

**THE HON'BLE SRI JUSTICE C.V.NAGARJUNA
REDDY**

WRIT PETITION No.1734 of 2016

–
22.01.2016

Between:

Madavi Shyam Rao

.. Petitioner

and

The District Collector (District Election Officer),
Adilabad and others

.. Respondents

Counsel for the petitioner: Mr.Rudresh Desh Pande

Counsel for respondent Nos.1 to 3: Assistant Government Pleader
for Revenue (TS)

Counsel for respondent No.4: --

Counsel for respondent No.5: Assistant Government Pleader
for Panchayat Raj and Rural Development (TS)

The Court made the following:

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ORDER:

The petitioner, who is the elected Sarpanch of Thumpelly Gram Panchayat, filed this writ petition feeling aggrieved by the action of respondent No.1 in not issuing a prior notice as directed by this Court in its order, dated 21.07.2014, in W.P.No.31723 of 2013, before allocation of the election petition filed by respondent No.4 to respondent No.3. The petitioner has also challenged order, dated 04.01.2016, passed by respondent No.3, *vide* his proceedings No.E/1338/2015.

I have heard Mr.Rudresh Desh Pande, learned counsel for the petitioner, and the learned Assistant Government Pleader for Panchayat Raj and Rural Development (TS) appearing for respondent No.5.

Respondent No.4 filed an election petition before respondent No.2 questioning the election of the petitioner as Sarpanch. As the said election petition was not numbered and being proceeded by respondent No.2, respondent No.4 filed W.P.No.31723 of 2013. Respondent No.2 has represented before this Court that as he being an election authority and also a party to the election petition, he is not entitled to hear the said election petition. In the light of the said representation, this Court has disposed of the said writ petition, by order, dated 21.07.2014, directing respondent No.1 to transfer the election petition to any of the Revenue Divisional Officers among those of Adilabad, Utnoor, Nirmal and Mancherial. However, it was directed that any such order by respondent No.1 be passed only after the petitioner was given an opportunity of being heard. Following the same, respondent No.1 has allotted the election petition to respondent No.3. In pursuance of the notice issued by respondent No.3, the

petitioner has entered appearance through his Advocate. Thereafter, respondent No.3 has passed the impugned order, dated 04.01.2016, wherein he has observed that both the Advocates are present and argued for re-verification and recounting of the votes secured by both the candidates and rejected votes and that therefore, re-verification and recounting of the votes secured in favour of each candidate and rejected votes to be undertaken on 23.01.2016 is ordered.

The only plea raised by the petitioner in this writ petition is that before the election petition was allotted to respondent No.3, respondent No.1 has not given the petitioner an opportunity of being heard. In my opinion, whether respondent No.1 has given a notice to the petitioner before allotting the election petition to respondent No.3 or not pales into insignificance, for the reason that not only the petitioner has entered appearance through his Advocate before respondent No.3, but also he has not raised any objection to respondent No.3 proceeding with the election petition. On the contrary, from the observations made by respondent No.3 in the impugned order, which remained uncontroverted, the petitioner's Advocate was present and also argued for re-verification and recounting of the votes secured by both candidates. Thus, the procedural irregularity, if any, committed by respondent No.1 in issuing a prior notice before allocation of election petition as directed by this Court has lost its relevance, as the petitioner has acquiesced in raising such objection by his subsequent conduct as noted hereinabove. Having agreed for re-verification and recounting of the votes, the petitioner is not entitled to question the decision taken by respondent No.3 as impugned in this writ petition.

For the aforementioned reasons, I do not find any merit in the Writ Petition and the same is accordingly dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.No.2196 of

2016 filed by the petitioner for interim relief shall stand dismissed as infructuous.

C.V.NAGARJUNA REDDY, J

22nd January, 2016
GHN