

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION NO.5388 of 2015

Date: 14-12-2015

ORDER:

This civil revision petition is filed challenging the order dated 26.11.2015 passed in I.A.No.516 of 2014 in O.P.No.6 of 2013 by the Junior Civil Judge, Ramannapet, Nalgonda District, allowing the I.A. filed for production of ballot boxes from the custody of respondents 3 and 4.

The petitioner herein is the 1st respondent in O.P.No.6 of 2013. The 1st respondent filed the above O.P under the provisions of A.P. Panchayat Raj Act, 1994, questioning the election conducted for the post of Sarpanch of Aregudem village of Choutuppal Mandal, Nalgonda District, in the year 2013.

The relief prayed in the O.P reads as under:

- (i) Pass orders for recounting of votes polled for the post of Sarpanch, Aregudem village of Choutuppal Mandal, Nalgonda District.
- (ii) Declare that the election of the 1st respondent to the post of Sarpanch Aregudem village of Choutuppal Mandal, District Nalgonda is void.
- (iii) Declare that the petitioner has been duly elected to the post of Sarpanch Aregudem village of Choutuppal Mandal, Nalgonda District.
- (iv) Award cost of the petition; and
- (v) Grant such other relief or reliefs as the Hon'ble Court may deem fit and proper in the circumstances of case.

One of the allegations made by the 1st respondent herein in the above O.P. is that the Returning Officer burgled up with the counting of votes and in the process he picked up five votes, though the same are rejected votes, and illegally counted them in favour of the petitioner herein. The 1st respondent herein also filed I.A.516 of 2014 under

Rule 7 of the A.P. Panchayat Raj (Election Tribunals in respect of G.Ps, M.Ps and Z.P.Ps) Rules 1995 r/w Rule 129 of Civil Rules of Practice for production of ballot boxes containing the votes, from the custody of respondents 3 and 4.

The said application was resisted by the petitioner herein denying the averments made in the application. On consideration of the rival contentions, the learned Junior Civil Judge allowed the application directing both the parties and their counsel to appear before the Court by 10.30 a.m., on 15.12.2015 and issue notices to respondents 2 to 4 therein to produce the ballot boxes before the Court, on deposit of costs by the 1st respondent herein.

Sri N. Subba Rao, learned counsel for the petitioner herein, drew attention of this Court to the relief prayed in the main O.P and would contend that the evidence has been completed and the matter was coming up for hearing. Therefore, granting the relief as prayed for in the interlocutory application, at this stage, would cause prejudice to the petitioner. He would also contend that the Junior Civil Judge without there being any pleading erroneously granted the relief in the I.A. The learned counsel specifically raised an objection with regard to the observation made by the Court below at paragraph-9 of the impugned order. To buttress his contention, the learned counsel placed reliance on a judgment of the Supreme Court in **Kattinokkula Murali Krishna v. Veeramalla Koteswara Rao and others**^[1] whereunder the order passed by the High Court in the revision petition, filed by the petitioner against the order passed in the interlocutory application directing recounting of votes, was set aside by the Supreme Court.

Sri I.V. Radha Krishna Murthy, learned counsel appearing for the 1st respondent opposed the revision petition.

Having considered the pleadings as well as the rival submissions, the crucial aspect, that is required to be considered is the

relief sought by the 1st respondent herein in the O.P. filed by him. The main relief in the O.P. is recounting of votes polled on the ground of mischief on the part of the Returning Officer. The dispute of this nature can only be resolved by recounting the votes. However, it is well settled by the Supreme Court in the above referred judgment that the pre-condition for ordering recounting is the allegations has to be pleaded and established before recounting is ordered. It may also be noted that in the above referred judgment the relief prayed is in the O.P. but not at interlocutory stage.

In the present case, the relief in the I.A reads as under:

“For the reasons stated in the accompanying affidavit, it is just and necessary that the Hon'ble Court may be pleased to pass orders for the production of the boxes containing the votes polled for the post of Sarpanch of Aregudem village, Choutuppal Mandalam, District Nalgonda from the custody of respondent Nos.3 and 4, in the interest of justice.”

A reading of the above prayer leaves no manner of doubt. What all sought by the petitioner in the I.A is only production of ballot boxes containing votes before the Court. The petitioner before the Election Tribunal did not seek further prayer of opening the ballot boxes and counting of votes, obviously, for the reason that, that would be the last step for the Court after coming to a positive conclusion that there was mischief in the process of counting of votes and sealing the boxes.

The revision petition is filed only on apprehension that too based on the discussion portion at paragraph-9 of the order the learned Junior Civil Judge may grant the relief which has not been pleaded in the relief portion. But in the final result the learned Junior Civil Judge only directed the parties to appear before the Court and issue notice to respondents 2 to 4 to produce the ballot boxes before the Court.

In view of the apprehension expressed by the petitioner, this Court is of the opinion that the interest of justice would be served, if it is made clear that the order shall be confined only for production of ballot

boxes before the Court and for taking appropriate steps for preserving the same till the final orders are passed by the Election Tribunal.

Learned counsel appearing for the 1st respondent also fairly submits that his client has no objection for giving such direction.

In that view of the matter, the Civil Revision Petition is closed subject to the above observations. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

14th December, 2015
Js.

Note: issue C.C. in 3 days.
(B/o) Js.

[\[1\]](#) 2010 (1) ALD 40 (SC)