

Kona Prabhakara Rao

Vs

M. Seshagiri Rao and Another

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Civil Appeals Nos. 1321 and 2021 and 2043 of 1979

(Syed M. Fazal Ali, P. S. Kailasam JJ)

09.04.1980

JUDGMENT

FAZAL ALI, J. –

1. Civil Appeal No. 1321 of 1979 has been filed by the appellant who was a candidate in the 1978 elections from Andhra Pradesh and had been successfully elected to the Legislative Assembly of the state from Bapatla constituency No. 98. The respondent, who is the election petitioner and also one of the candidates who lost the election, filed an election petition before the Andhra Pradesh High Court challenging the election of the appellant mainly on the three grounds : firstly that the appellant indulged in corrupt practices inasmuch as he took the assistance of a Tahsildar in promoting his election prospects; [2] that the appellant at the time of filing his nomination papers held an office of profit under the Government and therefore was disqualified from fighting the election; and [3] it was alleged by the petitioner that there were number of irregularities and infirmities in the counting of the votes and therefore if the votes were re-counted, the election petitioner would have succeeded and hence he should be declared duly elected.

2. The High Court after taking the evidence and hearing the counsel for the parties found the first two grounds namely, corrupt practice and the question that the appellant as holding an office of profit under the Government in favour of the election petitioner as proved and set aside the election of the appellant. The High Court however did not choose to go into the question of re-counting although the respondent election petitioner had made an express prayer for re-counting of the votes and for being declared to be duly elected to the Assembly if the election of the appellant was set aside. The respondent, election petitioner, accordingly has filed Civil Appeal NO. 2043 of 1979 against that part of the judgment of the High Court by which his prayer for re-count and a declaration that he be declared duly elected was disallowed.

3. So far as Civil Appeal No. 1321 of 1979 is concerned, after hearing counsel for the parties, we are satisfied that the judgment of the High Court cannot be sustained. In support of the appeal, only two points were raised before us. In the first place Mr. P. P. Rao submitted that according to the facts found by the High Court, the appellant could not in law be held to be holding an office under the Government, much less an office of profit. Secondly, it was argued that so far as the corrupt practice

is concerned, the pleadings of the election petitioner in his petition are absolutely vague and contain neither any details nor any particulars as required under the law. It was vehemently contended that even on the allegations made by appellant, the Tahsildar concerned was transferred some time in September 1977, long before the elections were notified and the appellant had filed his nomination papers. So far as this part of the matter is concerned, Mr. K. K. Venugopal, counsel appearing for the respondent in Civil Appeal No. 1321 of 1979 and for the appellant in Civil Appeal No. 2043 of 1979 could not support the judgment on this aspect of the matter because the allegations made in the pleadings are absolutely vague and are not accompanied with the necessary particulars required by law. There is absolutely no allegations in the pleadings are absolutely vague and are not accompanied with the necessary particulars required by law. There is absolutely no allegations in the pleadings to show that at any time after having filed his nomination papers, the appellant made any efforts to seek the assistance of Tahsildar Narasimha Rao in furthering his election prospects or in any way helping him to win the election. In this view of the matter, we are satisfied that the election petitioner failed to prove the allegations of corrupt practice alleged against the appellant. The finding of the High court on this point cannot be sustained.

4. As regards the other question namely as to whether or not the appellant was holding an office of profit under the Government, Mr. Venugopal appearing for the respondent, in view of the long course of decisions of this Court, [contended] that the evidence clearly shows-that the appellant was holding an office under the Government having been appointed by the Government. In this connection, reliance was placed by Mr. Venugopal on the order of the Government at page 40 of Paper-book No. II, the relevant part of which may be extracted thus :

Consequent on the expiry of the terms of office of the Board of Directors of the Travel and Tourism Corporation [Andhra Pradesh] Private Limited on March 29, 1977, the Government reconstituted the Board with the following members for a period of two years from the date of this order : 1. Sri. Kona Prabhakar Rao M. L. A. Part-time Chairman.

5. It was submitted that in view of this order of the Government, it must be held that the appellant was appointed by the Government and therefore he held an office under the Government when he filed his nomination papers.

6. On the other hand Mr. Rao, learned counsel for the appellant pointed out that to being with the appellant was merely a part-time Chairman of the Travel and Tourism Corporation [Andhra Pradesh] Private Limited. The counsel has drawn our attention to the Article of Association and particularly to Article 60 [a] which runs thus :

60. [a] The Andhra Pradesh State Road Transport Corporation may from time to time appoint a part-time Chairman, vice-Chairman of the board of Directors on such terms and conditions and on such remuneration as may deem fit.

7. A perusal of this paragraph of the Article shows that the appointment of a part-time Chairman rests not with the Government but with the Corporation. Acting in pursuance of this provision, the Corporation by can order dated October 11, 1977, long before the order passed by the Government had appointed the appellant as part-time Chairman. This order runs thus :

Corporation resolved that the following be and hereby appointed at part-time Chairman and Directors to serve on the Board of Travel and Tourism Corporation [A.

P.] Private Limited in pursuance of Articles 60 [a] and 60 [b] of Memorandum and Articles of Association of the Company, as the nominees of the A. P. S. R. T. C. from the date of this Resolution for a period of two years.

8. Of course, under article 62, the remuneration or compensatory allowances of the Directors could be determined both by the Corporation and the state Government. But this Article does not confer any power on the Government either to appoint or to remove the part-time Chairman. In this case however we find that the remuneration of the appellant or compensatory allowance whatever it may be called seems to have been fixed by the corporation itself in the exercise of its powers under article 60 [a] of Articles of Association.

9. The question as to what are the ingredients of a person holding an office of profit under the government is no longer *res integra* as the same is concluded by a catena of decisions of this Court. In the case of *Gurugobinda Basu v. Sankari Prasad Ghosal*, this Court pointed out that one of the dominant tests to determine this question would be to find out as to who was the appointing and removing authority of the officer concerned. After reviewing some decisions, this Court observed as follows :

It is clear from the aforesaid observations that in *Maulana Abdul Shakur* case the factors which were held to be decisive were [a] the power of the Government to appoint a person to an office of profit or to continue him in that office or revoke his appointment at their discretion, and [b] payment from out of Government revenues, though it was pointed out that payment from a source other than Government revenues was not always a decisive factor.....

To the same effect, is another decision of this Court in the case of *D. R. Gurushantappa v. Abdul Khuddus Anwar*. We do not consider it necessary to multiply authorities on this point.

10. In view of these decisions, it is absolutely clear that as the appellant was neither appointed nor was removable by Government and even his compensatory allowances were paid from the funds of the Corporation and not from the coffers of the Government, he cannot be said to be a person holding any office of profit under the Government. For these reasons, the view taken by the High Court on this aspect of the question is also legally erroneous. For these reasons, therefore, we allow Civil Appeal No. 1321 of 1979 and set aside the judgment of the High Court voiding the election of the appellant. As a material consequence of allowing the appeal, the appellant will continue to remain a member of the Legislative Assembly of the State of Andhra Pradesh subject of course to the result of Civil Appeal No. 2043 of 1979.

11. As regards Civil Appeal No. 2043 of 1979, the counsel for both the parties have expressed their joint consent that in view of the allegations made by the appellant, the re-counting may be done in this Court instead of remitting the matter to the High Court which will involve lot of delay. In view of the consent given by the parties, without going into the question whether or not a *prima facie* case has been made for a re-count, we shall proceed on the footing that both the parties agree to the re-counting to be done under orders of this Court. We, therefore, direct Mr. R. Narasimhan, Registrar [Judicial] of this Court to conduct the re-counting according to law with the assistance of any of his officer which he may choose and in order to facilitate his work, we appoint the following advocates as tellers who are requested by us to act as such and each teller shall be paid by the election petitioner a consolidated amount of Rs. 1000 for the entire process of re-counting :

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1. Mr. Vimal Dave
2. Mrs. Rani Chhabra
3. Mr. Altaf Ahmed
4. Mr. Anil Dev Singh
5. Mr. Miss R. Vaigai
6. Mr. M. Raghuraman

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12. The re-counting will be done by the Registrar from 11 a.m. to 4 p.m. and should be completed as far as practicable in two days. In case it is not finished in two days, it can be continued on the third day. The re-counting will be done in the presence of the parties and their counsel. Parties have further agreed before us that the report of the Registrar regarding the result of the re-count shall be binding on the parties without any further argument and the appeal should be decided in accordance with the order passed by this Court on the basis of the report of the Registrar. The Registrar [Judicial] will exercise all powers of the Returning Officer in re-counting. We might hasten to add that one of the primary considerations which weighed with us in allowing the prayer for recount was the agreement of both the parties to abide by the decision of the Registrar.

13. The ballot papers which are kept in steel trunks may be called for from the High Court which may be directed to send the same through a special messenger as expeditiously as possible at the cost of the appellant of civil Appeal No. of 1979 [election petitioner].

14. The Registrar shall notify the date of re-counting as soon as the steel boxes are received, and after completing the task, submit his report to this Court after which the parties will be informed of the date and the case will be put up before us for final orders;.

15. Cost in both the appeals to abide the result of Civil Appeal No. 2043 of 1979.

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