

HON'BLE THE ACTING CHIEF JUSTICE DILIP B. BHOSALE

AND

THE HON'BLE SRI JUSTICE S.V. BHATT

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Writ Petition No.39947 of 2015

Date:22.12.2015

Between:

Mohammed Shamsuddin,

Kandukur,

R/o. Lemoor,

Ranga Reddy District.

Petitioner

And

The Union of India,

Represented by its Chief Election Commissioner,

Election Commission of India,

Nirvachan Sadan,

New Delhi and others.

... Respondents

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PC: (Per the Hon'ble the Acting Chief Justice Dilip B. Bhosale)

Heard Mr. Suresh Shiv Sagar, learned counsel for the petitioner and Mr. Avinash Desai, learned counsel for the respondents.

The petitioner, in the instant writ petition, seeks the following relief:

"For the reasons stated in the accompanying affidavit, the petitioner herein prayed that this Hon'ble Court may be pleased to pass order or orders one in the nature of Writ of Mandamus declaring the action of the respondent Nos. 1 to 4 in not including the name of petitioner in the Electoral Rolls prepared for upcoming Biennial Elections for seat of Local Authorities Constituency, Ranga Reddy District, for Legislative Council for State of Telangana, to be scheduled on 27-12-2015 as per Notification dated 02-12-2015 and also not including the name of the petitioner irrespective of representation dated 30.11.2015 made with the respondent No.4 under Form-17 under Rule 30 of Registration of Electoral Rolls, 1960, thereby depriving the petitioner from exercising Right to Vote as guaranteed under Article 171 of Constitution of India, so also under Section 27 (2) of the Representation of People Act, 1950 and also under Memo No.466/Elecs.E/A3/2015-2, dated 13.2.2015 & 8.10.2014 issued by respondent No.2 as illegal, arbitrary, violative of Constitutional, Statutory and Fundamental Rights of petitioner and against principles of natural justice and pass such other order or orders as this Hon'ble Court may deem fit in the circumstances of the case."

According to the petitioner, he made application for inclusion of his name in the electoral roll for Local Authorities' Constituency on 30.11.2015. He claims

to be Co-opted member of Mandal Praja Parishad, which is a constituent Local Authority. He further claims that he is entitled to be registered as elector in the said Constituency and requested for inclusion of his name in the electoral roll.

We have perused the application in Form-17 under Rule 30 of the Registration of Electors Rules, 1960. Though the application made by the petitioner was addressed to the Electoral Registration Officer, acknowledgment thereof, was given by Zilla Praja Parishad, Ranga Reddy Zilla and not by the Electoral Registration Officer. The Electoral Registration Officer in the present case is Joint Collector.

Learned counsel for the respondents submits that the Electoral Registration Officer never received the petitioner's application and in any case, he did not receive it before the last date for filing nominations, i.e., 9.12.2015.

Though, learned counsel for the petitioner made a feeble attempt in submitting that the application though was presented in the Office of Zilla Praja Parishad, on the basis of the letter dated 8.10.2015, it reached the office of Chief Electoral Officer, Andhra Pradesh and Telangana before 9.12.2015. There is absolutely nothing on record to show that the application was presented either to the Electoral Registration Officer or to the Chief Electoral Officer.

Learned counsel for the respondent-Election Commission invited our attention to Section 23 of the Representation of the People Act, 1950 (for short 'the Act') to contend that it provides the procedure for inclusion of names in electoral roll. Sub-Section (1) thereof, states that any person whose name is not included in the electoral roll of a Constituency may apply to the "Electoral Registration Officer" for the inclusion of his name in that roll. Sub-section (2) provides that the Electoral Registration Officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his name to be included therein. Sub-section (3) is also important, which, he submitted, provides that no amendment, transposition or deletion of any entry shall be made under Section 22 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this Section, after the last date for making nominations for an election in that constituency or in the Parliamentary constituency within which that constituency is comprised and before the completion of that election.

It is not in dispute that the petitioner though addressed the application to the Electoral Registration Officer in Form-17, it was not delivered in the office of the Electoral Registration Officer within the stipulated time. He, therefore, submitted that the prayer in the writ petition cannot be entertained. Learned counsel for the petitioner could not and did not dispute the submissions made on behalf of the respondents. We are, therefore, constrained to dismiss the petition.

Order accordingly.

Consequently, pending miscellaneous applications shall also stand closed.

DILIP B. BHOSALE, ACJ

S.V. BHATT, J

22nd December, 2015

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