BODDULA KRISHNAIAH AND ANR.

v.

STATE ELECTION COMMISSIONER, A.P. AND ORS.

MARCH 20, 1996

[K. RAMASWAMY, S.P. BHARUCHA AND K.S. PARIPOORNAN, JJ.]

Andhra Pradesh Panchayat Raj Act, 1994 : Section 33.

Andhra Pradesh Panchayat Raj Election Tribunals In respect of Gram Panchayat Mandal Parishads and Zila Parishad Rules, 1994 : Rules 2(1)(2) and 12(d)(iii).

Constitution of India, 1950: Article 243(0).

Election process—Power of Court to interfere with—Gram Panchayat Election—Draft Electoral Rolls—Deletion of names of 94 persons—Writ—Interim order by High Court a day before Election—Interim order directing that 94 persons should participate in the election but on the date of poll they could not exercise their franchise—Directions sought for exercising franchise—Interim order by High Court not to declare the result of the election—High Court also directing Revenue Divisional Officer to conduct enquiry—Finding that 20 persons were eligible to be included in the voter's list—High Court directing that 20 persons found eligible should exercise their franchise separately when the poll was already over—Appeal against Order of High Court—Held the order passed by the High Court was not correct in law in giving direction not to declare the result of the election or to conduct fresh poll for 20 persons, though the writ petition was maintainable—The High Court, pending writ petition was not justified in issuing direction to stall the election process.

Meghraj Kothari **v.** *Delimitation Commission*, **[1967] 1 SCR 400 = AIR (1967) SC 669, cited.**

N.P. Punnuswami **v.** *Returning Officer, Namakkal Constituency & Ors.*, **[1952] SCR 218;** *Lakshmi Charan Sen and Ors. Etc.* **v.** *A.K.M. Hassan Uzzaman & Ors. Etc.*, **[1985] Supp. 1 SCR 493 and** *State of U.P. & Ors.* **v.** *Pradhan, Sangh Kshettra Samiti & Ors.*, **[1995] Supp. 2 SCC 305, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 5283-84 of 1996.

From the Judgment and Order dated 22.12.95 of the Andhra Pradesh High Court in W.P. Misc. P. No. 16901/95, W.V.M.P. No. 2478, In W.P. No. 13830, W.P.M.P. No. 16901 of 1995.

P.P. Rao, L. Nageshwara Rao, Vimal Dave, M. Narayana Rao and B. Rajeshwara Rao for the Appellants.

M.M. Reddy, D. Prakash Reddy, K. Ram Kumar, Balasubramaniam and Ms. S. Usha Reddy, for the Respondents.

The following Order of the Court was delivered :

Leave granted. We have heard the counsel on both sides.

The controversy relates to election to the Gram Panchayat, Nalgonda District of Andhra Pradesh. The Notification was issued on June 7, 1995 to conduct elections to the Gram Panchayat Under the Andhra Pradesh Panchayat Raj Act, (No 13 of 1994) 1994 (For short the 'Act'). The electoral rolls of the Gram Panchayat were required to be finalised 30 days prior to the poll. It would appear that in the draft roll prepared by the competent authority, names of about 94 persons find their place but later their names were delete. Consequently, they filed Writ Petition No. 3060/95 in the High Court including respondent No. 6-42 in this case. The elections were held and on 27th June, 1995. By an order dated 26th June, 1995 the High Court, by an interim order directed to allow 94 persons to participate in the election but on the date of the poll they could not exercise their franchise. Subsequently, in WPMP No. 16901/95 the respondent No. 6-42 sought direction to permit them to exercise their franchise. By an interim order dated July 6, 1995, the direction was issued by the High Court not to declare the result of the election of the Gram Panchayat. The appellant and proforma respondent No. 43 filed WVMP No. 2478/95 to vacate the direction issued by the High Court on July 6, 1995. On November 8, 1995, the High Court directed the Revenue Divisional Officer (RDO), Nalgonda to scrutinise the claims of respondent Nos. 6-42 and ascertain whether they are residing in the village. By proceedings dated December 2, 1995, the RDO found that only 20 persons were eligible to be included in the voters list as they were found living in the village, during the enquiry. On these

facts, the High Court by the impugned order dated December 22, 1995 directed that 20 persons out of respondent Nos. 6-42, who were found eligible to vote should be allowed to participate in the election. Thus, these appeals by special leave.

The only question is whether the High Court would be justified in giving the direction for participating the 20 persons who are found to be eligible to vote for exercising their franchise separately when the poll was already over. Shri P.P. Rao, the learned senior counsel appearing for the appellant contended that once the election process was set in motion, by operation of Article 243(0) of the Constitution, the High Court was not justified in directing 20 persons to participate in the. election. The appropriate remedy would be by way of an election petition. The object of the Act, the Rules made thereunder and Article 243 (0) is to see that the election process to the Gram Panchayat, once is set in motion, the process should be culminated in the declaration of the result of election and any dispute in relation to the conduct of the election would be subject matter of an election dispute and would be dealt with by the appropriate Tribunal in accordance with law. The High Court, therefore, was not justified in giving the aforesaid direction. Shri K. Madhava Reddy, learned senior counsel appearing for the respondents contended that the respondents have filed the writ petition in January 1995 much earlier than the election process notified questioning deletion of their names from the draft electoral rolls. It is found as a fact that though their names were appearing in the draft electoral rolls, they were deleted without giving an opportunity to the residents of village Narayanpur. In the enquiry, names of as many as 20 eligible persons were found and yet they were denied the exercise of their right to franchise when the order passed by the High Court on June 26, 1995 in Writ Petition No. 3060/95 which was allowed to become final. The direction to allow them to participate in the election was frustrated by preventing them to exercise their franchise which is in the teeth of the Court's order. Therefore, the High Court was justified in giving direction in the writ petition. It is also contended that the High Court pending the writ petition, gave the direction and it being discretionary, this Court would be slow to interfere with the order under Article 136 of the Constitution.

Having given our anxious consideration to the respective contentions the question that arises for our consideration is whether the High Court would be justified in giving direction, firstly, that respondent Nos.

6-42, in particular 20 persons, be allowed to participate in the process of election after the election process was completed and consequently whether the High Court would be justified in interfering with the election process.

Section 33 of the Act envisages that no election held under this Act shall be called in question except by an election petition presented to such authority in accordance with such rules as may be made in this behalf. In exercise of the rule-making power under the Act, the Andhra Pradesh Panchayat Raj Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zila Parishads Rules, 1994 (for short, the 'Rules') were made. Under Rule 2 (1) provides that (s)ave as otherwise provided, no election held under the Act, whether of a member, Sarpanch or Upa-Sarpanch of Gram Panchayat, President (and Vice-President) of Mandal Parishad and Member of Mandal Parishad Territorial Constituencies and Chairman, (Vice-Chairman) of Zila Parishad and Members of Zila Parishad Territorial Constituencies thereof, shall be called in question except by an election petition presented in accordance with the Rules to the Election Tribunals as defined in sub-rule(2) by any candidate or elector against the candidate who has been declared to have been duly elected (hereinafter called the returned candidate) or if there are two or more returned candidates against all or any such candidates.

Rule 12 (d) (iii) of the Rules provides the grounds to set aside the elections which reads as under :

> "If in the opinion of the Election Tribunal, the result of the election, insofar as it concerns a Returned Candidate, has been materially affected, by any improper reception refusal or rejection of any vote, or the reception of any which is void the Election Tribunal shall declare the election of the Returned Candidate to be void".

Article 243 (0) of the Constitution envisages bar on interference by courts in election matters. Notwithstanding anything contained in the Constitution, under sub-clause (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 any law made by the Legislature of a State". Thus there is a constitutional bar on interference with the election process except by an election petition, presented to an Election Tribunal as may be made by or under law by the competent

legislature and in the manner provided thereunder. Power of the court granting stay of the election process is not longer *res integra*.

In *N.P. Punnuswami* v. *Returning Officer, Namakkal Constituency & Ors.*, [1952] SCR 218 a Constitution Bench of this Court had held that having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted. In conformity with the principle, the scheme of the election law is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which under the law by which elections are governed, would have the effect of vitiating the "election" and enable the person affected to call it in question; they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress.

The same principle was laid down in *Lakshmi Charan Sen and Ors. Etc.* v. *A.K. M. Hassan Uzzaman & Ors. Etc.*, [1985] Supp. 1 SCR 493. In this case where the election process was set in motion the High Court granted ad-interim injunction of the further proceedings of the election to the State Legislature. A Constitution Bench of this Court had held thus :

> "The High Court acted within its jurisdiction in entertaining the writ petition and in issuing a Rule Nisi upon it, since the petition questioned the vires of the laws of election. But, it was not justified in passing the interim orders dated February 12, and 19, 1982 and in confirming those orders by its judgment dated February 25, 1982. Firstly, the High Court had no material before it to warrant the passing of those orders. The allegations in the Writ Petition are of a vague and general nature, on the basis of which no relief could be granted. Secondly, though the High Court did not lack the jurisdiction to entertain the Writ Petition and to issue appropriate directions therein, no High Court in the exercise of its power under Article 226 of the Constitution should pass any orders, interim or otherwise, which has the tendency or effect of postponing an

election, which is reasonably imminent and in relation to which its writ jurisdiction is invoked.

The High Courts must observe a self-imposed limitation on their power to act under Article 226, by refusing to pass orders or given directions which will inevitably result in an indefinite postponement of elections to legislative bodies, which are the very essence of the democratic foundation and functioning of our Constitution. That limitation ought to be observed irrespective of the fact whether the preparation and publication of electoral rolls are a part of the process of 'election' within the meaning of Article 329(b) of the Constitution."

At page 497 it was further held that :

"Even assuming, that the preparation and publication of electoral rolls are not a part of the process of 'election' within the meaning of Article 329(b), the High Court ought not to have passed the impugned interim orders, whereby it not only assumed control over the election process but, as a result of which, the election to the Legislative Assembly stood the risk of being postponed indefinitely."

The same principle was reiterated when the election to the Gram Panchayat was sought to be stalled in State of U.P. & Ors. v. *Pradhan, Sangh Kshettra Samiti & Ors.*, [1995] Supp. 2 SCC 305 at 331. The Court observed thus :

"What is more objectionable in the approach of the High is that although clause (a) of Article 243 (0) of the Constitution enacts a bar on the interference by the courts in electoral matters including the questioning of the validity of any law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made or purported to be made under Article 243-K and the election to any panchayat, the High Court has gone into the question of the validity of the delimitation of the constituencies and also the allotment of seats to them. We may, in this connection, refer to a decision of this Court in *Meghraj Kothari* v. *Delimitation Commission*, [1967] 1 SCR 400 = AIR (1967) SC 669. In that case, a notification of the Delimitation Commission whereby a city which

had been a general constituency was notified as reserved for the Scheduled Castes. This Court held that the impugned notification was a law relating to the delimitation of the constituencies or the allotment of seats to such constituencies made under Article 327 of the Constitution, and that an examination of Sections 8 and 9 of the Delimitation Commission Act showed that the matters therein dealt with were not subject to the scrutiny of any court of law. There was a very good reason for such a provision because if the orders made under Sections 8 and 9 were not to be treated as final, the result would be that any voter, if he so wished, could hold up an election indefinitely by questioning the delimitation of the constituencies from court to court. Although an order under Section 8 or Section 9 of the Delimitation Commission Act and published under Section 10(4) of that Act puts such an order in the same position as a law made by Parliament itself which could only be made by it under Article 327. If we read Articles 243-C, 243-K and 243-0 in place of Article 327 and Sections 2 (kk), 11-F and 12-BB of the Act in place of Sections 8 and 9 of the Delimitation Act, 1950, it will be obvious that neither the delimitation of the panchayat area nor of the constituencies in the said areas and the allotments of seats to the constituencies could have been challenged nor the court could have entertained such challenge except on the ground that before the delimitation, no objections were invited and no hearing was given. Even this challenge could not have been entertained after the notification for holding the elections was issued. The High Court not only entertained the challenge but has also gone into the merits of the alleged grievance although the challenge was made after the notification for the election was issued on 31-8-1994".

Thus, it would be clear that once an election process has been set in motion, though the High Court may entertain or may have already entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh, in particular when election has already been held in which the voters were allegedly prevented to exercise their franchise. As seen, that dispute is covered by an election dispute and remedy is thus available at law for redressal.

Under these circumstances, we hold that the order passed by the High Court is not correct in law in giving direction not to declare the result of the election or to conduct fresh poll for 20 persons, though the writ petition is maintainable. The High Court, pending writ petition, would not be justified in issuing direction to stall the election process. It is made clear that though we have held that the respondents are not entitled to the relief by interim order, this order does not preclude any candidate including defeated candidate to canvass the correctness of the election. They are free, as held earlier, to seek remedy by way of an election petition as provided in the Act and the Rules.

The appeals are allowed accordingly, but in the circumstances, without costs.

Appeals allowed.