

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 29612 of 2017

Date :12.9.2017

Between :

Sayyed Mahaboob S Shakir S/o Sayyed Mohiddin Haji
30 years R/o H No. 62-1-40 Market Street
Jagannadhapuram, Kakinada Urban
East Godavari district

Petitioner

And

The State of AP,
Rep by its Principal Secretary,
Municipal Administration and Urban Development Department
Secretariat, Velagapudi, Guntur and others

Respondents

The Court made the following:



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ORAL ORDER:

Petitioner is claiming to be resident of Kakinada Municipal Corporation (for short KMC) limits. In the writ petition, petitioner is challenging the action of the respondents in conducting elections to the post of Mayor and Deputy Mayor to KMC without conducting elections to all the 50 wards of KMC. According to petitioner, same is in violation of the provisions of Section 90 of Greater Hyderabad Municipal Corporation Act, 1955 (for short the Act, 1955) and the A.P. Municipal Corporations (Conduct of Election of Mayor and Deputy Mayor) Rules, 2005 (for short the Rules, 2005).

2. Heard Sri Vedula Venkataramana, learned senior counsel appearing for petitioner, learned Special Government Pleader (AP) for first respondent, Sri Ancha Panduranga Rao, learned standing counsel for second respondent-KMC, learned Government Pleader for Revenue (AP) for third respondent.

3. According to learned senior counsel, the composition of elected ward members of KMC is fixed at 50, however, elections were held to only 48 wards leaving 2 wards aside, due to interim orders granted by this Court dated 1.8.2017 in WPMP No. 32209 of 2017 in W.P. No. 25983 of 2017 which writ petition was filed challenging inclusion of certain areas within the limits of KMC covering ward Nos. 42 & 48. As elections are not held to those 2 wards, it cannot be said that there is full composition of the elected ward members of KMC and unless there is full composition of elected members available, no election to the post of Mayor and Deputy Mayor can be held. In support of the said contention, learned senior counsel placed reliance on provisions in Sections 5 & 90 of the Act, 1955 and Rules, 2005.

4. On the other hand, learned Special Government Pleader placed reliance on the decision rendered by learned single Judge of this Court in **S.K.Pushpalatha Vs. The State of Andhra Pradesh**¹, as affirmed by Division Bench in WA No. 1416 of 2016 dated 3.3.2017 and contended that all the issues as agitated in this writ petition were considered and this Court held that it is not necessary that elections to all the wards should be held and all ward members should be elected before holding elections to the post of Mayor and to the post of Deputy Mayor and in view of the law laid down by the learned single Judge as confirmed by the Division Bench, the prayer sought in this writ petition cannot be granted.

5. In response, learned senior counsel would submit that as relevant provisions of the Act, 1955 and Rules made thereunder have not been properly interpreted, the decision arrived at by this Court in **S.K.Pushpalatha** requires reconsideration.

6.1 The said contention of the learned senior counsel is stated to be rejected. No case is made out to reconsider the decision in **S.K.Pushpalatha**. All the aspects concerning election to the post of Mayor and to the post of Deputy Mayor were extensively considered in **S.K.Pushpalatha** and a clear finding is recorded that it is not necessary to differ holding of election to Mayor and Deputy Mayor till the elections to all the wards are held. All contentions urged in this writ petition were also considered. The said decision is affirmed by the Division Bench.

6.2 It is appropriate to note at this stage that in the case of **S.K.Pushpalatha** ward member who was elected as Mayor died and another ward member vacancy arose for some other reason, therefore there were two vacancies of ward members. The prayer to hold election to Mayor and Deputy Mayor was opposed by the State Election

¹ 2017 (4) ALD 90

Commission on the ground that first elections to the ward members should be completed and all the ward members should be elected. On extensive consideration of all the contentions, the stand of the State Election Commission, was negatived and directions were issued. The Division Bench of this Court in WA No. 1416 of 2016 affirmed the view taken by the learned single Judge on the scope of relevant provisions of the Act and on the issue of conducting of elections even though all the ward members are not elected.

6.3. The relevant paragraphs in **S.K.Pushpalatha** reads as under:

“26.D The sentence **‘one half of the members then in the corporation’** read with the word **‘Elected’** used in Sections 5,6,7 & 90 of GHMC Act clearly point out, leading to no ambiguity that only existing members mentioned in Sections 5 (1) and 5(1-A), who were already elected and who have not earned disqualification to participate in the election, would comprise Electoral College. Thus, Statute does not require full representation of all Ward Members.

26.E It is implicit that vacant wards are not counted. A vacancy in a ward can be for any reason, such as due to death, resignation, disqualification or not holding election/countermanding the election for valid reason. Thus, the statutory prescription and legislative intent is explicit and clear that election of Mayor in the first instance or to a casual vacancy is not dependant on filling of all wards seats or other members of Electoral College.

26.F. It is also appropriate to further note that Electoral College comprises of Ward members, Members of Legislative Assembly, Members of Parliament (Lok Sabha), Members of Parliament (Rajya Sabha) and Members of Legislative Council. If the stand of the State Election Commission is taken to its logical conclusion, no election of Mayor can be held even if posts mentioned in Section 5 (1-A) are vacant. Further, if the intendment of State Election Commission is not to hold election of Mayor if there is more than one vacancy, the same should also be extended to vacancies of members covered by Section 5 (1-A). Thus, there is no justification by the SEC in confining only to Ward Members in its circular dated 14-09-2016, when Electoral College is wider.

27. Municipal Corporation is also a democratically elected body like State Legislative Assembly and Indian Parliament. Majority of members of State Legislative Assembly and Indian Parliament elect a person as Chief Minister and Prime Minister, as the case may be. Even to elect a Chief Minister or Prime Minister, the quorum counted is from among the serving members as on the date of election and no such election/ re-election is deferred on the ground of existence of some vacancies of Members of Legislative Assembly or Members of Parliament. So also election to President and Vice President are held based on the quorum available in the Electoral College when elections are held and not postponed till the vacancies are filled up. Vacancies in State Legislature/ Council or Parliament can be for similar reasons as applicable to Municipal Council.

28. The provisions in Sections 5, 6, 7 & 90 of Act, 1955 clearly point out that the State Election Commission cannot wait till all the vacancies of Ward Members or posts mentioned in Section 5 (1-A) are filled. Such a course also may lead to uncertainty. That is not the intendment of

the Act and the Rules. It would defeat the very object of the statutory scheme. The scheme of Part IX-A of the Constitution, relevant provision of Act, 1955 and Rules 2005 is to avoid such uncertainty and to ensure that functioning of these democratic institutions is not crippled and that socio-political fabric of the society is not affected. The law relating to the elections is the creation of the statute which has to be given effect strictly in accordance with the will of the legislature. It cannot be said that legislature was unaware of arising of vacancies in the Electoral College for various reasons.”

7. This decision was challenged in W A No.1416 of 2016. In the judgment rendered on 3.3.2017, the Division Bench of this Court held as under:

.....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.

8. Having regard to the principle laid down **S.K.Pushpalatha** as affirmed by the Division Bench, I see no illegality in holding elections to the posts of Mayor and Deputy Mayor of KMC based on elections held to 48 wards and the prayer sought in this writ petition cannot be granted.

9. Accordingly, the writ petition is dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are dismissed.

P NAVEEN RAO,J

DATE:12.9.2017
TVK

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