

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI

HON'BLE MR.JUSTICE DHIRAJ SINGH THAKUR, CHIEF JUSTICE

&

HON'BLE MR. JUSTICE R. RAGHUNANDAN RAO

WRIT PETITION No. 26889 of 2023
ALONG WITH
WRIT PETITION Nos. 25343, 28058 of 2023

WRIT PETITION No.26889 of 2023

Dr. Chadalavada Aravinda Babu, S/o.Ch. Mohanarao,
Aged 64 years, Occ: Professional, R/o.H.No.12-10-37,
Prakash Nagar, Narasaraopet Town and Mandal,
Palnadu District, Andhra Pradesh and others.

... Petitioners

Versus

The Election Commission of India,
Rep by its Chief Election Officer,
Headquarter, NirvachanSadan, Ashoka Road,
New Delhi – 110001 and others.

...Respondents

Mr. B. Adinarayana Rao, Id. Sr. Counsel for Mr. T. Venu Gopal, Counsel
for the Petitioner in W.P.Nos.26889 and 25343 of 2023.

Mr. Javvaji Sarath Chandra, Counsel for the Petitioner in W.P.No.28058
of 2023.

Mr. D. S. Sivdarshan, Counsel for the respondents.

DATE : 20.05.2024

PER DHIRAJ SINGH THAKUR, CJ:

In all these three writ petitions, since similar questions of law and
fact arise, we propose to decide the same by way of a common judgment
and order.

W.P.No.26889 of 2023:

2. In this writ petition the petitioners claim that the polling station Nos.36 and 37 in Rompicherla Village, Narasaraopet Mandal were shifted to a different location in gross violation of the instructions contained in the Manual on Polling Stations (hereinafter referred to as “the manual”) prepared by the Election Commission of India.

3. Petitioner No.1, states that he is in-charge of a political party called TDP in Narasaraopet Assembly Constituency. Petitioner No.2 is stated to be resident of Rompicherla Village and had been casting her vote from booth No.36 in the said village. Petitioner No.3 is stated to be also a resident of Rompicherla Village and had been casting his vote in polling booth No.37 of the same village. Petition No.4 is stated to be a resident of Petlurivaripalem Village and had been casting his vote in polling booth No.223 of the said village. Whereas, Petitioner No.5 is stated to be also a resident of the Petlurivaripalem Village and had been casting his vote in polling booth No.224 of the same village.

4. The grievance of the petitioners is that these polling stations were shifted from their existing place without any consultative process with the political parties and without affording any opportunity of being heard to the petitioners. Mala fides have been alleged in regard to shifting of these

polling stations and the main intention purportedly being to prevent the majority of the voters from existing locations from casting their vote which was otherwise guaranteed under Section 62 of the Representation of People Act.

5. Reference in detail was made to the instruction 4.3.3 contained in the manual issued by the Election Commission of India, which requires consultation with political parties.

Instruction 4.3.3 of the manual, envisages that proposals prepared after physical verification of existing polling stations, should be discussed with recognised political parties and that the complaints and suggestions received from such political parties should be enquired into and disposed of with a suitable reply to them.

According to Instruction 4.3.5 of the manual, a report is envisaged to be sent regarding the process followed in the rationalization of the polling stations by the District Election Officer. This Clause also envisages that if the proposals of the political parties are not accepted the report should mention the reasons for not accepting the same. Copies of the minutes of the meeting with political parties in which the subject of rationalization of polling stations was discussed are also envisaged to be sent.

Clause 4.3.5 (ii) of the manual also further envisages that the report should have a special section to reflect as to how the vulnerable Sections of the Society have unhindered access to polling stations without threat or intimidation.

6. In response to this writ petition the reply submitted by the Additional Chief Electoral Officer on behalf of the respondents denies any violation of the instructions contained in the manual referred to hereinabove. It is stated that the shifting of polling stations was justified in the facts and circumstances of the case and was ordered so accordingly. It is stated that as per Section 25 of the Representation of People Act, 1951, District Election Officer is the authority to provide a polling station in every constituency and that the provision made for polling station by the District Election Officer has to be approved by the Election Commission of India. The rationalization of polling stations involves various factors *inter alia* the distance of the polling station so that a voter is not required to travel more than two kilometres for casting his or her vote, that the polling station should be on the ground floor, that in localities predominantly inhabited by minorities, weaker sections of Society, the polling stations are to be located in such a manner that such communities are not prevented from reaching the polling stations.

7. According to the stand of the official respondent, the proposals with regard to polling station Nos.36 and 37 in Rompicherla Village and polling station Nos.223 and 224 in Petlurivaripalem Village was placed before the political parties for consultation. It is stated that all other political parties were present except TDP and that they agreed and accepted the proposal.

8. The affidavit further goes on to give justification regarding the shifting of polling station No.36 from MPDO office building, Rompicherla to MPP (H.E) School in Rompicherla due to the fact that there were no toilet facilities in the earlier polling station, it was also categorized as a sensitive polling station and that the new polling station had a compound wall drinking water and toilet facilities.

In regard to polling station No.37, which was shifted from MPE School, Padamatipalem, Rompicherla, to MPP (H.E.) School, it is stated that the existing building was old, did not have any compound wall, drinking water and toilet facilities and that a bomb blast had occurred in the said polling station, regarding which an FIR number 36 of 2001, dated 12.07.2001, was also registered. Whereas, the new polling station was located in BC/SC Colony as 97% of voters belong to BC, SC, and ST communities.

In relation to polling station Nos.223 and 224, it is stated that the polling stations were shifted from Mandal Parishad Hindu Primary School, Petlurivaripalem Village to Mandal Parishad Primary School (B.C), South Side Room due to the reason that the earlier polling station was in a dilapidated condition, did not have minimum amenities like electricity, drinking water, toilets and was without a compound wall, and that voters had to earlier cross the Narsaraopet-Kurnool State Highway.

W.P.No.25343 of 2023

9. In this writ petition the grievance of the petitioner is that polling station No.232 situate in Zilla Parishad High School, New Building Yallamanda Village, where the petitioner used to cast his vote for so many years was shifted on the request letter addressed to the official respondents by the MLA of the local ruling party to the Ground Floor of the Mandal Parishad Primary School, Eastern side room.

10. It is alleged by the petitioner that the location was shifted on the basis of a letter written by the local MLA belonging to the ruling party, in which the request for change was made stating that the existing polling station was far away from the residence of voters of BC, SC and ST communities and that they would be unable to cast their vote in the upper caste area where the polling station was earlier located. The petitioner's

grievance is that even when he belongs to BC community and that there was no threat or inconvenience from anyone in polling booth No.232, the shifting of the polling station was sought for achieving the political ends of the ruling party's MLA.

11. In the reply affidavit filed by the Joint Secretary to Government and Joint Chief Electoral Officer, on behalf of the respondents, it is reiterated that while the shifting of the polling station was done without any mala fide reasons but was done in accordance with the guidelines issued by the Election Commission of India. It is stated that the proposals for Narasaraopet Assembly Constituency by the Electoral Registration Officer was placed before the political parties meeting which was conducted on 04.10.2022, under the Chairmanship of the District Election Officer and Collector, Palnadu, and the same was approved. It is also stated that the request of the MLA for change of location of polling station was considered for the reason with the existing polling station was located beyond 1 kilometre from the voters in polling station No.232. The Election Commission of India duly approved the proposal and the final list of polling stations was accordingly published, to which no complaints, representations or objections were received up to 31.08.2023. It is further stated that in order to enhance the accessibility of voters belonging to the marginalized sections of the Society and mitigate the potential

obstructions from influential groups, the polling station was thus relocated to a vicinity closer to a residential area of the BC community.

W.P.No.28058 of 2023

12. In this writ petition the petitioner seeks a Mandamus to the respondents for establishing new polling stations in three villages, namely Kosannapalle, Lalmanpalli and L.Kottala Villages of Veldurthy Mandal in Pattikonda Assembly Constituency. The main ground taken is that the villagers in these villages have to travel more than two kilometres to cast their vote and that the Election Commission ought to have taken steps to set up polling stations within two kilometres of the place of residence of the voters.

13. In this regard, the reply affidavit filed for and on behalf of the Election Commission of India suggests that pursuant to the petitioners' request to create new polling stations in Lalmanpalli village, which has about four hundred and forty voters and are assigned to polling station Nos.167 and 168 in Lakkasagram Village, a meeting was conducted by the Tahsildar of Krishnagiri Mandal with village elders on 16.09.2023, in which meeting approximately two hundred and fifty voters stated that there was no need for a new polling station and that they could travel to vote without difficulty. The affidavit further states that on account of

incidents of violence in Lalmanpalli in the past, it was recommended to maintain the polling station Nos.167 and 168 at Lakkasagram Village for the voters from Lalmanpali Village.

14. In regard to Kosanapalli Village, it is stated that the polling booths are located in the schools at Cherukulapadu Village, which is approximately 2.8 kilometres from Kosanapalli Village. An inquiry is stated to have been conducted on 10.10.2023, by the Electoral Registration Officer, Tahsildar and other concerned in Kosanapalli Village about the creation of a separate polling station however, the majority of the voters expressed comfort with the existing polling stations citing factional issues and law and order concerns.

15. In so far as the request for a new polling station at L.Kottala Village is concerned although the existing polling station was at a distance of 9.8 kilometres from the said village yet in the open enquiry conducted in the village on 07.09.2023, the villagers expressed their concern regarding creation of the new polling station in their village on account of the possible problems which could be created by dominant and influential leaders of L.Kottala Village during elections.

16. In the rejoinder affidavit, the petitioner seeks to contradict the stand taken by the official respondents that no enquiry was conducted in the village as was asserted.

17. We have heard learned counsel for the parties.

18. The main thrust of the argument of the learned counsel for the petitioners in writ petition Nos.26889, 25343 of 2023, primarily is that the official respondents had violated the instructions as prescribed in the manual of the Election Commission of India, inasmuch as the procedure prescribed therein had not been strictly followed.

19. While the petitioners allege that consultation with political parties as was envisaged in terms of instruction 4.3.3 of the manual for rationalizing the polling stations was not done, the stand of the respondents is that the political parties were consulted except the TDP which chose not to be part of the consultative process. While a lot of emphasis was placed upon the requirement of consideration of instruction 4.3.5 of the manual which required District Election Officer to submit a report on the process followed in rationalization of the polling stations mentioning all such proposals received from political parties and the reasons for not accepting the said proposals and further that copies of the minutes of the meetings with the political parties in which the subject of rationalization of polling

stations was discussed was required to be sent, yet according to the petitioners instruction 4.3.5 of the manual was not followed.

20. Be that as it may, assuming that the official respondents had not strictly complied with the said instruction the question that falls for consideration is whether the process of rationalization undertaken by the official respondents would render the same illegal. This issue is no longer res integra, the Apex Court in **Lakshmi Charan Sen and Others vs. A. K. N. Hassan Uzzaman and others**¹ held that the directions given by the Election Commission of India to the Chief Electoral Officers have no force of law and while the directions to the Chief Electoral Officers may be binding on the latter, but their violation could not create rights and obligations and furnish any cause of action to the voter or a candidate to complain about it. It was held at paragraph 22 as under:

“22. ...Therefore, in the absence of a provision to that effect, it would not be correct to equate with law, the directions given by the Election Commission to the Chief Electoral Officers. The Election Commission is, of course, entitled to act ex debito justitiae, in the sense that, it can take steps or direct that steps be taken over and above those which it is under an obligation to take under the law. It is, therefore, entitled to issue directions to the Chief Electoral Officers. Such directions are binding upon the latter but, their violation cannot create rights and obligations unknown to the

¹ (1985) 4 SCC 689

election law. To take a simple example, if the Election Commission issues a directive to a Chief Electoral Officer to invite leaders of political parties for a meeting to consider their grievances pertaining to the electoral roll, the failure to hold such a meeting cannot be equated with the failure to comply with the provision of a law.The question is not whether the directions issued by the Election Commission have to be carried out by the Chief Electoral Officers and are binding upon them. The plain answer is that such directions ought to be carried out. The question is whether, the failure on the part of the Chief Electoral Officer to comply with the directions issued by the Election Commission furnishes any cause of action to any other person, like a voter or a candidate, to complain of it. We are of the opinion that the directions issued by the Election Commission, though binding upon the Chief Electoral Officers, cannot be treated as if they are law, the violation of which could result in the invalidation of the election, either generally, or specifically in the case of an individual. In the instant case, the Chief Electoral Officer carried out faithfully the directions issued by the Election Commission. But, even if he had not, he could not be accused of disobeying a law.”

21. In our opinion, therefore, the petitioners in W.P.Nos.26889 and 25343 of 2023, cannot succeed merely on the ground that because the Electoral Registration Officer had not furnished the requisite report in the prescribed format under instruction 4.3.5 of the manual, would render the rationalization of the polling stations illegal. To that extent we do not find any merit in these writ petitions and are accordingly dismissed.

22. However, in the writ petition No.28058 of 2023, the grievance of the petitioner is that the polling stations ought to have been established in the three villages where the voters had to traverse a distance of more than two kilometres. In fact the petitioner had highlighted that in case in one L.Kottala Village, the voters would have to travel a distance of 9.8 kilometres. Although the official respondents in the response have taken a stand that meetings/consultations were held in the villages concerned where the villagers of the three villages had expressed inconvenience in establishing polling booths in their villages on account of their apprehension that the political bosses would interfere with their right of franchise, yet to make the voters travel a distance of approximately nine kilometres for casting their vote especially in regard to those citizens who are old, aged or ladies who may be in their family way or other eligible voters who may on account of their physical challenges may find it difficult to traverse such a distance, it would be appropriate if the official respondents do consider seriously the request of the petitioner for establishing polling stations with a view to prevent any hardship to a voter to travel a distance of more than two kilometres. The official respondents shall therefore consider this issue for the next elections. The official respondents shall consider the representation dated 10.10.2023, of the petitioner in W.P.No.28058 of 2023 and pass appropriate orders thereupon, in accordance with law. There shall be no order as to costs.

Pending miscellaneous applications, if any, shall stand closed.

DHIRAJ SINGH THAKUR, CJ.

R. RAGHUNANDAN RAO, J.

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