



IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH  
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRTEENTH DAY OF APRIL  
TWO THOUSAND AND FOUR  
PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY  
and  
THE HON'BLE MR JUSTICE GHULAM MOHAMMED

WRIT PETITION NO : 13388 of 2003

Between:

- 1 Somarapu Satyanarayana  
Municipal Council., Ramagundam., H.No.14., Industrial Area., Fertilizer  
City, Ramagundam., Karimnagar.

..... PETITIONER

AND

- 1 Government of Andhra Pradesh., rep.by its Secretary., Municipal Admn.&  
Urban Development Department., Secretariat Buildings., Hyderabad.
- 2 State Election Commission., rep.by its Secretary., Buddha Bhavan.,  
M.G.Road., Secunderabad.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the  
circumstances stated in the Affidavit filed herein the High Court will be pleased to  
issue a Writ or Order or direction, particularly one in the nature of Writ of  
Mandamus, declaring the Election Notification in Proceedings No.429/SEC-  
F2/2003-2. dated 03-07-2003 issued by the Election Commission, the 2nd  
Respondent, notifying the election program for the conduct of election of  
members of Ramagundam Municipal Council, as illegal and void.

For the Petitioner:MR. E.MANO HAR, SENIOR COUNSEL FOR MR.  
P.KESHAVA RAO, ADVOCATE

For the Respondent No.1: THE ADDL.ADVOCATE GENERAL

For the Respondent No.2: MR. V.V.PRABHAKARA RAO, SC FOR STATE  
ELECTION COMMISSION

The Court Made the Following :

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THE HONOURABLE SRI JUSTICE  
B.SUDERSHAN REDDY  
AND  
THE HONOURABLE SRI JUSTICE  
GHULAM MOHAMMED

WRIT PETITION No. 13388 of 2003.

Order: (Per Hon'ble Sri Justice B.Sudershan Reddy)

The Chairperson of Ramagundam Municipality invoked the extraordinary jurisdiction of this Court under Art. 226 of the Constitution of India challenging the validity of the notification dated 3-7-2003 issued by the State Election Commission notifying the election programme to elect Chairperson of the said Municipality in accordance with Sec. 23(2) of the A.P. Municipalities Act, 1965 (for short 'the Act').

In order to consider the question as to whether the notification issued by the State Election Commission suffers from any legal or constitutional infirmity, the facts, which are few, may be noticed.

That for the first time Ramagundam notified area was constituted as a Municipality in the year 1995 and a Special Officer was appointed as per sub-section (1) of Sec. 7 of the Act to exercise the powers, discharge the duties and perform the functions of the Council and the Commissioner. That as provided for under sub-section (2) of Sec. 7 of the Act necessary arrangements were made to hold the elections to

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the newly constituted Ramagundam Municipality and the elections were accordingly held in the month of June, 1998. The writ petitioner was elected as the Chairperson along with other members of the council. They have assumed the office for the first time on 4<sup>th</sup> August, 1998. Their contention is that, according to sub-section (5) of Sec. 7 of the Act, they are entitled to continue in the office up to March, 2005. The contention is based on the assertion that the term of office of elected members and the Chairperson of a Municipality referred to in sub-section (1) of Sec. 7 of the Act shall be co-terminus with the elected members and the Chairpersons of the Municipalities in the State elected in the last preceding ordinary elections. The last preceding ordinary general elections were held in the month of March, 2000 and those elected bodies shall continue to hold the office for a period of five years i.e., up to March, 2005 and therefore, the term of the office of the elected council and the Chairperson, Ramagundam Municipality also shall come to an end only in March, 2005. The notification issued by the State Election Commission proposing to hold the elections on 30<sup>th</sup> July, 2003, according to the writ petitioner, is ultravires.

There is no dispute whatsoever that the Ramagundam Municipality was constituted in the year 1998. For the first time, the ordinary elections to the said Municipality was

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notified in the month of May, 1998. The day appointed for the first meeting of the Ramagundam Municipal Council was 4-8-1998.

The short question that falls for consideration is whether the notification issued by the State Election Commission suffers from any legal or constitutional infirmity and whether the petitioner is entitled to continue in office up to March, 2005?

Section 20 of the Act provides that the term of office of elected members shall, save as otherwise expressly provided in this Act, be five years from the date appointed by the elected authority for the first meeting of the Council. It is thus clear that the normal term of office of elected members of the Council, which includes the Chairperson, is five years from the date appointed by the authority. However, Sec. 7 is a special provision in the case of newly constituted and re-constituted Council and the same reads as under:

**7. Special Provision in the case of newly constituted and reconstituted councils:-**

- (1) Notwithstanding any other provision in this act, where a municipality is constituted for the first time, the Government may appoint a Special Officer to exercise the powers, discharge, the duties and perform the functions of the council, [its Chairperson, its Wards Committees] [its Committees referred to in Sections 43 and 74], and [the Commissioner].

- (2) The Special Officer shall cause arrangements for election to be made so that [the Chairperson and the elected members] [ - - - ] may come into office on such date as may be specified by the Government by an order made in his behalf:

Provided that the Government may, from time to time, postpone the date ["within a period of one and half years"] so specified if, for any reason, the elections cannot be completed before such date.

[(2A) Notwithstanding anything contained in this Act, every Special Officer appointed under sub-section (1) read with Sub-section (6) to any municipality in the State, shall cause arrangements for election to be made to that municipality so that the elected councilors and the Chairperson thereof may come into office on such date as may be specified by the Government by an order made in this behalf;

- (3) The Special Officer shall exercise the powers, discharge the duties and perform the functions of the council until the elected councilors come into office, of the [Chairperson until a Chairperson is elected, of the Wards Committees until the Wards Committees are constituted], "of the committees referred to in Sections 43 and 74 until committees thereof have been constituted" and of the Commissioner until a Commissioner has been appointed, as the case may be; elected [and comes into office] and of a [Commissioner] has been appointed, as the case may be.

- (4) [ - - - ]

[(5) The term of office of the elected members and the Chairperson of a Municipality referred to in sub-section (1) shall be co-terminus with the elected members and the Chairpersons of the Municipalities in the State elected in the last preceding ordinary elections.]

- (6) The provisions of sub-sections (1) to (5) shall so far as may be, apply to all cases of reconstitution of councils, unless otherwise provided in this Act.

- (7) Where the number of seats on a council is increased by or in consequence of a notification under sub-section (1) of Section 5, the members elected for the additional seats or the members elected in their places at casual vacancies shall hold office until the date on which the members

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elected to the original seats at the ordinary elections immediately preceding will vacate office.

Under the aforesaid provision, the elected members of an ordinary election is entitled to hold for a term of five years from the date of the first meeting of the Municipal Council held after the said ordinary election. That Sec. 7 of the Act makes an exception in case of newly constituted and reconstituted Council and the term of office of the elected members and the Chairperson of a Municipality newly constituted shall be co-terminus with the elected members and the Chairpersons of the Municipalities in the State elected in the last preceding ordinary elections. Part IXA of the Constitution of India deals with the Municipalities and Clause (1) of Article 243-U in clear terms provides that "every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting and no longer." The provisions of the A.P. Municipalities Act, including Sec. 7 of the Act, which being a special provision in the case of newly constituted Municipalities is required to be read in harmony and in a manner so as to be in conformity with the constitutional mandate. The expression "no longer" therein is material in order to interpret the special provision in the Act that the term of the office of elected members and Chairpersons of a newly constituted Municipality shall be co-

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terminus with the elected members in the State elected in the last preceding ordinary elections. Article 243-U (4) of the Constitution of India further provides that "a Municipality constituted upon the dissolution of a Municipality before the expiration of its duration shall continue only for the remainder of the period for which the dissolved Municipality would have continued under clause (1) had it not been so dissolved."

That there is also no dispute whatsoever that the first ordinary election to the Municipalities in the State of Andhra Pradesh were held in the month of March, 1995 and the term of the elected members and the Chairpersons of the Municipalities in the State expired in March, 2000 and accordingly elections were once again held in March, 2000. The "last preceding elections" referred to in sub-section (5) of Sec. 7 of the Act, so far as the elected members and the Chairperson of Ramagundam Municipality would have come to an end in March, 2000 itself. However, in view of the mandate enshrined in Article 243-U of the Constitution of India, the elected members and the Chairperson of Ramagundam Municipality were allowed to continue so as to complete the full term of five years. It is under those circumstances, the State Election Commission did not notify

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Ramagundam Municipality and included in the election programme for holding the elections in March, 2000.

It is rather difficult to discern as to how the petitioners can be allowed to contend that the "last preceding elections" referred to in sub-section (5) of Sec. 7 of the Act were held in March, 2000 and therefore, they are entitled to continue in the office up to March, 2005. The contention, if accepted, results in absurdity. The Constitution specifically mandates that every Municipality, unless sooner dissolved under any law, shall continue for five years from the date appointed for its first meeting. But for the Constitutional mandate enshrined under Article 243-U, the term of the writ petitioner and other elected members ought to have come to an end in March, 2000 itself when the elections in general were held to the Municipalities in the State of Andhra Pradesh, according to sub-section (5) of Sec. 7 of the Act. The contention of the writ petitioner that the term of their office shall be co-terminus with the elected members and the Chairpersons of the Municipalities in the State and shall come to an end only in 2005 since the ordinary elections for the Municipalities were held in 2000, is totally unacceptable. The "last preceding ordinary elections" so far as this newly constituted Ramagundam Municipality is relatable to the elections that were held in 1995 and not the elections that were held in

2000. That by the time the elections to the Municipality in 2000 were held, the petitioner and other elected members were already in office. Their term of office shall be co-terminus with the elected members and the Chairpersons of the Municipalities in the State elected in the elections held in 1995. They were obviously allowed to hold the office in the light of the Constitutional mandate enshrined under Article 243-U of the Constitution of India.

In our considered opinion, sub-section (5) of Sec. 7 of the Act cannot be read as suggested by the writ petitioner and any such interpretation would amount to reading down the Constitutional provision. On the other hand, sub-section (5) of Sec. 7 is required to be read in harmony so as to be in conformity with Article 243-U of the Constitution of India. That any other interpretation may render sub-section (5) of Sec. 7 of the Act *ultra vires* and unconstitutional.

For the aforesaid reasons, we hold that the elected members and the Chairperson of Ramagundam Municipality could not have continued in their respective offices beyond 4-8-2003. We, therefore, do not find any substance in the submission made by the learned counsel for the writ petitioner and ably supported by the learned Addl. Advocate General. The contentions advanced are devoid of any merit.

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The writ petition fails and shall stand accordingly dismissed. No order as to costs.

Sd/- MA.NAYEEM PASHA  
ASSISTANT. REGISTRAR  
*MA*  
SECTION OFFICER

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To

1. The Secretary, Municipal Administration & Urban Development Department, The Govt. of Andhra Pradesh, Secretariat Buildings, Hyderabad
2. The Secretary, The State Election Commission, Buddha Bhavan, M.G. Road, Secunderabad
3. 2 CCs to GP for Municipal Administration, High Court of A.P., Hyderabad (OUT)
4. 2 CCs to the Additional General, High Court of A.P., Hyderabad (OUT)
5. 2 CD Copies
6. One CC to Mr. P.Keshava Rao, Advocate
7. One CC to Mr. S.Niranjan Reddy, Advocate]
8. One CC to Mr. K.Balagopal, Advocate

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*to Mr. P.*

HIGH COURT

Dated: 13-04-2004

ORDER

W.P. NO. 13388 OF 2003

DISMISSING THE WRIT PETITION  
WITHOUT COSTS

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