

**Right To Contest Elections Only A Statutory Right, Not A Fundamental Right:
Andhra Pradesh High Court**

2022 LiveLaw (AP) 133

IN THE HIGH COURT OF ANDHRA PRADESH AT AMRAVATI

CHEEKATI MANAVENDRANATH ROY; J.

Writ Petition No.8696 of 2022; 28-09-2022

C. Vasudeva Rao

versus

State of A.P. rep. by its Prl. Secretary, G.A.D., A.P. Secretariat, Amaravati & Ors.

Counsel for the petitioner: Adv. Tata Singaiah Goud, learned counsel; Counsel for respondents: Govt. Pleader for GAD Sri V. Maheswar Reddy, Adv. B.A. Rao, Adv. M.Sri Vijay.

ORDER

The petitioner has invoked the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India seeking mandamus to declare the action of the 3rd respondent Election Officer in rejecting the nomination of the petitioner on the ground that his name is not tallying with the serial number in the voters list, as illegal, arbitrary and violative of Rule 22(5) of the Andhra Pradesh Cooperative Societies Conduct of Election Rules, 1964, and consequently, sought direction to the 3rd respondent to stay further proceedings pursuant to the issuance of election notification, dated 29.03.2022.

FACTUAL MATRIX:-

2) The petitioner is an employee working as Section Officer in Revenue Department of Andhra Pradesh Secretariat. The 2nd respondent is an Association in the name and style “The Andhra Pradesh Secretariat Section Officers’ Association” represented by its President. The petitioner claims to be the member of the said Association and also a voter on the rolls of the electoral roll of the said Association. There is an Executive Committee for the said Association consisting of certain office bearers. As the term of the office bearers of the said Executive Committee expired long back, the Executive Committee of the Association in its meeting held on 11.03.2022 has taken a decision to conduct election of office bearers for the 2nd respondent Association. The said meeting was presided over by Sri T.Venkata Subbaiah, Assistant Secretary, M.A. & U.D. Department, A.P. Secretariat. The date of the election is fixed on 08.04.2022. The 3rd respondent was appointed as Election Officer to conduct the election.

3) Pursuant to the decision taken in the Executive Committee meeting held on 11.03.2022 to conduct election for a period of three years to elect the office bearers of the Executive Committee of the Association, the 3rd respondent Election Officer issued notification on 29.03.2022 to conduct elections. The election schedule as per the said notification is as follows:

1.	Filing Nominations	30.03.2022 to 31.03.2022 Upto 4:00 PM
2.	Publication of Valid list of Nominations	31.03.2022 at 5:00 PM
3.	Last date of withdrawal of Nominations	01.04.2022 upto 4:00 PM

4.	Publication of final list of Nominations	01.04.2022 at 5:00 PM
5.	Date of Poll	08.04.2022 (10.00 AM to 03:00 PM)
6.	Counting of votes and Declaration of Results	08.04.2022 at 4:00 PM

4) The petitioner has submitted his nomination to contest the election for the post of Secretary of the Executive Committee. The 3rd respondent Election Officer has rejected the nomination of the petitioner on the ground that his name is not tallying with the serial number in the voters list that was published. It is stated that the name of the petitioner is clearly shown in the voters list at Sl.No.336, which was circulated by the 2nd respondent Association. Though the serial number furnished by the petitioner in the nomination form is not tallying with the serial number in the voters list, it is stated that the name of the petitioner is clearly found in the voters list and his identity is also well established. Therefore, it is stated that the rejection of the nomination of the petitioner on the ground that the serial number furnished by him in the nomination form is not tallying with the serial number in the voters list, is not valid under law and the nomination of the petitioner was improperly rejected and it was deliberately rejected and the same is contrary to Rule 22(5) of the Andhra Pradesh Cooperative Societies Conduct of Election Rules, 1964.

5) It is further stated that Sri T. Venkata Subbaiah, who was the former Section Officer, has presided over the Executive Committee meeting held on 11.03.2022, in which the decision to conduct the election was taken. He was promoted as Assistant Secretary, M.A. & U.D. Department, A.P. Secretariat, from the cadre of Section Officer on 24.03.2020 itself and he was relieved from the post of Section Officer on 08.04.2020. Therefore, as he was promoted that he ceased to be the Section Officer and consequently, he also ceased to be the member of the 2nd respondent Association. So, he is not competent to preside over the meeting of the Executive Committee. Further it is stated that the 3rd respondent is appointed as Election Officer pursuant to the decision taken in the said Executive Committee meeting held on 11.03.2022, presided over by the said T. Venkata Subbaiah, who is not competent to preside over the said meeting. Therefore, it is stated that the decision taken to conduct election in the said meeting held on 11.03.2022 and appointing the 3rd respondent as Election Officer in the said meeting is not valid under law.

6) Therefore, on the aforesaid grounds, the petitioner sought to declare the action of the 3rd respondent in rejecting the nomination of the petitioner improperly as not valid under law and consequently, sought to interdict the process of election.

7) Respondent No.1 filed counter-affidavit stating that the 2nd respondent Association was registered under the Societies Registration Act. Therefore, the petitioner has got efficacious remedy of raising dispute before the civil Court relating to the validity of the said election. So, the Writ Petition is not maintainable. Further, it is pleaded that the State Government has no role to play in the elections of any service associations except recognizing the said Association and according permission to conduct elections and to grant permission to any officer to act as an Election Officer. Therefore, prayed for dismissal of the Writ Petition.

8) Respondent No.3 - Election Officer filed counter-affidavit stating that as per the letter, dated 15.03.2022, the Secretary of the 2nd respondent Association has requested him to give consent for being appointed as an Election Officer to conduct the election. Accordingly, he has given consent. Thereafter, as per the letter submitted

by the 2nd respondent Association, dated 17.03.2022, the 1st respondent appointed the 3rd respondent as Election Officer and also appointed a person by name Sri K.V.S. Sai Baba, Assistant Secretary to Government, Agriculture and Cooperation Department, to act as Assistant Election Officer. Therefore, as per the request made by the 2nd respondent Association, as per letter, dated 28.03.2022, requesting to issue notification to conduct the election on 08.04.2022 that the 3rd respondent issued the election notification, on 29.03.2022.

9) It is stated that accordingly, he has initiated election process on 29.03.2022 by issuing the election notification and that the petitioner has submitted his nomination on 30.03.2022 at 1.30 P.M. mentioning in it that his name is at Sl.No.336 in the voters list. The said details furnished by him in the nomination form are not tallying with the final voters list. Therefore, it is stated that the nomination of the petitioner is rejected.

10) It is pleaded that if the petitioner got any grievance in rejecting his nomination, he has to file an arbitration claim before the Registrar under Section 60 of the Andhra Pradesh Cooperative Societies Act and he cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, it is stated that the Writ Petition is misconceived and is liable to be dismissed.

11) The petitioner has filed his reply affidavit stating that as per the law laid down by the Apex Court in the case of **Whirlpool Corporation v. Registrar of Trade Marks**¹ even when an efficacious alternative remedy is available that when the principles of natural justice are violated in the process of conduct of the election that the petitioner can invoke the writ jurisdiction. It is pleaded that the right to contest election is the fundamental right of the petitioner and as the fundamental right of the petitioner is curtailed by improper rejection of his nomination, the present Writ Petition is maintainable.

12) Heard learned counsel for the petitioner Sri Tata Singaiah Goud; and learned Government Pleader for General Administration Department Sri V.Maheswar Reddy, appearing for the 1st respondent; learned counsel for the 2nd respondent Sri B.A. Rao; learned counsel for the 3rd respondent Sri M.Sri Vijay. None appeared for the respondents 4 and 5.

CONTENTIONS:-

13) Learned counsel for the petitioner would submit that admittedly the name of the petitioner is clearly shown in the final voters list. But, only the serial number mentioned in the nomination form is not tallying with the serial number in the voters list and it is only an insignificant discrepancy in the serial number in the voters list. He would submit that when the petitioner is admittedly the member of the 2nd respondent Association and when admittedly he is enrolled as a voter in the final voters list, the 3rd respondent Election Officer ought to have accepted his nomination and he committed a grave error in rejecting the nomination of the petitioner on the trivial ground that the serial number mentioned by him in the nomination form is not tallying with the serial number in the voters list. He would submit that the said rejection of nomination of the petitioner by the 3rd respondent Election Officer amounts to improper rejection of nomination of the petitioner, which has ultimately deprived him of his right to contest the election. So, he would contend that the election process is tainted and vitiated by the said illegal decision taken by the 3rd respondent in improperly rejecting

¹ (1998) 8 SCC 1

the nomination of the petitioner. It is contended that the 3rd respondent Election Officer did not give opportunity of being heard to the petitioner before rejecting his nomination. So, the principles of natural justice are also vitiated.

14) It is then contended that the Officer, who has presided over the Executive Committee meeting held on 11.03.2022 to take a decision to conduct the elections is not the member of the 2nd respondent Association and as such, he is not competent to preside over the said meeting. So, the decision taken in the said meeting to conduct elections for the said Association is not valid under law. He would further contend that the 3rd respondent Election Officer was the former member of the 2nd respondent Association when he was working as Section Officer and as he was promoted as Assistant Secretary that he ceased to be the Section Officer and consequently, he ceased to be the member of the 2nd respondent Association. So, it is contended that he cannot act as an Election Officer for the election held for the 2nd respondent Association. He would submit that the appointment of the 3rd respondent as Election Officer is not valid under law.

15) As regards the maintainability of the Writ Petition is concerned, learned counsel for the petitioner would contend that since the Government has appointed the 3rd respondent as the Election Officer, and as the very validity of the appointment of the Election Officer is being challenged that the Writ Petition is maintainable. He would also contend that right to contest election is the fundamental right of the petitioner and as his nomination was improperly rejected on an erroneous ground that he was deprived of his fundamental right to contest the election. Therefore, when the fundamental right of a person is violated that he can invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. He would further contend that as the the nomination of the petitioner was improperly rejected without hearing him that the principles of natural justice are also violated. Therefore, as per the law laid down by the Apex Court in the case of **Whirlpool Corporation**¹ that even though an efficacious alternative remedy of challenging the election is available, that the petitioner can still invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. Therefore, he would contend that the Writ Petition is maintainable under law.

16) Learned Government Pleader for General Administration Department Sri V.Maheswar Reddy, appearing for the 1st respondent, strenuously contended that the Writ Petition is not maintainable under law. He would contend that the 2nd respondent Association i.e. The Andhra Pradesh Secretariat Section Officers' Association was registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, on 11.08.1971, as per the Certificate of Registration issued to that effect by the Registrar of Societies. Therefore, he would contend that as the 2nd respondent Association is registered under the Societies Registration Act, in 1971, although the earlier Act of 1860 was repealed by A.P. Societies Registration Act, 2001, Section 32(2) clearly mandates that notwithstanding any such repeal that anything done or any action taken under the said Act viz., the Societies Registration Act, 1860 (Central Act 21 of 1860) in its application to the Andhra area of the State of Andhra Pradesh and the Andhra Pradesh (Telangana Area) Public Societies Registration Act, including issuance of certificate or byelaws etc. in exercise of any power conferred by or under the aforesaid Act shall be deemed to have been done or taken in exercise of the powers conferred by or under the present Act i.e. 2001 Act as if the said Act was in force as on the date on which such a thing was done or action taken. Therefore, he

would contend that the registration of the 2nd respondent Association under the earlier Societies Registration Act, 1860 is deemed to have been done under the present A.P. Societies Registration Act, 2001. So, he would contend that when the 2nd respondent Association was registered under the Societies Registration Act, the petitioner has to challenge the validity of the said election even on the ground of improper rejection of nomination of the petitioner only by way of filing an appropriate application to that effect in the concerned District Court in terms of Section 23 of the A.P. Societies Registration Act, 2001. So, he would contend that contravening the said procedure, that the petitioner cannot invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India.

17) He would then contend that the State Government has absolutely no role to play in the affairs of the 2nd respondent Association or in the matter of conduct of the election of the office bearers of the said Association. He would submit that it is only on the request made on behalf of the 2nd respondent Association that the Government has only permitted the 3rd respondent to act as an Election Officer for the said elections and it has nothing to do with the sovereign functions of the 1st respondent State. Therefore, he would contend that no public law remedy is involved in the *lis* to invoke the writ jurisdiction of this Court under Article 226 of the Constitution of India. He would also submit that even on the ground that the nomination of the petitioner was improperly rejected without hearing him cannot be a valid legal ground to invoke the writ jurisdiction of this Court and to maintain this Writ Petition. He would submit that the Writ Petition is clearly misconceived and it is not maintainable under law. He states that the remedy of the petitioner is only by way of filing an application under Section 23 of the A.P. Societies Registration Act, 2001. In support of his contention, he relied on the judgment of the erstwhile High Court of Andhra Pradesh rendered in **C.Babu Rao v. The District Registrar, Registration of Societies, Hyderabad**² and the judgment of this Court rendered in the case of **Yelamanchili Satya Krishna v. The State of Andhra Pradesh**³ and the judgment of the Apex Court rendered in the case of **Kulchinder Singh v. Hardayal Singh Brar**⁴.

18) Learned counsel for the 2nd respondent – Association would contend that when once the election process commenced by way of issuing notification that the Courts will not usually interfere with the election process and interdict the further process of the election even on the ground of improper rejection of nomination or on the ground of violation of principles of natural justice in rejecting the nomination without hearing the aggrieved person. He would submit that the only remedy of the aggrieved person is by way of challenging the validity of the said election after the election process is completed and results are announced by way of filing an Election Petition in the concerned District Court/Tribunal. In support of the said contention, he relied on the judgment of the Apex Court rendered in the case of **Shaji K Joseph v. V.Viswanath**⁵. Therefore, he would contend that the Writ Petition is not maintainable and thereby prayed for dismissal of the Writ Petition.

19) Learned counsel for the 3rd respondent Election Officer, while adopting the arguments of the learned Government Pleader for General Administration Department, would submit that the Writ Petition is not maintainable and the remedy of

² Order dated 03.11.2009 passed in W.P.No.23374 of 2009 (AP HC)

³ Order dated 21.04.2022 passed in W.P.No.3203 of 2022 (AP HC)

⁴ AIR 1976 SC 2216 = (1976) 3 SCC 828

⁵ (2016) 4 SCC 429

the Writ Petitioner is only by way of filing an application under Section 23 of the A.P. Societies Registration Act, 2001.

DECISION OF THE COURT:-

20) Although the Writ Petition is founded on the premise that the election of the 2nd respondent Association is governed by the A.P. Cooperative Societies Registration Act, 1964, as per the pleadings set out in the Writ Petition, the material placed on record and the unequivocal admission made on behalf of the petitioner by his counsel during the course of hearing the Writ Petition, makes it manifest and abundantly clear that the 2nd respondent Association is not a society registered under the A.P. Cooperative Societies Registration Act, 1964. Therefore, the said Act and the Rules made thereunder has absolutely no application to the present *lis*. The 2nd respondent Association is not governed by the said enactment and the Rules made thereunder.

21) Prior to the bifurcation of the erstwhile State of Andhra Pradesh, with effect from 02.06.2014, the capital city of the erstwhile State of Andhra Pradesh was Hyderabad. The Secretariat of the Government of Andhra Pradesh was in Hyderabad. The Section Officers working in the Secretariat of the erstwhile State of Andhra Pradesh formed into an Association called as “The Andhra Pradesh Secretariat Section Officers’ Association”. It was registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act. Earlier there was the Societies Registration Act, 1860 (Central Act 21 of 1860) in its application to the Andhra Area of the State of Andhra Pradesh and the Andhra Pradesh (Telangana Area) Public Societies Registration Act. Since, the Secretariat of the erstwhile State of Andhra Pradesh was in Hyderabad in Telangana Area, the 2nd respondent Association was registered under the Andhra Pradesh (Telangana Area) Public Societies Registration Act. The copy of the Certificate of Registration bearing No.414 of 1971, which is now produced by the learned Government Pleader for General Administration Department, along with the bye-laws of the said Association, bears ample testimony of the fact that the 2nd respondent Association was registered under the aforesaid Societies Registration Act. Learned counsel for the petitioner would also fairly concede that the 2nd respondent Association was originally registered in the year 1971 under the aforesaid Societies Registration Act. Therefore, the fact that the 2nd respondent Association was registered under the Societies Registration Act is now beyond question and it is also an admitted fact. So, the 2nd respondent Association was originally established under the Societies Registration Act, 1860, and it is governed by the said Act. The said Societies Registration Act, 1860, was subsequently repealed by the Andhra Pradesh Societies Registration Act, 2001. Section 32 of the A.P. Societies Registration Act, 2001, deals with repeals and savings. It reads thus:

“32. Repeal and savings - (1) The Societies Registration Act, 1860 (Central Act 21 of 1860), in its application to the Andhra area of the State of Andhra Pradesh and the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350F (Act 1 of 1350F) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts (including any order, rule, form regulation, certificate or bye-laws) in the exercise of any power conferred by or under the said Acts shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the date on which such a thing was done or action taken.”

22) Clause (2) of Section 32 starts with non-obstante clause. It makes it manifest and abundantly clear that notwithstanding the repeal of the Societies Registration Act,

1860, anything done or any action taken under the said Acts, including issuance of certificate or bye-laws, in the exercise of any power conferred by or under the said Act, which was repealed, shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act i.e. A.P. Societies Registration Act, 2001, as if this Act was in force on the date on which such a thing was done or action taken. Therefore, by virtue of the said saving clause, the 2nd respondent Association is now deemed to have been registered under the present A.P. Societies Registration Act, 2001 and it is now governed by the said enactment.

23) Now, the question is whether the petitioner can invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India to challenge the decision of the 3rd respondent Election Officer in rejecting the nomination of the petitioner on the ground of improper rejection of the said nomination and to stall the further process of election or whether he has to file an application under Section 23 of the A.P. Societies Registration Act in the concerned District Court i.e. the Principal Civil Court of original jurisdiction.

24) As the matter pertains to an election dispute relating to the election of office bearers of the Executive Committee of the 2nd respondent Association, the dispute squarely falls within the ambit of Section 23 of the A.P. Societies Registration Act, 2001. Section 23 reads thus:

“23. Dispute regarding management - In the event of any dispute arising among the Committee or the members of the society, in respect of any matter relating to the affairs of the society, any member of the society may proceed with the dispute under the provisions of the Arbitration and Conciliation Act, 1996 (Central Act 26 of 1996), or may file an application in the District Court concerned and the said Court shall after necessary inquiry pass such order as it may deem fit.”

25) A careful reading of the aforesaid Section makes it manifest that any dispute arising among the Committee or the members of the Society, in respect of any matter relating to the affairs of the society, any member of the said society may either proceed with the dispute under the provisions of the Arbitration and Conciliation Act, 1996, or can file an application in the District Court concerned and the said Court, after necessary inquiry, may pass appropriate orders as it may deems fit. The expression “any dispute” is wide enough to cover even the disputes relating to election of the members of the committee. So, any dispute arising among the committee, *albeit*, it be a dispute pertaining to the election of office bearers of the Executive Committee, squarely falls within the expression “any matter relating to the affairs of the society” as has been used in Section 23 of the 2001 Act. The expressions “any dispute” and “any matter relating to the affairs of the society” are too wide enough even to cover the election dispute relating to the election of the office bearers of the Executive Committee or any matter relating to the affairs of the society. Even an election of office bearers of the Executive Committee relates to the affairs of the Society. Therefore, when the petitioner being the member of the said 2nd respondent Association is aggrieved by the decision of the Election Officer, in rejecting his nomination, he has to challenge the said decision or election only by way of making an application under Section 23 of the A.P. Societies Registration Act, 2001, before the District Court concerned. Section 2(d) of the 2001 Act defines ‘Court’ which means in the cities of Hyderabad and Secunderabad, the City Civil Court, and elsewhere, the Principal Civil Court of original jurisdiction.

26) Therefore, as the dispute is arising out of the members of the committee and as it is touching the affairs of the society in the matter of election of office bearers of the 2nd respondent Association, it is purely the dispute *inter se* the members of the 2nd respondent Association. So, a private law remedy is involved in the *lis* and no public law remedy is involved in the *lis*. So, the petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India and seek a writ of mandamus as prayed for in this Writ Petition. Simply because the State Government has accorded permission to one of the employees of the Secretariat, to act as Election Officer on the request made by the 2nd respondent Association, it does not involve discharge of any sovereign function or a public function or a statutory duty to invoke the writ jurisdiction. Even the validity of the appointment of the Election Officer to conduct the election of office bearers of the Association, can also be challenged by way of filing an application before the concerned District Court. Therefore, the writ is not legally sustainable and maintainable in the given facts and circumstances of the case.

27) In this context, it is apt to consider in the present facts of the case, the ratio laid down by the Apex Court in the case of **Kulchinder Singh**⁴. The Apex Court while dealing with a Writ Petition arising out of a civil litigation held as follows:

“We fail to see how a supplier of chalk to a government school or cheese to a government hospital can ask for a constitutional remedy under Article 226 in the event of a breach of a contract, bypassing the normal channels of civil litigation. We are not convinced that a mere contract agreeing to a quota of promotions can be exalted into a service rule or statutory duty. What is immediately relevant is not whether the respondent is State or public authority but whether what is enforced is a statutory duty or sovereign obligation or public function of a public authority. Private law may involve a State, a statutory body, or a public body in contractual or tortious actions. But they cannot be siphoned off into the writ jurisdiction.”

Although the facts of the above referred case are different, the principle of law laid down in the aforesaid judgment applies to the present facts of the case.

28) Be that as it may, even otherwise, when once the election process commenced by way of issuing notification for the conduct of election, even to challenge the decision of the Election Officer in improperly rejecting the nomination, writ is not the appropriate remedy and the said decision has to be challenged only by way of filing an Election Petition after the result of the election is declared and challenge the validity of the said election.

29) The legal position in this regard is also well settled. Way back in the year 1952 itself, the Apex Court in the case of **N.P. Ponnuswami v. Returning Officer, Namakkal Constituency, Namakkal, Salem District**⁶ held that once the election process starts, it would not be proper for the Courts to interfere with the election process. Similar view was taken by the Supreme Court in the case of **Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra**⁷. Following the law laid down in the aforesaid judgments, the Supreme Court again in the case of **Shaji K Joseph**⁵ held at para.14 as follows:

“14. In our opinion, the High Court was not right in interfering with the process of election especially when the process of election had started upon publication of the election program

⁶ AIR 1952 SC 64

⁷ (2001) 8 SCC 509

on 27th January, 2011 and more particularly when an alternative statutory remedy was available to respondent No.1 by way of referring the dispute to the Central Government as per the provisions of Section 5 of the Act read with Regulation 20 of the Regulations. So far as the issue with regard to eligibility of respondent No.1 for contesting the election is concerned, though *prima facie* it appears that respondent No.1 could contest the election, we do not propose to go into the said issue because, in our opinion, as per the settled law, the High Court should not have interfered with the election after the process of election had commenced.”

30) As per the facts of the above referred judgment also, election was held for the post of member to the Dental Council of India. The nomination of the petitioner in the said case was also rejected by the Returning Officer. When the aggrieved person filed Writ Petition challenging the said decision of the Returning Officer in not accepting the nomination of the petitioner therein, the Apex Court held that once the election process had commenced that the Court should not interfere with the election process. The Supreme Court clearly held that as per the settled position of law that whenever the process of election starts, normally, Courts should not interfere with the process of election for the simple reason that if the process of election is interfered with by the Courts, possibly no election would be completed without Court’s order. Very often, for frivolous reasons, candidates or others approach the Courts and by virtue of interim orders passed by the Courts, the election is delayed or cancelled and in such a case the basic purpose of having election and getting an elected body to run the administration is frustrated. For the aforesaid reasons, the Supreme Court has taken a view that all disputes with regard to election should be dealt with only after completion of the election.

31) In a way, the Supreme Court held that “so far as the issue with regard to eligibility of respondent No.1 for contesting the election is concerned, though *prima facie* it appears that respondent No.1 could contest the election, we do not propose to go into the said issue because, in our opinion, as per the settled law, the High Court should not have interfered with the election after the process of election had commenced.”

32) The ratio laid down in the above referred judgments of the Supreme Court squarely applies to the present facts of the case. In the instant case also, *prima facie*, it appears that the petitioner is entitled to contest the election as his name is clearly found in the final voters list. Only on a very trivial ground that the serial number mentioned by him in the nomination form against his name is not tallying with the serial number in the voters list, his nomination appears to have been rejected eventhough his name is clearly found in the final voters list. However, in view of the law laid down by the Apex Court in the above referred judgments, the High Court should not interfere in the process of election and the remedy of the petitioner is only by way of challenging the said decision of the Election Officer after completion of election by filing an appropriate application to that effect in the appropriate forum.

33) Even the erstwhile High Court of Andhra Pradesh, in the case of **All India SC and ST Railway Employees Association v. E. Venkateshwarlu**⁸ held that person, who intends to challenge the election held for a registered society, has to do so by filing an application under Section 23 of the A.P. Societies Registration Act, 2001, and the Writ Petition is not maintainable.

⁸ 2003 (2) ALD 384 = 2003 (3) ALT 674

34) That was a case where election was held for All India SC and ST Railway Employees Association. Writ Petition was filed seeking mandamus to order for re-election according to bye-laws after cancelling the elections held on 10.01.2003 and also sought direction to respondent No.7 therein not to recognise the elected members and office bearers and to conduct fresh elections according to bye-laws.

35) The Court held that the petitioner Association is registered under the Societies Registration Act, 1860, which stood repealed by Section 32 of the A.P. Societies Registration Act, 2001 and Section 32(2) of the 2001 Act lays down that notwithstanding the repeal of 1860 Act, anything done or action taken under that Act shall be deemed to have been done or taken in exercise of the powers conferred by or under the 2001 Act, as if the said Act was in force on the date on which the thing was done or action was taken. Therefore, the petitioner-Association should be deemed to have been registered under the A.P. Societies Registration Act, 2001. It is held that if the election held for that Society is not in accordance with its bye-laws, person aggrieved by those irregularities has to file a petition, questioning the elections held to its Governing Body. So, any member of the Society, who is aggrieved in respect of the election of the Association that was conducted, has a right to move the District Court concerned under Section 23 of the 2001 Act, which is an effective remedy provided by the Statute. Further held that when an effective alternative remedy is available, the jurisdiction of this Court under Article 226 of the Constitution of India cannot be invoked. The ratio laid down in the aforesaid judgment also squarely applies to the present facts of the case.

36) Thus, from the law expounded in the above cited judgments, the legal position is crystal clear that a member of an Association, which is registered under the A.P. Societies Registration Act, 2001, who is aggrieved by the process of election conducted to elect the members of the Executive Committee, cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India and he has to only file an application under Section 23 of the 2001 Act in the District Court concerned. The legal position is also made clear that when once the election notification is issued and election process commenced, the Courts should not interfere in the process of election even in the cases where blatant illegality was committed by the Election Officer/ Returning Officer in improperly rejecting or accepting the nomination papers even without hearing the aggrieved person. The only remedy available to the aggrieved person is to challenge the validity of the said election after election process is completed and result of the election is declared.

37) The judgment relied on by the learned counsel for the petitioner in **Whirlpool Corporation** case¹ is not applicable to the present facts of the case. That was not a case relating to election dispute. Further, it was held in it that in view of the self-imposed restrictions by the High Court that when an effective and efficacious remedy is available that the High Court would not normally exercise its jurisdiction and the said bar will not operate atleast in three contingencies, viz., (i) where the Writ Petition has been filed for the enforcement of any of the fundamental rights; or (ii) where there has been a violation of the principle of natural justice; or (iii) where the order or proceedings are wholly without jurisdiction or vires of an Act is challenged.

38) Relying on the ratio laid down in the above judgment, learned counsel for the petitioner would contend that right to contest election is a fundamental right and as the said fundamental right of the petitioner, which is vested in him, is denied by

improper rejection of his nomination form, that to enforce the said fundamental right that the present Writ Petition is maintainable.

39) The said contention has absolutely no merit. Right to contest election is not a fundamental right. It is only a statutory right. Therefore, it cannot be said that the fundamental right of the petitioner is violated and seeking enforcement of the same that the present Writ Petition is maintainable.

40) In the case of **Jyoti Basu v. Debi Ghosal**⁹, the Apex Court after considering the earlier precedents held at para.8 of the judgment as follows:

“8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation.”

41) Relying on the said judgment, again, in the case of **Vishwanath Pratap Singh v. Election Commission of India**, very recently, the Supreme Court in the judgment rendered in Special Leave to Appeal (C) No.13013/2022, on 09.09.2022, held that the right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute.

42) Therefore, the contention of the learned counsel for the petitioner that the right to contest election is a fundamental right and that in view of the law laid down in the **Whirlpool Corporation** case¹, relied on by the petitioner, that the Writ Petition is maintainable is legally unsustainable and cannot be countenanced.

43) Therefore, the Writ Petition questioning the decision of the 3rd respondent Election Officer in rejecting the nomination of the petitioner and seeking to interdict the process of election is not maintainable under law. The petitioner has to seek redressal of his grievance by way of filing an application under Section 23 of the A.P. Societies Registration Act, 2001, in the concerned District Court.

44) Resultantly, the Writ Petition is dismissed as not maintainable.

45) However, the writ petitioner is at liberty to file an application under Section 23 of the A.P. Societies Registration Act, 2001, in the concerned District Court after the result of the election is declared. As the petitioner was deprived of his right to contest the election on account of rejection of his nomination form, which in the view of the writ petitioner is improper rejection, if found to be true, on fact, would materially vitiate the result of the election, in the event of the writ petitioner filing any such application under Section 23 of the A.P. Societies Registration Act, challenging the legal validity of election, the concerned District Court shall expeditiously dispose of the said application, within six months from the date of filing the said application, without fail. Interim order granted earlier stands vacated. No costs

The miscellaneous petitions pending, if any, shall also stand closed.

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⁹ (1982) 1 SCC 691