

THE HONOURABLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.1054 OF 2019

ORDER

The petitioner is contesting for the post of Sarpanch of Datla Village Gram Panchayat, Danthalapally Mandal, Mahaboobnagar District, in the election scheduled to be held on 25.01.2019. His grievance is that the election authorities are continuing to show the seventh respondent herein as a contesting candidate for the said post despite the fact that he withdrew his candidature in accordance with the due procedure. The action of the election authorities is stated to be in violation of Rule 13 of the Telangana Panchayat Raj (Conduct of Elections) Rules, 2018 (*for brevity*, 'the Rules of 2018'), and a consequential direction is sought to the election authorities to eliminate the candidature of the seventh respondent by deleting his name from the list of contesting candidates.

Ms.B.Rachna Reddy, learned counsel for the petitioner, would state that the seventh respondent submitted his withdrawal in writing in Form-VII on 17.01.2019, being the last date for such withdrawal as per the election schedule notified in Annexure-I to the Election Notification dated 01.01.2019, and having accepted the same, the Returning Officer caused a notice of the said withdrawal to be published in Form-VIII. She would contend that after taking these steps, it was not open to the Returning Officer to thereafter publish the list of contesting candidates in Form-IX by including the name of the seventh respondent. It is on these grounds that the learned counsel would press for a direction to the election authorities to eliminate the seventh respondent from the list of contesting candidates in the election scheduled to be held on 25.01.2019. She would also rely upon **KANDRU VENKATESWARLU V/s.**

GOVERNMENT OF A.P., REP. BY ITS SECRETARY FOR PANCHAYAT RAJ WING, HYDERABAD¹, in support of her contention that when a candidate withdraws his nomination, the withdrawal would relate not only to any one of his nominations but to his candidature as a whole.

Mr.G.Vidyasagar, learned senior counsel appearing for Mr.P.Sudheer Rao, learned counsel for the Telangana State Election Commission, would however point out that in terms of Rule 7(2)(e) of the Rules of 2018, a candidate may be nominated for election as a Sarpanch by more than one nomination paper. He would further point out that it is the admitted case of the petitioner that the seventh respondent filed two sets of nomination papers. Learned senior counsel would state that the Form-VIII placed on record by the petitioner himself demonstrates that only the second nomination of the seventh respondent was withdrawn but not the first and that is the reason why his name was shown in the list of contesting candidates in Form-IX. Learned senior counsel would assert that the writ petition is not maintainable in the light of the law laid down by the Supreme Court in **N.P.PONNUSWAMI V/s. RETURNING OFFICER, NAMAKKAL CONSTITUENCY, NAMAKKAL, SALEM DISTRICT²**. As regards the latter contention as to withdrawal of candidature, the learned senior counsel would inform this Court that the Returning Officer ought not to have issued Form VIII when only one nomination was withdrawn but not the other and that he has already been suspended for committing such irregularities.

It may be noted that as long back as in the year 1952, the Supreme Court, in **N.P.PONNUSWAMI²**, held that the jurisdiction of the High Court under Article 226 of the Constitution would stand excluded

¹ 1995(3) ALT 217 (D.B.)

² AIR 1952 SC 64

while dealing with any matter which may arise while elections are in progress. Though these observations were made in the context of the Representation of the Peoples Act and Article 329(b) of the Constitution, the principle laid down in the said judgment would be squarely applicable to a local body election also.

Ms.Rachna Reddy, learned counsel, would however rely on case law in support of her contention that the present writ petition would not be hit by the bar posited by **N.P.PONNUSWAMI**². She would point out that in **SMT.SK.KHASIM BEE V/s. THE STATE ELECTION COMMISSIONER**³, a Division Bench of this Court noted that the High Court only observes self-imposed limitations in electoral matters and declines to interfere with the election process once the election notification is issued because such matters can be effectively agitated before the Election Tribunal, but where the constitutional validity of an Act or a Rule or provision of an Act affecting the election is challenged, or where error in exercising such jurisdiction or malafides or non-compliance of rules of natural justice are established, the High Court would have ample power to render justice by taking recourse to the power of judicial review conferred on it under Article 226 of the Constitution.

As to whether the irregularity committed by the Returning Officer in issuing Form-VIII, when only the second nomination of the seventh respondent was withdrawn, would inure to the benefit of the petitioner is open to question. All the more so, when interference by this Court at this stage, behind the back of the seventh respondent, would cause his candidature to be eliminated in the election scheduled to be held on 25.01.2019. Such a step cannot be said to be in aid of the election

³ AIR 1996 AP 324

process as it would only benefit the petitioner by reducing competition for the said post in the ensuing election.

Ms.Rachna Reddy, learned counsel, also relied upon **KAYATHI JAYAPAL REDDY V/s. STATE ELECTION COMMISSION**⁴, wherein a learned Judge of this Court, upon a conspectus of earlier case law, set out the following conclusions:

‘(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 case of mala fide or arbitrary exercise of power being made out of 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 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.’

⁴ AIR 2002 AP 307

It may however be noted that interference by this Court at this stage would obstruct the flow of free elections as it appears that the seventh respondent only withdrew his second nomination and not his candidature in its entirety. Such interference therefore cannot be held to subserve the progress of the election or facilitate its completion, as it actually aids only the petitioner, as already stated *supra*.

It is no doubt true that Rule 13 of the Rules of 2018 speaks of withdrawal of candidature and not of a nomination paper in particular. However, in the light of the Form-VIII issued by the Returning Officer categorically stating that only the second nomination was withdrawn, the very issuance of Form-VIII was invalid. If the candidature of the seventh respondent was not withdrawn in its entirety, the question of issuing Form-VIII did not at all arise. Therefore, the edict in **KANDRU VENKATESWARLU¹** has no application to the case on hand, on facts.

On the above analysis, this Court holds that the writ petition is not maintainable and no relief can be granted to the petitioner on the strength of the withdrawal of his nomination by the seventh respondent.

The writ petition is accordingly dismissed. This order shall however not preclude the petitioner from invoking appropriate remedies available to him, in accordance with law, in the event the seventh respondent is elected.

Pending miscellaneous petitions shall also stand dismissed. No order as to costs.

SANJAY KUMAR, J

24th JANUARY, 2019

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