

Sri M. Omkar

Vs

Revuri Prakash Reddy

Civil Appeal No. 10409 of 1996.

(CJI Dr. A.S. Anand, M. Jagannadha Rao, M. Srinivasan JJ)

04.05.1999

JUDGMENT

Dr. A.S. Anand, CJ.

1. The appellant who contested the election as a Marxist (Communist Party of India) candidate for a seat to the Andhra Pradesh Legislative Assembly in the elections held on December 5, 1994, lost to respondent No. 1, who had contested the election as a candidate fielded by Telugu Desam party by a narrow margin of 87 votes. The appellant filed an election petition challenging the election of respondent No. 1 alleging irregularities during counting and sought a recount of votes. The election petition was contested by respondent No. 1 and from the pleadings of the parties, the following issues were framed :

- (1) Whether there are any discrepancies in the counting of votes in round Nos. 5, 6, 7 and 9 as alleged as well as in the result sheet supplied ?
- (2) Whether the Returning Officer has violated the instructions of the Election Commission of India in proceeding with the counting of votes, if so, to what effect ?
- (3) Whether the result of the election has been materially affected due to any material irregularities ?
- (4) whether the election petitioner is entitled to seek recount of votes ?

2. After evidence was led by the parties, the learned Single Judge of the High Court dismissed the election petition with costs. Hence, this appeal.

3. The only grievance projected by learned counsel for the appellant before us is that the Returning Officer had violated the instructions of the Election Commission of India with regard to the counting of votes particularly in polling station Nos. 28, 35, 191 and 200, viz., Ramavaram, Advi Rangapur, Musmi and Dubbagudem. According to the learned counsel, the votes polled in these polling stations were more than 90% but the Returning Officer ignored the instructions issued by the Election Commission regarding counting of votes from such polling stations and that the irregularity so committed had materially affected the result of the election in so far it concern the returned candidate. The instructions on which the learned counsel has relied upon are contained in the Chief Election Commission Order dated 13th April, 1991. Those instructions *inter alia* provide that if the Returning Officer, at the stage of counting of votes, finds that in a particular polling station 90% votes have been cast and out of those votes, 90% have gone in favour of one candidate and the votes

cast in favour of the other candidate are very negligible, "he should keep aside the ballot papers contained in the ballot boxes used in that particular polling booth in a sealed cover". Further the Returning Officer is prohibited from declaring the result in such a case and he should seek orders from the Election Commission and only after receipt of the instructions from the Election Commission and only after receipt of the instruction from the Election Commission, should be proceed further in the matter of counting of votes. It is asserted that these instructions were violated by the Returning Officer and he counted the votes without following the procedure prescribed in the instructions.

4. In paragraph 7 of the election petition, which projects this grievance, it is alleged as under :

"As per the instructions of the Election Commission of India, the cases of polling stations where 90% or more polling has been recorded the Returning Officer has to report to the Chief Electoral Officer and the Election Commission for Commission's decision. Till the decision of the Commission is communicated, the Returning Officer shall not open the ballot boxes of those Polling Booths/Stations for counting but at the same time, shall proceed with the counting of votes in respect of other polling booths/stations. In the instant case, though abnormal polling, i.e., 90% and above was recorded in 4 polling stations, *the Returning Officer with an oblique motive of helping Respondent No. 1, without reporting to the Election Commission and setting apart the said ballot boxes, allowed to mix up the said votes along with other ballot papers.*" (Emphasis ours)

5. Thus, it is seen that the gravamen of the charge is that the Returning Officer "without reporting to the Election Commission and setting apart the said ballot boxes, allowed to mix up the said votes along with other ballot papers" and counted the same. The Returning Officer was examined as a court witness - CW-1. According to his evidence, on finding that more than 90% of polling was recorded in the four polling stations, he submitted a report to the Election Commission regarding it vide Ex. C-1 and after receiving instructions from the Election Commission, through the District Collector, to the effect that those votes were to be counted, the needful was done. It is, thus, obvious that the allegations that the Returning Officer counted the votes without reporting the matter to the Election Commission or without obtaining instructions is not correct.

6. The evidence of the Returning Officer reveals that during counting there was no complaint of any mal-practice or irregularity in the matter of counting of votes. After the result was declared an application for recount was made by the appellant which was found to be vague. A bare reading of the application dated 10.12.1994, Annexure-D, demonstrates the vagueness of the allegations. That application reads :

"To

The Returning Officer,

266, Narsampet L.A.C.

Sir,

There has been lot of mischief committed by our staff at the time of counting i.e. on 9.12.1994 to get me defeated and to help the T.D.P. candidate to become successful. Similarly several irregularities have taken place in deciding the doubtful votes. The

difference rather margin between me and the successful T.D.P. candidate Sri R. Parkash Reddy is about 100 votes.

Hence, I request you to issue orders for recounting immediately and hold up the result till the recounting takes place.

Thanking you,

Yours sincerely,

Sd/-

(M. Omkar)

Candidate

From 266 Narsampet L.A.C."

7. The application is hopelessly vague and the Returning Officer rightly rejected it holding that the facts disclosed in the application did not justify the recounting of votes. We agree.

8. On the basis of the factual matrix, as noted above, the only grievance projected before us by the learned counsel for the appellant, while assailing the judgment of the learned single Judge, does not stand any scrutiny. The election petition was rightly dismissed and we are not persuaded to take a different view.

9. This appeal, therefore, fails and is dismissed but without any order as to costs.