

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.23338 of 2013

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WRIT PETITION No.23204 of 2013

COMMON ORDER:

W.P.No.23338 of 2013:

Questioning the re-poll to polling stations of Laxmipur Gram Panchayat and the subsequent proceedings dated 02.08.2013 modifying the earlier orders and according permission to conduct polls in 10 wards of Laxmipur Grampanchayat, the present Writ Petition came to be filed.

2. The facts in issue are as under:-

A notification came to be issued by the 3rd respondent, fixing the Election schedule for the Laxmipur Grampanchayat to be held on 23.07.2013. In response to the said notification, the petitioner filed his nomination for the post of Sarpanch as it was reserved for woman (General). In all, seven women candidates, filed their nominations and after withdrawal, the petitioner and the unofficial respondent remained in the fray. Due to heavy rains, a decision was taken to post-pone the election to Laxmipur Grampanchayat and accordingly the election, which was scheduled to be held on 23.07.2013 was postponed to 31.07.2013. Out of 1143 voters, 904 voters are said to have exercised their franchise on 31.07.2013. Except Ward No.9 in all

other wards, the polling was above 64%. The polling was held as per schedule i.e., from 7.00 a.m., to 1.00 p.m. After closing of the voting hours, the ballot boxes were sealed in the presence of the candidates and their agents. On 31.07.2013, the second respondent issued proceedings vide Lr.No.1476/SEC-B2/2013, according permission to conduct re-poll in one polling station of Laxmipur Grampanchayat on 03.08.2013. However, another letter came to be issued on 02.08.2013 modifying the earlier orders, according permission to conduct polls for all the 10 wards of Laxmipur Grampanchayat, Bheemini Mandal, Adilabad on 08.08.2013. Consequently, a notice dated 03.08.2013 came to be issued by the 7th respondent requesting the voters, who have not voted earlier, to cast their vote on 08.08.2013. Challenging the same, the present Writ Petition came to be filed.

3) The implead petitioner in W.P.No.23338 of 2013, who was also a candidate for the post of Sarpanch for Laxmipuram Grampanchayat, filed an implead petition along with the vacate stay application. In his counter, it is stated that Laxmipur Grampanchayat consists of 10 wards, out of which ward Nos.1 to 3 belongs to Laxmipur village, Wards 4 and 5 are of Wadala village, wards 6 and 7 are of Chennapur village and Ward Nos.8 to 10 belong to Peddapeta village. The poling station was located in a Upper Primary School at Laxmipur village. It is said that the voters of the three villages

should cross Erravagu to reach Laxmipur from Peddapeta and Chennapur villages and the voters of Wadala village are required to cross two tanks. Due to heavy rains on 31.07.2013, most of the voters could not reach the polling booth. In spite of best efforts, about 160 voters could reach the polling station. The said incident was brought to the notice of the second respondent, who accorded permission to conduct polls in terms of 225-B read with 54 of A.P. Panchayat Raj Act. It is stated that due to heavy rains the tanks overflowed and it has become very difficult for the voters to reach the polling station by crossing the vaagu and tank. It is further stated that since the election process has already commenced, this Court under Article 226 cannot entertain the matter. It is urged that if the writ petitioner has any grievance, he can challenge the same by filing an Election Petition but not under writ jurisdiction. In any event it is said that right to vote is a constitutional right and since the voters could not approach the polling station, the authorities were forced to postpone the election. The allegation that the elections were postponed only to favour a candidate belonging to a particular political party is absolutely false and baseless. It is urged that no prejudice would be caused if the votes, which are polled on 08.08.2013 are also counted, as they may be useful to the petitioner as well.

W.P.No.23204 of 2013:

4) Questioning the action of the respondents in adjourning the elections to the post of Sarpanch of Chamanpally Gram Panchayat, Vemanpalle Mandal, Adilabad District and proposing to continue the adjourned polls on 08.08.2013, as illegal and violation and consequently direct the respondents to declare the results basing on the votes already polled on 31.07.2013, the present Writ Petition came to be filed.

5) The facts in issue are as under :

The 1st respondent issued a notification on 03.07.2013 for holding elections to the said Gram panchayat. Pursuant thereto, the petitioner filed his nomination on 13.07.2013 and was allotted the symbol of "Finger Ring". The polling was scheduled to be held on 27.07.2013. But the same got postponed to 31.07.2013. On the said date, polling was conducted and about 51.20% of votes were said to have been polled. Contrary to the expectation of the public, the 5th respondent, without assigning any reasons, informed that polling will be continued on 03.08.2013 and shifted the ballot boxes to Chennur Police Station for safe custody. The respondents again adjourned the polling from 03.08.2013 to 08.08.2013. Challenging the same, the present Writ Petition came to be filed.

6) The 7th respondent filed vacate petition along with counter. It is contended that himself and the writ petitioner are the only contestants for the post of Sarpanch. The polling was originally scheduled to 27.07.2013 but due to heavy rains in entire district, the election was postponed to 31.07.2013. The said Chamanapally Gram panchayat consists of 3 villages i.e., Chamanapally, Baddempally and Bommina villages and 8 wards. There are nearly 326 voters in Chamanapally, 248 voters in Baddempally village and 190 voters in Bommina village. The polling booth was in Chamanapally village and the other villagers have to go to the said place by crossing two big water sources known as "Pedda Vaagu" and "Erra Vaagu". Due to heavy rains, the said "Vaagus" were overflowing, thereby making it was impossible for the people to cross the stream and go to Chamanapally village. Only the local people exercised their franchise whereas residents of two villagers could not cast their votes. In these circumstances, the election authorities postponed to 08.08.2013 and even on that day also due to heavy rain, poll was postponed to 13.08.2013. It is further averred that the writ petitioner is a resident of Chamanapally village having no hold on the voters of the other two villages and knowing fully well that he would be defeated if the voters of the other two villages are allowed to cast their votes, the elections were postponed. Hence, approached this Court with a contention that the votes polled

on 31.07.2013 alone should be taken into consideration to declare the election.

7) Heard learned counsel for the petitioners and respondents. In spite of the matter being adjourned number of times, there is no representation on behalf of the State Election Commission.

8) On 07.08.2013, this Court while issuing rule nisi, held as under :

"While the polling scheduled to be held on 08.08.2013 may go on, the respondents shall not undertake the exercise of counting, and announcement of the result of the elections, until further orders. The respondents shall also ensure that the votes polled on 31.07.2013 are kept in separate ballot boxes different from those votes polled in the polling scheduled to be held on 08.08.2013.

9) The main ground urged by the learned counsel for the petitioner is that the procedure as contemplated under Section 225-B of the A.P. Panchayat Raj Act, 1994, which deals with adjournments of poll in emergencies, has not been followed. He also states that if any poll is adjourned under Section 225-B, the provisions of Rules 51 to 53 of the Panchayat Raj Rules have to be followed. Since the Presiding Officer of the polling station has not announced the adjournment of poll to a date to be notified latter and since he has not reported any

adjournment of the poll to the Returning Officer, it is urged that the order passed by the authorities is *ex-facie* illegal. It is further stated that the Returning Officer has not submitted any report to the District Election authority and the State Election authority with regard to circumstances under which the poll was adjourned. In the absence of such a procedure being followed, the District Election authority cannot order re-poll. He further submits that since the polling in the Laxmipur Gram Panchayat was above 80% and the average poll being 79%, and that in Chamanapalli Gram Panchayat being above 51.20%, it is urged that the re-poll has been ordered with a malafide intention.

10) Therefore, the questions that arise for consideration are :

i) Whether the jurisdiction of this Court under Article 226 of the Constitution of India can be invoked after the commencement of election process?

ii) Whether the authorities were right in adjourning the poll and permitting the voters, who have not voted on 31.07.2013 to cast their vote on 08.08.2013?

11) In order to appreciate the first point, it would be useful to refer to Article 243-O of the Constitution of India, which states

that no election to any Panchayat Raj shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the legislature of the State.

12) Learned counsel for the petitioner would submit that since the election process ends with the completion of polling and not with the declaration of result, the argument that Writ under Article 226 of the Constitution of India would not lie, cannot be accepted. Learned counsel for the petitioner would further submit that the jurisdiction of the Court under Article 226 of the Constitution of India cannot be invoked, if there is any discrepancy in the voters' list or allocation of the voters to the polling station or otherwise, but not in a case where polling has been adjourned without following the mandatory provisions contemplated under Section 225-B of the Act.

13) It is well established law that election process commences from the date of notification till the date of declaration of results. Under those circumstances, it is to be seen as to whether a writ under Article 226 of the Constitution of India would lie?

14) Article 243-O of the Constitution postulates that no election to a Grampanchayat, shall be called in question except by way of an Election Petition. Such being the position, it is to be seen as to

whether this Court can decide the issues raised viz., violation of Section 225(B) in a Writ filed under Article 226 of the Constitution of India. It is well established principle of law that election process commences from the date of notification till the date of declaration of result. Admittedly, the present Writ Petition came to be filed when the election process is still going on. In **Boddula Krishnaiah and another v. State Election Commissioner, A.P. and others**¹, the Apex Court, dealt with the issue as to when the court can interfere with the election process. The controversy in the said case relates to election to the Grampanchayat, Nalgonda District, Andhra Pradesh. In the draft role prepared by the competent authority, names of about 94 persons find their place but later their names were deleted. Challenging the same, the Writ Petition was filed and this Hon'ble Court by its order dated 26.06.1995 gave an interim order directing to allow 94 persons to participate in the election. But on the date of poll, they could not exercise their franchise. Subsequently, they sought permission to exercise their franchise. An interim order came to be issued by the High Court not to declare the election of the Grampanchayat. Vacate stay petitions were filed. Consequently, the High Court directed, 20 persons, who were found eligible to vote, be allowed to participate in the election. The question was whether the High Court was justified in permitting 20 persons, to exercise their

¹ (1996)3 Supreme Court Cases 416

franchise separately when the poll was already over. Referring to Article 243-O and Rule 12(d)(iii) of the A.P.Panchayat Raj Election Tribunals in respect of Grampanchayats, Mandal Parishads and Zilla Parishads Rules, 1994, the Court set-aside the order passed by the High Court and directed the parties to challenge the grievance by way of election petition. Relying upon the judgments of the Apex court in **N.P.Ponnuswami v. Returning Officer, Namakkal Constituency**², **Lakshmi Charan Sen v. A.K.M. Hassan Uzzaman**³ and in **State of U.P. v. Pradhan Sangh Kshettra Samiti**⁴, observed as under :-

7. Article 243-O of the Constitution envisages bar on interference by courts in election matters. Notwithstanding anything contained in the Constitution, under sub-clause(b) "no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State". Thus there is a constitutional bar on interference with the election process except by an election petition, presented to an Election Tribunal as may be made by or under law by the competent legislature and in the manner provided thereunder. Power of the court granting stay of the election process is no longer *res integra*.

11. Thus, 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 from exercising their franchise. As seen, that dispute is covered by an election dispute and remedy is thus available at law for redressal."

² AIR 1952 SC 64

³ (1985) 4 SCC 689

⁴ 1995 Supp (2) SCC 305

16) In **C. Subrahmanyam v. K.Ramanjaneyulu and others**⁵, a Writ Petition came to be filed challenging the election process as violative of Section 231 of the Andhra Pradesh Panchayat Raj Act, 1994. Dealing with the same, a Three Judge bench of the Apex Court held that non-compliance of the provisions of the Act is a ground for election petition, and Writ under Article 226 of the Constitution could not have been entertained for this purpose and accordingly set-aside the order of the High Court.

17) In **Harnek Singh v. Charanjit Singh and others**⁶, the Apex Court, after referring to the judgments in **C.Subrahmanyam case**(5 supra) and **Jaspal Singh Arora v. State of M.P.**⁷ held that the Writ Petition is not maintainable.

18) A Constitutional Bench of the Apex Court in **A.K.M.Hassan Uzzaman and others v. Union of India and others**⁸, while dealing with the question as to whether the High Court can interfere with the election process, more particularly as to whether the Election Commission, Chief Electoral Officer, Electoral Registration Officers had acted in violation of the Constitution, Representation of the Peoples Act or rules made therein, observed

⁵ (1998) 9 Supreme Court Cases 703

⁶ (2005) 8 Supreme Court Cases 383

⁷ (1998)9 SCC 594

⁸ (1982) 2 Supreme Court Cases 218

that the High Court should not entertain a Writ Petition, in which no substantial question of constitutionality is involved.

19) In **Mohinder Singh Gill and another v. The Chief Election Commissioner New Delhi and others**⁹ a Constitutional Bench of the Apex Court while dealing with order of fresh poll (re-poll) observed as under :-

"Election covers the entire process from the issue of the notification under Section 14 of the Representation of the People Act to the declaration of the result under Section 66 of the Act. When a poll that has already taken place has been cancelled and a fresh poll has been ordered, the order therefore, with the amended date, is passed as an integral part of the electoral process. When the Election Commission amended its notification and extended the time for completion of the election by ordering a fresh poll, it is an order during the course of the process of 'election'. Even if it is a wrong order it does not cease to be an order passed by a competent authority charged with the conduct of elections with the aim and object of completing the elections. Although that is not always decisive, where the impugned order has been passed in the exercise of power under Art. 324(1) of the Constitution and Sect.153 of the Representation of the People Act, such an order, relating, as it does, to election cannot be questioned except by an election petition under the Act. If during the process of election, at an intermediate or final stage, the entire poll has been wrongly cancelled and a fresh poll has been wrongly ordered, that is a matter which may be agitated after declaration of the result on the basis of the fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law. The petitioner, then, will have a remedy to question every step in the electoral process and every order that has been passed in the process of the election including the countermanding of the earlier poll.

The catch-all jurisdiction under Article 226 cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with re-poll. For, the prima facie purpose of such a re-poll is to restore a detailed poll

⁹ AIR 1978 Supreme court 851

process and to complete it through the salvatory effort of a re-poll. A writ petition challenging the cancellation coupled with re-poll amounts to calling in question a step in 'election' and is therefore barred by Art. 329(b)."

20) In **Election Commission of India through Secretary v. Ashok Kumar and others**¹⁰, the Apex Court after considering the judgments referred to above held as under:-

"32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove :-

1) If an election, (the term 'election' being widely interpreted so as to include all steps and entire proceedings commencing from the date of notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

2) Any decision sought and rendered will not amount to "calling in question an election" if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same

¹⁰ (2000)8 Supreme Court Cases 216

would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material."

21) Referring to Clause (3) of the said finding, the learned counsel for the petitioner would submit that since the exercise of power being arbitrary and malafide and as the same is made to favour a particular group, this Court can entertain the Writ Petition under Article 226 of the Constitution of India.

22) I am afraid the said argument cannot be accepted for the reason that there is no material to show that the Election Commissioner has acted arbitrarily so as to favour a particular group. In fact even as per the counsel for the petitioner nearly 80% of the votes were polled on 31.07.2013. Therefore, the argument that the Election Commissioner is trying to favour a particular group may not be of much help to him.

23) The judgment of the Apex court in **Ashok Kumar's case** (10 supra) was considered by the Apex Court in **Harnek Singh's case** (6 supra). After referring to **C.Subrahmanyam's case** (5 supra), **Jaspal Singh Arora's case** (7 supra) and also the provisions of Section 100 of the Representation of the People Act, 1951, the Court felt that the High Court could not have exercised its jurisdiction under Article 226 of the Constitution. While dealing with the provisions of Article 243-O of the Constitution of India, the Court held that though did not per se bar judicial review which is the basic structure of the Constitution, but ordinarily such jurisdiction would not be exercised. The court held that there may be some cases where a writ petition would be entertained but having regard to the facts and circumstances, felt that it was not a case for exercising the writ jurisdiction.

24) Having regard to the judgments referred to above, more particularly the judgment of the Apex Court in **C.Subrahmanyam's case** (5 supra), where it has been held that the violation of any provision of the Grampanchayat Act, cannot be a ground to entertain a Writ Petition, I am of the view that both the Writ Petitions are not maintainable as are liable to be dismissed. In view of the above, it is not necessary to go into the second question.

25) Accordingly, both the Writ Petitions are dismissed, giving liberty to the petitioners to avail the remedies available under law. Since the votes polled on 31.07.2013 are kept separately, the Authorities are directed to keep the votes polled on 31.07.2013 and 08.08.2013 separately for a period of three months or if any appropriate orders are passed by the Tribunal in an Election Petition, if any filed. No costs. Miscellaneous Petitions, pending if any, in these Writ Petitions shall stand closed.

Dt:10.04.2017
GM

JUSTICE C. PRAVEEN KUMAR

