 18 of the Rules and Regulations of SCBA till the final disposal of the suits could not have been granted.”*

However, the respondents had rightly pointed to the learned

judge that the election process has already started and therefore, injunction as claim should not be granted since 1952 the Court has authoritatively laid down that once election process is started, the Court should not ordinarily interfere with the said process by way of granting injunction. In para No.60 held that this Court has no doubt at all that the injunction granted by the learned judge has propensity to intervene and interfere with the election process, which had already started. Apart from the prayers claimed in the applications filed under Order 39 Rules 1 and 2 read with Section 151 C.P.C. the Court could not have ignored the affect of granting an injunction. If the injunction granted by the learned Judge had not been stayed by this Court, the office bearers of District Committee would have been required to prepare a new voters list and the exercise undertaken by them for preparing voters list have been of no consequence. Thus, the injunction claimed by the respondent-plaintiffs, which had very wide repercussions on the elections, which were to be held in the month of December, 2012 should not have been granted by the learned Judge.

In another judgment of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and Another v.State of Maharashtra and others**^[6], the Apex Court in para No.7 of the judgment held as follows:

“ In the light of the aforestated provisions of Chapter XI-A of the Act and the Rules, we will examine as to whether preparation of electoral rolls is an intermediate stage in the process of election.”

Further in para No.9 of the judgment held that breach of any rule or certain mandatory provisions of the Rules were not complied with while preparing the electoral roll, the same could be challenged under Rule-81(d) (iv) of the Rules by means of an election petition.

If these principles are applied to the facts of the present case, preparation of election rolls, publication of the same by the election

officer, fixing date of filing nominations, withdrawal of nominations and polling can be said to be a commencement of election process without any hesitation. In such a case, the Court cannot grant interim injunction restraining the respondents 1 and 2 before the trial Court and revision petitioners herein from holding election as per the schedule. In view of the law declared by the Apex Court in B.D. Kausik's case referred supra.

It is well known that no election can be challenged except by way of election petition and the Supreme Court time and again commencing from 1952, in **Mohinder Singh Gill and another v. Chief Election Commissioner, New Delhi and others**^[7] and **Lakshmi Charan Sen v. AKM Hassan Uzzaman and others**^[8]. But these judgments are under Representation of People Act and by virtue of Article 329 of Constitution, there is bar from interfering with the election process. However, the present matter not pertaining to the provisions of Representation of Peoples but it pertains to Societies Registration Act but the general principle is that once the election process is started it cannot be interdicted by granting interim injunction.

In Boddula Krishnaiah and another v. State Election Commissioner, Andhra Pradesh and others^[9] in para No.12 the Apex Court held as follows:

“ It would be clear that once an election process has been set in motion, though the High Court may entertain or may have already entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh in particular when election has already been held in which the voters were allegedly prevented to exercise their franchise. As seen, that dispute is covered by an election dispute and remedy is thus available at law for redressal.”

In **K.Vishnukumar Reddy v.Inspector General of Registration and others**^[10], a single Judge of this Court held that the Courts are expected to be slow in interfering in such election matters by making a restraint order, this Court is not inclined to interfere at this stage. However, the same can be agitated by filing election petition. The consistent view of this Court and the Apex Court is that once the election process is started, the same cannot be interdicted by granting any injunction but such election can be questioned by filing an election petition.

Irrespective of nature of the matter, the Court while granting ad interim injunction has to record its reasons for dispensing with notice under Order 39 Rule-3 C.P.C. to the respondents but here the trial Court did not assign reason for dispensing with the notice. However in the judgment of **Maria Margarida Sequeria Fernades and Others v.Erasmo Jack de Sequeria (dead) through L.Rs**^[11], the Apex Court in para No.86 held as follows:

“ Grant or refusal of an injunction in a civil suit is the most important stage in the civil trial. Due care, caution, diligence and attention must be bestowed by the judicial officers and judges while granting or refusing injunction. In most cases, the fate of the case is decided by grant or refusal of an injunction. Experience has shown that once an injunction is granted, getting it vacated would become a nightmare for the Defendant. In order to grant or refuse injunction, the judicial officer or the judge must carefully examine the entire pleadings and documents with utmost care and seriousness.

The safe and better course is to give short notice on injunction application and pass an appropriate order after hearing both the sides. In case of grave urgency, if it becomes imperative to grant an ex parte ad interim injunction, it should be granted for a specified period, such as, for two weeks. In those cases, the Plaintiff will have no inherent interest in delaying disposal of injunction application after obtaining an ex parte ad interim injunction. The Court in order to avoid abuse

process of law may also record in the injunction order that if the suit is eventually dismissed, the plaintiff undertakes to pay restitution, actual or realistic costs. While passing the order, the Court must take into consideration the pragmatic realities and pass proper order for mesne profits. The Court must make serious endeavour to ensure that even-handed justice is given to both the parties.”

If the law as declared by Apex Court is applied to the present case granting ad-interim injunction till 15-06-2015 is totally inconsonance with the principle laid down in the above judgment, by the Vacation Civil Judge, Nizamabad.

On overall consideration of entire material available on record with reference to law declared by Apex Court and this Court, it is clear that no injunction can be granted to interdict the election once the election process is started.

One of the contentions urged before me in the Revision Petition by the counsel for the revision petitioners and respondents 1 and 2 before the trial Court is that without exhausting remedy available under rule 27 of the District Level Bye-laws, the petitioner cannot straight away approach the Court to interdict the election.

According to Rule 27 of the District Level Bye-laws, when there is a dispute regarding the election or any other dispute, the aggrieved party may approach the president of Mahasabha. The present dispute is only with regard to election. In such a case, the remedy is available under rule 27 of District Level Bye-laws and in such a case, the respondents 1 and 2 herein and the petitioners before the trial Court are not entitled to claim injunctive relief and the same question was decided by this Court in the judgment rendered in **G.Bala Subrahmanyam and another v.Bar Council of Andhyra Pradesh, Hyderabad and others**^[12] and in para No.20 of the said judgment this Court held as follows:

“ In my opinion, it is for the aggrieved party to

work out his remedies either under the bye-laws or if the same is not possible under Section 23 of the Societies Registration Act.”

This Court held that he may work out his remedies as per the bye-laws or if the same is not possible, he may approach this Court under Section 23 of the Societies Registration Act. Here, the petitioners before the trial Court and the respondents 1 and 2 herein did not exhaust remedy available under Rule 27 of the District Bye-laws. On this ground alone, the petitioners are disentitled to claim injunction.

The major contention of the counsel for the respondents 1 and 2 herein and the petitioners before the trial Court is that unless the elections for village level, mandal level and town level itself are completed, the district level committee cannot be elected for the reason they are the voters and they have to franchise their vote for election of District Level Committee. No doubt, the respondents 1 and 2 are voters to elect the District Level Committee, but as per the clause No.4 of bye-law No.18 of District Bye-laws says that if for any reason the elections of mandal and city presidents was not completed within time for any reason, the District President election shall go on. Even otherwise, Arya Vysa Mahasabha of the said committee will conduct election. Therefore, non-completion of election of mandal, city and village level committees is not a ground to interdict the election. Of course, they are loosing their right to franchise their vote in the election of District President. But in view of the bye-laws, it is difficult to sustain this contention to interdict the election.

Learned counsel for the revision petitioner contended that the 1st petitioner before the trial Court suppressed his filing nomination and withdrawing the same. Thereby, he is disentitled to claim equitable relief of injunction.

Learned counsel for the petitioner brought to the notice of this

Court about withdrawal of his nomination for the office of president of District Level Committee and withdrawing the same. The election officer accepted the same. But this fact was not disclosed in the petition but by that itself is not a ground to decline injunction.

Learned counsel for the revision petitioner further contended that holding of election is delayed, students to be admitted in the hostel obtaining financial aid from the District Level will be put to serious loss since the academic year is fast approaching. One of the objects of the District Level Committee is to provide help to the poor students by joining into Vyshya hostel and financial help for prosecuting their studies. Undoubtedly, the academic year is fast approaching and in case, the students applied for their admission into Vyshya hostel or for financial help. Those applications have to be processed by District Level committee and they will be put to inconvenience. But the counsel for the respondents brought to my notice that there was no Vyshya hostel within the limits of Nizamabad District and the question of admitting students from Vyshya community does not arise. But the counsel for the revision petitioner contended that even for admission in Vyshya hostel in Hyderabad, the District Committee has alone has to process the application. But these contentions are not germane for deciding the issue involved in this matter in view of my discussion in the earlier paras. One of the objections taken by this Court about the maintainability of the petition under Section 23 of Societies Act. But the learned counsel Sri Prabhakar Perpi drawn attention of this Court to several judgments but this is not appropriate stage to decide the maintainability of the petition except for limited purpose of deciding injunction petition. However, it is left open to both the parties to agitate the same before the trial Court if necessary.

In view of finding on points 1 and, 2, the revision petition is maintainable under Article 226 of Constitution and that no injunction

shall be granted to interdict the election when once the election process is started. But the trial Court did not adhere to the law at the time of granting interim injunction but passed an order mechanically, in view of the urgency complained by the petitioner before the trial Court. However the order cannot be sustained and the same is hereby set aside.

Very maintainability of election petition is doubtful for the reason election was not held as per schedule, at best it may attract the management of society covered by Section 23 of Societies Registration Act. This question needs no examination in view of limited scope of revision. The parties are at liberty to agitate the same before trial Court.

In the result, the petition is allowed vacating interim stay granted by Vacation Civil Judge-cum-District Judge, Nizamabad in I.A.No.17 of 2015 in EOP.No.1 of 2015. Each party do bear their own costs.

M. SATYANARAYANA MURTHY, J

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