

**HONOURABLE SRI JUSTICE P.NAVEEN RAO**

**WRIT PETITION NO.29034 OF 2019**

**Date: 08.01.2020**

Between:

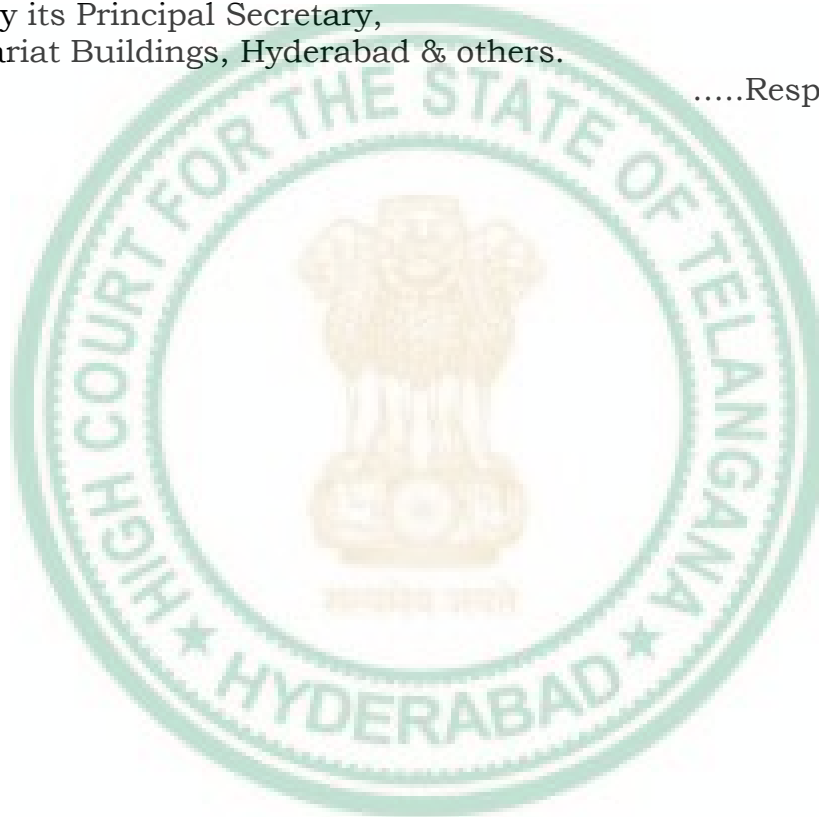
Md. Samad, s/o. Umar Miya, Aged 40 years,  
Occu: Business, r/o. H.No.26-110, Gandhinagar,  
Wanaparthi, Telangana State.

.....Petitioner

And

The State of Telangana,  
Rep., by its Principal Secretary,  
Secretariat Buildings, Hyderabad & others.

.....Respondents



The Court made the following:

**HONOURABLE SRI JUSTICE P.NAVEEN RAO**

**WRIT PETITION No.29034 of 2019**

**ORDER:**

Heard Mr. Ravi Shankar Jandhyala, learned counsel for the petitioner, learned Additional Advocate General for all respondents except State Election Commission, and Sri P.Sudheer Rao, learned Standing counsel for respondent No.5.

2. Petitioner claims to be the voter of Wanaparthy Municipality and aspiring to contest the upcoming elections to the Wanaparthy Municipality. In this writ petition, petitioner is challenging the final notification of wards, delimitation of wards dated 17.12.2019 on various grounds.

3. According to learned counsel for the petitioner, petitioner filed W.P.No.149434 of 2019 pointing out various illegalities in the pre-election exercise undertaken by the respondents in Wanaparthy Municipality. Having *prima facie* found that there are several illegalities which require consideration, the Court granted stay of further election process and liberty was granted to rectify the mistakes pointed out by the petitioner.

4. Learned counsel submits that in spite of various illegalities noticed by the Court, the same are not attended and the same mistakes are also repeated now. Notification is challenged on the ground that the boundaries of the wards are not specified and the wards are not organized in clockwise direction. The final publication has scattered numbering without following clockwise pattern and wards were created without following due procedure.

5. Based on the final order passed in W.P.No.14619 of 2019 and batch cases, petitioner filed detailed objections and has also sought personal hearing, as directed by the Court in the final order dated 29.11.2019, but personal hearing was not provided. Therefore, the entire exercise is liable to be set aside on this ground alone.

6. According to learned standing counsel representing learned Additional Advocate General submits that that clockwise system is maintained and 10% limit on variation of voters is strictly followed and no basis to allegation of violation of rules. He would submit that vague statements are made. The list furnished by the Election Commission of India is followed by Municipality and no corrections/additions or deletions to that list were made. Further, on not mentioning of house numbers and simply mentioning locality names, college names etc., he would submit that respondents have not prepared the electoral list. The list relied by petitioners relate to Assembly Elections.

7. The Rules notified vide G.O.Ms.No.78 Municipal Administration & Urban Development (MA) Department, dated 29.06.2019 prescribe procedure to undertake pre-election process such as formation of wards, arrangement of wards clockwise, allocation of voters in various wards by ensuring that the voters in all the wards are evenly distributed with 10% margin, determination of voters belonging to Scheduled caste, Scheduled tribe, backward class and women categories, identification of wards to be reserved in favour of Scheduled caste, Scheduled tribe and women and reservation of post of Chair Person/Mayor.

8. What is agitated by the petitioner is not with reference to exclusion of his name from the voters list, affecting his right to cast vote, but over all aspects of determination of delimitation of wards and apportionment of voters, who is aspiring to contest the elections.

9. Assuming that even in administrative decisions, opportunity of hearing should be provided, it is appropriate to note as to what is meant by '*opportunity of hearing*'.

10. The issue of what is meant by opportunity of hearing and whether not affording of opportunity of personal hearing would vitiate the exercise undertaken by the competent authority are considered by the Hon'ble Supreme Court in **Union of India vs. Jesus Sales Corpn.**,<sup>1</sup>

11. In **Jesus Sales Corpn.**, the Supreme Court considered the contention of not affording reasonable opportunity of being heard. The respondents therein, relied upon the entry in Section 4-M(2) of Imports and Exports (Control) Act, 1947, which provide "...after giving to the appellant a reasonable opportunity of being heard....", the Supreme Court held that this does not mean in all circumstances a personal hearing.

12. Paragraph No.5 of the judgment reads as under :

**"5.** The High Court has primarily considered the question as to whether denying an opportunity to the appellant to be heard before his prayer to dispense with the deposit of the penalty is rejected, violates and contravenes the principles of natural justice. In that connection, several judgments of this Court have been referred to. It need not be pointed out that under different situations and conditions the requirement of compliance of the principle of natural justice vary. The courts cannot insist that

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<sup>1</sup> (1996) 4 SCC 69

under all circumstances and under different statutory provisions personal hearings have to be afforded to the persons concerned. If this principle of affording personal hearing is extended whenever statutory authorities are vested with the power to exercise discretion in connection with statutory appeals, it shall lead to chaotic conditions. Many statutory appeals and applications are disposed of by the competent authorities who have been vested with powers to dispose of the same. Such authorities which shall be deemed to be quasi-judicial authorities are expected to apply their judicial mind over the grievances made by the appellants or applicants concerned, but it cannot be held that before dismissing such appeals or applications in all events the quasi-judicial authorities must hear the appellants or the applicants, as the case may be. When principles of natural justice require an opportunity to be heard before an adverse order is passed on any appeal or application, it does not in all circumstances mean a personal hearing. The requirement is complied with by affording an opportunity to the person concerned to present his case before such quasi-judicial authority who is expected to apply his judicial mind to the issues involved. Of course, if in his own discretion if he requires the appellant or the applicant to be heard because of special facts and circumstances of the case, then certainly it is always open to such authority to decide the appeal or the application only after affording a personal hearing. But any order passed after taking into consideration the points raised in the appeal or the application shall not be held to be invalid merely on the ground that no personal hearing had been afforded. This is all the more important in the context of taxation and revenue matters. When an authority has determined a tax liability or has imposed a penalty, then the requirement that before the appeal is heard such tax or penalty should be deposited cannot be held to be unreasonable as already pointed out above. In the case of *Shyam Kishore v. Municipal Corpn. of Delhi* [(1993) 1 SCC 22] it has been held by this Court that such requirement cannot be held to be harsh or violative of Article 14 of the Constitution so as to declare the requirement of pre-deposit itself as unconstitutional. In this background, it can be said that normal rule is that before filing the appeal or before the appeal is heard, the person concerned should deposit the amount which he has been directed to deposit as a tax or penalty. The non-deposit of such amount itself is an exception which has been incorporated in different statutes including the one with which we are concerned. Second proviso to sub-section (1) of Section 4-M says in clear and unambiguous words that an appeal against an order imposing a penalty shall not be entertained unless the amount of the penalty has been deposited by the appellant. Thereafter the third proviso vests a discretion in such appellate authority to dispense with such deposit unconditionally or subject to such conditions as it may impose in its discretion taking into consideration the undue hardship which it is likely to cause to the appellant. As such it can be said that the statutory requirement is that before an appeal is entertained, the amount of penalty has to be deposited by the appellant; an order dispensing with such deposit shall amount to an exception to the said requirement of deposit. In this background, it is difficult to hold that if the appellate authority has rejected the prayer of the appellant to dispense with the deposit unconditionally or has dispensed with such deposit subject to some conditions without hearing the appellant, on perusal of the petition filed on behalf of the appellant for the said purpose, the order itself is vitiated and is liable to be quashed being violative of the principles of natural justice.”

13. In **Patel Engg. Ltd., Vs Union of India**<sup>2</sup>, dealing with the contention that 2<sup>nd</sup> respondent, ought to have been given oral hearing before the adverse decision was taken, the Supreme Court followed the decision in **Jesus Sales Corpn.**, and agreed with the conclusion arrived at by the High Court holding that there is no inviolable rule that a personal hearing of the affected party must precede every decision of the State.

14.1. Again the decision of **Jesus Sales Corpn.**, was considered in **Nirma Industries Ltd. Vs SEBI**<sup>3</sup>. Affirming the view taken in **Jesus Sales Corpn.**, the Supreme Court held as under :

“38. In our opinion, the aforesaid provisions are of no assistance to the appellants. Firstly, neither the appellants nor their merchant bankers requested for an opportunity for a personal hearing. Secondly, in the present case, SEBI has not issued any instructions or directions under Section 11, which requires that the rules of natural justice be complied with. Thirdly, it cannot be said that the appellants had been condemned unheard as the entire material on which the appellants were relying was placed before SEBI. It is upon consideration of the entire matter that the offer of the appellants was rejected. This is evident from the detailed order passed by SEBI on 30-4-2007. The letter indicates precisely the exceptional circumstances mentioned by the appellants seeking to withdraw the public announcement. Each and every circumstance mentioned was considered by SEBI. Therefore, it cannot be said that the appellants have been in any manner prejudiced by the non-grant of the opportunity of personal hearing. Therefore, the submission made by Mr Shyam Divan with regard to the breach of rules of natural justice is rejected.”

14.2. The Supreme Court also referred to the view expressed by the Supreme Court in **“ECIL Vs B.Karunakar**<sup>4</sup>, wherein it was held that the Court should not mechanically set aside the order of

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<sup>2</sup> (2012) 11 SCC 257

<sup>3</sup> (2013) 8 SCC 20

<sup>4</sup> (1993) 4 SCC 727

punishment on the ground that the report was not furnished to the employee.

14.3. In **Nirma Industries, Ltd.**, the Supreme Court, observed by referring to the view expressed in **B.Karunakar**, that a person challenging the order on the basis that it is causing civil consequences, would have to prove the prejudice that has been caused by non-grant of opportunity of hearing.

15. In the **State of Haryana Vs Northern Indian Glass Industries Ltd.**,<sup>5</sup> the decision in **Jesus Sales Corpn.**, on the issue whether not affording personal hearing would vitiate the proceedings is followed.

16. It thus emerges from the above precedent decisions that '*opportunity of hearing*' does not mean '*personal hearing*'. Even assuming that it is necessary to afford personal hearing, burden is on the person to prove that by denying opportunity of personal hearing, grave prejudice is caused to him.

17. Learned counsel for petitioner contended that subsequent to 23.12.2019, voters' lists were revised and in all revised voters lists of respective wards, there is variation beyond 10% permissible and the same is illegal. It is also contended that having finalized voters' lists in respective wards, subsequently revision of voters could not have been undertaken. In response to this contention, learned Additional Advocate General submitted that the basis for apportionment of the voters to the respective wards was finalized and after the finalization of the voters list, there is change in the calendar year and the Election Commission of India circulated

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<sup>5</sup> (2015) 15 SCC 588

revised voters list containing additions to the voters who have now acquired the age to cast votes, therefore those voters have to be included in the voters list. Since such revision was undertaken by the Election Commission of India, same has to be incorporated in the voters list and in the process, in the revised exercise, there is variation. Variation in the voters list is based on disclosure of voters' house numbers in the respective wards. Therefore, the increased voters are added to the respective wards where the voters have shown their residences and revised exercise of apportionment of voters to different wards cannot be undertaken at this stage. In support of his contention, learned Additional Advocate General placed reliance on the general procedure adopted in all elections whereunder the voters revision is a continuous process and all eligible voters who were not included earlier but are entitled to be included and have right to cast vote have to be included and permitted to cast their votes, as exercise of franchise is fundamental right of all citizens. He also placed reliance on Section 195-A in support of his contention that such revision is mandatory.

18. The preparation of alignment of wards clockwise, allocation of voters, and reservation of wards is an exercise required to be completed before the final election notification is issued. However, with reference to the eligibility to cast vote, the State Election Commission is required to revise the electoral list based on the revised list furnished by the Election Commission of India till issuance of notification i.e., 07.01.2020. Thus, it is permissible to undertake revision of voters list subsequent to 23.12.2019. Therefore, I do not see any error in the exercise undertaken in

revising voters list. In the process of such revision, if there is increase in the voters more than permissible under Rule 5 of the Rules notified vide G.O.Ms.No.78, dated 29.06.2019, the same cannot be said illegal as increase is the result of the revision of voters list by the Election Commission of India. Subsequent reflection of new voters in the respective wards is based on their residential status in those wards as reflected in the electoral rolls furnished by the Election Commission of India. After completion of exercise as per the Rules 4 and 5 of the Rules notified vide G.O.Ms.No.78 dated 29.06.2019 and furnishing of revised electoral rolls, there is no requirement to revise the allocation of voters by maintaining the proportionality principle. Whereas, ward-wise revision of voters list as per revised list furnished by Election Commission of India and as discernable from Section 154-A of the Act is mandatory. Thus, the said contention of the learned counsel for petitioner is stated to be rejected.

19. Having regard to the principle laid down in **Jesus Sales Corpn.**, firstly, opportunity of hearing does not mean a personal hearing and even assuming that personal hearing is required to be given, having regard to the order of this Court in the earlier round of litigation, merely because personal hearing is not afforded, it would not vitiate the pre-election process unless prejudice is established, for this Court to interject the election process. Further, what is pointed out against pre-election process are not grave enough warranting nullifying election process as the main election process is schedule to commence today and at the threshold of issuing election notification, the Court cannot interject the election process on these grounds, in exercise of equitable

jurisdiction. The law laid down by the Supreme Court in the long line of precedents clearly point out that High Court should exercise restraint in election matters. Therefore, I do not see any error in the exercise undertaken by the respondents.

20. Writ Petition is accordingly dismissed. Pending miscellaneous petitions shall stand closed.

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**JUSTICE P.NAVEEN RAO**

Date: 08.01.2020  
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