

(1994) 11 AP CK 0001

Andhra Pradesh High Court

Case No: Writ Petition No. 20486 of 1994

N. Chandra Babu Naidu

APPELLANT

Vs

The Chief Election Commissioner
and Others

RESPONDENT

Date of Decision: Nov. 24, 1994

Acts Referred:

- Constitution of India, 1950 - Article 226, 324
- Representation of the People Act, 1951 - Section 28A

Citation: (1995) 1 ALT 143 : (1995) 1 ALT 14

Hon'ble Judges: Motilal B. Naik, J

Bench: Single Bench

Advocate: S. Ramachandra, for the Appellant; C.P. Sarathy, for Respondent No. 1, General for Respondent No. 2, D. Sivaramakrishna and M. Subrahmanyam, for the Respondent

Final Decision: Dismissed

Judgement

Motilal B. Naik, J.

Petitioner seeks a Writ, Order or direction directing the first respondent to order the third respondent not to discharge and function any official duties pertaining to the conduct of General Elections in Andhra Pradesh State scheduled to be held on 1-12-1994 and 5-12-1994. A further direction is also sought to the first and second respondents to appoint any other eligible officer as Director General of Police, Andhra Pradesh for conducting the General Elections.

2. The petitioner is an M.L.A. representing Telugu Desam Party and he is also Floor Leader of Telugu Desam Party in the Legislative Assembly. The main allegation of the petitioner is that the third respondent though a Senior I.P.S. Officer is acting in a partisan manner and is a fanatic supporter of the ruling Congress Party. The petitioner states that by virtue of his official position, the third respondent has secured Congress ticket for one of his brothers M.V. Chalapathi Rao to contest

elections from Tuni Assembly Constituency in East Godavari District. It is also alleged that though the third respondent being senior I.P.S. Officer has not only maneuvered for the Congress ticket for his brother but has also personally went to Gandhi Bhavan which is Congress Party's Office and collected B-Form on behalf of his brother.

3. The petitioner further states that the partisan attitude of the third respondent is very well known particularly with reference to the incidents which have taken place after the assassination of late Sri Rajiv Gandhi on 21-5-1991 when some of the Congress M.L.As viz., Sudheer Kumar and Mukesh had deliberately organised destruction of properties of Sri. N.T. Rama Rao located at Abids area. Though the third respondent knew the culprits who are involved in this episode, shielded them and has not taken any action against them. Therefore, the petitioner claims that such is the vendetta of the third respondent against Telugu Desam Party. The petitioner also alleges that the fourth respondent in collusion with the third respondent has hatched a conspiracy to help Congress Party in the ensuing elections and are abusing power and using police forces for rigging the polls in Telangana area and also trying to use police force to help the Congress candidates throughout the State with me sole oblique motive of ensuring success of Congress Party Candidates.

4. In Pursuance of achieving this goal, senior I.P.S. Officers of the rank of D.I.G. and I.Gs. are posted in-charge of six different zones as per the instructions issued by the third respondent in File No. 231/E1/94 dated 11-11-1994. Sri M.V. Krishna Rao, IPS another brother of the third respondent who is the Director of A.P. Police Academy has been posted in-charge of Visakhapatnam range. It is alleged that M.V. Krishna Rao has been kept in-charge of Visakhapatnam Range which is adjacent to Tuni Assembly Constituency in East Godavari District to help M.V. Chalapathi Rao, another brother of the third respondent who is contesting on Congress Party ticket. Thus, the third respondent has been misusing his official position as Director General of Police for the purpose of ensuring the success of Congress Party candidates including his own brother M.V. Chalaoathi Rao.

5. The petitioner states that he made representation to the first respondent by complaining all these events requesting the first respondent to take appropriate action against the third respondent who, according to the petitioner, is misusing his position as Director General of Police and trying to ensure the success of Congress Party candidates in the ensuing General Elections. The petitioner states that the first respondent having received complaints not only from the petitioner but also from other persons about the misuse of power by the third respondent, has not acted upon so far. Therefore, this Writ Petition is filed seeking a direction to the first respondent to order third respondent not to discharge any functions and also a further direction to first and second respondents to appoint any other eligible officer as Director General of Police in the State of Andhra Pradesh till the

completion of election process.

6. To meet these allegations, respondents 2, 3 and 4 have filed separate counters. As far as the first respondent is concerned, Sri C.P. Sarathy, learned counsel appearing on behalf of the first respondent has filed a memo before this Court on 22-11-1994 during the course of arguments along with material papers which are said to have been received from the first respondent. During the course of arguments in line morning session on 22-11-1994, this Court had also permitted the learned counsel representing the first respondent to place any other relevant information which would be received by him from the first respondent before the Court raises for that day by furnishing a copy of the said information to the counsel for the petitioner also. Thus, on behalf of the first respondent, a memo has been filed along with material papers which indicates the course of action taken by the first respondent in this behalf.

7. As I said earlier, detailed counters have been filed on behalf of other respondents refuting the allegations levelled against them by the petitioner.

8. I have heard Sri S. Ramachandra Rao, counsel for the petitioner, Sri C.P. Sarathy, counsel for the first respondent, the learned Advocate General, appearing on behalf of second respondent, Sri D. Sivaramakrishna, counsel for respondent No. 3 and Sri M. Subrahmanyam, counsel representing the fourth respondent, at length.

9. The sum and substance of the arguments advanced on behalf of the petitioner centres mainly on the misuse of the official position by the third respondent in particular designed to help the ruling Congress Party for which the fourth respondent is the leader, in the ensuing elections which are scheduled to be held on 1-12-1994 and 5-12-1994. The allegations are on various counts. Firstly, the petitioner alleges that the third respondent has secured Congress Party ticket to his brother M.V. Chalapathi Rao from Tuni Assembly Constituency in East Godavari District, by using his official position as Director General of Police and indirectly promising the fourth respondent that he will use his entire police machinery to ensure the success of the Congress Party candidates in the ensuing elections. Secondly, the third respondent has gone to the extent of collecting B-Form on behalf of his brother M.V. Chalapathi Rao who is contesting from Tuni Assembly Constituency on Congress Party ticket, by personally going to Gandhi Bhavan, the central office of Congress party, which act would amount to unbecoming of a government servant. Thirdly, the third respondent has also posted his another brother M.V. Krishna Rao, IPS who is functioning as Director, A.P. Police Academy as in-charge of Visakhapatnam Range to ensure the success of his other brother M.V. Chalapathi Rao, who is contesting on Congress Party ticket from Tuni Assembly Constituency in East Godavari District. Likewise, to ensure the success of other Congress Party candidates, eight senior IPS Officers have been kept in-charge of six zones, by the third respondent.

10. Article 324 of the Constitution of India makes provision for a centralised election machinery. The election commission is empowered to issue all necessary directions for the purpose of conducting smooth, free and fair elections. Clause (6) of Article 324 provides that the President or the Governor of a State, shall when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission under Clause (1) of Article 324 of the Constitution of India. The election process in the State of Andhra Pradesh is set in motion by issuance of notification by the Governor of Andhra Pradesh in terms of Clause 15 (2) of the Representation of People Act, 1951 on 1-11-1994. Thus, by issuance of the election notification, the election process has commenced in the State of Andhra Pradesh and the said election process will come to an end on 13-12-1994 by the time, the entire results will be announced. The Election Commission is empowered to issue all necessary directions for the purpose of conducting smooth, free and fair elections. Accordingly, the Chief Electoral Officer and Principal Secretary to Government of Andhra Pradesh has issued G.O. Ms. No. 542, General Administration (Elec. D) Department, dated 2-11-1994 invoking power u/s 28(A) of the Representation of the People Act, 1951 by designating the following Police Officers for the purpose of maintaining law and order and other duties connected with the conduct of ensuing General Elections to the Legislative Assembly of the State of Andhra Pradesh.

1. Director General of Police
2. Additional Directors General of Police
3. All Inspectors General of Police
4. All Deputy Inspectors General of Police
5. All Superintendents of Police
6. All Additional Superintendents of Police (Both cadre and non-cadre)
7. All S.D.P. Os.
8. All Inspectors of Police
9. All Sub-Inspectors of Police
10. All Head Constables
11. All Police Constables.
12. Any other police officers serving for the time being in the Police Department

11. Therefore, the third respondent whose services were also requisitioned by the Election Commission has to necessarily work under the instructions and guidance of the Chief Electoral Officer and Principal Secretary to Government of Andhra

Pradesh, along with other officials whose services have also been requisitioned in terms of the G.O. cited supra, till the election process is completed. The first respondent is bestowed with the responsibility of conducting free and fair elections. The first respondent or the Regional Election Commissioner has to necessarily devise ways and means to entrust work to various officials whose services are requisitioned for the purpose of manning elections. The internal arrangements such as allocating certain types of jobs to police officials or other officials are all part of the functions of the Election Commission. Therefore, the third respondent can not be said to be independent and free enough to depute any person or official of his choice to a particular zone or range.

2. It is true that the brother of third respondent namely M.V. Chalapathi Rao is contesting as a Congress Party candidate in Tuni Assembly Constituency of East Godavari District. It is also true that M.V. Krishna Rao, another brother of the third respondent is kept in-charge of Visakhapatnam Range comprising of three districts to oversee the election process. Likewise, several senior police officials have also been kept in-charge of six other zones. Once the election process commences, the Code of Conduct as prescribed by the Election Commission from time to time comes into effect. Not only candidates of various political parties but also the officials connected with the election process are brought within the purview of the Code of Conduct. Any violation thereof, action would be initiated against such violators in accordance with the relevant provisions.

13. In the instant case, the petitioner has levelled several charges against the third respondent in particular. It is also stated that despite complaints being lodged against the third respondent, with the first respondent, the first respondent has not moved in this matter and therefore, the petitioner has moved this Court seeking appropriate directions.

14. Three wings of constitutional bodies viz., legislature, judiciary and executive have respective roles to play. The three wings have to harmoniously function without overstepping on the powers of the other. No doubt, High Courts under their review power, are competent to set at naught any wrong done by an authority under the Constitution.

15. It is not the concern of this Court to examine as to how a person obtained ticket from a political party. It is equally not the concern of this Court to say that such and such person shall not be assigned a particular job specially during the electioneering, when the entire election process is being manned by the Election Commission.

16. Unlike the other case where the Government had issued G.O. Rt. No. 2796, Home (Courts-B) Department, dated 26-10-1994 conferring powers of Special Executive Magistrates on Superintendents, Additional Superintendents and Deputy Superintendents of Police, this Court interfered in such action of the Government,

prima facie, on the ground that it offends Articles 14, 19 and 21 of the Constitution of India besides viewing the action as to "tend to allowing a person to be. a judge for his own cause."

17. In 163-Gorantla Assembly Constituency when the election was cancelled, the validity of such cancellation of election notification issued by the Governor of Andhra Pradesh on the basis of recommendation of the first respondent was challenged in this Court. This Court justified the action of the Election Commission in recommending such cancellation by holding that if election process is allowed to be completed in the said constituency, purity in the election process may not be achieved, besides the true choice of the electorate also may not be reflected. Therefore, there is no similarity of situation arising in this Writ Petition for issuance of a direction as prayed for.

18. When once the election process is set in motion, the Code of Conduct issued by the Election Commission holds the field. As I said earlier, not only the candidates and their respective political parties, but also the officials who are requisitioned and assigned with the election work are also brought under the net of the Code of Conduct till the entire election process comes to an end. The Election Commission so constituted under Article 324 of the Constitution of India is clothed with sufficient powers to deal with any situation arising out of electioneering in order to ensure purity in the conduct of free and fair elections.

19. It is brought to the notice of this Court by the counsel representing the first respondent that the complaint of the petitioner against the third respondent has been examined by the first respondent and found to be not worthy of consideration. In this view of the matter, I am of the view, that the relief sought in this Writ Petition cannot be granted to the petitioner.

20. The Writ Petition therefore fails and is accordingly dismissed.