

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

CIVIL REVISION PETITION No. 838 of 2015

ORDER:

Aggrieved by an order, dated 23.01.2015 passed in E.O.P.No.4 of 2013 on the file of the Junior Civil Judge, Nandikotkur, the petitioner, who is the first respondent in the above election petition, preferred the present Civil Revision Petition under Article 227 of the Constitution of India.

The facts in issue are as under:

Respondent No.1 herein filed the above election petition seeking a declaration that the election of the petitioner to the post of Sarpanch of Brahmanakotkur Gram Panchayat is bad in-law. It is stated that as per G.O.Ms.No.23, Backward Class Welfare (C2) dated 07.07.2007, there are 14 subsects/sub caste in muslims and they were given 4% reservation in admissions into educational institutions and appointments to the post and vacancies in the services of the State. It was stated that no political reservation is given to muslims as per the said G.O. It is alleged that the petitioner herein claiming himself to be BC (E) category, took false benefits and won the election though he was not given reservation under BC(E) category. Hence, respondent No.1 herein filed the Election Petition to declare the nomination of the petitioner herein, who claims benefit of BC-E reserved sub-caste under the provisions of the Andhra Pradesh Reservation in favour of Socially and Educationally Backward Class of Muslim Act, 2007 (for short "Act of 2007) as illegal and to set aside the

election of the first respondent as Sarpanch of Brahmanakotkur Gram Panchayat on 23.07.2013.

The petitioner herein filed counter stating that he contested for the post of Sarpanch of Brahmanakotkur village under BC (E) Category. He further submits that as per G.O.Ms.No.23 the Government reserved 4% seats in all the educational institutions and also in appointments to various post in the services of the State. In view of the above, the election authority also allowed the

petitioner to contest the said post under BC (E) reserved category seat. He also submits that he does not belong to “Moghul” caste as contended by the first respondent herein and that he belongs to “shaik” sub-caste. Hence, he states that the Tribunal has no jurisdiction to entertain the election petition as the issue of caste cannot be decided in the election petition.

Respondent Nos.3 and 5 filed counter which was adopted by respondent Nos.2 and 4. They stated that the M.R.O. (Tahsildar), after conducting a full fledged enquiry issued the BC (E) caste certificate in favour of the petitioner herein and since petitioner belong to “shaik” sub-caste, which is fallen under BC (E) Category, is entitled to contest the election as per Memos NO.16240/E&R/ A2/2013-2 dated 05.07.2013 and 6636E&R/A2/2011. Hence, prayed to dismiss the election petition.

Pending the said proceedings, the first respondent herein filed an application under Order XIV Rule 2 (a) and Section 151 C.P.C. to decide the issue as to “whether the Court has got jurisdiction to entertain the Election Petition” as a preliminary issue.

After considering the rival submissions made, the trial Court held that the Court-cum-Tribunal has got jurisdiction to make enquiry and pass appropriate orders after due enquiry in accordance with law. Challenging the same the present revision is filed.

Reiterating the arguments advanced before the trial Court, the learned counsel for the petitioner herein submits that claiming benefit under BC (E) category cannot be gone into in an election petition.

Per contra, the learned counsel for the second respondent opposed the revision contending that a petition under Order XIV Rule 2 of C.P.C., which deals with framing an issue with regard to jurisdiction of the Court, is not maintainable as all the provisions under C.P.C. are not made applicable to the election Tribunal.

Now the point for consideration is Whether the Election Tribunal was justified in rejecting the objection raised under Order XIV Rule 2 (a) C.P.C.

Before proceeding further, it would be appropriate to refer to Order XIV Rule 2 of C.P.C. which is as under:

2. Court to pronounce judgment on all issues:

(1) Notwithstanding that a case may be disposed of on preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues.

(2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

Undisputedly, Order XIV, Rule 2 (2) C.P.C. provides that where issues both of law and of fact arise in the same suit and the Court is of the opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to (a) the jurisdiction of the Court, or (b) a bar to the suit created by any law for the time being in force and for that purpose the Court may if thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue. Under Rule 2 (2) of Order XIV, it is necessary for the Court to satisfy itself that the issue is one of law, i.e., it requires no evidence to be lead.

Rule 54 of Andhra Pradesh Gram Panchayat (Conduct of Election) Rules, 1964, reads as under:

54. (1) Every election petition shall be inquired into by the election Court as nearly as may be in accordance with the procedure laid down in the C.P.C. to the trial of suits;

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

(2) The election Court shall have the powers which are vested in a Court under the C.P.C. 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.

In ***Gadde Venkateswara Rao v. K.Venkata Rao and another*** this Court held as under:

“The question, therefore, that falls for decision is whether the order passed by the election court granting injunction restraining the Sarpanch of a Gram Panchayat from functioning as such pending final decision in the O.P. is valid as urged by the respondent, or illegal and without jurisdiction as contended by the petitioner.

5. The answer to the question turns on the applicability or otherwise of the provisions of Section 151 and Order 39 Rule 1 of C.P.C. to the facts of the present. The C.P.C. is a general law prescribing the procedure to be adopted by the Courts in dealing with the matters that come up before them for adjudication according to law. It is now well-settled that C.P.C. has no general application to the special tribunals or authorities created under special enactments for the purpose of deciding the disputes arising under those statutes except to the extent indicated in the special Act, or the Rules made thereunder. The tribunals may be judicial, quasi-judicial or administrative in character and the proceedings before such tribunals are governed by the specific provisions of the special Acts or the Rules made thereunder in that regard.

In ***Kailash v. Nanhku & Others***, the Apex Court held that the trial of an election petition is entirely different from the trial of a civil suit, as in a civil suit trial commences on framing the issues while trial of an election petition encompasses all proceedings commencing from the filing of the election petition up to the date of decision. Therefore, the procedure provided for the trial of civil suits under C.P.C. is not applicable in its entirety to the trial of the election petition. For the purpose of the election petition, the word ‘trial’ includes the entire proceedings commencing from the time of filing the election petition till the pronouncement of the judgment. The applicability of the procedure in Election Tribunal is circumscribed by two riders : firstly, the procedure prescribed in C.P.C. is applicable only “as nearly as may be”, and

secondly, the C.P.C. would give way to any provisions of the Act or any rules made thereunder. Therefore, the procedure prescribed in C.P.C. applies to election trial with flexibility and only as guidelines. The said principle was reiterated by the Apex Court in ***Kalyan Singh Chouhan v. C.P.Joshi.***

Having regard to the judgments referred to above and taking into consideration Rule 54 of Andhra Pradesh Gram Panchayat (Conduct of Election) Rules, 1964, this Court is of the view that the election tribunal is precluded from entertaining the issues raised in the application filed under Order XIV Rule 2 of C.P.C. as preliminary issue since the same does not fall within the parameters laid down with regard to the scope and applicability of C.P.C. to the election tribunal.

In view of the above, it may not be necessary for this Court to go into other aspects of the matter.

Accordingly, the Civil Revision Petition is dismissed. There shall be no order as to costs. Miscellaneous Petition, if any, pending in this Civil Revision Petition, shall stand closed.

JUSTICE C. PRAVEEN KUMAR

01.05.2015

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