

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

THURSDAY, THE TWENTY NINTH DAY OF APRIL
TWO THOUSAND AND TWENTY ONE

:PRESENT:
THE HON'BLE THE CHIEF JUSTICE HIMA KOHLI
AND
THE HON'BLE SRI JUSTICE B.VIJAYSEN REDDY

WP(PIL) NOS: 56 AND 58 OF 2020

WP(PIL). No. 56 of 2020

Between:

Mr. R. Sameer Ahmed, Advocate, 1st Floor, 10-3-311/2/A/3/A, Castle Hills Road No.1, Behind
NMDC, Masab Tank, Hyderabad 500 057

...Petitioner

AND

1. State of Telangana, Rep. by its Chief Secretary, Secretariat, Hyderabad.
2. State of Telangana, Represented by its Principal Secretary, Medical and Health Department, Secretariat, Hyderabad.
3. State of Telangana, Represented by its Principal Secretary, Municipal Administration and Urban Development, Secretariat, Hyderabad.
4. The Commissioner, Greater Hyderabad Municipal Corporation, Tank Bund Road, Hyderabad.
5. State of Telangana, Represented by its Principal Secretary, Home Department, Secretariat, Hyderabad
6. The Director General of Police, State of Telangana, Lakdikapool, Hyderabad.
7. The Commissioner of Police, Cyberabad Commissionerate at Hyderabad.
8. The Commissioner of Police, Hyderabad city, Basheerbagh, Hyderabad.
9. State of Telangana, Represented by its Principal Secretary, Revenue Department, Secretariat, Hyderabad.

...Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Letter dated 27.03.2020 sent by the petitioner herein through email, the High Court may be pleased to issue an appropriate Writ, Order or Orders more particularly, one in the nature of a Writ of Mandamus to call for remarks from the Respondents herein relating to and in connection with "protecting the lives of the Doctors and their assisting staff in putting their life at risk by not providing complete Personal Protection Equipment i.e., N-95 Respirator Mask, Face shield, goggles, Corvell/ Gowns, Shoe covers, Head covers etc., while testing reasonable suspects and patients of Epidemic/Pandemic COVID-19", since the Government of Telangana has directed the Medical Practitioners/ Civil Assistant Surgeons serving in all Primary Health Centres (including Urban Primary Health Centres) to physically visit the residence of each suspect, examine and conduct counseling to reasonable suspects and the vulnerable family members having the recent history of traveling from abroad and that the said Officers are directed to continue the same activity on daily basis till the completion of 14 days of incubation period, as the State is duty bound to protect the lives of the Doctors and their assisting staff who are putting their life at risk without being provided complete Personal Protection Equipment i.e., N-95 Respirator Mask, Face shield, goggles, Corvell/Gowns, Shoe covers, Head covers etc., which amounts to sheer infringement of their Right to life enshrined under Article 21 of the Constitution of India

This petition coming on for hearing, upon perusing the Letter dated 27.03.2020 sent by the petitioner herein through email and earlier order dated 18.03.2021, 06.04.2021, 08.04.2021, 19.4.2021, 23.04.2021, 27.04.2021 made herein and upon hearing the arguments of Advocate General on behalf of Respondent Nos. 1 to 3 and 5 to 9 and of Sri N. Ashok Kumar, Standing Counsel for Respondent No. 4,

WP(PIL) NO: 58 OF 2020

Between:

Sri. P. Thirumala Rao, Advocate Enrolment No. (AP/423/2000) Advocate Code - 8365

...Petitioner

AND

1. Union of India, rep. by its Secretary Department of Medical and Health, Central Secretariat, New Delhi.
2. Indian Council of Medical Research (ICMR), COVID-2019, New Delhi.
3. State of Telangana, Rep. by its Chief Secretary, Secretariat, Hyderabad.
4. State of Telangana, Represented by its Principal Secretary, Medical and Health Department, Secretariat, Hyderabad.
5. The Director of Medical and Health, Government of Tetangana, Koti, Hyderabad.

...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 an appropriate Writ, Order or Orders more particularly, one in the nature of a Writ of Mandamus to call for remarks from the Respondents herein relating to and in connection with Government imposing charges For COVID-2019 test on patients in this lockdown circumstances by private laboratories upto Rs.4,500/- is grossly arbitrary and discriminatory which would Frustrate and defeat the very purpose and objective of the Government and the Governments (both Central and State) ought to assure and undertake the Full responsibility of providing to the citizens, the treatment For COVID-19 CORONA VIRUS Free of cost at private medical laboratories and private medical establishments and to call for a status report on the diagnostic tests undertaken and treatment of COVID-19 patients and especially on the hygiene conditions in Hospitals which are treating COVID-19 patients, from the concerned authorities and to direct the Union of India and the State of Telangana to provide for diagnosis and treatment to patients suffering from CORONA VIRUS, Free of cost at private medical laboratories and private medical establishments

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and earlier order dated 18.03.2021, 06.04.2021, 08.04.2021, 19.04.2021 & 23.04.2021 & 27.04.2021 made herein and upon hearing the arguments of Sri P. Thirumala Rao, petitioner Party in person and of Sri Namavarapu Rajeshwar Rao, Assistant Solicitor General on behalf of Respondent No. 1 & 2 and of Advocate General on behalf of Respondent Nos. 3 to 5

Common Order:

1. This order is in continuation of the order passed on 27.04.2021 on which date, this court had directed the State Election Commission to file an affidavit furnishing *inter alia* the plan of action for managing crowding of voters at polling booths on 30.04.2021, at the premises where the counting shall take place and on the date of declaration of the results. Learned Advocate General was also requested to file an affidavit of the State on the above aspect.

2. Mr. G. Vidya Sagar, learned Senior Advocate appearing for the Telangana State Election Commission is present along with Mr. M. Ashok Kumar, Secretary, Telangana State Election Commission.

3. Affidavits have been filed by the Secretary, Telangana State Election Commission, Commissioner and Director of Municipal Administration Department, Government of Telangana, Director General of Police, State of Telangana and Secretary to Government, Health, Medical and Family Welfare Department, Government of Telangana.

4. In its affidavit, the State Election Commission (SEC) has submitted that it is empowered under Article 243-K and 243-ZA of the Constitution of India read with Section 195 of the Telangana Municipalities Act, 2019 (for short, the Act), to issue Notification and Schedule for general elections and elections for casual vacancies in Municipalities and Municipal Corporations in the State. The elections to ordinary vacancies are to commence three months before the occurrence of said vacancies.

5. In the instant case, the elections that are to be conducted on 30.04.2021 are casual vacancies of Council Members of Greater Warangal Municipal Corporation (GWMC), Khammam Municipal Corporation, Atchampet Municipality that came to an end on 14.03.2021 and the term of elected Municipal Councils of Siddipet Municipality came to an end on 15.04.2021. In addition to the above, the State Election Commission is empowered to fill up casual vacancies under Section 15 of the Act that are required to be filled up within four months from the date of occurrence of such vacancies. The elections to the casual vacancies in urban local bodies are in eight Districts of the State and the elections in the Municipalities and Municipal Corporations are in seven Districts.

6. It has been stated that the SEC has issued Notification dated 15.04.2021 for polling to take place in two Municipal Corporations and five Municipalities. The election schedule is placed in a tabulated form in para 4 of the affidavit, which

shows that the election notice to be issued by the Returning Officer was on 16.04.2021. The date of polling has been fixed as 30.04.2021. The date of counting of the votes is 03.05.2021. The said schedule reveals that candidates were given one whole week to campaign in the elections from 22.04.2021 to 27.04.2021.

7. We have enquired from Mr. G. Vidya Sagar, learned Senior Advocate appearing for SEC as to the date on which the election process had been set into motion. He states on instructions that the said process was set into motion in the second half of December, 2020. We have next enquired that keeping in mind the fact that by the end of February, 2021, the second wave of COVID-19 infection was most imminent, did the SEC review its earlier decision of going ahead with the election process. Learned Senior Advocate states that though no steps were taken in the month of February or March 2021 but, before declaring the election schedule, the SEC had addressed a letter dated 09.04.2021 to the State Government for seeking its view with regard to proceeding with the election process, in terms of Section 195 of the Act. For ready reference, the relevant part of the aforesaid provision is extracted below:-

“195. Election Notification:- (1) The State Election Commission shall issue the Notification and Schedule for general election and elections for casual vacancies in all Municipalities and Municipal Corporations. The Schedule and the dates on which elections will be conducted, shall be decided, by the State Election Commission in concurrence with the State Government, which has to consider matters pertaining to law and order situation, internal security, security personnel, central armed police forces and the logistics of their deployment, availability of staff for election related duties, availability and procurement of election related material and premises for polling and counting, conduct of

elections to other legislative and statutory bodies, natural calamities and seasonal conditions including drinking water situation and agricultural season, major fairs and festivals, education calendar and examinations in schools and colleges, likely onset of any epidemic diseases, operations relating to collection of vital statistics like census or any other enumeration, and matters involving public interest and any other administrative exigencies:

Provided that in cases of multiple phases, the schedule of each phase shall have a gap of not more than five days from each other.

(emphasis supplied)”

8. As can be seen from the provisions of Section 195 of the Act quoted above, the SEC is required to examine several aspects, including the on set of any epidemic disease before setting down the schedule of the elections.

9. In response to the aforesaid letter dated 09.04.2021, the State Government had replied on 12.04.2021 stating *inter alia* that it was giving its concurrence for conducting the elections after examining and taking into consideration all relevant factors. We may note that by the middle of April 2021, the situation in the State had deteriorated and there were 24,000 active COVID-19 infection cases. However, both the SEC and the State took a decision to proceed full steam. Even on 19.04.2021, the SEC addressed a letter to the State Government again, seeking their comments in the light of the order dated 19.04.2021 passed in W.P.No.10386 of 2021, to which the State Government had responded vide letter dated 21.04.2021 again stating that there was no reason that would warrant a change regarding planning of the elections. It is noteworthy that one day before that, the State Government had issued G.O.Ms.No.50, dated 20.04.2021, mandating COVID-19 related instructions and imposing a night curfew between 9.00 P.M to 5.00 A.M till 30th April, 2021 in view of the steep rise of the cases. Instead of

taking a decision on its own as to whether the elections ought to be postponed in the critical situation where the public is waging a war against COVID-19 infection, cryptic letters have been addressed by the SEC to the State Government asking for their concurrence to go ahead with the elections. It is also ironical that only some years ago, elections to the post of Mayor in Hyderabad were not conducted by the SEC for a year and a half when there was no impediment for conducting the elections to the said post. ✓

10. On information gathered from learned Senior Counsel for the SEC, it transpires that 7695 Government staff (teachers and other Government employees) have been roped in for the smooth conduct of the elections and 2557 police personnel have been deputed on election duty. This is in the face of a situation where thousands of people are getting infected with COVID-19 and the polling booths can turn into hot spots and become super spreaders. The plea taken that the police personnel being frontline warriors, have received both doses of the vaccine, is hardly of any consequence when they still remain susceptible to the infection and if infected, can pass on the infection to persons in their contact. The said explanation doesn't even hold true for the rest of the Government staff deputed on election duty.

11. The helpless and hapless condition of over 10,000 Government staff and police personnel reminds this court of the poem penned by the British poet, Lord Tennyson titled, "Charge of the Light Brigade" which narrates the story of 600 soldiers who had obeyed the command to charge the enemy forces and had to ride on horseback without any artillery into the "Valley of death". Paying a tribute to the soldiers, the poet had written:-

"Forward, the Light Brigade!"

Was there a man dismay'd?

Not tho' the soldier knew

*Some one had blunder'd:
Theirs not to make reply,
Theirs not to reason why,
Theirs but to do and die:
Into the valley of Death
Rode the six hundred."*

12. The predicament of the Government employees and police personnel called upon to report for election duty, is no better. Even if they may be mortally scared of catching the infection, they do not have any say in the matter as any non-compliance on their part will invite disciplinary action. We place on record our deep dissatisfaction with the manner in which the SEC has decided to put to risk the life and health of the citizens of the State and proceed with the election process which could have easily been put on hold till the intensity of the infection would have abated.

13. Coming back to the affidavit of the SEC, the steps and the broad guidelines required to be followed for conducting the elections to the local bodies have been set out in para 5. It has also been stated that vide letter dated 22.04.2021 the SEC has curtailed the timeline of the campaign up to 7.00 p.m and extended the silence period from 48 hours to 72 hours. The arrangement made at the polling stations have been detailed in para 10. It has been stated in para 13 that vide letter dated 27.04.2021, the SEC has notified more stringent provisions to be followed during the process of counting, in addition to existing broad guidelines which includes prohibiting any victory procession after the counting of votes on 03.05.2021 and permitting only two persons to accompany the winning candidates or his/her authorized representative to receive the certificate of election from the Returning Officer concerned.

14. The affidavit filed by the Commissioner and Director of Municipal Administration Department, Government of Telangana, is only a reiteration of what has been stated by the State Election Commission in its affidavit and therefore, we do not propose to repeat the contents thereof.

15. The Director General of Police has filed a Report referring to the guidelines issued by the State Election Commission and the manner in which the police personnel are going to be deployed on the polling day, during the counting and on the date of announcement of results.

16. The affidavit of the Secretary to Government, Health, Medical and Family Welfare Department, Government of Telangana, states that the Department has issued a Memo dated 15.04.2021 designating the Director of Public Health and Family Welfare as Nodal Health Officer at State level to oversee COVID-19 related arrangements and preventive measures during entire electoral process; that Collectors & District Magistrates in the State are requested to appoint Nodal Health Officers for District level to oversee the said arrangements.

17. In other words, the entire man power of the State machinery has been diverted to managing and streamlining the election process instead of focusing on emergent situation of COVID-19 infection that requires all hands on the deck.

18. The State Election Commission and the State are directed to ensure that the remaining election process from 30.04.2021 to 03.05.2021, is conducted under strict vigilance and the COVID-19 protocol is enforced without further jeopardizing the health of the voters and those on election duty.

19. The State Government has also stated that restricted measures and night curfew are in force till 30.04.2021 and the Government will review the situation on the same day and take further measures, as may be warranted. Learned Advocate

General requests that the matter may be taken up tomorrow to enable him to convey the decision taken in that regard.

20. At the request of learned Advocate General, list on 30.04.2021, for reporting instructions on the aforesaid aspect.

21. For all other issues referred to in our earlier order, list on 05.05.2021.

//TRUE COPY//

SD/- I.NAGA LAKSHMI
ASSISTANT REGISTRAR

SECTION OFFICER

To

1. The Chief Secretary, State of Telangana, Secretariat, Hyderabad.
2. The Principal Secretary, Medical and Health Department, State of Telangana, Secretariat, Hyderabad.
3. The Principal Secretary, Municipal Administration and Urban Development, State of Telangana, Secretariat, Hyderabad.
4. The Commissioner, Greater Hyderabad Municipal Corporation, Tank Bund Road, Hyderabad.
5. The Principal Secretary, Home Department, State of Telangana, Secretariat, Hyderabad
6. The Director General of Police, State of Telangana, Lakdikapool, Hyderabad.
7. The Commissioner of Police, Cyberabad Commissionerate at Hyderabad.
8. The Commissioner of Police, Hyderabad city, Basheerbagh, Hyderabad.
9. The Principal Secretary, Revenue Department, State of Telangana, Secretariat, Hyderabad.(Addressees 1 to 9 by SPL. MESSENGER)
10. The Secretary Department or Medical and Health, Union of India, Central Secretariat, New Delhi. (BY RPAD)
11. Indian Council of Medical Research (ICMR), COVID-2019, New Delhi.(BY RPAD)
12. The Director of Medical and Health, Government of Telangana, Koti, Hyderabad.(By SPL. Messenger)
13. The State Election Commissioner, State Election Commission, Budha Bhavan, Hyderabad. **(By Special Messenger)**
14. Mr.G.Vidya Sagar, learned Senior Advocate for State Election Commission. **(By Special Messenger)**
15. One CC to Sri P. Thirumala Rao, Party in person, (OPUC)
16. Two CCs to the Advocate General, High Court for the State of Telangana (OUT) **(By Special Messenger)**
17. Two CCs to the Mr.N.Rajeshwar Rao, Assistant Solicitor General, High Court for the State of Telangana, at Hyderabad (OUT)
18. Two spare copies

HIGH COURT

HCJ
&
BVR,J

DATED: 29.04.2021

NOTE: LIST ON 30.04.2021
For all other issues referred to is
Earlier order, list on 05.05.2021

ORDER

WP(PIL) NOS: 56 and 58 OF 2020

DIRECTION



A large, handwritten signature or scribble in black ink, located below the stamp. It consists of a single, continuous, wavy line that starts on the left, curves upwards, then downwards, and finally extends to the right.