

M. Budda Prasad

Vs

Simhadri Satyanarayana Rao and Others

Civil Appeal No. 84 of 1992

(Kuldip Singh, P. B. Sawant JJ)

09.10.1992

JUDGMENT

1. Simhadri Satyanarayana Rao (Rao) and four others contested election to the Andhra Pradesh Legislative Assembly from Avani Gadda Constituency. The election was held on November 22, 1989 and Rao was declared elected. M. Budda Prasad a voter of the constituency challenged the election of Rao by way of an election petition before the Andhra Pradesh High Court. The High Court by its judgment dated September 6, 1991 dismissed the election petition with costs. This appeal by the election petitioner is against the judgment of the High Court.

2. On the pleadings of the parties the High Court tried the election petition on the following issues:-

- (1) Whether votes of 22 dead persons were polled in polling station No. 104 of No. 91, Avani Gadda Legislative Assembly Constituency?
- (2) Whether votes of 241 persons who have migrated to different places from Vakkapatlavaripalem village long back have been polled in polling station No. 104 of No. 91 Avani Gadda Legislative Assembly Constituency?
- (3) Whether Mr. Ambati Brahmanaiah and his close relatives trespassed into polling station No. 104 and rigged the votes by stamping on ballot papers in favour of the first respondent?
- (4) Whether Mr. Ambati Brahmanaiah and his relatives have impersonated 22 dead persons and 241 voters residing in far off places by affixing their thumb impressions on the counterfoils of the ballot papers?
- (5) Whether the sixth respondent has improperly rejected ten postal ballot papers on the ground that they were not put into two separate covers?
- (6) Whether the sixth respondent has counted as many as 500 ballot papers which did not contain the signatures of the Presiding Officers?
- (7) Whether the sixth respondent has declared the results without giving time for the petitioner to demand for recount in writing?
- (8) Whether the percentage of votes polled in polling station Nos. 59, 104 and 112 is

more than 90%?

(9) If so, whether the sixth respondent is under an obligation to keep aside the ballot papers and the ballot paper accounts of the said polling stations?

(10) Whether the result of the election has been materially affected by improper reception of 500 invalid votes in favour of the first respondent, improper rejection of 100 ballot papers and 10 postal ballot paper polled in favour of the fifth respondent and by improper reception of 263 ballot papers in favour of the first respondent pertaining to polling station No. 104?

3. The appellant-petitioner examined himself as PW 1 and further examined PW 4 to PW 10 before the High Court in support of his allegations. He also produced documentary evidence. The High Court discussed in detail the evidence of the witnesses produced by the parties. On appreciation of the evidence the High Court decided Issues 1 to 4 against the respondent-petitioner.

4. Issues 5 to 7 and 10 concern the irregularities allegedly committed during the counting of the votes. The High Court came to the conclusion that neither the contesting candidates nor any of their counting agents made any complaint before the Returning Officer during the course of the counting or thereafter. No objection of any kind was raised by any candidate regarding the counting. In the election petition various allegations were made with the sole object of making a fishing enquiry. The High Court, believing the testimony of the Returning Officer and other official witnesses came to the conclusion that no illegality or irregularity was committed in the counting of the votes.

5. On Issue No. 8 the High Court came to the conclusion that the votes polled at polling station No. 59, 104 and 112 were more than 90% but the said polling did not materially affect the result of the election.

6. On Issue No. 9 the High Court held that the Returning Officer was under no obligation to keep aside the ballot papers / ballot papers account of the polling stations since more than 90% polling was only in four polling stations.

7. We have heard learned counsel for the parties. Mr. Krishnamurty Iyer, learned Senior Advocate appearing for the appellant has taken us through the judgment of the High Court and other relevant material on the record. He has not been able to point out any infirmity in the appreciation of evidence by the High Court. We agree with the reasoning and the conclusions reached by the High Court in dismissing the election petition. We, therefore, dismiss the appeal with costs. Appeal dismissed.

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