

Katta Sivaiah Vs Government of A.P. and Others

Court: Andhra Pradesh High Court

Date of Decision: April 26, 2013

Acts Referred: Constitution of India, 1950 Article 226

Citation: (2013) 5 ALD 1 : (2013) 4 ALT 265

Hon'ble Judges: N.V. Ramana, Acting C.J.; Vilas V. Afzulpurkar, J

Bench: Division Bench

Advocate: P. Radhiva Reddy, for the Appellant;

Final Decision: Allowed

Judgement

N.V. Ramana, Actg. C.J.

1. These batch of appeals are filed by the writ petitioners who are aggrieved by the common order passed by a learned single Judge of this Court

in W.P. No. 2148 of 2013 and batch, dated 15-02-2013. All the writ petitioners are members of Primary Agricultural Co-operative Societies and

all of them have questioned the orders passed by the Government in exercise of the power under Rule 22-C(1)(iii) of the A.P. Co-operative

Societies Rules, 1964 (for short "the Rules") framed in the A.P. Co-operative Societies Act, 1964 (for short "the Act"). By the aforesaid orders,

Government had postponed elections to the Managing Committees of the said Societies and aggrieved thereby, the petitioners have filed the writ

petitions and by a common order of the learned single Judge which is impugned herein, all the writ petitions were dismissed upholding the orders of

the Government postponing the elections.

2. Most of the appeals in the present batch relate to Prakasam District where it is stated that out of 173 Societies, elections scheduled in more than

18 Societies were postponed under the impugned orders of the Government. Similar fact situation exist in other appeals also.

3. The nature of the orders passed by the Government in almost all the cases is more or less similar. It would, however, be appropriate to extract

one such order, which is subject matter in W.P. No. 3109 of 2013 and against which first one of these batch appeals (W.A. No. 238 of 2013) is

preferred:

GOVERNMENT OF ANDHRA PRADESH ABSTRACT

Cooperation Department -- Elections -- Elections to Primary Agricultural Cooperative Societies (PACS), 2013 -- Elections to constitute the

Managing Committee of Regadapalli PACS (643/87B) Nagarjunakunta (H.O.) Konakanamitla Mandal, Prakasam District -- Postponement of

elections--Orders -- Issued

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AGRICULTURE & COOPERATION (COOP. V) DEPARTMENT G.O. Rt. No. 256

Date: 28-01-2013

Read the following:-

1. Election notification issued by the Dist. Election Authority, dated 21-01-2013.
2. Endorsement of the Hon"ble Minister for Cooperation, Endt. No. 156/M(Coopn)/2013 dated 28-01-2013 on Sri Byreddy Venkat Reddy,

Nagireddypally, Konakanamitla Mandal, Prakasam District dated 28-01-2013.

ORDER:-

Whereas the District Election Authority, the Managing Committee of Regadapalli PACS (643/87B) Nagarjunakunta (H.O.) Konakanamitla

Mandal, Prakasam District vide reference first read above;

2. And whereas while the election process is in progress, several representations have been received from various quarters that efforts are made

by certain groups/party to intimidate the voters in the reference 2nd read above;

3. And whereas, an appeal has been preferred stating that the members whose names are deleted illegally and without notice as well as those who

are not given membership and voting right even though eligible as such are agitated and are likely to create commotion and law and order situation

and would affect peaceful and lawful conduct of elections and it is apprehended the voters may cause possible obstruction to the conduct of free

and fair poll;

4. The Government by virtue of powers conferred under Rule 22(C)(1)(iii) of the Andhra Pradesh Cooperative Societies Rules, 1964 hereby

order the postponement of elections to the Managing Committee of the Regadapalli PACS (643/87B) Nagarjunakunta (H.O.) Konakanamitla

Mandal, Prakasam District until further orders.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

I.Y.R. KRISHNA RAO

SPECIAL CHIEF SECRETARY TO GOVT.

4. Since the orders of the Government impugned are referable to the power under Rule 22-C(1)(iii) of the Rules, it is appropriate to notice the said

provision, which is extracted hereunder:

22-C(1) Notwithstanding anything contained in these rules, the Government or the Election authority may direct the postponement of elections

under one or more of the following circumstances:-

(i) Break down of law and order affecting the peaceful and lawful conduct of elections.

(ii) Any natural calamity that prevents the conduct of elections particularly, voters from participation in the election.

(iii) Where there is reasonable apprehension that voters will not be allowed to vote frankly and freely.

(b) The postponement shall be done only by issue of an order which shall specify the grounds of postponement. After such postponement the

election process shall be recommenced when the conditions become conducive for re-commencing of election, by issue of an order by the

Authority that has postponed the elections. The process will re-commence from the stage at which it was obstructed or interrupted.

5. We have heard Mr. D. Prakash Reddy, learned Senior counsel appearing for the appellants in many of the matters in this batch of appeals and

also heard Mrs. Bobba Vijayalakshmi, Mr. V.R. Avula, Mr. Koti Reddy and Mr. Venkateswarlu Posani in support of other appeals. Mr. Sridhar

Reddy, learned Special Government Pleader appeared for the respondent-State and Mr. Ch. Janardhan Reddy appeared for some of the

contesting respondents in three appeals and supported the orders of the Government, as also Mr. N. Subbarao.

6. While the learned Senior counsel and the other counsel supporting him in the appeals have contended that though power of the Government

under Rule 22-C(1)(iii) of the Rules is not under challenge, but exercise of the said power is questioned in the writ petitions on the ground that it

was exercised without there being any material or justification and it amounts to colourable exercise of power. It is contended that the said power

is exercised purportedly on receiving of several representations and complaints, but there is no material in support of the same. It is also alleged

that the apprehension as to breakdown of law and order during the process of voting is totally without any basis and the voters, who were seeking

to exercise their franchise, cannot be deprived of their right to vote on an apprehension that they will disrupt the elections. It is also contended that

in normal course, a complaint alleging exclusion of any eligible voter from the voters list would be, at best, subject matter of an election dispute, but

such complaint cannot be a ground to postpone the elections particularly when the voters list is published and the election process is already

initiated. Learned counsel would also contend that the power is so exercised by the Government for political purpose and there is no justification

whatsoever for postponing elections selectively within the district.

7. Learned Special Government Pleader on the other hand contends that Government had received specific complaints by way of

representations/appeals bringing to it's notice that eligible voters are illegally excluded from the voters list and as such there are agitated and are

likely to create disturbance to the law and order whereby peaceful conduct of elections may be obstructed by them. He, therefore, states that in

order to ensure free and fair polls and to protect law and order situation, Government had exercised the power to postpone elections and the

learned single Judge, being satisfied with the reasons in support of the said action of the Government, has dismissed the writ petitions and as such,

there is no reason for interference in these appeals. Learned Special Government Pleader would also point out that Rule 22-C(1)(b) of the Rules

provides that ""The postponement shall be done only by issue of an order which shall specify the grounds of postponement. After such

postponement the election process shall be recommenced when the conditions become conducive for re-commencing of election, by issue of an

order by the Authority that has postponed the elections. The process will re-commence from the stage at which it was obstructed or interrupted.

and based on that, submits that it would be appropriate that the matter is left for the Authority to reassess the situation and take appropriate

decision as provided under the Rule aforesaid. He raised a technical objection that the orders of the Government impugned in the writ petitions are

in the nature of interlocutory orders pending further orders on the representations/appeals filed by the complainants and as such it would not be

appropriate for this Court to interdict with the said orders under Article 226 of the Constitution of India. Learned Special Government Pleader has

placed a tabular statement before this Court showing the material said to have been considered by the Government before passing the orders of

postponement. From the said tabular statement, it is pointed out that the basic reasons given in support of the respective impugned orders in each

of the writ petitions broadly fell into two categories i.e., (1) Members, whose names are deleted illegally and without notice, are agitated and they

are likely to create commotion and law and order situation, and it is apprehended that voters may cause possible obstructions to the conduct of

free and fair poll; and (2) Efforts are being made by certain groups to intimidate the voters with regard to ineligibility and illegal membership and it

is apprehended that voters may cause possible obstruction to the conduct of free and fair poll. The material considered by the Government while

passing orders of postponement in each case, as is given in the tabular statement, is mostly in the nature of application/complaint together with copy

of voters list, application/complaint together with rowdy sheet and voters list, application together with complaint as to bogus voters,

application/complaint together with receipts in proof of payments, similarly application/complaint for inclusion in the voters list together with

payment receipts and regarding irregularities/defects in the voters list.

8. On the basis of the aforesaid material, learned Special Government Pleader contends that there was sufficient material before the Government to

come to the conclusion that postponement of elections is warranted in each of the cases, and the impugned orders were passed in the interest of

conducting free and fair polls.

9. Learned counsel, who supported the impugned orders of the Government on behalf of the contesting respondents, apart from adopting the said

contentions of the learned Special Government Pleader, submitted that several eligible persons had approached the Chief Executive Officer of the

Societies to receive share capital, and the Chief Executive Officer, having verified and received applications of all the eligible members as per the

Rules, has arbitrarily postponed receiving of share capital and ultimately finalized the voters list without including the names of such eligible

members. Such members state that they have complained to the Government about the wrong inclusion, which is the basis for passing of the

impugned orders of postponement of elections by the Government. It is, therefore, contended that the orders passed by the Government are based

upon relevant material.

10. In the light of the aforesaid contentions, we have examined these batch of appeals, and the nature of the reasons given in each order of the

Government as well as the material said to have been considered by the Government, as is found in the tabular statement prepared by the learned

Special Government Pleader which was briefly mentioned above, may be noticed as under:

11. A sample order of the Government impugned in W.P. No. 3109 of 2013 and the corresponding W.A. No. 238 of 2013, is also extracted

above. It may be noticed from the said extract that Reference No. 2 thereof refers to a representation said to have been filed by one person dated

28-01-2013 before the Minister for Co-operation and on the same day G.O. Rt. No. 256 was issued postponing the elections. Paragraph-2 of

the G.O. refers to several representations having been received from various quarters. However, there is no reference in the order to such "several

representations, various quarters". Further paragraph-3 of the G.O. refers to irregularity in the voters list on account of deletion of voters' names

and that is stated to be the reason for apprehension that such excluded voters may create commotion and law and order problem. In our view, as it

appears from the G.O., at the instance of the complaint made by one person, instantly, the order of postponement of the elections is passed

without even calling for reports regarding the correctness or otherwise of such complaint. There is also no material apparent from the G.O. as to

what are the several representations the Government had received from various quarters. Further, disputes as to exclusion of any eligible voter or

inclusion of any ineligible voter in the voters list are matters, which have to be adjudicated before appropriate Election Tribunal, as it amounts to a

dispute relating to election. The G.O. itself records in paragraph-2 that the election process is in progress and it is not in dispute that the voters list

duly finalized was published. Merely a complaint of exclusion of eligible voters or inclusion of ineligible voters in the voters list cannot be a ground

to postpone the elections as even if any justification is found for such complaint, no relief can be granted to such complainants unless there is

adjudication of the dispute by the appropriate Election Tribunal. It is also well settled that the election process which has commenced must be

allowed to be completed without interdicting the same, however the Government, while exercising the power under Rule 22-C(1)(iii), apparently

interfered with the election process without any justification. It is also noteworthy that the power under Rule 22-C(1) refers to three contingencies,

viz., (i) Break down of law and order affecting peaceful and lawful conduct of elections; (ii) Any natural calamity that prevents the conduct of

elections particularly participation of voters; and (iii) Where there is reasonable apprehension that voters will not be allowed to vote frankly and

freely. In all these matters Government exercised the power under contingency No. (iii) aforesaid that the voters will not be allowed to vote frankly

and freely. We, therefore, fail to see any material to accept the ground in the impugned orders that ""Voters may cause possible obstruction to the

conduct of free and fair poll"". Further under Rule 22-C(1)(b), it is provided that the postponement shall be done only by issue of an order which

shall specify the grounds of postponement. It is, therefore, mandatory that when the Government exercises such power to postpone elections, it

must not only give reasons in support thereof, but such reasons must also stand to the test of scrutiny before a Court of law. On the face of it, as

we have recorded in the earlier paragraph, reasons given in the impugned order of the Government show total non-application of mind and are

based on irrelevant considerations without there being any material or basis. For instance, the impugned order, which is subject matter of W.P.

No. 2355 of 2013 and the corresponding W.A. (SR). No. 26799 of 2013, does not even refer to any appeal or representation, but a reference is

made to the endorsement of the Minister for Co-operation dated 23-01-2013 and on the same day the G.O. is issued. Similarly in W.P. No. 2506

of 2013, which corresponds to W.A. No. 342 of 2013, the impugned order of the Government was passed at the instance of the representation of

one Sri T. Krishna Reddy, who is said to be a voter in constituency No. 7. Whereas out of 13 constituencies, in 10 constituencies i.e., constituency

Nos. 3 to 12, only one candidate in each constituency remained after scrutiny of nominations and as such all the ten constituencies are to be

declared as elected unanimously. Therefore, there is no substance in the complaint of one of the voters from constituency No. 7. Thus the

remaining elections are to be held only for constituency Nos. 1, 2 and 13. However, without considering these aspects, straight away election is

postponed.

12. The representation/appeal, which is the basis for the Government to exercise the power of postponement of elections, is based upon the

grievance that there is illegal exclusion of eligible voters/illegal inclusion of ineligible voters in the voters list and also on the apprehension that such

voters may cause obstruction to the conduct of free and fair polls. Section 61 of the Act provides for resolution of all disputes touching the

constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee. An

"election dispute" is also covered under sub-sections (3) and (4) thereof which may be noticed as extracted hereunder:

61. Disputes which may be referred to the Registrar:-

(1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or the business of a

society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises--

(a) among members, past members and persons claiming through members, past members and deceased members; or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or

any officer, agent or employee of the society; or

(c) between the society and any other society, such dispute shall be referred to the Registrar for decision.

(2)

(3) Every dispute relating to, or in connection with, any election to a committee of a society shall be referred for decision to the Tribunal having

jurisdiction over the place where the main office of the society is situated, whose decision thereon shall be final.

(4) Every dispute relating to, or in connection with any election shall be referred under sub-section (3) only after the date of declaration of the

result of such election.

13. On the face of it, if a grievance arising out of voters list is either with regard to illegal exclusion or inclusion of a voter therein, Section 61(3) of

the Act provides for remedy for all such disputes before appropriate Election Tribunal and as per the mandate of sub-section (4) thereof extracted

above, such dispute will be entertained only after declaration of result of the election. In other words interdiction of the election process on account

of any such dispute is not permissible in view of the object, purpose and scheme u/s 61 of the Act and particularly sub-section (4) thereof. Thus by

exercising power under Rule 22-C of the Rules, the mandate of Section 61(4) of the Act cannot be defeated.

14. In M.A.R.V.S. Sai Babu Vs. Commissioner and Registrar of Co.op. Societies, Government of Andhra Pradesh, Hyderabad and others, , a

Division Bench of this Court considered the validity of Rule 22-AAA of the Rules as it then existed. Under the said Rule, the power was reserved

with the Government or the Election Authority, for reasons to be recorded in writing, to postpone or alter the date or dates of election to the

societies fixed or commenced under Rule 22 or 22-B at any stage thereof. While considering the power exercised under the said Rule, this Court

held as under:

9. It is needless to mention that every rule framed should be subsidiary to the provisions of the Act and the provisions of the Act always prevail

over the Rules and the Rules can sustain only if they operate for carrying out the purposes of the Act. There is nothing arbitrary in conferring the

power either to the government or the District Collector to exercise the power to postpone the elections. We are of the considered view that

conferment of such power is not arbitrary. As rightly pointed out by the learned Advocate General that reasons are to be given and when the

reasons are not relevant for postponing the elections, this Court in exercise of its judicial power can always annul the same. Like the statute, the

rules cannot also apprehend all such situations warranting the postponing of elections and each case has to be judged on its own material as to

whether there is a reasonable and rationale basis conforming to the intendment and object of the co-operative movement and the concerned

statutory provisions; essence being the free and fair elections. If the action postponing the elections is unsustainable, we quash the said action and

bring order into the process.

10. The matter relating to irregularities in the electoral list-either wrong admission of members or wrong deletions of the valid members from the

electoral roll is not a matter which falls for action under rule 22-AAA of the Rules in view of the discussion mentioned supra as this is one squarely

covered either by Section 32(7)(a) of the Act before the commencement of the election process or Section 61(3) of the Act sub-sections (3) and

(4) of Section 61 of the Act after the election process starts. In the instant cases, there is no dispute that the process of election has commenced

and as such, the action in postponing the elections on the ground of irregularities in the voters' list is invalid as being contrary to the provisions

contained under sub-sections (3) and (4) of Section 61 of the Act.

15. We may also notice the ratio of the judgment of the Hon'ble Supreme Court in *Bhikhubhai Vithlabhai Patel and Others Vs. State of Gujarat*

and Another, wherein the Supreme Court examined the limits of exercising discretionary power by the Government and held as under:

32. We are of the view that the construction placed on the expression "reason to believe" will equally be applicable to the expression "is of opinion"

employed in the proviso to Section 17(1)(a)(ii) of the Act. The expression "is of opinion", that substantial modifications in the draft development

plan and regulations, "are necessary", in our considered opinion, does not confer any unlimited discretion on the Government. The discretion, if

any, conferred upon the State Government to make substantial modifications in the draft development plan is not unfettered. There is nothing like

absolute or unfettered discretion and at any rate in the case of statutory powers. The basic principles in this regard are clearly expressed and

explained by Prof. Sir William Wade in *Administrative Law* (9th Edn.) in the chapter entitled "Abuse of discretion" and under the general heading

the principle of reasonableness" which read as under:

The common theme of all the authorities so far mentioned is that the notion of absolute or unfettered discretion is rejected. Statutory power

conferred for public purposes is conferred as it were upon trust, not absolutely -- that is to say, it can validly be used only in the right and proper

way which Parliament when conferring it is presumed to have intended. Although the Crown's lawyers have argued in numerous cases that

unrestricted permissive language confers unfettered discretion, the truth is that, in a system based on the rule of law, unfettered governmental

discretion is a contradiction in terms. The real question is whether the discretion is wide or narrow, and where the legal line is to be drawn. For this

purpose everything depends upon the true intent and meaning of the empowering Act.

The powers of public authorities are therefore essentially different from those of private persons. A man making his will may, subject to any rights

of his dependants, dispose of his property just as he may wish. He may act out of malice or a spirit of revenge, but in law this does not affect his

exercise of his power. In the same way a private person has an absolute power to allow whom he likes to use his land, to release a debtor, or,

where the law permits, to evict a tenant, regardless of his motives. This is unfettered discretion. But a public authority may do none of these things

unless it acts reasonably and in good faith and upon lawful and relevant grounds of public interest. The whole conception of unfettered discretion is

inappropriate to a public authority, which possesses powers solely in order that it may use them for the public good.

There is nothing paradoxical in the imposition of such legal limits. It would indeed paradoxical if they were not imposed.

33. The Court is entitled to examine whether there has been any material available with the State Government and the reasons recorded, if any, in

the formation of opinion and whether they have any rational connection with or relevant bearing on the formation of the opinion. The Court is

entitled particularly, in the event, when the formation of the opinion is challenged to determine whether the formation of opinion is arbitrary,

capricious or whimsical. It is always open to the Court to examine the question whether reasons for formation of opinion have rational connection

or relevant bearing to the formation of such opinion and are not extraneous to the purposes of the statute.

16. The exercise of the power under the impugned orders is, therefore, clearly available under the jurisdiction of judicial review by this Court and

as such the contentions of the learned Special Government Pleader that the omissions in the G.O. are not fatal and that the order of the

Government is merely interlocutory in nature and is in the nature of an administrative order etc. are all liable to be rejected. In the very same

decision of the Supreme Court referring to earlier decision in Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi

and Others, it was held in para-35 that:

It is very well settled that public orders publicly made, in exercise of a statutory authority cannot be construed in the light of explanations

subsequently given by the decision-making authority. Public orders made by authorities are meant to have public effect and must be construed

objectively with reference to the language used in the order itself.

17. It is, therefore, not right on the part of learned Special Government Pleader to contend that even if there are omissions in the order of the

Government, counter affidavit gives reasons in support of the action.

18. The further contention of the learned Special Government Pleader that the order impugned passed by the Government is in the nature of an

administrative order and consequently reliance placed by him on the decisions reported in M.A. Rasheed and Others Vs. The State of Kerala, and

State of Orissa and Others Vs. Gopinath Dash and Others, , is equally unsustainable as after the decision of the Supreme Court in Mrs. Maneka

Gandhi Vs. Union of India (UOI) and Another, , the necessity of giving reasons even in support of administrative orders is well settled.

Furthermore the power under Rule 22-C(1) is not merely an administrative power and as the order itself states that the appeals filed by the

complainants have been entertained and the order of postponement is made, the power is a quasi judicial one and not mere administrative exercise.

19. In M.A. Rasheed and Others Vs. The State of Kerala, the Supreme Court held as under:

7. Where powers are conferred on public authorities to exercise the same when ""they are satisfied"" or when ""it appears to them"", or when ""in their

opinion"" a certain state of affairs exists; or when powers enable public authorities to take ""such action as they think fit"" in relation to a subject

matter, the Courts will not readily defer to the conclusiveness of an executive authority's opinion as to the existence of a matter of law or fact upon

which the validity of the exercise of the power is predicated.

9. Administrative decisions in exercise of powers even if conferred in subjective terms are to be made in good faith on relevant consideration. The

courts inquire whether a reasonable man could have come to the decision in question without misdirecting himself on the law or the facts in a

material respect. The standard of reasonableness to which the administrative body is required to conform may range from the courts' own opinion

of what is reasonable to the criterion of what a reasonable body might have decided. The courts will find out whether conditions precedent to the

formation of the opinion have a factual basis.

20. When representations are made to the Government with regard to the law and order problem or any commotion may take place in the event of

conducting the elections as scheduled, the Government is required to enquire into the same and obtain information either from the District Level

Law Enforcing Agency or from the local police about the correctness or otherwise of the said allegation, either before staying the election or

subsequent to vacating the stay. Apart from that, none of the election officers reported that there is law and order problem in case elections are

conducted. No such exercise was done or steps were taken to find out truth or otherwise of the allegations. We are, therefore, of the view that the

orders of the Government impugned are wholly unsustainable and liable to be set aside.

21. The learned single Judge, under the orders impugned, has not considered these aspects and as we do not see existence of any material, as

discussed in detail above, we are of the view that the impugned orders under appeal are wholly unsustainable. Therefore, the orders of the learned

single Judge are set aside, and the impugned G.Os in each of the writ petitions shall stand quashed. Consequently, the election process shall be

allowed to continue and start from the stage where it had stopped. All the writ appeals are, accordingly, allowed. As a sequel, Miscellaneous

Petitions pending, if any, in these appeals shall stand closed. No order as to costs.