

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

C.R.P.No.1751 of 2015

ORDER:

This Revision Petition is filed under Article 227 of the Constitution of India challenging the Order dt.10-04-2014 in I.A.No.39 of 2014 in Election O.P.No.7 of 2013 of the Principal Junior Civil Judge, Jangam, Warangal District.

2. Petitioner herein is 1st respondent in the Election O.P.No.7 of 2013. The said O.P. was filed by 1st respondent herein questioning the election of the petitioner as Sarpanch of Alimpur Gram Panchayat in Warangal District on the ground that the petitioner has three children by the date of election to the said Panchayat on 31-07-2013.
3. In the counter affidavit filed in the O.P., petitioner herein in para-5 stated that he had a third child borne at Area Hospital, Jangam on 07-04-2004.
4. Subsequently, he filed I.A.No.39 of 2014 to substitute the words 'Arogyamatha Udumala Hospital' in the place of the words 'area hospital'. His plea was that on account of inadvertence, the details about the hospital were wrongly mentioned.
5. Counter affidavit was filed to the said I.A. filed by 1st respondent opposing the amendment contending that it is a false plea and that a false certificate in support of thereof has been procured by tampering with the earlier Birth Certificate issued by the Municipality of Jangam.
6. By Order dt.10-04-2014, the Principal Junior Civil Judge,

Jangam allowed I.A.No.39 of 2014. It accepted the plea of 1st respondent that on account of inadvertence, he had mentioned 'Area Hospital' instead of 'Arogyamatha Udumala Hospital' and for such a lapse, he cannot be prohibited from seeking amendment of the counter n the O.P.

7. Sri S.Lakshma Reddy, learned Senior Counsel, appearing for Sri S.Rahul Reddy, learned counsel for the petitioner would contend that under Rule 7 of the AP Panchayat Raj (Election Tribunal in respect of the Gram Panchayats, Mandal Panchayats and Zilla Parishads) Rules, 1995, amendment of election petition is not permissible. He placed reliance on the judgment of Division Bench of this Court in **Kummari Ramulu Vs. Gangaram Penta Reddy and others.**

8. Learned counsel for 1st respondent on the other hand contended that the Order of the Court below is correct and that all the provisions of the CPC are made applicable to Election Tribunal by reference and therefore Order VI Rule 17 CPC also would apply. He therefore contended that no error was committed by the trial Court while permitting the amendment to the counter in the O.P.

9. Rule 7 of the Rules referred to supra states:

“(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 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."

10. In **Kummari Ramulu** (1 supra), the Bench considered the question whether it is permissible in an Election Petition to amend the name of a respondent in the Election Petition by exercising power under Order VI Rule 17 CPC at the instance of the election petitioner. It held:

"10. The powers which the Election Tribunal has got while trying election petition, which are vested in a Court while trying the suit under the Code of Civil Procedure, are only for discovery and inspection, enforcement of attendance of witness and requiring deposit of expenses, compelling production of documents, examining witnesses on oath, reception of evidence taken on affidavit and issuing commission for examination of witnesses. Nowhere the rule makes a provision that Election Tribunal shall have the power to permit amendment of election petition or addition, substitution or deletion of parties, which is a specific power available to a Civil Court while trying a suit under the Code of Civil Procedure. Law enjoins upon trial of election petition expeditiously. That being the purpose, the Legislature in its wisdom rightly conferred specific powers on the Election Tribunal while trying election petition, which are enjoined upon a Civil Court while trying civil suit, and not all the powers exercisable by a Civil Court as provided under the Code of Civil Procedure. That being the purpose, it has to be assumed that the powers, which are not mentioned in the rules, cannot be exercised by the Election Tribunal, Moreover, power to permit addition of a party after the period of limitation is such a power that can be exercised only when it is specifically conferred on the Tribunal."

Thus, the Division Bench in the above case has taken the view that the Rule 7 nowhere empowers an Election Tribunal to permit the amendment to the Election Petition or for addition, substitution or deletion of parties although such a power would vest in a Civil Court

trying a suit under Civil Procedure Code.

11. In **M.Ganganna Vs. A.Chinna Guravaiah and others**, however, a learned Single Judge of this Court has taken a view that all the provisions of CPC were made applicable by reference to an Election Tribunal and that all subsequent amendments to the CPC also get incorporated and would apply. The view taken by the learned Single Judge is contrary to the view taken by the Division Bench in **Kummari Ramulu** (1 supra), wherein the Division Bench has held powers of the Tribunals have been restricted to only those matters mentioned in sub-rule (2) of Rule 7.
 12. The Division Bench judgment being a judgment later in point of time is binding on me. Therefore, I am not inclined to follow judgment of the learned Single Judge in **M.Ganganna** (2 supra).
 13. I am therefore of the opinion that the Court below had exercised jurisdiction not vested in it by allowing I.A.No.39 of 2014 at the instance of 1st respondent and allowed the amendment of the counter/written statement filed in the O.P. filed by him. Therefore, the impugned order cannot be sustained and it is accordingly set aside.
 14. Accordingly, the Civil Revision Petition is allowed. No costs.
 15. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.
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JUSTICE M.S.RAMACHANDRA RAO

Date: 05-06-2015

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