

K. Pamulu Vs Collector and Dist. Election Authority and Another

Court: Andhra Pradesh High Court

Date of Decision: July 5, 2001

Acts Referred: Andhra Pradesh Municipalities Act, 1965 " Section 326, 326(2)

Andhra Pradesh Panchayat Raj Act, 1994 " Section 19

Constitution of India, 1950 " Article 226, 243K, 243O, 243T, 243ZA

Citation: (2001) 4 ALT 389

Hon'ble Judges: Satyabrata Sinha, C.J; V.V.S. Rao, J

Bench: Division Bench

Advocate: B. Adinarayana Rao, for the Appellant; G.P. for Panchayat Raj, for the Respondent

Final Decision: Dismissed

Judgement

Satyabrata Sinha, C.J.

Although an interesting question has been raised in this writ petition by Mr. Adinarayana Rao, learned Counsel for

the petitioner questioning rejection of nomination of the writ petitioner on misinterpretation of Section 19 of the A.P. Panchayat Raj Act, yet,

having due regard to the provisions contained in Article 243-O of the Constitution of India, we cannot interfere with the matter in exercise of our

jurisdiction under Article 226 of the Constitution.

2. It is not in dispute that notification for election has been issued on 22-6-2001. The impugned order rejecting the claim of the petitioner has been

passed on 1-7-2001. Although, a prima facie case has been made out, having regard to the limitation of this Court's power, we are of the opinion

that no relief can be granted to the petitioner at this stage. Article 243-O of the Constitution reads thus:

Bar to interference by Courts in electoral matters.

Notwithstanding anything in this Constitution,...

(a) the validity of any law relating to the delimitation of constituencies, made or purporting to be made under Article 243-K, shall not be called in

question in any Court;

(b) no election to any Panchayat shall be called in question except by an Election Petition presented to such authority and in such manner as is

provided for by or under law made by the Legislature of a State.

3. Apart from the fact that there existed a general provision to the effect that the Writ Court in exercise of jurisdiction under Article 226 of the

Constitution of India would not ordinarily interfere with an election process, a constitutional mandate now has been issued by reason of the said

provision. The question raised in this application is squarely covered by a decision of the Apex Court in N.P. Ponnuswami Vs. Returning Officer,

Namakkal Constituency and Others, wherein it has been held:

As we have seen, the most important question for determination is the meaning to be given to the word "election" in Article 329(b). That word has

by long usage in connection with the process of selection of proper representatives in democratic institutions, acquired both a wide and a narrow

meaning. In the narrow sense it is used to mean the final selection of a candidate which may embrace the result of the poll when there is polling or a

particular candidate being returned unopposed when there is no poll. In the wide sense, the word is used to connote the entire process culminating

in a candidate being declared elected.

4. The Court relied upon the judgment of Mahajan, J (as his Lordship then was) in Satnarain v. Hanuman Parshad AIR 1946 Lah. 85; it was

observed:

It seems to me that the word "election" has been used in Part XV of the Constitution in the wide sense, that is to say, to connote the entire

procedure to be gone through to return a candidate to the Legislature. The use of the expression "conduct of elections" in Article 324 specifically

points to the wide meaning, and that meaning can also be read consistently into the other provisions which occur in Part XV including Article

329(b). That the word "election" bears this wide meaning whenever we talk of elections in a democratic country, is borne out by the fact that in

most of the books on the subject and in several cases dealing with the matter, one of the questions mooted is, when the election begins.

5. This aspect of the matter has also been considered recently by one of us (V.V.S. Rao, J) in V. Narayana v. Election Officer, Alwal Municipality

2000 (3) ALT 61 wherein having regard to the provision contained in Article 243-ZG of the Constitution of India, which is in pari materia with

Article 243-O of the Constitution of India, it was held:

There cannot be any doubt that a challenge to an election means and includes a challenge to any intermediary stage in the election. These

intermediary stages could be "issue of election notification", filing of nominations, scrutiny of nominations, rejection of nomination, voting on the

polling day, declaration of results, declaration of the elected candidates and reconstitution of the municipality by duly designated authorities and

authorities specified under the A.P. Municipalities Act, 1965 (the Act, for brevity) and various rules made u/s 326 of the Act. Therefore, any

challenge to any order or any act at the intermediary stage of the election can only be made before the duly constituted Special Tribunal constituted

for the purpose. Clause (b) of Sub-section (2) of Section 326 of the Act empowers the State Government to constitute an Election Tribunal.

6. Rejection of a nomination, which is being a part of the election process, we are afraid, no interference in the matter at this stage is called for.

7. A similar matter came up before this Court in Channala Ramachandra Rao Vs. State of A.P. and others, wherein the following question was

raised inter alia:

Whether the Writ Petitions are not maintainable for the reason that there is an embargo as per Clause (a) of Article 243-ZG of the Constitution of

India on the exercise of power by this Court under Article 226 of the Constitution?

8. The said question was answered in the following terms:

72. In the light of the decided cases, the principles that emerge may be summarised.

(i) By reason of Clause (a) of Article 243-ZG, the Division of Municipality into territorial constituencies called wards or allotment of seats to such

wards or the notification specifying the offices of Chairpersons of Municipalities reserved to persons belonging to STs., SCs., and/or B.Cs., cannot

ordinarily be challenged under Article 226 of the Constitution.

(ii) In view of embargo placed by Clause (a) of Article 243-ZG, a law providing for delimitation of constituencies and allotment of seats to such

constituencies made by the State Legislature under Clause (6) of Article 243-T read with Clause (2) of Article 243-ZA and the Entry 5 of List II

of Seventh Schedule to the Constitution cannot be called in question under Article 226 of the Constitution.

(iii) The principles (i) and (ii) are subject to the condition that if the delimitation notification is arbitrary and in the sense that before delimitation no

objections were invited and no hearing was given to a limited extent the same is amenable to judicial review by this Court under Article 226 of the

Constitution.

9. The aforementioned decision has recently been followed by a Full Bench of this Court in a judgment delivered on 27-6-2001 in W.P.No. 9857

of 2001 and batch. A.P. Sarpanchas Association Vs. Government of A.P. and others,

10. For the reasons aforementioned, we are of the opinion that the relief sought for by the petitioner cannot be granted by setting aside the

impugned order dated 1-7-2001 at this stage.

11. The writ petition is dismissed. There shall be no order as to costs.