

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

C.R.P.No.4651 of 2014

ORDER:

Heard Smt.M.Vidyavathi, learned counsel for the petitioner and Sri P.Gangarami Reddy, learned counsel for 3rd respondent. None appears for the respondent Nos.1 and 2 in spite of notice being served on them.

2. This Revision Petition is filed challenging the order dt.07-11-2014 in I.A.No.47 of 2014 in E.O.P.No.1 of 2014 of the Election Tribunal cum Senior Civil Judge, Gudur.

3. Petitioner herein filed the said E.O.P. challenging the election to the Zilla Parishad Territorial Constituency (ZPTC), Chittamuru which was won by 2nd respondent herein on the ground of irregularities in the election process. In the Election Petition, the petitioner originally showed only two respondents. It was filed on 26-05-2014.

4. On 30-05-2014, the petitioner filed I.A.No.47 of 2014 under Order I Rule 10 CPC read with Section 94-C and Section 151 CPC seeking permission to implead 1st respondent herein as a party to the E.O.P. contending that on account of over sight and mistake, 1st respondent who also contested in the said election, was not added as

a party. He alleged that since there is no negligence or willful laches on the part of the petitioner, 1st respondent may be impleaded as a party in the Election Petition since the petitioner is seeking declaration that she has to be declared as elected as per her prayer in the election petition.

5. This application was opposed by 2nd respondent who contended that the election Tribunal has no jurisdiction to entertain any interlocutory application beyond the specific powers vested in it under the provisions of Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads) Rules, 1995 and the Tribunal cannot exercise powers beyond the powers contemplated under Rule 7 of the Rules.

6. By order dt.07-11-2014, the Court below dismissed the said application relying on judgment of a Division Bench of this Court in **Kummari Ramulu Vs. Gangaram Penta Reddy and others**^[1].

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

8. Learned counsel for the petitioner contended that the said judgment has no application to the present case since the issue which was raised in the said judgment was whether a party can be impleaded in

an election petition beyond the period of limitation and since in the present case, the application for impleadment of 1st respondent was made by the petitioner within the period of limitation, the said judgment has no application. Learned counsel for the petitioner also relied on a judgment of the Supreme Court reported in **Ishwardas Rohani Vs. Alok Mishra and others**^[2].

9. Learned counsel for the 3rd respondent on the other hand refuted the above contentions and contended that the judgment of the Division Bench of this Court in **Kummari Ramulu** (1 supra) clearly applies to the facts of the case; that the judgment of the Supreme Court referred to by the learned counsel for the petitioner indicates that there was a disagreement between two judges who were hearing the said case and the matter was then referred to a Third Judge; the issue considered by the Supreme Court was whether amendment to the Election Petition can be permitted beyond the period of Limitation provided under Section 81 of the Representation of People's Act, 1951 in filing the Election Petition or not, and the said issue does not arise in the present case.

10. In **Kummari Ramulu** (1 supra), validity of election to the post of Sarpanch of Rayapalli-D village, Zaheerabad Mandal, Medak District was challenged. In the said Election Petition, the respondent before this Court

claimed a declaration that the election of the appellant to the post of the Sarpanch be set aside and he himself be declared as elected. In the said Election Petition, he impleaded three others, who had been nominated to contest in the said election, but who had not withdrawn before the date of polling. Trial in the Election Petition commenced and two years after the Election Petition was filed, an application was filed under Order 6 Rule 17 CPC seeking to amend the name of 3rd respondent in the Election Petition as Devrampalli Ravikumar instead of Devrampalli Rajkumar alleging that Devrampalli Rajkumar is the brother of Deverampalli Ravikumar; Deverampalli Rajkumar was not the candidate, who was nominated for the election, but it was Devrampalli Ravikumar, who was the candidate and who had also contested the election. That application was ordered by the Election Tribunal on the ground that it was a *bona fide* mistake on the part of 1st respondent in wrongly describing the party who ought to have been impleaded. The order of Election Tribunal was confirmed by the Learned Single Judge of this Court. The matter was then carried in appeal by the appellant to the Division Bench. The Division Bench referred to Rule 7 of the Rules framed under the Act which reads:

"Rule 7:- (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."

11. It thereafter, in para 10, 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.”
(emphasis supplied)

12. From the above decision, it is clear that the Division Bench opined that the Election Tribunal does not have power to permit amendment of Election Petition or to add substitute or delete parties which is specific power available to a Civil Court while trying a suit under the Code of Civil Procedure; that Legislature in its wisdom granted only specific powers to the Election Tribunal 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. It held that therefore it should be assumed that the powers which are not mentioned in the Rules cannot be exercised by the Election Tribunal. It further observed “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.”

13. In my considered opinion, the Division Bench decided not only that the Election Tribunal has no power to permit amendment or add parties but it also decided that power to add a party after the period of limitation does not inhere in the Election Tribunal. I do not agree with the contention of the learned counsel for the petitioner that the Division Bench only decided that addition of a party after the period of limitation cannot be permitted.

14. Coming to the decision in **Ishwardas Rohani** (2 supra), a reading of the said judgment indicates that there was a disagreement between Two Judges of the Division Bench of the Supreme Court which heard said case on the issue whether an amendment petition can be permitted beyond the period of limitation and the matter was then referred to a Third Judge. In view of the disagreement between the Two Judges, the said decision cannot be said to be a precedent on the issue. In any event, the issue which was considered in that Supreme Court case is not whether parties can be impleaded later or not, because the judgment only indicates that the Court considered the question about only existence of a power to amend the Election Petition to rectify certain defects. Therefore, in my opinion, the said decision has no application to the facts of the case.

15. Having regard to the Division Bench judgment of this Court in **Kummari Ramulu** (1 supra), I am of the opinion that the Court below was correct in rejecting the application for impleadment of 1st respondent on the ground that such a power is not conferred on the Election Tribunal by the provisions of the Rules framed under the Act which are extracted above.

16. Therefore, mere fact that such application is filed within limitation cannot help the petitioner because there is no power to implead a party at all after the

Election Petition is filed in view of the above decision of the Division Bench of this Court.

17. I therefore do not find any merit in the Civil Revision Petition and the same is accordingly dismissed. No costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 26-06-2015

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[\[1\]](#) 2004 (3) ALT 788 (D.B.)

[\[2\]](#) (2012) 7 S.C.C. 309