

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE DR JUSTICE SHAMEEM AKTHER

WRIT APPEAL NO.1416 OF 2016

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

Heard Sri L.Ravi Chander, learned Senior Counsel appearing on behalf of the appellant (petitioner in WP.No.35675 of 2016), Sri P.Veera Reddy, learned Senior Counsel appearing on behalf of the petitioner in WP.No.33607 of 2016, Sri P.Keshav Rao, learned counsel appearing on behalf of the petitioner in WP.No.33408 of 2016 and Sri V.V.Prabhakara Rao, learned Standing Counsel for the State Election Commission.

As this appeal is preferred only against the order passed in WP.No.35675 of 2016 dated 09.12.2016 by the petitioner therein, and as the controversy in these proceedings is limited to the question whether the learned Single Judge was justified in directing the State Election Commission to forthwith hold elections to the post of Mayor of Chittoor Municipal Corporation without linking up holding of such election to the election of vacant Ward Members of Chittoor Municipal Corporation, it is unnecessary for us to refer to the facts in detail. Suffice it to note that, while the death of the Mayor on 17.11.2015 resulted in the office of the Mayor and of one of the members falling vacant on that day, another casual vacancy arose on the death of another member on 17.12.2015. Election to the office of the Mayor is indirect, and all the elected members of the Chittoor Municipal Corporation, in turn, elect the Mayor.

Section 7(2) of the Greater Hyderabad Municipal Corporation Act, 1955, in view of the provisions of the Andhra Pradesh Municipal Corporations Act, is applicable to all Municipal Corporations in both the States of Telangana and Andhra Pradesh. The said provision relates to the election of members of the Municipal Corporations, and stipulates that every casual vacancy, in the office of an elected member of a Municipal Corporation, shall be reported by the Commissioner to the State Election Commission within fifteen days from the date of occurrence of such vacancy; and shall be filled within four months from that date. Section 90 of the said Act relates to the election of Mayor and Deputy Mayor and, under sub-section (1) thereof, the elected members shall elect one of themselves to be the Mayor and another to be the Deputy Mayor at the first meeting of the Corporation, after the ordinary elections, by show of hands on party basis duly obeying the party whip given by such functionary of the recognized political party, in the manner prescribed; if in an election, the Mayor or Deputy Mayor is not elected, fresh election shall be held on the next day; the names of the Mayor and the Deputy Mayor so elected shall be published in the prescribed manner; any casual vacancy in the said offices shall be filled in the same manner at a casual election; and a person elected as the Mayor or the Deputy Mayor, in any such vacancy, shall enter upon office forthwith, and hold office only so long as the person in whose place he is elected would have been entitled to hold office, if the vacancy had not occurred. Rule 8 of the Andhra Pradesh Municipal Corporations (Conduct of Election of Mayor and Deputy Mayor) Rules, 2005 relates to the procedure for filling up a casual vacancy in the office of the Mayor

and Deputy Mayor and, under the proviso thereto, every casual vacancy shall be filled up within a period of six months from the date of occurrence of such vacancy.

The Election Commission issued a Circular dated 29.10.2003 which required election to the office of Mayor to be held only after election of a member of the Municipal Corporation. In the order under appeal the learned Single Judge has, in our view rightly, observed that, since the quorum for election of a Mayor in a Municipal Corporation is 50% of the members, election of the office of a Mayor need not await election of the members of the Municipal Corporation. The learned Single Judge, thereafter, directed the State Election Commission to forthwith hold election to the post of Mayor of Chittoor Municipal Corporation without linking up holding of such election to the election of vacant Ward Members of the Chittoor Municipal Corporation.

While Sri L.Ravi Chander, learned Senior Counsel appearing on behalf of the appellant, has put forth his submissions on the validity of the Circular, we are satisfied that the understanding of the State Election Commission (which resulted in the said Circular being issued), that filling up of a casual vacancy in the office of Mayor/Deputy Mayor of a Municipal Corporation should await election to the post of members of the Municipal Corporation, is flawed. To the extent the learned Single Judge found the Circular to be contrary to the provisions of the Act and the Rules, we see no reason to interfere with the said order in an intra-Court appeal under Clause 15 of the Letters Patent as the order, to this extent, does not suffer from any infirmity.

We are, however, impressed with the submission of Sri L.Ravi Chander, learned Senior Counsel, that this Court, in the exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India, would not take upon itself the task, which Part IX-A of the Constitution of India, the provisions of the GHMC Act and the Rules made thereunder have conferred on the State Election Commission; and the manner in which elections of the Mayor/Deputy Mayor and members of the Municipal Corporations should be conducted are all matters for the State Election Commission to decide, and not for this Court to direct.

The time limit for conducting elections to fill up a casual vacancy of a member, under Section 7(2) of the Act, is four months. The time limit for filling up the casual vacancy of the Mayor, under the proviso to Rule 8, is six months. Any delay in conducting elections, either to the post of Mayor or that of members of the Municipal Corporations by the State Election Commission, can undoubtedly be questioned in proceedings under Article 226 of the Constitution of India, as the State Election Commission has the obligation, both under Part IX-A of the Constitution and the GHMC Act, to ensure timely conduct of elections. That would, however, not justify this Court directing the State Election Commission to conduct elections in a particular manner or in stipulating that the election of a Mayor should precede the election of members of the Municipal Corporation. We may not be understood to have held that election to the office of Mayor should await elections to the post of members of the Chittoor Municipal Corporation. All that we have held is that these are all matters for the State Election Commission to decide, and

not for this Court, in the exercise of its extraordinary jurisdiction under Article 226 of the Constitution of India, to dictate. To the limited extent the learned Single Judge directed the State Election Commission to hold election to the post of Mayor of the Chittoor Municipal Corporation, without linking up holding of such election to the election of vacant Ward Members of Chittoor Municipal Corporation, the order under appeal is set aside.

Both Sri P.Veera Reddy, learned Senior Counsel, and Sri P.Keshav Rao, learned counsel, would submit, rightly so, that, through a casual vacancy arose on the death of Mayor on 17.11.2015 and the six-month period stipulated for holding election expired by 16.05.2016, the casual vacancy of Mayor still remains unfilled. While Sri V.V.Prabhakara Rao, learned Standing Counsel for the State Election Commission, would draw our attention to the counter affidavit to submit that the State Election Commission has had its difficulties in conducting elections, we are satisfied that the State Election Commission ought to have held elections to the post of Mayor and members of the Municipal Corporation within the time stipulated under Section 7(2) and Rule 8 of the Act and the Rules. When we asked Sri V.V.Prabhakara Rao, learned Standing Counsel, as to the justification for the inordinate delay in holding elections, learned Standing Counsel undertakes, on behalf of the State Election Commission, that elections, to fill up the vacancies in the office of Mayor and members of the Chittoor Municipal Corporation, would be held before 15th of April, 2017.

The order under appeal is modified and the State Election Commission is directed, in terms of the undertaking now furnished

by them to this Court, to complete holding of elections, to the office of Mayor and members of the Chittoor Municipal Corporation, on or before 15.04.2017.

The Writ Appeal stands disposed of, accordingly. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(DR. SHAMEEM AKTHER, J)

3rd March 2017
RRB

