

HIGH COURT FOR THE STATE OF TELANGANA AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE THIRTY FIRST DAY OF DECEMBER
TWO THOUSAND AND TWENTY

PRESENT

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

WRIT PETITION NO. 23206 OF 2020

Between:

Mumtaz Fatima, D/o. Mohd Abdul Hakeem, Aged about 32 years, R/o 8-2-293/82/L/13-B, MLA Colony Road No.12, Banjara Hills, Hyderabad.

...PETITIONER

AND

1. The State of Telangana, represented by its Principal Secretary Municipal Administration and Urban Development Dept., Secretariat Buildings, Hyderabad.
2. The Telangana State Election Commission, Represented by its Secretary, 1st floor, DTCP building, Opposite PTI, AC Guards, Hyderabad.
3. The Commissioner and Election Authority, Greater Hyderabad Municipal Corporation, Hyderabad.
4. The Returning Officer, Ward No.138, Moula-ali, Malkajgiri-28, GHMC, Hyderabad.
5. Gunnala Sunitha Yadav, H.No.30-268/11 and 12, Santoshima Nagar, Moula Ali 138 Division, Malkajgiri.

...RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue any writ, order or direction more particularly one in the nature of writ of mandamus declaring the in action of the respondent No.4 i.e., The Returning Officer-148, Moulali Division, GHMC, in considering the petitioner's request for recounting for the Division Moulali-138, GHMC, including counting of rejected votes of 609 is illegal and arbitrary, in violation of Article 14 and 21 of Constitution of India besides in violation of principles of natural justice, in contra to the circular issued by the respondent No.2 vide Lr.No.1192/TSEC-ULBs-GHMC/2020, dated 03.12.2020 and also in violation of the orders passed by this Hon'ble Court in W.P.No. 22176 of 2020 and consequently direct the respondents more particularly respondent Nos. 2 and 4 to recount the votes for the Division Maulali-138, GHMC, including counting of 609 rejected votes.

IA NO: 1 OF 2020

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct

the respondents more particularly respondent nos. 2 and 4 to recount the votes for the Division Moulali-138, GHMC, including counting of 609 rejected votes pending disposal of the above writ petition.

Counsel for the Petitioner: SRI KATIKA RAVINDER REDDY

**Counsel for the Respondent No.1: GP FOR MUNICIPAL ADMINISTRATION AND
URBAN DEVELOPMENT**

**Counsel for the Respondent No.2: SRI P. SUDHEER RAO,
S.C. FOR ELECTION COMMISSION**

**Counsel for the Respondent Nos. 3 & 4: SRI PASHAM KRISHNA REDDY,
S.C. FOR GHMC**

Counsel for the Respondent No.5: --

The Court made the following: ORDER

THE HON'BLE SRI JUSTICE A.ABHISHEK REDDY

W.P.No.23206 OF 2020

ORDER:

Heard the learned counsel for petitioner, the learned Government Pleader for Municipal Administration and Urban Development for respondent No.1, Sri P.Sudheer Rao, the learned Standing Counsel for Telangana State Election Commission for respondent No.2, the learned Standing Counsel for GHMC appearing for respondent Nos.3 and 4. With their consent, the Writ Petition is disposed of at the stage of admission itself.

2. The present Writ Petition is filed seeking the following relief:

"... to issue any writ, order or direction more particularly one in the nature of writ of mandamus declaring the inaction of the respondent No.4 i.e., The Returning Officer-148, Moulali Division, GHMC, in considering the petitioner's request for recounting for the Division Moulali-138, GHMC, including counting of rejected votes of 609 is illegal and arbitrary, in violation of Article 14 and 21 of Constitution of India besides in violation of principles of natural justice, in contra to the circular issued by the respondent No.2 vide Lr.No.1192/TSEC ULBs-GHMC/2020, dated 03-12-2020 and also in violation of the orders passed by this Hon'ble Court in W.P.No.22176 of 2020 and consequently direct the respondents more particularly respondent Nos.2 and 4 to recount the votes for the Division Moulali-138, GHMC, including counting of 609 rejected votes and to pass such other order or orders as this Hon'ble Court may deems fit just and proper in the circumstances of the case."

3. The case of the petitioner, in brief, is that she is the contesting candidate as Corporator for Moulali-138 Division, GHMC, on TRS party candidature. As per the Election Schedule, the elections were held on 01.12.2020 and counting was conducted on 04.12.2020. But, respondent Nos.2 and 4 failed to take up the counting process in accordance with law. It is specifically averred that respondent No.2 failed to give proper instructions to the Returning Officers due to which several discrepancies took place during the course of polling as well as counting process. When the same were brought to the notice of respondent No.2, a Circular dated 03.12.2020, was issued giving certain clarification with regard to counting of the votes. It is averred that it is the mistake committed by the polling officers who had given 'ink pad' to the voters instead of giving 'Arrow Cross Mark' for marking on the ballot paper. It is further averred that 609 votes were ejected on the ground that the votes were cast by the voters through thumb impression and other distinguishing marks, which are impermissible. That, the petitioner immediately submitted a representation on 05.12.2020 requesting for recounting of the votes, but the same was not even acknowledged nor any orders are passed. Section 20 of the Election Rules empowers the respondent No.4 for recounting. Further, this Court has upheld the circular issued by respondent No.2 on 03.12.2020. Hence, same ratio ought to have been applied by the respondents

herin while counting the votes, but the respondent No.4 has not acted so, for the reasons best known to him. Therefore, the petitioner, left with no other option, has filed the present writ petition.

4. This Court, on 07.12.2020, while passing orders in W.P.No.22176 of 2020, has held as under:

"The Telangana State Election Commission has the power to issue necessary directions/clarifications in furtherance of conducting the Election in a fair and impartial manner. The clarification impugned in this writ petition is well within the power of the Telangana State Election Commission. However, in the peculiar facts and circumstances of this case, the clarification issued vide Lr.No.1192/TSEC-HILBs GHMC/2020, dated 03.12.2020 has created confusion in the minds of the voters, parties and contestants. A plain reading of the order does not reveal as to what was clarified by the Telangana State Election Commission when he meant "marking by the voter". But in view of the specific assertion and submission made by Sri G.Vidya Sagar, Senior Standing Counsel, appearing on behalf of Telangana State Election Commission, that what was meant by the Telangana State Election Commission was that the marking on the ballot paper by the voter other than that of 'Arrow Cross Mark' is only with reference to the 'Distinguishing Mark' only and no other mark of any kind. Therefore, this Court has to interfere and necessarily read down the clarification, dated 03.12.2020, issued by the Telangana State Election Commission "marking" as to mean the 'Distinguishing Mark' only, which is specific and supplied to that particular Polling Booth/Station by the Telangana State Election Commission.

The Telangana State Election Commission is directed to count the Ballot papers, which have been marked with the 'Distinguishing Mark'.

The Returning Officer shall verify as to whether the 'Distinguishing Mark' which is specific to the particular Booth

has been used in lieu of 'Arrow Cross Mark' and count the ballot papers accordingly as valid ones. In case, any other mark is found other than the 'Distinguishing Mark' of that particular Polling Station, the Returning Officer is free to take an independent decision as per the procedure contemplated under 51 (2) of Telangana Municipal Corporations (Conduct of Election of Members) Rules, 2005.

Accordingly, the Writ Petition is disposed of."

5. A perusal of the writ affidavit discloses that the petitioner by her own admission has stated as under:

"The purpose and purport of the circular issued by the respondent No.2 is that the polling officers failed to perform their duties in guiding the voters in franchising their votes according to the procedure contemplated under law, more particularly illiterate voters. Without there being any mistake on their part and as per the guidance and advice of the polling officers, the voters have franchised their votes with different modes. That noticing the said issue the respondent No.2 herein had issued the above said circular. As per the said circular the votes which have been franchised by the voters with the distinguishing marks such as using thumb impression, using pen etc. It is pertinent to mention herein that it is the mistake of polling officers who had given inkpadd to the voters instead of giving arrow cross mark for marking on the ballot paper."

6. This Court, in the order, dated 07.12.2020, passed in W.P.No.22176 of 2020, has clearly stated that in case the polling officer has given the 'Distinguishing Mark' instead of 'Arrow Cross Mark', then the same may be considered as valid votes, but in so far as other marks on the ballot papers are concerned, it is only the Returning Officer who has to take a

decision. In this particular case, it is not the case of the petitioner that the voters were supplied "Distinguishing Mark" instead of "Arrow Cross Mark", but the voters had affixed Thumb Impression on the ballot paper. Once the votes are rejected by the Returning Officer, the remedy available to the petitioner is to file an Election Petition challenging the rejection of the votes among other grounds. In the absence of any specific assertion that the 'Distinguishing Mark' was supplied by the polling officer instead of 'Arrow Cross Mark', the writ petition has to fail. The petitioner cannot take shelter under the Order, dated 07.12.2020, passed in W.P.No.22176 of 2020 as the facts in this case are entirely different. The petitioner is free to challenge the same in an Election Petition before an appropriate Election Tribunal.

7. Moreover, the Hon'ble Supreme Court in **Jaspal Singh Arora vs. State of M.P. and others**¹ has held as under:

"...In view of the mode of challenging the election by an election petition being prescribed by the M.P. Municipalities Act, it is clear that the election could not be called in question except by an election petition as provided under that Act. The bar to interference by courts in electoral matters contained in Article 243-ZG of the Constitution was apparently overlooked by the High Court in allowing the writ petition. Apart from the bar under Article 243 ZG, on settled principles interference under Article 226 of the Constitution for the purpose of setting aside the election to a municipality was not called for because of the statutory provision for election petition and also the fact that an earlier writ petition

for the same purpose by a defeated candidate had been dismissed by the High Court."

8. In view of the above mentioned facts and circumstances, and the law laid down by the Hon'ble High Court, the writ petition fails, and the same is, accordingly, dismissed. If the petitioner is so advised, she is always at liberty to file an Election Petition before the Election Tribunal raising all the grounds raised in this writ petition and this order does not come in her way in doing so.

The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

SD/-CH.VENKATESWARULU
ASSISTANT REGISTRAR

//TRUE COPY//

SECTION OFFICER

To,

1. One CC to Sri Katika Ravinder Reddy, Advocate [OPUC]
2. Two CCs to GP for Municipal Administration and Urban Development, High Court for the State of Telangana at Hyderabad. [OUT]
3. One CC to Sri P. Sudheer Rao, S.C. For Election Commission (OPUC)
4. One CC to Sri Pasham Krishna Reddy, S.C. For GHMC (OPUC)
5. Two CD Copies.

MP



HIGH COURT

DATED:31/12/2020

ORDER

WP.No.23206 of 2020



DISMISSING THE WRIT PETITION
WITHOUT COSTS

Handwritten signature and date:
31/12/2020