

The Hon'ble Sri Justice C.V.Nagarjuna Reddy

Civil Revision Petition Nos.2594 & 3864 of 2015

Dated 18.09.2015

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CRP.No.2594/15

Between:

Smt.Pachala Indira

... Petitioner

and

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The District Election Officer/

District Collector & Magistrate

for Panchayat Elections, Guntur and 5 others.

...Respondents

Counsel for the petitioner: Mr.B.Chinnappa Reddy

Counsel for respondent No.2: Mr.PV.Vidyasagar

Counsel for respondent No.4: Mr.Venkateswarlu Posani

Counsel for respondent Nos.1 & 3: None appeared

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CRP.No.3864/15

Between:

Smt.Perika Vasundhara Devi

... Petitioner

and

-

Smt.Pachala Indira and 3 others.

...Respondents

Counsel for the petitioner: Mr.Posani Venkateswarlu

Counsel for respondent No.1: Mr.B.Chinnappa Reddy

Counsel for respondent No.3: Mr.P.V.Vidyasagar

Counsel for respondent Nos.2 & 4: None appeared

The Court made the following:

Common Order :

As the subject matter and the parties is common in these two Civil Revision Petitions, they are heard and being disposed of together. For convenience, the parties are referred as they are arrayed in CRP.No.3864 of 2015.

Respondent No.1 filed EOP.No.1 of 2013 challenging the

election of the petitioner as Sarpanch of Phirangipuram Gram Panchayat. Broadly, the principal ground on which the election of the petitioner was questioned was that as many as 491 votes, which were invalid, were illegally counted in favour of the petitioner, as a result of which, the petitioner was declared as elected by a margin of only one vote. During the trial, the evidence on the side of respondent No.1 was completed. At that stage, she has filed IA.No.1161 of 2014 under Order XVI Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 (CPC) to direct respondent No.3 herein (Election Officer) to cause production of the documents and other material including counted and rejected (invalid) ballot papers in the list, which are lying with him, for confrontation of the averments by respondent No.1. Interestingly, respondent No.1 has not impleaded the petitioner herein, who is the returned candidate and whose interests will be directly affected, if the said IA is allowed. The Election Tribunal, by its Order, dated 12-02-2015, has allowed the said IA and directed respondent No.2- District Election Officer to produce all the material in original, as mentioned in the list of documents filed along with the IA, for confrontation by respondent No.1 during the cross-examination of respondent No.3 as RW.1. Feeling aggrieved by the said order, the petitioner has filed C.R.P.No.3864 of 2015 with an application for leave. This Court has allowed the said leave application.

Following the Order passed in IA.No.1161 of 2014, respondent No.1 has filed a memo in CFR.No.2276 of 2015 requesting the Election Tribunal to permit her to verify the ballots and the documents produced by respondent No.2. This Memo was opposed by the Counsel for the petitioner. The Election Tribunal has dismissed said Application, on 15.06.2015, by assigning the following reasons:

“As this is an E.O.P. filed seeking the relief of

declaration of respondent No.4 as the Sarpanch, as illegal and void, the burden lies on the petitioner to prove the same that there is illegality in the said election declaration made by respondent No.2. When the Court comes to a conclusion that there is illegality occurred in the declaration of election of respondent No.4 made by respondent No.2, this Court can Order/Permit to open the ballot box and other documents relating to the said election.

As this is a stage of cross-examination of R.W.1, this Court cannot permit the petitioner to peruse the ballot box and invalid votes for the purpose of cross-examining RW.1”

Assailing this Order, respondent No.1 has filed CRP.No.2594 of 2015.

Mr.Posani Venkateswarlu, learned Counsel for the petitioner, has submitted that IA.No.1161 of 2014 was filed by respondent No.1 without impleading the petitioner, though she is the affected party; that the lower Court has committed a serious jurisdictional error in entertaining the said IA and granting relief, which travels far beyond the scope of IA No.1161 of 2014. He has further elaborated his submission by stating that while respondent No.1 has sought for summoning of the material “for confrontation of the averments made by the petitioner”, which phrase is vague and generic, the lower Court has granted the relief of directing respondent No.2 to produce all the material in original as mentioned in the list of documents filed along with the Petition, for confrontation by respondent No.1 during the cross-examination of respondent No.3 as RW.1. He has further submitted that the ballot boxes cannot be opened and the Election Officer cannot be confronted with the ballot papers even before the Tribunal is satisfied, based on the material allegations in the Election Petition and the evidence adduced by the election petitioner,

that a case of illegality in the conduct of elections has been made out. He has further commended the correctness of Order, dated 15-06-2015, passed by the Election Tribunal on the Memo filed by respondent No.1. In support of his submissions, the learned Counsel has placed reliance on the judgments of the Supreme Court in **Kattinokkula Murali Krishna vs Veeramalla Koteswara Rao and others** and **Kalyan Singh Chouhan vs. C.P.Joshi**.

Mr.P.V.Vidyasagar, learned Counsel representing respondent No.3, has supported the submissions of Mr.Posani Venkateswarlu.

Mr.B.Chinnappa Reddy, learned Counsel for respondent No.1, has submitted that his client is entitled to confront respondent No.3 with the invalid ballot votes in the light of the material allegations made by her in the Election Petition and that therefore, the Election Tribunal has rightly allowed IA.No.1161 of 2014 filed by her. He has further submitted that the Memo filed by his client, during the course of the evidence of RW.1, is in consonance with Order, dated 12-02-2015, passed by the Election Tribunal in IA.No.1161 of 2014; that in the light of the said Order, the Election Tribunal was left with no option other than allowing the Memo filed by his client; and that instead of allowing the said Memo, the Tribunal has wrongly rejected the same.

Before proceeding with further discussion, this Court finds serious defect in IA.No.1161 of 2014 filed by respondent No.1 without impleading the petitioner. As rightly submitted by the learned Counsel for the petitioner, she being the returned candidate, the petitioner is not only a proper but necessary

party to IA.No.1161 of 2014, which, if allowed, would seriously affect her interests. It is surprising to note that not only that respondent No.1 failed to implead the petitioner as a respondent in IA.No.1161 of 2014, but also the Tribunal has failed to notice this serious lapse and allowed the said application without hearing the petitioner. The order passed in IA.No.1161 of 2014 is liable to be set aside on this ground alone.

Further, in IA.No.1161 of 2014, respondent No.1 has not pleaded that RW.1 must be confronted with ballot papers. On the contrary, she has sought for summoning of the said material “for confrontation of the averments by the petitioner”. The prayer has not referred as to the averments of which party that are sought to be confronted. At any rate, the prayer is not specific to the effect that respondent No.1 wants to confront RW.1 with invalid ballot papers. While this being the prayer, the Election Tribunal has allowed the IA “for confrontation by the petitioner during the cross-examination of RW.1”. Thus, the relief granted by the Election Tribunal travels far beyond the scope of the vague prayer in IA.No.1161 of 2014.

Be that as it may, the election law relating to counting of ballot papers is well settled by a catena of judgments. In **Kattinokkula Murali Krishna vs Veeramalla Koteswara Rao and others** (1st supra), the Supreme Court has briefly referred to the principles relating to the inspection and recounting of ballot papers and held as under:

“Before examining the merits of the issues raised on behalf of the parties, it would be appropriate to bear in mind the salutary principle laid down in the election law that since an order for inspection and re-count of ballot papers affects the secrecy of ballot, such an

order cannot be made as a matter of course. Undoubtedly, in the entire election process, the secrecy of ballot is sacrosanct and inviolable except where strong prima facie circumstances to suspect the purity, propriety and legality in the counting of votes are made out. The importance of maintenance of secrecy of ballots and the circumstances under which that secrecy can be breached, has been considered by this Court in several cases.

It would be trite to state that before an Election Tribunal can permit scrutiny of ballot papers and order re-count, two basic requirements *viz.* (i) the election petition seeking re-count of the ballot papers must contain an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded, and (ii) on the basis of evidence adduced in support of the allegations, the Tribunal must be, prima facie, satisfied. Broadly stated, material facts are primary or basic facts which have to be pleaded by the election petitioner to prove his cause of action and by the defendant to prove his defence. But, as to what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.”

In Kalyan Singh Chouhan vs. C.P.Joshi (2nd supra), the Apex Court has held as under:

“During the trial of an election petition, it is not permissible for the court to permit a party to seek a roving enquiry. The party must plead the material fact and adduce evidence to substantiate the same so that the court may proceed to adjudicate upon that issue. Before the court permits the recounting, the following conditions must be satisfied:

- (i) The court must be satisfied that a prima facie case is established;
- (ii) The material facts and full particulars have been pleaded stating the irregularities in counting of votes;

(iii) A roving and fishing inquiry should not be directed by way of an order to re-count the votes;

(iv) An opportunity should be given to file objection; and

v. Secrecy of the ballot requires to be guarded.”

[Vide Jagjit Singh (Dr.) v. Giani Karta Singh, Suresh Prasad Yadav v. Jai Prakash Mishra, M.Chinnasamy v. K.C.Palanisamy, Chandraka Prasad Yadav v. State of Bihar, Tanaji Ramchandra Nimhan v. Swati Vinayak Nimhan, Gursewak Singh v. Avtar Singh and Baldev Singh v. Shinder Pal Singh]”

From the settled legal position, as could be culled out from the above referred judgments of the Supreme Court, it is clear that unless the election petitioner makes out a *prima facie* case of illegalities/irregularities in the conduct of elections including counting by raising specific pleas and producing evidence, the Tribunal cannot direct opening of the ballot boxes for making a roving enquiry or enabling the election petitioner to fish out the material in support of the allegations made by her. In other words, the petitioner has to make out a *prima facie* case *de hors* the material such as ballot papers and other election material.

In the instant case, the petitioner wants to take the aid of the ballot papers even before making out a case for verification/recounting of the votes. This procedure is contrary to the fundamental principles of election law as enunciated by the Courts. Thus, in my opinion, the Election Tribunal has committed a serious error in allowing IA.No.1161 of 2014.

Therefore, Order, dated 12-02-2015, in IA.No.1161 of 2014, on the file of the Court of the Election Tribunal of Gram

Panchayath-cum-Principal Junior Civil Judge, Sattenapalli, Guntur District, is set aside.

As a consequence of setting aside the said order, the very basis, on which respondent No.1 has filed the Memo in CFR.No.2276 of 2015, stands removed. Hence, CRP.No.2594 of 2015, filed against Order, dated 15.06.2015, passed in the said Memo, is liable to be dismissed.

On the analysis as above, CRP.No.3864 of 2015 is allowed and CRPNo.2594 of 2015 is dismissed.

As a sequel, CRPMP.Nos.5167 of 2015 and 3477 of 2015, filed by the respective parties for interim reliefs, are disposed of as infructuous.

(C.V.Nagarjuna Reddy, J)

Dt: 18th September, 2015

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