

THE HON'BLE SRI JUSTICE A. RAJASHEKER REDDY

WRIT PETITION No.27010 of 2019

ORDER:

This writ petition is filed challenging the order dated 16.11.2019 passed by the Electoral Registration Officer, Sangareddy Assembly Constituency/Sangareddy Parliamentary Constituency, the second respondent.

It is the case of the petitioner that when he was residing at Maddikunta Village, Sadasivapet Mandal, he obtained Aadhar Card, and also entered his name in the Electoral Register of the said village. Now, he is residing at Raghavendra Nagar, Sadasivapet. Therefore, he wanted to transfer his name from the voters list of Maddikunta Village, Sadasivapet Mandal, to Raghavendra Nagar, Sadasivapet Town. Hence, he made an application to the second respondent on 01.10.2019. However, the second respondent rejected his application with an endorsement that *"the document submitted by the applicant does not match with the claim"*. When he enquired in the office of the second respondent, he came to know that his name in the Electoral Identity Card of Maddikunta was written as "Md. Arifoddin", whereas in Aadhar Card, his name was written as "Mohammed Arifoddin". Therefore, he made another application on 25.10.2019 with full name as "Mohammed Arifoddin", enclosing his Aadhar Card and other documents. As the said application was not disposed of, he filed W.P.No.24119 of 2019 before this Court. The said writ petition was disposed of on the representation made by the learned counsel for the second respondent that the petitioner's application would be considered and necessary orders would be

passed within a period of one week. Pursuant to the said order, the second respondent has passed the impugned order dated 16.11.2019 rejecting the petitioner's application under Section 20(7) of the Representation of the People Act, 1950 (for short, 'the Act'), on the ground that he is not an ordinary resident of Sadashivapet. Hence, this writ petition.

Mrs. K. Sesharajyam, the learned Senior Counsel appearing for Mr. K. Chaitanya, the learned counsel for the petitioner, submits that the petitioner has filed an application in Form – 8A of Registration of Electors Rules, 1960 (for short, 'the Rules') requesting to transfer his name from the voters list of Maddikunta Village, Sadashivapet, to Raghavendra Nagar, Sadashivapet. However, without considering the documents submitted by him, the third respondent has rejected his application.

On the other hand, Ms. P. Akhila, the learned counsel representing Mr. Avinash Desai, the learned Standing Counsel for the Election Commission of India, submits that against the impugned order, an appeal lies under Section 24 of the Act. She further submits that as per Rule 26 of the Rules, every application under Section 22 or Sub-section (1) of Section 23 shall be made in duplicate in such one of the Forms 6, 6A, 7, 8, 8A and 8B as may be appropriate. Since the petitioner filed his application in Form – 8A of the Rules, it falls under Section 22 of the Act. Hence, an appeal lies against the impugned order.

Admittedly, the petitioner has filed his application in Form – 8A of the Rules, as required under Rule 26 of the Rules.

Sub-Rule (1) of Rule 26 of the Rules reads as under:

“26. Correction of entries and inclusion of names in electoral rolls.— (1) Every application under section 22 or sub-section (1) of section 23 shall be made in duplicate in such one of the Forms 6,6A,7, 8, 8A and 8B as may be appropriate.”

Rule 13 (4) of the Rules reads as under:

“Every application for transposition of an entry from one part to another part of the roll shall be in Form 8A”.

Section 24 of the Act reads as follows:

“An appeal shall lie within such time and in such manner as may be prescribed—(a) to the district magistrate or additional district magistrate or executive magistrate or district collector or an officer of equivalent rank, from any order of the electoral registration officer under section 22 or section 23 (b) to the chief electoral officer, from any order of the district magistrate or the additional district magistrate under clause (a)”

Section 22 (b) of the Act reads as under:

“22. Correction of entries in electoral rolls.—If the electoral registration officer for a constituency, on application made to him or on his own motion, is satisfied after such inquiry as he thinks fit, that any entry in the electoral roll of the constituency—

(a),

(b) should be transposed to another place in the roll on the ground that the person concerned has changed his place of ordinary residence within the constituency.”

According to Section 24 of the Act, an appeal against any order passed under Section 22 of the Act lies to the District Magistrate or Additional District Magistrate.

The petitioner filed application in Form 8A for transposition of his name to another place, which is under Section 22 of the Act, as per Rule 26 of the Rules, and the impugned order is passed

which can be only under Section 22 of the Act. Reference to Section 20(7) of the Act is only procedure to be followed in determining whether a person is ordinarily resident at any relevant time, as such, appeal lies against the impugned order under Section 24 of the Act.

Admittedly, in the instant case, an appeal lies against the impugned order. In fact, the scope under appellate jurisdiction is wider than that of the writ jurisdiction, as the parameters laid down under Article 226 of the Constitution of India are limited.

In view of the alternative remedy available to the petitioner under Section 24 of the Act, this Court is not inclined to entertain this writ petition.

The writ petition is disposed of granting liberty to the petitioner to avail the alternative remedy of appeal. If the appeal is filed, it goes without saying that the same shall be disposed of as expeditiously as possible, preferably within a period of four months from the date of filing of the appeal. There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

A. RAJASHEKER REDDY, J

Date: 06.12.2019

Note: Issue CC tomorrow

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