

**IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH AT HYDERABAD**

**THURSDAY THE TWENTY SECOND DAY OF JUNE
TWO THOUSAND AND SIX**

**: PRESENT :
THE HON`BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
THE HON`BLE SRI JUSTICE: G.V. SEETHAPATHY**

W.A.M.P. Nos. 1354 & 1355 OF 2006

WAMP No. 1354 OF 2006 :

Between :

1. Government of Andhra Pradesh, rep. by its Prl. Secretary to Government, Panchayat Raj & Rural Development Department, Secretariat, Hyderabad.
2. The Commissioner of Panchayt Raj Department, Government of Andhra Pradesh, Hyderabad.
3. The District Collector (Panchayt Wing) cum District Electoral Officer, Guntur District, Guntur.
4. The District Panchayt Officer, Guntur Guntur District.

. . . . Petitioners
(Appellants in W.A.No. 709 OF 2006
on the file of the High Court)

A N D

1. N. Sekhar, S/o. Subba Rao, R/o. H.No. 4-17, Sambhunipalem Street, Main Road, Nadendla Mandal, Guntur District.
Respondent/Writ Petitioner
2. The State Election Commission, III Floor, Buddha Bhavan, Ranigunj, Secunderabad, rep. by its Secretary.

Respondent
(5th Respondent in -do-)

Appeal under Section 151 of CPC praying that in the circumstances stated in the affidavit filed herein, the High Court may be pleased to dispense with the production of certified copy as well as typed copy of the Judgment dated. 20-06-2006 rendered in W.P.No. 10965/2006, pending W.A.No. 709 of 2006 on the file of the High Court.

**Counsel for the Petitioners : The Advocate General
Counsel for the Respondent No.1: Sri S. Ramachandra Rao, Senior Counsel
representing Sri K.R. Prabhakar
Counsel for the Respondent No. 2 : Sri Nuty Rama Mohana Rao**

WAMP No. 1355 OF 2006 :

Between :

The State Election Commission, III Floor, Buddha Bhavan, Ranigun,
Secunderabad, rep. by its Secretary,

. . . .Appellant
(5th Respondent in W.A. No. 710 of 2006
on the file of the High Court)

A N D

1. N. Sekhar, S/o. Subba Rao, R/o. H.No. 4-17, Sambhunipalem Street, Main Road, Nadendla Mandal, Guntur District.
Respondent/Petitioner
2. The Government of Andhra Pradesh, rep. by its Prl. Secretary to Government, Panchayat Raj & Rural Development Department, Secretariat, Hyderabad.
3. The Commissioner, Panchayat Raj Department, Government of Andhra Pradesh, Hyderabad.
4. The District Collector (Panchayat Wing) cum District Electoral Officer, Guntr District, Guntur.
5. The District Panchayat Officer, Guntur, Guntur District.

Respondents
(Respondent in -do-)

Appeal under Section 151 of CPC praying that in the circumstances stated in the affidavit filed herein, the High Court may be pleased to dispense with the production of the copy of the order and judgment rendered by learned single judge in W.P.No. 10965 of 2006 and permit the applicant herein to produce the same in due course of the hearing of the above appeal, pending W.A.No. 710 of 2006 on the file of the High Court.

Counsel for the Petitioners : Sri Nuty Rama Mohana Rao
Counsel for the Respondent No.1: Sri S. Ramachandra Rao, Senior Counsel
representing Sri K.R. Prabhakar
Counsel for the Respondent No. 2 to 5 : The Advocate General

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These Petitions coming on for hearing upon perusing the petitions and affidavits filed herein and the order of the High Court dated: 21-06-2006 made herein and upon hearing the arguments of the above mentioned counsel, the Court made the following.

**HON`BLE SRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON`BLE SHRI JUSTICE G.V. SEETHAPATHY**

**W.A.M.P. No. 1354 OF 2006 IN W.A. 709 OF 2006
AND
W.A.M.P. No. 1355 OF 2006 IN W.A. 710 OF 2006**

COMMON ORDER: (per G.S. Singhvi, CJ)

Shri C.V. Mohan Reddy, Advocate General, State of Andhra Pradesh for the appellants in W.A. (SR) No. 64485 of 2006 and W.A.M.P.No. 1354 of 2006. Shri Nuty Rama Mohan Rao, Advaocate for the State Election Commission in W.A.(SR) No. 64488 of 2006 and W.A.M.P.No. 1355 of 2006, Shri S.Ramachandra Rao, Senior Advocate assisted by Shri K.R. Prabhakar, Advocate for the writ petitioner (respondent No. 1 herein).

Feeling aggrieved by order dated 20.06.2006 passed by the learned Single Judge in Writ Petition No. 10965 of 2006 (N. Sekhar v. Government of Andhra Pradesh and others), the Government of Andhra Pradesh and others as also the State Election Commission have filed appeals under Clause 15 of the Letters Patent. They have also filed miscellaneous petitions for dispensing with the filing of certified copy and types copy of the order of the learned Single Judge. Both the appellants have also applied for stay of the order of the learned Single Judge.

Yesterday, we had adjourned the case because copy of the order passed by the learned Single Judge had not been made available either to the parties or to the Registry.

Today before the Court assembled, the Registrar (Judicial) informed us that the file of Writ Petition No. 10965 of 2006 and order dated 20-06-2006 passed by the learned Single Judge have not been received so far in the Registry. Learned Advocate General, Shri Nuty Rama Mohan Rao, Shri S. Ramachandra Rao, Senior Advocate for respondent No. 1 in the appeal also say that their clients have so far not got the certified copies of order passed by the learned Single Judge.

Learned Advocate General and Shri Nuty Rama Mohan Rao submitted that non-availability of the copy of the order under challenge in these appeals should nto be made a ground for not entertaining the prayer made by the State Government and the State Election Commission for stay of that order.

Learned Advocate General argued that learned Single Judge should not have entertained and adjudicated the grievance made by respondent No. 1 ignoring the constitutional bar contained in Article 243-0 of the Constitution of

India. In support of this argument, learned Advocate General relied on the judgement of the Supreme Court in Anugrah Narayansinh v. State of U.P.¹ Shri Nuty Rama Mohan Rao adopted the argument of the learned Advocate General on this issue and relied on another judgement of the Supreme Court in Boddula Krashnaiah v. State Election Commission, A.P.² Learned Advocate General then submitted the election process initiated vide notification dated 10-06-2006 issued by the State Election Commission should be allowed to be completed else grave injury will be caused to the public interest. He submitted that the State Election Commission is required to get about four crore ballot papers printed at a cost of Rs. 18 crores, 50 companies of police have been requisitioned by the State Government for ensuring free and fair election and maintaining law and order. This has resulted in expenditure of Rs. 21 crores. He further submitted that extra police is required to be deployed in sensitive districts identified by the State Election Commission. According to the learned Advocate General, on the whole a sum of Rs. 43 crores would have been spent by this time for holding the elections, which are required to be completed before the end of five years term of the existing elected bodies. He argued that the direction given by the learned Single Judge for holding election after preparation of fresh electoral roll would necessarily result in postponing the elections and that would amount to serious erosion of the constitutional mandate enshrined in Article 243-E(1) and (3) read with Section 13 of the A.P. Panchayat Raj Act, 1994 (for short 'the Act'). Learned Advocate General submitted that the learned Single Judge should not have annulled notification dated 10.06.2006 which will affect the entire election though the grievance of respondent No. 1 and other similarly situated persons was in relation to about 50 Gram Panchayats/Mandal parishads, In the end, learned Advocate General relied on the observations made by the Supreme Court in Rameshwar Prasad v. Union of India³ and submitted that the Court must keep its hands off and refrain from interfering with the process of election even if some irregularity is shown to have been committed in the preparation of the electoral roll because judicial interdiction in such matters has great adverse impact on the democracy at the grass-root level.

Shri S. Ramachandra Rao, Senior Advocate appearing for respondent No. 1 vehemently argued that the Division Bench should not stay the order of the learned Single Judge, which has been passed after a careful examination of various issues raised in the writ petition and which strikes at the root of the procedure adopted by the State Election Commission. Learned senior counsel emphasized that there have been grave irregularities in the preparation of the electoral rolls inasmuch as names of a large number of ineligible persons have

¹ (1996) 6 SCC 303

² AIR 1996 SC 1595

been added in the voters' list, likewise names of a large number of eligible persons have been deleted from the lists. learned counsel referred to some of the pleadings of Writ Petition No. 10965 of 2006 to emphasize that the electoral rolls have not been prepared in accordance with law. he then submitted that by virtue of the Andhra Pradesh Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules, 2000, all the previous G.Os. issued by the State Government, which contained procedure for preparation of electoral rolls after considering the objections as also the provision for appeal, have been superseded and, therefore, the electors are deprived of their legitimate right to raise grievance against the electoral rolls which constitute the foundation of the elections for the democratic institutions at the grass-root level. He submitted that the learned Single Judge has assigned cogent reasons for striking down notification dated 10-06-2006 and, therefore, the appeals will, in all probability, be dismissed by the Division Bench. Shri Rao then argued that some addition or deletion of the voters in different constituencies is not the substantive ground on which notification dated 10-06-2006 has been struck down. According to him, the notification has been annulled because there were no validly constituted electoral authorities and there was a constitutional hiatus, Sri Ramachandra Rao was joined by Shri K. Ramakrishna Reddy, Senior Advocate in arguing that the balance of convenience is not in favour of staying the order of the learned Single Judge or allowing the State Election Commission to continue with the process of election. They also submitted that it would be a waste of huge public money and a burden on the people of the State if the disputed elections are allowed to be held on the basis of totally infirm electoral rolls. Shri Ramakrishna Reddy submitted that in terms of Article 243-K of the Constitution, it is the duty of the State Election Commission to prepare the electoral rolls, but in the present case this power has been abdicated by the State Election Commission in favour of other authorities and, therefore, there does not exist any valid electoral roll on the basis of which election can be held.

We have given serious thought to the respective arguments. Before proceeding further, we may mention that in the post-lunch session, Registrar (Judicial) has sent the record of the writ petition but the same does not contain the order passed by the learned Single Judge. On being asked by us, Registrar (Judicial) informed that order passed by the learned Single Judge has not been received so far in the Registry.

Article 243-O on which reliance has been placed by the learned Advocate General and Shri Nuty Rama Mohan Rao in support of their argument that the

³ AIR 2006 Supreme Court 980

High Court cannot entertain prayer for stultifying the process of election read as under:

"243-O 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 or the allotment of seats to such constituencies made or purporting to be made under article 243K, 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 any Law made by the Legislature of a State."

The ambit and scope of the bar contained in the aforementioned Article would require detailed consideration by the Bench. However, keeping in view the judgments of the Supreme Court in **Anugrah Narayansinh v. State of U.P (supra)**, **Boddula Krashnaiah v. State Election Commission, A.P. (supra)** on which reliance has been placed by the learned counsel for the appellants as also the judgments of the Supreme Court in **N.P. Ponnuswamy v. Returning Officer, Namakkal Constituency**⁴, **Mohinder Sing Gill v. Chief Election Commissioner**⁵, **Election Commission of India v. Ashok Kumar**⁶ and **State of U.P. v. Pradhan, Sangh Kshetra Samithi**⁷, we find some merit in the argument of the learned Advocate General and Shri Nuty Rama Mohna Rao that the Court cannot interfere with the process of election by entertaining petition filed under Article 226 of the constitution. We may hasten to add that final verdict on this issue would be rendered only after considering the reasons recorded by the learned Single Judge for rejecting the objection raised on behalf of the appellants to the maintainability of the writ petitions.

We shall now consider whether the operation of order dated 20-06-2006 passed by the learned Single Judge which has the effect of stultifying the process of election initiated vide notification dated 10-06-2006 issued by the State Election Commission should be stayed. It is not in dispute that notification issued by the Election Commission was meant for holding elections for about 16,000 Gram Panchayats and about 1,000 Mandal Parishads whose tenure is going to expire in the month of July 2006, Article 243-E(1) and (3) read with Section 13 of the Act ordains that the tenure of an elected body should be five years. The use of the expression "and no longer" gives an added emphasis to the intention of the Parliament as well as the Legislature that the term of an elected body cannot exceed five years. Therefore, it is the constitutional as well as statutory duty of the State Election Commission to ensure that election to Panchayats are held and

⁴ AIR 1952 SC 64

⁵ AIR 1978 SC 851

⁶ (2000) 8 SCC 216

completed before expiry of five years tenure of the existing body. This is also the mandate of Article 243-E(3)(a). Therefore, any judicial intervention in the process initiated by the State Election Commission has to be with great care and circumspection and the Court has to resist the temptation of making an order which would result in negating the mandate of the constitutional and legislative provisions.

Learned counsel for respondent No.1 and Shri K. Ramakrishna Reddy, Senior advocate have not controverted the statement of the learned Advocate General that the appellants have spent almost Rs. 43 crores of rupees for making arrangement for printing of ballot papers, requisitioning 50 companies of police and deployment of extra police forces in sensitive districts. It is also not in dispute that about 80 lakh electors will be able to cast their choice for the candidates for various Gram Panchayats and Mandal Parishads. While the learned Advocate General and Shri Nuty Rama Mohan Rao emphasized that postponement of election would result in colossal loss of public money and would cause serious injury to the larger public interest, Shri S. Ramachandra Rao and Shri Ramakrishna Reddy retorted by arguing that the State and the State Election Commission should not be allowed to fritter public money by insisting on holding election on the basis of wholly infirm electoral roll. According to them, once the notification has been struck down, there could be no justification for allowing the State Election Commission to continue the process of election.

In our opinion, it will neither be in the interest of public at large nor in the interest of the institution of democracy at the grass-root level to frustrate, at this stage, the process of election initiated vide notification dated 10-06-2006. The public exchequer has already spent more than Rs. 40 crores for holding and ensuring free and fair election. More than money, it is the question of sustaining the democratic institutions at the grass-root level. If the existing elected bodies are allowed to continue after expiry of their term, then it would amount to mockery of the constitutional provisions. Since these bodies cannot continue in view of Article 243-E(1) and (3), there is a likelihood of constitutional crisis. Thus, the balance of convenience is in favour of allowing the process of election to continue.

While recording the aforementioned conclusion, we are conscious of the fact that the dispute raised in the writ petition filed by respondent No.1 and connected matters relates to only some constituencies, may be 50 or 100. Such a dispute can always be raised by the affected candidates before an appropriate adjudicatory forum after the result of election is announced, but adjudication of the same at this stage did not justify by an order of the Court which has the effect of

⁷ 1995 Supplementary (2) SCC 305

negating the constitutional mandate and which affect the electoral process in the entire State.

Before concluding, we may mention that while disposing of Writ Appeal No. 568 of 2006 and connected matters on 09-06-2006 and setting aside an interlocutory order dated 01.06.2006 passed by the learned Single Judge, we had taken cognizance of the fact that the Andhra Pradesh Panchayat Raj (Preparation and Publication of Electoral Rolls) Rules 2000 contain a comprehensive procedure for addition and deletion of the names from the electoral roll notified under Rule 5 of those rules. The State Election Commission had from time to time issued press notes enabling the aggrieved persons to approach the concerned authorities for making necessary corrections. If the aggrieved persons did not resort to the mechanism envisaged by Rule 6 of the Rules, they cannot be heard to make a complaint against the so-called arbitrary exclusion or inclusion of the names in the electoral rolls.

In the result, W.A.M.P. No. 1354 of 2006 and W.A.M.P.No. 1355 of 2006 are allowed and operation of order dated 20-06-2006 passed by the learned Single Judge in Writ Petition No. 10965 of 2006 is stayed.

Needless to say that this order will be subject to the final adjudication of the appeals.

The main appeals be listed for hearing on 27-06-2006.

Sd/- T.S. Vasanthakesavulu
Assistant Registrar

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for ASSISTANT REGISTRAR

To

1. The Prl. Secretary to Government, Panchayat Raj & Rural Development Department, Govt. of Andhra Pradesh, Secretariat, Hyderabad.
2. The Commissioner of Panchayat Raj Department, Govt. of Andhra Pradesh, Hyderabad. (Addressers 1 & 2 by Special messenger)
3. The District Collector (Panchayat Wing) cum District Electoral Officer, Guntur District, Guntur
4. The District Panchayat Officer, Guntur, Guntur Dist.
5. The Secretary, State Election Commission, III Floor, Buddha Bhavan, Ranigunj, Secunderabad. (By Spl. Messenger)
6. N. Sekhar, S/o. Subba Rao, R/o. H.No. 4-17, Sambhunipalem Street, Main Road, Nadendla Mandal, Guntur Dist.
7. Two CCs to the Advocate General, High Court of A.P. Hyderabad (By Special Messenger)
8. One CC to Sri Nuty Rama Mohana Rao, Advocate (OPUC)
9. One CC to Sri K. R. Prabhakar, Advocate (OPUC)
10. Two CCs to the G.P. for Panchayat Raj, High Court of A.P., Hyderabad (OUT)

11. Two spare copies.
12. One CC to Sri K. Ravindra Kumar, Advocate (OPUC)