

(1995) 07 AP CK 0001

Andhra Pradesh High Court

Case No: Writ Petition No's. 5694, 11899 and 12469 of 1995

M. Ranga Mohan and Others

APPELLANT

Vs

The Electoral Appellate
Officer-cum-Revenue Divisional
Officer and Others

RESPONDENT

Date of Decision: July 14, 1995

Citation: (1995) 3 ALD 153 : (1995) 3 ALT 300

Hon'ble Judges: M.N. Rao, J; B.S.A. Swamy, J

Bench: Division Bench

Advocate: G. Dharma Rao and N.S. Bhaskara Rao, in W.P. 11899/95, Koka Raghava Rao, in W.P. 5964/95 and Anil Narsikar, in W.P. 12469/95, for the Appellant; G. Dharma Rao and N.S. Bhaskara Rao for R-4 in W.P. 5694/95 and for R-5 in W.P. 12469/95, Government Pleader for Panchayat Raj for R-1 to R-4 in W.P. 11899/95 and W.P. 12469/95 and for R-1 to R-3 in W.P. 5694/95, Koka Raghava Rao, for R-5 in W.P. 11899/95 and M. Ravindranath Reddy, for R-6 in W.P. 11899/95, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

M.N. Rao, J.

The question at issue in these three inter-connected Writ Petitions is whether the electoral roll in respect of the gram panchayat of Mucherla, which attained finality on 1-1-1995, could be altered by the Electoral Registration Officer (Mandal Revenue Officer) and the Electoral Appellate Officer (Revenue Divisional Officer). The gram panchayat in question is Mucherla in Pedana mandal of Krishna district.

2. Writ Petition No. 5694 of 1995 was filed by 31 persons. The case of petitioner Nos. 1 and 2 is that in the draft electoral roll published on 31-12-1994 their names were included; but the Revenue Divisional Officer who is the Electoral Appellate Officer, by his order dated 20-1-1995 on an appeal filed by one M. Ranga Mohan (5th respondent in Writ Petition No. 12469 of 1995), directed deletion of their names on

the ground that they are not residents of the village. That order was passed, according to them, without affording them any opportunity to establish their claim that they are permanent residents of the village. As regards petitioner Nos. 3 to 11 the averment in the affidavit filed in support of the writ petition is that they are voters of the gram panchayat and they also participated in the elections to the Andhra Pradesh Legislative Assembly held on 5-12-1994, but the Mandal Revenue Officer removed their names from the electoral roll without giving any notice. When they preferred an appeal to the Electoral Appellate Officer the same was rejected on 19-1-1995 without giving any opportunity to them. As regard petitioner Nos. 12 to 31 the case pleaded is that they are the permanent residents of the village and so they are entitled to be included in the voter's list and when they filed applications before the Electoral Registration Officer the same were rejected and the appellate authority affirmed that order.

3. Writ Petition No. 11899 of 1995 was filed by 16 persons claiming that their names were included in the draft electoral roll; but one D. Venkateswara Rao, leader of the opposite faction, represented to the Revenue Divisional Officer that they are not the residents of the village and on that ground their names were deleted from the voter's list by the District Panchayat Officer. When the election notification was issued on 7-6-1995 they came to know that their names were deleted and as the election notification was already issued they could not prefer appeal to the appellate authority.

4. In Writ Petition No. 5694 of 1995 an order was passed by a Division Bench of this Court on 30-5-1995 holding that both the original as well as the appellate authorities concluded that petitioner Nos. 12 to 31 are not residents of the village Mucherla and therefore the rejection of their claim for inclusion of their names in the voters' list was justified. On that view the Writ Petition was dismissed so far as petitioners 12 to 31 are concerned. But as regards petitioner Nos. 1 to 11 the Writ Petition was directed to be listed for final hearing. We must also mention in this context that when the Writ Petition came up for admission on 30-5-1995 in the Vacation Court, a Division Bench, while posting the matter for admission to 15-6-1995, granted interim injunction to the effect that:

"In the meanwhile, if any notification is issued notifying the election for Mucherla Gram Panchayat, the petitioners Nos. 1 to 11 shall be permitted to participate in the said elections."

5. As regards petitioner Nos. 1 to 11, the Writ Petition was admitted.

6. Writ Petition No. 12469 of 1995 was filed by 15 persons of the village of whom petitioner Nos. 2,3,4,11,12,13,14 and 15 figured earlier as petitioner Nos. 22,21,23,29,31,25,24 and 30 in Writ Petition No. 5694 of 1995 which was dismissed insofar as they are concerned. The case pleaded in Writ Petition No. 12469 of 1995 is that all the petitioners are residents of the village, their names were found in the

draft electoral roll but they were deleted at the instance of the 5th respondent, Ranga Mohan, who alleged that they were not residents of the village. Deletion was effected, according to them, without any notice.

7. By an interlocutory order dated 22-6-1995, the petitioners in Writ Petition No. 12469 of 1995 were permitted to participate in the elections. So far as petitioners in Writ Petition No. 1 1899 of 1995 are concerned, by an interlocutory order dated 20-6-1995 they were permitted to participate in the voting but their votes were directed to be kept separately. As a consequence of the interim orders passed in the three Writ Petitions, the 42 persons whose names are not found in the final electoral roll have exercised their franchise. Insofar as the 16 persons in Writ Petition No. 11899 of 1995 are concerned, their votes are now identifiable since they have been kept separately in a sealed cover. As regards the rest of the 26 votes (11 votes of the petitioner Nos. 1 to 11 in Writ Petition No. 5694 of 1995 and 15 votes of the petitioners in Writ Petition No. 12469 of 1995), the same cannot now be readily identified as no orders similar to the one in Writ Petition No. 11899 of 1995 were passed to keep the votes in a separate sealed cover.

8. The electoral roll became final with effect from 1-1-1995. By Rule3-A of the Rules issued in G.O.Ms. No. 879, Panchayat Raj, dated 3-12-1994, as amended by G.O.Ms. No. 72, dated 4-2-1995, the Electoral Registration Officer was empowered to direct additions or deletions to the electoral roll even after the election notification was issued. The aforesaid Rule 3-A was struck down by a five Judge Bench of this Court presided over by the Hon"ble the Chief Justice in Writ Petition No. 11106 of 1995 and batch as clarified in Review W.P.M.P. No. 16875 of 1995 and batch by order dated 10-7-1995. The Bench directed that the officers connected with the conduct of elections should verify the electoral rolls "of such wards in which names of voters have been added after 7-2-1995 and if the newly added votes are found to be genuine, declare the result of the election. If, however, there are some voters whose names were added after 7-2-1995 and who have voted but the result of election is not likely to be materially affected thereby, publish the result. If, however, in such a case the result is likely to be materially affected, not to publish the result and order for fresh election".

9. Although the aforesaid direction concerns only with additions, inasmuch as the amendment made to Rule 3-A empowering the Electoral Registration Officer to delete the names from the electoral roll has not been noticed, the direction given to the officers connected with the conduct of elections insofar as additions are concerned, applies equally to the deletions also. But, it must be noticed that the aforesaid direction has no application to the cases in hand for the self-evident reason that the alleged deletions in question had taken place prior to 7-2-1995.

10. What follows, therefore, is that the alleged deletions made to the draft electoral roll cannot be challenged by the petitioners.

11. All the three Writ Petitions are, therefore, dismissed. The Election Officer shall publish the result of the election and while doing so he shall not take into account the 16 votes directed to be kept separately as per the order in W.P.M.P. No. 14544 of 1995 in Writ Petition No. 11899 oM995. We make it explicit that if an election petition is filed alleging any irregularities, the Election Tribunal shall identify the aforesaid 42 votes and exclude them from reckoning by declaring them invalid and decide the matter in accordance with as expeditiously as possible, in any event not later than three months from the date of filing of the petition. The interim orders granted earlier stand vacated.