

**THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA
RAO**

C.R.P.No.3479 of 2014

ORDER:

This Revision Petition is filed challenging the order dt.03-06-2014 in I.A.No.36 of 2014 in E.O.P.No.1 of 2013 of the Election Tribunal-cum-Junior Civil Judge, Venkatagiri.

2. The petitioner herein is the 1st respondent in the said E.O.P. His election as Sarpanch of Marlagunta Gram Panchayat of Ogili Mandal in the election held on 31-07-2013 was questioned by 1st respondent herein in the said E.O.P. In the E.O.P., 1st respondent sought for recounting of all the votes polled in the said election, to declare the election of the petitioner as void and to declare the 1st respondent as elected.

3. Counter affidavit was filed by the petitioner opposing the grant for any relief to 1st respondent in the O.P.

4. I.A.No.36 of 2014 was filed invoking Rule 129 of Civil Rules of Practice by 1st respondent to issue summons to the Mandal Parishad Development Officer, Ogili Mandal, SPSR Nellore District (A.P.) to produce the following documents:

“1. Marked copies of electoral roll of 4th ward of Mummyapalem Gram Panchayat of Ogili Mandal marked in the panchayat elections held on 31-07-2013;

2. Counter foils of used Ballot papers of electors of the 4th ward of Mummyapalem Gram Panchayat of Ogili Mandal concerning the Panchayat elections held on 31-07-2013 and also paper noting time of issue of Ballot papers to voters of 4th ward of Mummyapalem Gram Panchayat of Ogili Mandal during the Panchayat election held on 31-07-2013.

3. Close circuit camera footings of voters who participated in the election held on 31-07-2013 of Mummyapelem Gram Panchayat of Ogili Mandal.”

5. In the affidavit filed in support of the said I.A., 1st respondent contended that this material is required to enable 1st respondent to prove his case that certain voters of Mummyapalem Gram Panchayat named in the election petition voted in both the Mummyapalem and Marlagunta Gram Panchayats in the elections held on 31-07-2013.

6. Counter affidavit was filed to the said I.A. by the petitioner opposing the said application. After denying the allegations made in the affidavit filed by 1st respondent, he contended that Rule 129 of Civil Rules of Practice is not attracted and that the application should be filed under Rule 36 of the Conduct of Election Rules framed under AP Gram Panchayat Act, 1994. The petitioner however also stated *“concerned returning officer or election officer has to be summoned to cause production of documents after taking them from the*

concerned custody officer”.

7. By docket order dt.03-06-2014, the Court below allowed the said I.A. stating that it had perused the record and given weight to the contention raised by 1st respondent.

8. Challenging the same, this Revision Petition is filed.

9. It is contended by the learned counsel for the petitioner that no reasons are furnished in the impugned order and the material now sought by 1st respondent is not at all relevant to establish the case of 1st respondent in the election petition. He also contended that 1st respondent ought to get certified copies of the documents from the department concerned and if he fails to get them, then only he shall file this application.

10. Learned counsel for 1st respondent on the other hand contended that the petitioner having conceded in the Court below that the material sought by 1st respondent may be caused to produced by summoning the concerned Returning Officer, he cannot now oppose the said I.A. on totally different grounds. He also contended that mere mentioning of Rule 129 of Civil Rules of Practice in the petition accompanying I.A.No.36 of 2014 cannot be a ground to dismiss the said I.A. and that under Rule 36 of the Conduct of Election Rules framed under

the AP Gram Panchayat Act, 1994 applies and such application can be maintained under the said Rule.

11. No doubt the order passed by the Court below is a cryptic order and the Court below has merely observed that giving weight to the contentions raised by 1st respondent, it had allowed the application.

12. Obviously one of the reasons the Court below took into account was the statement in the counter of the petitioner that the concerned Returning Officer or Election Officer has to be summoned to cause production of the documents after taking them from the concerned custody officer. Having filed a counter in this manner in the Court below, it is not open to the petitioner to now contend that it is not necessary to summon the MPDO, Ogili Mandal to produce documents mentioned in I.A.No.36 of 2014.

13. In the Election Petition, 1st respondent had categorically alleged that certain residents of Mummayapalem village had exercised their franchise in Marlagunta Gram Panchayat also and the petitioner had the benefit of the same. Therefore, the material sought for by 1st respondent might assist 1st respondent in establishing the said fact.

14. Merely because wrong provision of law is quoted, the application filed by 1st respondent to summon

the MPDO to produce the documents mentioned in the affidavit filed in support of I.A.No.36 of 2014 cannot be dismissed.

15. So I do not find any error of jurisdiction in the order passed by the Court below.

16. Accordingly, the Civil Revision Petition is dismissed. No costs.

17. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 22-06-2015

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