

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.28162, 28172 and 28741 OF 2019

Date: 07.01.2020

WP No.28162 of 2019:

Between:

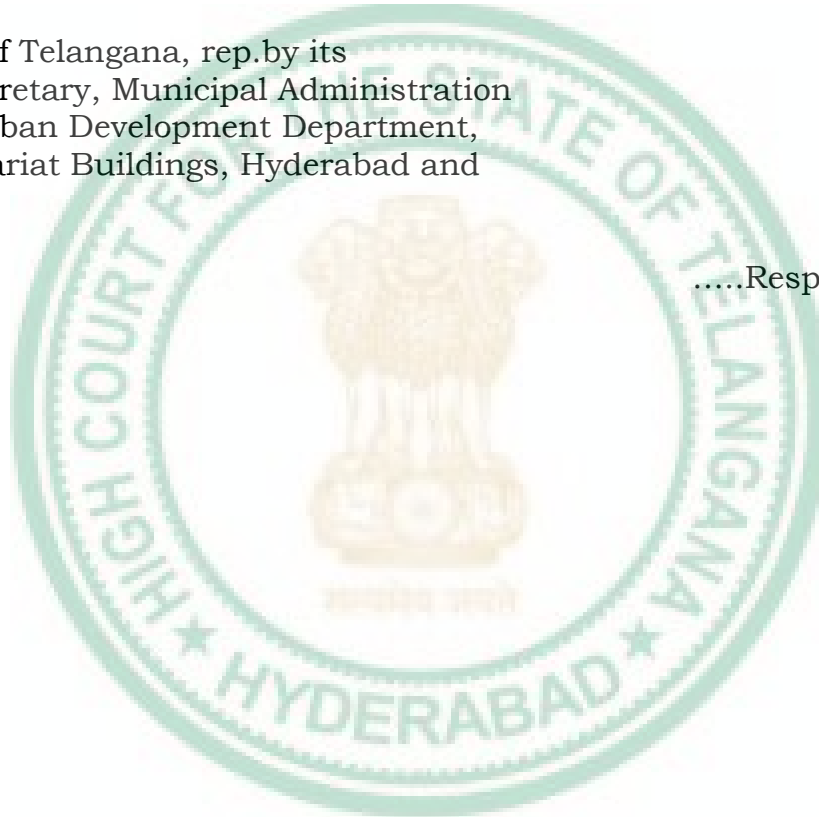
Gali Ravi, s/o. Laxman, Aged about 33 years,
Occu: Business, r/o. H.No.3-3-1/69,
Netaji Nagar, Bhainsa Town, Nirmal district.

.....Petitioner

And

State of Telangana, rep.by its
Prl.Secretary, Municipal Administration
and Urban Development Department,
Secretariat Buildings, Hyderabad and
others.

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NOs.28162, 28172 and 28741 OF 2019

COMMON ORDER:

Heard Mr C.Naresh Reddy, learned counsel for petitioners in W.P.Nos.28162 and 28172 of 2019, MR. B.Vijaysen Reddy learned counsel for petitioners in W.P.No.28741 of 2019, learned Government Pleader for Municipal Corporation, Sri P.Sudheer Rao, learned standing counsel for State Election Commission, Sri N.Praveen Kumar learned standing counsel for Municipality.

2. In W.P.Nos.28162 and 28172 of 2019, petitioners challenge the draft notification of wards dated 03.12.2019 concerning Bhainsa Municipality. In W.P.No.28741 of 2019, petitioners challenge proceedings dated 16.12.2019, where under the objections were considered and reasons are communicated and revised proposals of re-division of wards of Bhainsa Municipality into 26 wards with enclosers were submitted to the Commissioner. Petitioners in W.P.No.28741 of 2019 have not disclosed as to whether they are voters of Bhainsa Municipality and they intend to contest the elections to the Municipality.

3. In W.P.Nos.28162 and 28172 of 2019, petitioners claim that they are the voters of Bhainsa Municipality and are aspiring to contest the elections to the Bhainsa Municipality. Petitioner in W.P.No.28172 filed I.A.No.2 praying to take on record the additional affidavit and additional material papers. I.A.No.3 of 2019 is filed praying to amend the prayer in the writ petition. In addition to the challenge to the draft notification dated 03.12.2019, petitioner seeks to amend the prayer to challenge the notification

and delimitation of wards dated 17.12.2019. Along with these IAs, additional set of papers are also filed.

4. Learned counsel for petitioners in WP Nos.28162 and 28172 of 2019, Sri C.Naresh Reddy submitted that there are several illegalities in delimitation of wards and apportionment of voters to various wards. According to the learned counsel, in ward nos.1 and 13, same house numbers are shown. How those house numbers are shown in two different wards is not explained. He would further submit that Owaisi Nagar is now divided into two wards, i.e., ward Nos.3 and 18. The objections filed against such division were not considered. He would further submit that ward no.13 was covering larger geographical area, but now reduced. Prior to or after the voters strength of 1537 remains the same. It is not explained as to how the voters strength remain same even after the geographical area is reduced.

5. He further submits that in ward no.26, as per the draft notification, the total number of voters was shown as 1537. In the draft notification, house numbers 4-3-71 to 4-3-71/Z were also mentioned as forming part of ward no.26. These houses are deleted from ward no.26 and they are not added to any other ward. Further, there is no variation in the voters strength even after deletion of those house numbers. Similarly, in ward no.9, he would submit, earlier it was covering larger geographical area, but now reduced, but strangely the voter population is same. The voters' strength earlier was 1690, now marginally increased to 1694. In other words, more voters are shown with reduced area. He would further submit that in the final notification, boundaries of ward

no.23, insofar as North and West are concerned are shown as same and this is not possible. This would show non-application of mind.

6. He further submits that in spite of directions issued by this Court in the final order dated 29.11.2019 while disposing batch of writ petitions, to provide opportunity of hearing and in spite of request made by petitioner in W.P.No.28172 of 2019, personal hearing was not afforded and, therefore, on this ground alone the entire exercise is vitiated.

7. He further submits that local Member of Legislative Assembly (MLA) filed detailed objections vide his letter dated 09.12.2019, but none of the objections were considered. Reading of the said letter would show that the MLA has pointed out grave illegalities in undertaking pre-election process.

8. Learned counsel contended that against illegalities in delimitation of Wards, writ petition is maintainable. When there is colorable exercise of power, writ Court can go into the validity of the said exercise. In support of the said contention, he placed reliance on the decision of Supreme Court in **Anugrah Narain Singh & another v. State of U.P., and others**¹. He would submit that challenge to the pre-election exercise is without delay and, therefore, writ petition is maintainable.

9. Learned counsel Sri B.Vijaysen Reddy appearing for the petitioner in W.P.No.28741 of 2019 has taken through the objections filed by the local MLA vide his letter dated 09.12.2019.

¹ 1996 (6) SCC 303

According to the learned counsel, several point-wise objections are mentioned by the MLA, but none of those objections were considered. Some of the objections mentioned by the MLA were grave enough. Without considering the objections and rectifying the mistakes pointed out in the objections by a public representative, elections cannot be held to the Municipality. According to learned counsel, the entire exercise has to be redone.

10. He would further submit that in the final notification of delimitation of wards, strangely no boundaries are mentioned in Bhainsa Municipality. By comparing the similar notification issued with reference to Nirmal Municipality, learned counsel pointed out that in Nirmal Municipality, boundaries of each of the wards are mentioned.

11. Learned counsel further contended that words are not arranged clockwise as required by Rule 5 of the Telangana Municipalities (Division of Municipalities into Wards) Rules, 2019 notified vide G.O.Ms.No.78, dated 29.6.2019. According to the learned counsel, clockwise division of wards is intended to be made to ensure transparency and level playing field. According to the learned counsel, clockwise means arrangement of wards horizontally and not in a circle. Arrangement of wards horizontally is also intended to ensure level playing field, but horizontal arrangement of wards is not observed. He emphasized that there is clear violation of Rules governing the pre-election process and violation of the directions issued by this Court in batch of writ petitions.

12. Learned counsel also emphasized that issue is at pre-election notification stage, that election notification is yet to be issued and as the illegalities pointed out are glaring vitiating the election process, writ petition is maintainable. In support of his contention, learned counsel for petitioners placed reliance on the decision of Karnataka High Court in **Shiva Madhu and others v. State of Karnataka and others**². He further submits that improper identification of wards and other illegalities pointed out above, no remedy is available to the petitioners and, therefore, the only remedy for redressal of their grievance is extraordinary remedy under Article 226 of the Constitution of India and, therefore, writ petition is maintainable.

13. Responding to various contentions urged by the learned counsel for the petitioners in all the writ petitions, learned standing counsel representing learned Additional Advocate General would submit that there are no deviations observed in forming the wards and in apportioning the voters to various wards. Responding to the contentions of the learned counsel Sri Vijaysen Reddy, he would submit that clockwise means a circle and the wards are arranged clockwise. However, the arrangement of wards cannot be strictly in the position of a clock in view of geographical position and physical features of the Municipality and the wards cannot be shown in that manner even with regard to the boundaries as arrangement requires compliance of various parameters mentioned in the Rules, in addition to the physical

² 2018(6) KantLJ 245

features. He would therefore submit that to the extent possible, the principle of arranging the wards clockwise is observed strictly.

14. With reference to the allegations that though there is decrease in the geographical area/deletion of house numbers, the strength of voters remained the same, he would submit, with reference to the ward no.9, although the area of the ward is reduced, there is no variation in the voters strength as there was no habitation in the areas deleted from the ward. He would further submit, with reference to ward no.13, because some of the house numbers were not part of the notification, they were deleted and certain other house numbers are added and, therefore, figures have not changed. Further in the series of house numbers in ward nos.1 and 13, there is no discrepancy and they are tallying. He would submit that there is no overlapping of any area or double reflection of same house numbers in more than one ward.

15. He denied the allegations of reflecting large number of voters in the commercial area. Whatever the voters' strength is shown in the ward by the Election Commission of India is reflected. With reference to the allegation of discrepancies in boundaries in ward no.18, he would submit that the description of the ward boundaries is correctly shown and house numbers are correctly mentioned. With reference to the allegation of alignment of ward no.23, he would submit that there was a typographical mistake, which is sought to be taken advantage by the petitioners, but actual division of the ward was shown properly and all the house numbers are included.

16. With reference to the allegation of learned counsel that several objections were raised by the local MLA, but none of those objections were considered, he would submit that the objections raised by the MLA were considered and reply was given on 16.12.2019 dealing with each of the objections. Copy of the reply given to the MLA with acknowledgment by his Personal Assistant on 16.12.2019 is filed at page no.37 of the counter-affidavit in W.P.no.28741 of 2019. Responding to the objections raised by the petitioner in the said writ petition, reply was given on 16.12.2019. Copy of the reply given to the petitioner is filed at page no.28 of the counter-affidavit.

17. The Court has carefully considered the respective submissions of the learned counsel for petitioners and the stand of the respondent-Municipality, as contended by the learned standing counsel for Municipality, I am of the considered opinion that no serious infirmities are noticed in the exercise undertaken by the Municipality. Though learned counsel for petitioners sought to point out the discrepancies in arrangement of wards, it cannot be said that replies furnished by the Municipality in the counter-affidavits filed in these writ petitions are not valid.

18. As fairly submitted by the learned counsel Sri Vijaysen Reddy, though there appears to be some discrepancies in the boundaries in the preliminary notification, in the final notification the boundaries are mentioned. However, he sought to contend that no opportunity to file objections was given.

19. The Constitution of India requires conducting of elections to the Local Bodies regularly and before the completion of term of the

existing Executive Body. To conduct elections in a free and fair manner, without bias and preference to any political party or individuals autonomous Election Commission is established at the Stage level and it is the bounden duty of the State Election Commission to conduct free and fair elections. In order to ensure that the officers at the ground level undertake exercise in free and fair manner, several rules are notified dealing with various aspects, such as, alignment of wards, even apportionment of voters of all wards, determination of reservation of wards in favour of SCs/STs, reservation of the office of Chair Person/Mayor, procedure of issuing election notification, and conducting of elections etc. In the process of undertaking the exercise, it is possible for the individual voters to point out any discrepancy on various aspects mentioned above. Thus Officers at the gross root level are required to examine all the aspects and if there are objections on any aspect, which would point out serious irregularities, the same should be rectified.

20. From the material averments in the counter-affidavits in these writ petitions, on each aspect of the allegations made by the petitioners, respondents expressed their stand on how exercise was undertaken. I do not see any infirmity much less serious, in the exercise undertaken. In view of the explanation offered by the respondent-Municipality in the counter affidavits, the writ Court cannot go into the nitty-gritty of the exercise undertaken as what is required to be looked into is whether the illegalities are committed in complying with the Rules formulated for the purpose of smooth conduct of elections and whether such illegalities are grave enough vitiating the election process. More so, interference

of the writ Court in the election matters is within a narrow compass, moreover when the challenge to various aspects of elections is made proximate to the final election notification and conduct of elections writ Court should not interfere and stay the election schedule. No serious/grave infirmities are noticed warranting interference by this Court when the election notification was imminent. I therefore see no merit in the contentions urged by the learned counsel for petitioners.

21. Wit petitions are accordingly dismissed. Pending miscellaneous petitions shall stand closed.

JUSTICE P.NAVEEN RAO

Date: 07.01.2020
kkm



HON'BLE SRI JUSTICE P.NAVEEN RAO



WRIT PETITION NOs.28162, 28172 and 28741 OF 2019

Date: 07.01.2020

kkm