

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SRI JUSTICE P.NAVEEN RAO**

CONTEMPT CASE NO.2486 2016

Date: 15.09.2017

Between:

Chinteedi Narayana Murthy, S/o. late Surya Rao,
Aged about 52 years, Occu: Business, Tax Payer,
R/o. D.No.15-9-1C, Satyaprasanna Nagar,
Ramakrishna Raopet, Kakinada, Kakinada Urban(M),
East Godavari District.

.... Petitioner/writ petitioner

and

Dr N.Ramesh Kumar, IAS (Retd.), Commissioner,
The State Election Commission of Andhra Pradesh,
1st Floor, L Block, A.P.Secretariat, Hyderabad and
another.

.... Respondents/respondents 1 & 2



The Court made the following:

**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
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JUDGMENT: (*Per Hon'ble Sri Justice P.Naveen Rao*)

PIL No.144 of 2015 was instituted alleging that after the end of tenure of elected councillors to Kakinada Municipal Corporation in September, 2010, no steps were taken to conduct elections for long time defeating the very object of Article 243-U of the Constitution of India. Petitioner sought to issue writ of mandamus or any other writ declaring the action of the respondents in not conducting elections to Kakinada Municipal Corporation and continuing the Special Officer as person in charge is arbitrary, illegal and unconstitutional and sought for consequential directions. PIL No.249 of 2015 was filed seeking identical relief with reference to Kurnool Municipal Corporation.

2. When PILs were taken up for consideration, learned Advocate General representing State of Andhra Pradesh placed on record the letter dated 06.04.2016 received by him from the Principal Secretary to Government, Municipal Administration and Urban Development Department, which provided schedule for finalization of process to conduct elections, starting from publication of final electoral roll. The schedule indicated in the said letter would show that process would be completed and State Election Commission would be informed about readiness of the State Government to conduct elections. On behalf of Principal Secretary to Government, learned Advocate General has given undertaking stating that Chief Electoral Officer would complete the process as stated in the schedule. The said undertaking given on

behalf of Chief Electoral Officer was recorded and accepted. Learned counsel Sri V.V.Prabhakara Rao representing State Election Commission has also given undertaking that State Election Commission would complete the election process within the period of two months from the date of intimation to the State Election Commission about the publication of final voters list. The said undertaking was also recorded and accepted. Having regard to the said undertaking given by the learned Advocate General and the learned counsel representing State Election Commission, above PILs were closed. As per the schedule indicated in the letter dated 06.04.2016, final publication of electoral rolls were to be made by 16.05.2016 and intimation to State Election Commission about readiness to conduct elections was to be given by 24.09.2016. State Election Commission was required to conduct elections within two months from the date of final publication of electoral rolls. Alleging inaction in conducting elections and violating undertaking given, Contempt Case No.2486 of 2016 is instituted.

3. Initially, Sri Bhanwarlal, the State Election Commissioner of State of Andhra Pradesh was arrayed as first respondent and Sri Satya Prakash Tucker, Secretary, General Administration Department, was arrayed as second respondent. However, having noted that undertaking was on behalf of the State Election Commission and the Principal Secretary to Government, Municipal Administration and Urban Development, those two officers were deleted from array of respondents. Sri N.Ramesh Kumar was impleaded as respondent. Having regard to the submissions made on behalf of the State by the learned Advocate General and learned senior counsel Sri D.V.Sitaram Murthy appearing on behalf of the

State Election Commission, Court noticed that in fact the undertaking was on behalf of the Secretary, Municipal Administration Department, the earlier order closing the Contempt insofar as the Secretary, Municipal Administration Department was recalled. Sri Karikal Valven, IAS, working as Principal Secretary, Municipal Administration Department was also impleaded as respondent.

4. The Division Bench of this Court having noticed that undertaking given before this Court to conduct elections to Kakinada Municipal Corporation was violated, by order dated 30.06.2017 admitted the Contempt Case and issued notice in Form-I.

5. Sri N.Ramesh Kumar, the State Election Commission filed C.A.No.592 of 2017 praying to dispense with his appearance. On exhaustive consideration of the issue, by order dated 28.07.2017, said application was dismissed.

6. After the Contempt was admitted on 30.06.2017, both officers appeared on the date fixed for hearing. Two separate additional affidavits are filed by both respondents explaining the reasons for not conducting the elections as per the schedule informed to the Court and undertaking given before this Court and they have also expressed their unconditional apology for not conducting the elections within the time prescribed.

7. The averments stated by the respondents in the counter-affidavits and additional counter-affidavits would delineate the procedure required to conduct the elections as prescribed in the

Constitution of India, A.P.Municipal Corporations Act, 1994 and the Greater Hyderabad Municipal Corporation Act, 1955 and the Rules made there under.

8. The State Electoral Officer is appointed by the Election Commission of India and he acts on behalf of Election Commission of India in the State. He undertakes the exercise of publishing electoral rolls in the State on behalf of the Election Commission of India. The electoral rolls so prepared shall be the basis to conduct elections to the State Legislature and the Indian Parliament. It appears the State adopts the electoral rolls prepared and published by the Election Commission of India as the basis to hold elections to local bodies. It appears, the State Electoral Officer informed the Government that final electoral list would be published by 16.05.2016 and based on the said information furnished by the Chief Electoral Officer, the rest of the schedule to hold elections to Kakinada Municipal Corporation was determined. As required by the provisions of the Act, 1994, Greater Hyderabad Municipal Corporation Act and the Rules made there under, which govern the conducting of elections to Kakinada Municipal Corporation, after the publication of final electoral list, the State Government is required to prepare and publish electoral list Ward-wise in the Municipal Corporation, identify the SCs, STs, BCs and Women by conducting door to door survey; fix the number of seats to be reserved to various categories ie., SCs, STs, BCs and Women; specify the seats to SCs, STs, BCs and Women, by notification in the A.P. Gazette; publish draft notification of polling stations and publish final notification of list of polling stations and thereafter intimate to the State Election Commission about the readiness to

conduct elections. Once this process is completed by the State Government, the State Election Commission sets in motion the process of conducting elections. According to the schedule mentioned in the letter dated 06.04.2016 addressed to the learned Advocate General by the Principal Secretary to the Government, MA & UD Department, the intimation to State Election Commission about readiness to conduct elections was to be given on 24.09.2016. As per the undertaking given on behalf of the State Election Commission, the election process was to be completed within two months from the date of publication of final electoral list.

9. The stand of Sri N.Ramesh Kumar, State Election Commissioner, is after disposal of PILs, several letters were addressed by the State Election Commission to the Government requesting to complete the process as required and intimate the readiness of the State to conduct elections; that the State Election Commission has not received the publication of final electoral roll even till the case is heard, but on 04.03.2017 Government issued G.O.Ms.No.83 Municipal Administration & Urban Development (G2) Department on de-limitation of Wards, but the said G.O., was kept on hold and was released only on 03.07.2017; on 03.07.2017 Government issued G.O.Ms.No.264, Municipal Administration & Urban Development (G2) Department containing schedule for identification of SCs, STs, BCs and Women voters and the Ward-wise electoral roll forming part of reservation of seats. As this is pre-requisite for ordering preparation and publication of Ward-wise electoral rolls, no further action could be taken by the State Election Commission. However, immediately after the issue of said

two GOs, the State Election Commission set in motion in process to conduct elections. Notification was issued on 04.07.2017 ordering for preparation and publication of Ward-wise photo electoral rolls on 16.07.2017 for the purpose of conduct of elections and they were accordingly published. Simultaneously, the State Election Commission issued instructions to the Election Authority & Director of Municipal Administration; Collector and District Election Authority, East Godavari; and the Commissioner of Kakinada Municipal Corporation vide letter dated 15.07.2017 for making arrangements to conduct elections including printing of Ward-wise electoral rolls, publication of list of polling stations from 22.07.2017 to 31.07.2017; identification of polling personnel; first level check up of electronic voting machines, procurement of election material. The State Election Commission approved the list of officers to be appointed as Returning Officers/Assistant Returning Officers. It is further averred in the additional affidavit, deposited on 25.07.2017, that State Election Commission has made all preparatory arrangements and geared up election machinery to conduct elections.

10. In the affidavit filed by Sri R.Karikal Valaven, he deposed that though initially the State Electoral Officer informed the State that the final electoral list would be prepared by 16.05.2016, the schedule was changed by the Election Commission of India and the final rolls and final publication was made only on 17.01.2017. He would therefore submit that as per the original intimation given to the State Government by the State Electoral Officer, the schedule was determined and the schedule could not be adhered as final electoral list was not published as originally indicated, but

was actually published on 17.01.2017. The four months process indicated in the schedule in the letter dated 06.04.2016 altered to May, 2017. Soon after the final electoral list was published, all steps were taken and readiness of the State Government to conduct elections was informed to the State Election Commission.

11. According to the learned Advocate General representing 2nd respondent, delay in completing the process and expressing readiness to conduct election was on account of delay in publication of final voters list by Election Commission of India and it was not deliberate and wilful. He submitted that having regard to the peculiar facts of this case, the unconditional apology expressed by the deponent be accepted and contempt case be closed.

12. According to the learned senior counsel Sri D.V.Sitarama Murthy, the role of State Election Commission comes into play only after the State Government informs the readiness to conduct elections. He further submitted that even according to the undertaking given by the counsel appearing on behalf of the State Election Commission, the State Election Commission is required to complete the election process within two months from the date of intimation of publication of final electoral list. He would submit that though mere publication of final electoral list is not the stage from where the role of State Election Commission would start, but the State Election Commission was not informed about the final publication of electoral list even by the time the contempt is taken up for consideration. However, the process was already set in

motion even before the State Government expressed its readiness to conduct elections.

13. Learned senior counsel brought to the notice of the Court that the election notification was issued by the Election Commission on 03.08.2017. Learned senior counsel informed that as per the schedule prescribed, elections were held. He further submitted that in the peculiar facts of this case, there was delay in completing the election process and delay was not deliberate and wilful. He submitted that the State Election Commissioner has offered unconditional apology for the delay in completing the election process and submitted that same may be accepted and contempt be closed.

14. As per the statutory scheme, conducting of elections to the Municipal Corporations, the final electoral rolls published by the Election Commission of India is a starting point. It appears, the Election Commission of India decided to revise the electoral rolls comprehensively and accordingly process was taken up in the year 2016. Since the Election Commission of India decided to undertake review of electoral rolls, the state Government decided to wait for such revision and publication of final electoral rolls to set in motion the process of conducting elections to the two Municipal Corporations which were the subject matter of the two PILs. Such course adopted by the State Government cannot be faulted as revised electoral rolls can be the basis for proper assessment of the final voters list for the purpose of identification of various social groups in the Municipal Corporation, determination of Wards in the Municipal Corporation, reserving of Wards to various social

groups, such as, SCs, STs, BCs and Women etc. However, the Principal Secretary to Government, Municipal Administration Department could not have instructed the learned Advocate General to give undertaking on behalf of State Electoral Officer when he was not authorized by the State Electoral Officer. Similarly, when role of the State Election Commission comes into play to conduct elections only after the State Government expresses its readiness to conduct elections; the State Election Commission could not have given undertaking to complete the process of conducting elections to Kakinada Municipal Corporation from the date of publication of final electoral rolls. After publication of final rolls, a detailed exercise is required to be undertaken which require approximately four months time and only after the publication of final notification of list of polling stations intimation would be given to the State Election Commission by the State Government about its readiness and only thereafter State Election Commission should set in motion the process of conducting of elections.

15. The respondents are aware of the statutory framework and roles and responsibilities required to be performed by each of the authorities mentioned above. They ought to have brought to the notice of this Court the relevant facts soon after the PIL No.144 of 2015 was disposed of. They kept quiet until contempt is filed and process is set in motion more vigorously only after the Court admitted the contempt. In the peculiar facts of this case and the facts and circumstances explained by the respondents in their respective counter-affidavits, the Court accepts the apology and

closes the contempt. However, the Court expresses displeasure in the manner in which the issue is handled by the respondents.

16. The Contempt Case is accordingly closed. Miscellaneous petitions if any pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(P.NAVEEN RAO, J)

Date: 15.09.2017
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