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TADUR BALA GOUD

*v.*

M. NARAYAN REDDY & ORS.

FEBRUARY 27, 1989

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[MURARI MOHON DUTT AND T.K. THOMMEN, JJ.]

*Representation of the People Act, 1951: Section 19A—Election Commission—Secretary—Competence to appoint Assistant Returning Officers—Under Secretaries—Whether authorised to authenticate orders, notifications, on behalf of the Election Commission.*

C

*Administrative Law: Notification—Publication of—By exhibition on notice board—Whether amounts to sufficient notice to all persons.*

**In the Lok Sabha elections held in 1984, the appellant was declared elected from the Nizamabad Parliamentary Constituency. He secured 2,51,172 votes, while Respondent No. 1 got 2,48,725 votes. An election petition under Sections 80 and 81 of the Act was filed in the High Court, by the First Respondent, challenging the election of the appellant on grounds of illegalities and irregularities in the counting of votes, impersonation of voters and corrupt practices. The High Court set aside the election only on one ground that is, the Additional Returning Officers in respect of the Nizamabad Parliament Constituency were not appointed and authorised by the Election Commission to perform the duties and functions of Returning Officers and every action taken by such officers, including the rejection of doubtful ballot papers, is absolutely illegal, void and forbidden by law. The High Court gave directions to the Election Commission for recounting.**

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**This appeal, by special leave, is against the High Court's order setting aside the election.**

**On behalf of the appellant, it was contended that the officers were duly appointed and authorised by the Election Commission. The First Respondent contended that the officers were not duly appointed by the Election Commission and that their purported exercise of power as Additional Assistant Returning Officers was without authority and in contravention of the relevant legal provisions.**

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**Allowing the appeal,**

HELD: 1.1. Under Section 19A of the Act, the Secretary to the Election Commission is empowered to perform the functions of the Election Commission under the Constitution, relevant statutes and the rules. The Secretary is, therefore, competent to approve the revised list containing the names of officers proposed by the Chief Electoral Officer. [845H; 846A-B] A

1.2. Under Secretaries are duly authorised to authenticate all orders, notifications and other instruments on behalf of the Election Commission, as per the Gazette of India notification dated 5.4.1958. [847C] B

2.1. In the instant case, the officers concerned were duly appointed by the competent authority, viz, Secretary, Election Commission, and were authorised to perform the duties and functions of Assistant Returning Officers for the Nizamabad Parliamentary Constituency. The appoinments were also duly notified to the Chief Electoral Officer, by communicating the same by an officer who was competent to authenticate such orders. [847E] C D

2.2 Publication of the notification by exhibition on the notice boards was, sufficient notice to all persons concerned. [847F]

3. The High Court was not justified in setting aside the proceeding of counting of votes and the resultant declaration and in ordering a fresh counting of votes in respect of the election from the Parliamentary Constituency in question. The order of the High Court in so far as it relates to the findings and directions in this regard is set aside. [847G] E

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 733 (NCE) of 1988. F

From the Judgment and Order dated 25.1.1988 of the Andhra Pradesh High Court in Election Petition No. 1 of 1985.

G. Ramaswamy, Additional Solicitor General, A.V. Rangam and J. Eswariah for the Appellant. G

R. Vasudev Pillai, T.V.S. Krishnamurthy Iyer, Subodh Markandeya, Smt. Chitra Markandeya, G. Seshagiri Rao, Ms. Usha Saraswat, P. Parmeshwaran, Ms. A. Subhashini and M. Narayan Reddy–in–person, for the Respondents. H

A The Judgment of the Court was delivered by

**THOMMEN, J.** This appeal by special leave arises from the order of the high Court of Andhra Pradesh dated 25.1.1988 in Election Petition No. 1 of 1985. The High Court by the impugned order "set aside the proceedings of counting and the resultant declaration" made B on 28.12.1985 in respect of the election to the Lok Sabha held on 27.12.1984 from 34, Nizamabad Parliamentary Constituency consisting of 7 Assembly Segments. The High Court directed the Secretary to the Election Commission to conduct the counting of the votes afresh in the said Constituency from which the appellant was delcared elected to the Lok Sabha. The 1st respondent, M. Narayan Reddy was one of the six candidates who contested the election. According to the result C declared by the Returning Officer, the appellant secured 2,51,172 votes while the 1st respondent, the election petitioner, secured 2,48,725 votes. The 1st respondent filed Election Petition under Sections 80 and 81 of the Representation of the People Act, 1951 (43 of 1951) (hereinafter referred to as the 'Act') seeking a declaration D that the election of the appellant was void and that the 1st respondent was duly elected from the said Constituency.

The election was challenged by the 1st respondent broadly on three grounds:

E 1. Illegalities and irregularities in the counting of votes.

2. Impersonation of voters, and

3. Corrupt practices.

F The High Court on the basis of the pleadings of the parties framed 25 issues, of which Issue No. 7 alone is relevant in the present proceeding. The election was set aside by the High Court solely on the basis of Issue No. 7, the other issues having been either not pressed by the election petitioner or found against him. Issue No. 7 reads:

G "Whether the Additional Assistant Returning Officers were not authorised to perform the duties and functions of the Returning Officers as alleged by the election petitioner.?"

The pleading in regard to this issue is contained in paragraph 13 H of the Election Petition. It reads:

"Be that as it may, the "Additional Returning Officers" in respect of this Parliamentary constitency were not appointed and authorised by the Election Commission to perform the duties and functions of the Returning Officer. Therefore, every action taken by the said Additional Assistant Returning Officers, including the rejection of doubtful ballot, papers, is absolutely illegal, void and forbidden by law. Hence, it is a serious irregularity affecting the validity of counting procedure adopted for counting of votes and on this ground alone the petitioner is entitled to inspection of the ballot papers and order for recount. These irregularities have taken place during the counting in all the counting halls numbering 7 in total."

This allegation was refuted by the appellant in his written statement. He contended that the officers were properly appointed and duly authorised.

Among the witnesses who testified on behalf of the appellant in support of his contentions on this issue was R.W. 8, an Under Secretary to the Election Commission. He produced Exs. B-22 to B-28 and Exs. A-86 to A-88 as well as Ex. X-1 containing documents relating to the relevant proceedings connected with the appointment of the Additional Assistant Returning Officers. Certain documents initially produced and sought to be filed by the appellant as additional documents were marked as Exs. C-5 to C-8 at the instance of the election petitioner, the 1st respondent herein.

The controversy under Issue No. 7, as seen above, was whether the Additional Assistant Returning Officers were duly appointed by the Election Commission. The Court on consideration of the relevant documents held that they were not duly appointed by the Election Commission and that the votes of the 7 Assembly Segments of the said Constituency were liable to be recounted. The Court accordingly issued directions in that behalf to the Election Commission.

The main contention of the election petitioner, appearing in person, in the High Court as well as here has been that the officers in question were not duly appointed by the Election Commission, and that their purported exercise of power as Additional Assistant Returning Officers was without authority and in contravention of the relevant legal provisions. We see no merit in this contention.

The testimony of R.W. 8 and the documents proved by him leave no doubt that the officers in question were duly appointed by the Election Commission. R.W. 8 says:

> "It is true that Ex. A-55 is the copy of the notification issued by the Election Commission of India and as is clear from the document, it was published in the A.P. Gazette. This notification Ex. A-55 shows that the District Collector, Nizamabad was appointed as a Returning Officer for Nizamabad constituency. There is another notification No. 434/AP/84(2) showing appointment of Asst. Returning Officers. At Srl. No. 34 of the said notification the Joint Collector, Nizamabad and Personal Asst. to Collector, Nizamabad were appointed as Asst. Returning Officers to the said Constituency. The Commission received proposals from the Chief Electoral Officer, Andhra Pradesh, appointing Asst. Returning Officers for all the 42 Parliamentary Constituencies including Nizamabad constituency. On receipt of the proposals from the Chief Electoral Officer, the Election Commission of India approved the proposals and this is the true copy of the proposal that is approved. It is marked as Ex. B-22. The letter received from the Chief Electoral Officer as marked as Ex. B-23. It also contains the list of 21 Asst. Returning Officers for Nizamabad Parliamentary Constituency. This notification covers all the 42 Parliamentary constituencies including that of Nizamabad. The preamble to the notification is given in the notification dated 19.11.84. On that basis to this notification the approved list of Asst. Returning Officers is attached to this notification. The notification was signed by the Under Secretary. This notification Ex. B-24 was issued by the Under Secretary. This notification was approved by the Secretary, Election Commission of India, New Delhi. Ex. B-25 shows that this was approved by Sri. K. Ganeshan on 18.11.1984 who was at that time, the Secretary to the Election Commission of India, New Delhi and a notification was issued consequently on 19.11.84. Ex. B-26 is the original notification showing the amendments made in respect of Asst. Returning Officers in some parliamentary constituencies in the state of Andhra Preadesh and that includes Nizamabad parliamentary constituency also. Serial No. 13 is amended designation of the Asst. Returning Officer was approved by the Secretary as proposed by

the Chief Electoral Officer, A.P. The ultimate notification Ex. B-24 was issued by the Under Secretary but the approval was made as per Ex. B-25 by the Secretary to the Election Commission. The notification of Ex. B-24 was communicated as per Ex. B-22 to the Chiief Electoral Officer, A.P. Copies of these notifications were communicated to the Chief Secretary of Andhra Pradesh also. The amended notification date 30-11-84 was also communicated to the Chief Electoral Officer, Andhra Pradesh and a copy of it was also communicated to the Chief Secretary, Andhra Pradesh. Ex. B-27 is the true copy of the notification showing the amendments in the list of the Assistant Returning Officers. Ex B-28 is the communication of the approval of the amendments conveyed to the Chief Electoral Officer, Andhra Pradesh by telex message and copy of the notification date 30-11-84 was sent with the post copy of the message."

Ex. X-1 contains the original documents the relevant copies of which are marked as Exs. B-23 dated 14.11.1984, B-25 dated 18.11.1984, B-22 dated 19.11.1984, B-24 dated 19.11.1984 and B-26 dated 30.11.1984. We have carefully examined the original documents. We are satisfied that the testimony of R.W. 8 is fully supported by the documents he has referred to. By Ex. B-23 dated 14.11.1984 (see page 81 of Ex. X-1) the Chief Electoral Officer, Andhra Pradesh wrote to the Secretary to the Election Commission enclosing a revised list of officers proposed for appointment as Additional Assistant Returning Officers for all the 42 Parliamentary Constituencies for the purpose of counting of votes etc. and requesting for the approval of the list by the Election Commission. The revised list at page 137 of Ex. X-1 contains the names of the officers for 34, Nizamabad Parliamentary Constituency. By Ex. B-25 dated 18.11.1984 (see pages 1-2 of Ex. X-1) the list was approved by Shri K. Ganeshan, the Secretary to the Election Commission. His signature dated 18.11.1984 appears at page 2 of Ex. X-1. That was an approval of the note dated 18.11.1984 put up by Shri S.R. Sethi, the Under Secretary to the Election Commission, reading "C.E.O.'s proposals at S. Nos. 7 and 8 above and the action suggested at 'A' above may be approved." It is thus clear that the proposal made by the Chief Election Officer and the revised list submitted by him received the approval of the Secretary to the Election Commission. It has to be noticed in this connection that Section 19A of the Act empowers the Secretary to the Election Commission to perform, subject to certain

A conditions, the functions of the Election Commission under the Constitution and relevant statutes and rules. The Secretary is, therefore, competent to give approval to the revised list containing the names of officers proposed by the Chief Electoral Officer. This fact of approval was duly communicated by the Secretary to the Election Commission to the Chief Electoral Officer, Andhra Pradesh by telex message sent B on 19.11.1984 (see Ex. B-22 at page 158 of Ex. X-1). It was clarified in Ex. B-22 that the notification of the Election Commission was not published in the Gazette of India and it was not required to be published in the State Gazette. The notification of the Election Commission was sent with the post copy of the telex message. Ex. B-24 dated 9.11.1984 which is the post copy authenticated by Shri S.R. Sethi, the Under Secretary to the Election Commission is that notifica- C tion (see pages 156-157 of Ex. X-1). It says that "In exercise of the powers conferred by sub-section (1) of section 22 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby appoints .....". A list of the Assistant Returning Officers appointed under the notification is appointed in the table to Ex. B-24, D and it begins with "Srikakulam Parliamentary Constituency". The names of the constituencies and the officers are mentioned in the order in which they are stated by the Chief Electoral Officer in his revised list appended to Ex. B-23. However, Ex. B-24 specifically mentions only Srikakulam Parliamentary Constituency. At the end of the names in respect of that Constituency, the Under Secretary authenticating E the notification merely says "please see pp 82-157". These are the pages of Ex. X-1 containing the entire revised list. By this device the entire list appended to Ex. B-23 was incorporated into Ex. 24 notification, and the need for typing out all the names in Ex. B-24 was thus avoided. Ex. B-26 dated 30.11.1984 (see pages 177-179 of Ex. X-1) is a notification issued by the Election Commission making certain amendments to F its earlier notification dated 19.11.1984. Serial No. 17 of Ex. B-26 (at page 178 of Ex. X-1) reads:

> "At S. No. 13 against item No. 34-Nizamabad, the entry "13. District Manager, A.P.S.C.S.C. Nizamabad" shall be substituted;"

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This shows that the amendment in respect of 34, Nizamabad Parliamentary Constituency made by Ex. B-26 by substituting entry 17 for the relevant entry in the revised list appended to Ex. B-23 was in affirmation of the incorporation of the entire revised list in Ex. B-24.

H In the light of this evidence, there is no merit in the contention

that the revised list was not approved by the Secretary to the Election Commission and that the notification evidenced by Ex. B-24 did not relate to 34, Nizamabad Parliamentary Constituency. As stated earlier, Ex. B-25 evidences the approval given by the Secretary to the Election Commission to the revised list proposed by the Chief Electoral Officer and the approval was duly notified and communicated by the Under Secretary to the Election Commission to the Chief Electoral Officer, Andhra Pradesh with a request to exhibit the notification on the notice boards of the offices of the concerned District Election Officers and Returning Officers.

In this connection, it may be noticed that Under Secretaries are duly authorised to authenticate all orders, notifications and other instruments on behalf of the Election Commission (see notification No. 226/5/58 of Gazette of India dated 5.4.1958 appended to Volume I of Paper Book—page 170).

In the circumstances, we see no merit in the contention of the election petitioner, the 1st respondent herein, that the concerned officers for the Parliamentary Constituency in question had not been duly appointed by the competent authority and that they were, therefore, not authorised to perform the duties and functions of the Assistant Returning Officers. These Officers were appointed by the Secretary to the Election Commission who is undoubtedly to a competent authority to make such appointments and his order appointing them had been duly notified to the Chief Electoral Officer by communicating the same by an offficer who was competent to authenticate such orders. The notification was directed to be exhibited on the notice boards of the concerned offices. No statutory provision has been brought to our notice requiring formal publication of such notification in an Official Gazette. Publication of the notification by exhibition on the notice boards was, in our view, sufficient notice to all persons concerned.

Accordingly, we hold that the High Court was not justified in setting aside the proceeding of counting of votes and the resultant declaration and in ordering a fresh counting of votes in respect of the election from the Parliamentary Constituency in question. Consequently, we set aside the impugned order of the High Court insofar as it relates to the findings and directions regarding Issue No. 7. The appeal is allowed in the above terms. In the circumstances of this case, we make no order as to costs.

G.N. Appeal allowed.