

B. Sundara Rami Reddy

Vs

Election Commission of India Aad Others

Special Leave Petition (C) No. 2127 of 1991

(K. Ramaswamy, K. N. Singh JJ)

18.02.1991

ORDER

1. This petition under Article 136 of the Constitution is directed against the order a learned Single Judge of the High Court of Andhra Pradesh dated November 13, 1990 holding that the Election Commission of India is not a necessary or proper party to the election petition.
2. The petitioner was declared elected as a Member of the Andhra Pradesh Legislative assembly from Attakur Constituency of Nellore District in the elections held on November 29, 1989. K. Anjaneya Reddy, respondent 2, the unsuccessful candidate filed an election petition before the High Court of Andhra Pradesh at Hyderabad calling in question the petitioner's election. In the election petition respondent 2 challenged validity of the order of the Election Commission dated November 22, 1989 declaring the polling at Bhogasamudram polling station as void and directing re-poll at that polling station. Respondent 2 impleaded the Election Commission of India as one of the respondents to the election petition. The Election Commission made application before the High Court for deleting it from array of the parties on the ground that it was not a necessary party. The petitioner contested the application of the Election Commission. The High Court by its order dated November 13, 1990 held that the Election Commission was neither necessary nor a proper party. Accordingly, it issued direction for the detection of the Election Commission of India from the array of parties. The petitioner has challenged the order of the High Court by means of this petition.
3. After hearing learned counsel for the petitioner we do not find any merit in the petition. Section 82 of the Representation of the People Act, 1951 specifies the persons who are required to be joined as respondents to an election petition. Under this provision the returned candidate is a necessary party as a respondent and where relief for a declaration is claimed that the election petitioner, or any other candidate be duly elected, all the contesting candidates are necessary to be impleaded as respondents to the petition. No other person or authority except as aforesaid is required to be impleaded as a respondent to an election petition under the Act. The Election Commission of India is therefore not a necessary party to an election petition.
4. Learned counsel for the petitioner urged that even if the Election Commission may not be a necessary party, it was a property since its orders have been challenged in the election petition. He further urged that since Civil Procedure Code, 1908 is applicable to trial of an election petition the concept of proper party is applicable to the trial of election petition. We find no merit in the contention. Section 87 of the Act lays down that subject to the provisions of the Act and any rules made thereunder, every election petition shall be tried by the High Court, as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits. Provisions of the Civil Procedure Code have thus been made applicable to the trial of an

election petition to a limited extent as would appear from the expression "subject to the provisions of this Act". Since Section 82 designates the persons who are to be joined as respondents to the petition, provisions of the Civil Procedure Code, 1908 relating to the joinder of parties stands excluded. Under the Code even if a party is not necessary party, he is required to be joined as a party to a suit or proceedings if such persons is a proper party, but the Representation of the People Act, 1951 does not provide for joinder of a proper party to an election petition. The concept of joining a proper party to an election petition is ruled out by the provisions of the Act. The concept of joinder of a proper party to a suit or proceeding underlying Order I of the Civil Procedure Code cannot be imported to the trial of election petition, in view of the express provisions of Sections 82 and 87 of the Act. The Act is a self-contained Code which does not contemplate joinder of a person or authority to an election petition on the ground of proper party. In *K. Venkateshwara Rao v. Bekkam Narasimha Reddi* [AIR 1969 SC 872 : (1969) 1 SCR 679], this Court while discussing the application of Order I Rule 10 of the Civil Procedure Code to an election petition held that there could not be any addition of parties in the case of an election petition except under the provisions of sub-section (4) of Section 86 of the Act. Again in *Jyoti Basu v. Debi Ghosal* [(1982) 1 SCC 691 : (1982) 3 SCR 318], this Court held that the concept of 'proper party' is and must remain alien to an election dispute under the Representation of the People Act, 1951. Only those may be joined as respondents to an election petition who are mentioned in Section 82 and Section 86(4) and no others. However desirable and expedient it may appear to be, none else shall be joined as respondents.

5. We, are, therefore, of the opinion that the view taken by the High Court is correct and it does not call for any interference. The petition fails and it is, accordingly, dismissed.

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