

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

CRP No.2816 of 2015

&

CRP No.3174 of 2015

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Between:

Bollaboina Mallesh

... Petitioner.

And

Bollaboina Ailaiah Yadav and others.

...Respondents.

JUDGMENT PRONOUNCED ON : 12th October, 2015

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HON'BLE SRI JUSTICE : S. RAVI KUMAR

- 1 Whether Reporters of Local newspapers may
be allowed to see the Judgments? :
- 2 Whether the copies of judgment may be
marked to Law Reporters/Journals :
- 3 Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment? :

*** *THE HON'BLE SRI JUSTICE S. RAVI KUMAR***

+ CRP No.2816 of 2015 & CRP No.3174 of 2015

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% 12-10-2015

Bollaboina Mallesh

... Petitioner.

Vs.

\$ Bollaboina Ailaiah Yadav and others.

... Respondents.

! Counsel for the Petitioner: Sri L. Prabhakar Reddy

! Counsel for the Respondents: Sri K. Govid

< Gist:

> Head Note:

? Cases referred:

1. 1983 (1) APLJ 159
2. 1971 ILR 277
3. 2004 (3) ALD 280 (DB)
4. 2008 (6) ALT 303
5. 2009 (3) ALD 413
6. 2010 (1) ALD 316 (DB)

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP No.2816 of 2015

&

CRP No.3174 of 2015

-

Date:12.10.2015

Between:

Bollaboina Mallesh

... Petitioner.

AND

Bollaboina Ailaiah Yadav and others.

...Respondents.

The Court made the following :

THE HON'BLE SRI JUSTICE S. RAVI KUMAR

CRP No.2816 of 2015

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COMMON ORDER:

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As the point involved in these two revisions is common, they are disposed of by a common order.

2. CRP No.2816 of 2015 is preferred against orders in I.A.No.117/2015 in O.P.No.01/2013 dated 19-06-2015, whereas

CRP No.3174/2015 is preferred against orders in I.A.No.69/2015 in O.P.No.01/2013 dated 19-06-2015. I.A.No.69/2015 is filed under Order XVI Rule 1 (2) R/w.151 CPC to summon Sri V. Krishna Reddy, Head Master, UPS Pallepahad Village, Thoguta Mandal, Medak District. I.A.No.117/2015 is filed under Order XIII Rule 10 R/w.151 CPC to call for the record in O.P.No.02/2013 pending on the file of the very same Court. Both these petitions were opposed and the trial Court overruled the objections and allowed both the applications, aggrieved by which, these revisions are filed.

3. The revision petitioner is respondent No.1 in O.P.No.01/2013, which is filed by first respondent herein (who is the petitioner in O.P.No.01/2013) challenging election held to the office of Sarpanch, Gram Panchyat, Ravelly Village, Toopran Mandal in Gajwel constituency on 23-07-2013. First respondent herein, being petitioner in the Election O.P., filed the above referred two applications for summoning a witness and to call for the records from a similar O.P., pending on the file of same Court, contending that those records are relevant and necessary to prove his contentions that are raised in the election petition. He also prayed to summon one V. Krishna Reddy, who was the Returning Officer/Stage-II officer of Kallakal Village of Toopran Mandal to prove his claim in the petition. The main objection of the revision petitioner herein (first respondent in Election O.P.,) is that as per Rule 7 of A.P. Panchyat Raj (Election Tribunals in respect of Gram Panchyats, Mandal Parishads and Zilla Parishads) Rules, 1995 (hereinafter referred to as '1995 Rules') only specific provisions of CPC are applicable, and Order 13 Rule 10 &

Order 16 Rule 1 are not among the provisions referred in Rule 7 of 1995 Rules, therefore, the trial Court is not correct in allowing these two applications.

4. Heard both sides.

5. Advocate for revision petitioner mainly contended that as per Rule 7 of 1995 Rules, the trial Court has no power to invoke provisions of Order 13 Rule 10 & Order 16 Rule 1 CPC as such orders of the trial Court are illegal, improper and without jurisdiction, hence liable to be set aside. He placed reliance on the judgments of this Court reported in **Nadendla Apparao vs.**

B. Satyanarayana, Beerapalli Swaminatha Janaki Venkata Ramana Reddy vs. Attkuri Ammiraju, Kummari Ramulu v. Gangaram Penta Reddy, S. Nagarathnamma vs. P. Muralidhar Reddy, Kamasani Pedda Kotaiah v. Chimakurthi China Venkateswarlu (Hindu) and Tadi Lakshmana Rao v. Challa Satyanarayana.

6. On the other hand, Advocate for first respondent herein contended that in the very beginning of Rule 7 of 1995 Rules, it is stated that every election petition shall be enquired into by the Election Tribunal, in accordance with the procedure applicable under the Code of Civil Procedure for the trial of the suits and in sub-rule 2 of the said rule, it is indicated that the Election Tribunal shall have powers in respect of the matters indicated therein.

He submitted the subjects mentioned in sub-rule 2 are only illustrative and they are not exhaustive and the provisions exercised by the trial Court are concerning trial of suits, therefore, the objection of the revision petitioner is not at all tenable.

7. As referred above, main petition is filed challenging the election of Sarpanch held on 23-07-2013 for Ravelly Gram Panchyat of Toopran Mandal. Admittedly, a similar O.P., is also pending on the same Court in O.P No.02/2013 and the election record is produced in that O.P.

8. In **Nadendla Apparao vs. B. Satyanarayana**¹ an amendment petition was filed in the election petition and the election tribunal allowed that application and while setting aside that order, this Court held that provision relating to amendment cannot be exercised under the provisions of A.P. Gram Panchyats Act, 1964 and rules framed thereunder.

9. In **Beerapalli Swaminatha Janaki Venkata Ramana Reddy vs. Attkuri Ammiraju**² in that case, the issue was in respect of transposing one of the respondent as petitioner as per Order 1, Rule 10 CPC and this Court held that such a power is not vested with the election tribunal under the provisions of Andhra Pradesh Panchayat Samithis and Zilla Parishads Act, 1959.

10. In **Kummari Ramulu v. Gangaram Penta Reddy**³ the issue was in respect of amendment of the petition and this Court held that such a power is not vested with the election tribunal.

11. In **S. Nagarathnamma vs. P. Muralidhar Reddy**⁴ the point involved was in respect of election tribunal's power under Order 9 Rule 9 CPC for restoration of O.P., that was dismissed for default and this Court clarified that such a power is not vested as it is not covered under Rule 7 of 1995 Rules.

12. In **Kamasani Pedda Kotaiah v. Chimakurthi China Venkateswarlu (Hindu)**⁵ the point therein was not in respect of application of Rule 7 of 1995 Rules, but it was in respect of application under Section 19 (3) of A.P. Panchyat Raj Act, 1994.

13. In **Tadi Lakshmana Rao v. Challa Satyanarayana**⁶ a Division Bench of this Court, while considering Rule 7 of 1995 Rules, held that receiving documents is only an incidental to the power conferred under Rule 7 of 1995 Rules and distinguished the earlier decisions of this Court.

14. It may be relevant to read Rule 7 of 1995 Rules, which reads as follows:-

“(1) Every election petition shall be enquired into by the Election Tribunal, as early as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 for the trial of the suits:

Provided that it shall only be necessary for the Election Tribunal to make a memorandum of the substance of evidence of any witness examined by him.

(2) The Election Tribunal shall have the powers, which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters:

(a) discovery and inspection;

(b) enforcing the attendance of witness and requiring the deposit of their expenses;

(c) compelling the production of documents;

(d) examining witnesses on oath;

(e) reception of evidence taken on affidavit; and

(f) issuing commissions for examination of witnesses, and may summon and examine suo-motu any person whose evidence appears to him to be material.”

15. From a plain reading of the above provision in sub rule (1), it is clear that election tribunal shall enquire the election petition in accordance with the procedure applicable under the Code of Civil Procedure for trial of the suits and in sub rule 2, it is clarified that election tribunal is vested with the powers under CPC concerning discovery and inspection, enforcing the attendance of witness, compelling production of documents, examining witnesses on oath, reception of evidence taken on affidavit and issuing commissions for examination of witnesses etc.

16. First respondent herein requested the trial Court to issue summons to a witness (as per prayer in I.A.No.69/2015) and to call for the records from O.P.No.02/1993 (prayer in I.A.No.117/2015) and these two prayers are definitely concerned with enquiry of the election petition for which the Tribunal has to follow provisions of CPC that are applicable for trial of suit. In sub rule 2, it is clarified that such power includes examination of witness, compelling production of documents and enforcing

attendance of witness.

Two prayers sought by first respondent herein would definitely fall within the purview of compelling attendance of witness or compelling production of the documents for which the election tribunal is vested with the power. In all the decisions referred to above, except in the case of **Tadi Lakshmana Rao v. Challa Satyanarayana**⁶ either the provisions of CPC for amendment of pleadings or provisions of CPC for impleading parties or transposing parties were invoked, but not in respect of summoning a witness or receiving a document. Provisions relating to amendment of pleadings or impleading parties are not steps concerning trial of the suit. Those provisions are concerned with pleadings and array of parties which is not part of trial, but summoning of witness, summoning of documents or receiving of documents are steps concerning trial of suits, therefore, all the above referred decisions, except the case of **Tadi Lakshmana Rao v. Challa Satyanarayana**⁶, have no application to the case on hand. By following the decision of **Tadi Lakshmana Rao v. Challa Satyanarayana**⁶, I am of the view that summoning a witness or calling for records from another O.P., are only incidental to the powers given under Rule 7 Clause 2 of 1995 Rules, as such objection of the revision petitioner taken before the trial Court is not at all tenable. The learned trial Judge has rightly overruled the objection of the revision petitioner herein and there is no illegality or jurisdictional error in the impugned order of the trial Court.

17. For these reasons, both the revisions are devoid of merits and liable to be dismissed.

18. Accordingly both the revisions are dismissed and as a sequel, miscellaneous petitions, if any, pending in these civil revision petitions, shall stand dismissed. No costs.

JUSTICE S. RAVI KUMAR

Date:12.10.2015

Note: L.R Copy to be marked.

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