

THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO

Civil Revision Petition No.3516 of 2015

ORDER:

The short but interesting question of law that comes for consideration in this Civil Revision Petition is whether the Election Tribunal constituted under Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for short “Election Tribunals Rules”) while conducting enquiry in respect of election petitions is empowered to exercise all the powers which are vested in a Court under the Code of Civil Procedure, 1908 (for short “CPC”) or can exercise only limited powers which have been specifically conferred by Rule 7 of Election Tribunals Rules?.

2) The 1st respondent in CRP filed EOP No.1 of 2013 before the Election tribunal-cum-Junior Civil Judge, Palakonda, Srikakulam District seeking declaration of election of 2nd respondent in revision as null and void. The revision petitioners who are Returning Officer, Assistant Election Officer-cum-MPDO and District Collector, Srikakulam are arrayed as respondents 2 to 4 in the said EOP. While so, when the matter was coming up for the evidence of revision petitioners on 08.04.2015, the Tribunal set them ex-parte for their absence. Hence, the petition—I.A.No.336 of 2015 under Order IX Rule 7 r/w 151 CPC to set aside the ex-parte order dated 08.04.2015. By the impugned order dated 13.08.2015 the Election Tribunal dismissed the said application on the main ground that Order IX CPC was not specifically referred in Rule 7(2) of Election Tribunals Rules so as to entertain the application and exercise power under any of the rules under Order IX CPC. In this context, the Election Tribunal mainly relied upon the two judgments of our High Court viz.

1. Kummari Ramulu v. Gangaram Penta Reddy and

2. S.Nagarathnamma v. P.Muralidhar Reddy

Hence, the instant revision petition at the instance of respondents 2 to 4 in the EOP.

3) Rule 7 of Election Tribunals Rules reads thus:

(i) 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.

(ii) 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.”

As can be seen, Order IX CPC is not specifically mentioned in Rule 7(2) of Election Tribunals Rules.

4) The submission of learned counsel for petitioners is that despite rule position, the Election Tribunal in the interests of justice ought to have allowed the petition.

5) I am afraid, in the light of clear omission of Order IX CPC in Rule 7 of Election Tribunals Rules and the precedential jurisprudence laid down through an authoritative pronouncement by the Division Bench of this High Court in ***Kummari Ramulu***’s case (1 supra) and also followed subsequently by a learned single Judge of this High Court in ***S.Nagarathnamma***’s case (2 supra), the Election Tribunal cannot be found fault with. The Presiding Officer of the Election Tribunal has exhaustively discussed the ratio laid down in the above said judgments which say that the Legislature in its wisdom conferred only specific powers on 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. The Division Bench in ***Kummari Ramulu***'s case (1 supra) has in clear terms stated that it has to be assumed that the powers which are not mentioned in the rules cannot be exercised by the Election Tribunals.

6) Subsequently in ***S.Nagarathnamma***'s case (2 supra) a learned single Judge followed the above decision and observed that Order IX Rule 9 CPC was not specified in Rule 7 of Election Tribunals Rules and hence, the Election Tribunal cannot deal with the petition under Order IX Rule 7 CPC. He thus dismissed the revision petition while observing that the parties were at liberty to invoke the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India. In the light of above precedential jurisprudence, it must be held that Civil Revision Petition is not maintainable.

7) In the result, this Civil Revision Petition is dismissed with an observation that petitioners can pursue the other lawful remedies available to them. No costs.

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

U. DURGA PRASAD RAO, J

Date: 12.10.2015

Murthy