

THE HON'BLE SRI JUSTICE S.V.BHATT

CIVIL REVISION PETITION Nos.2107 and 2644 of 2016

COMMON ORDER:

The first respondent in EOP.No.4 of 2013 in the Court of Civil Judge-cum-A.P. Panchayat Raj Election Tribunal, Nandikotkur is the revision petitioner. The first respondent herein filed I.A.Nos.86 and 87 of 2016 praying for reopening EOP and condone the delay in filing documents appended to petition schedule in I.A.No.87 of 2016.

2. At the stage of conducting trial and while marking of documents, this is the second round of revision to this Court.

3. The first respondent herein filed EOP.No.4 of 2013 to declare that the revision petitioner is not entitled to contest the election in backward classes reserved constituencies, as Muslims are not entitled to contest in the constituencies reserved for backward classes, set aside the election of Sarpanch of Brahmanakotkur Gram Panchayat village and order fresh elections. The first respondent averred that **G.O.Ms.No.23 Backward Classes Welfare (C2) dated 07.07.2007** provides 4% reservation in admission into educational institutions and in appointments to posts and vacancies in the services of the State.

In para 5 of the petition in EOP it is further averred that the revision petitioner and the sixth respondent herein falsely claimed political reservation and that they belong to Muslims. The effort of the candidates in contesting the election amounts to playing fraud on respondents 2 to 5. The first respondent, as already noticed, prayed for setting aside the elections and hold fresh elections to **Brahmanakotkur Gram Panchayat**. (emphasis added)

4. The revision petitioner asserted that he belongs to Shaik, sub-caste of Muslim community and is entitled to the reservation benefits

given by Socially and Educationally Backward Classes of Muslim Act, 2007. According to the revision petitioner, the enactment provides for 4% of political reservation as well and the same is reiterated by Memo.No.6636/Elec.Rules/A2/2011-7 and Memo No.16240/E&R/E&R/A2/2013-2 dated 05.07.2013. A few categories of sub-castes of Muslim community are treated as reserved categories.

5. The first respondent filed I.A.No.203 of 2014 under Order VII Rule 14 of the Code of Civil Procedure to condone the delay and receive the documents stated therein. The application was ordered. The revision petitioner filed CRP.No.4566 of 2015 against the order in I.A.No.203 of 2014. The revision has been disposed of on 19.11.2015. The operative portion of the order reads thus:

“Reading of the impugned order goes to show that the proposed document is a downloaded copy of internet. As per Section 65(b) of the Indian Evidence Act, internet copy is a public document and the same is received subject to condition that the contents of the said document has to be proved by the respondent and by allowing the petition no prejudice would be caused to the contention of the respondent. It has to be seen that the impugned order is not correctly worded. The application is filed under Order 7 Rule 14 of C.P.C., for receiving the document. Admissibility of the document can be decided at the time of marking it. As held by this Court in **SATISH VS. SMT.A. PARIJATHAM** [2012 (2) ALT 227] mere receiving of documents in a suit cannot be said to be acceptance of the same as evidence. When the said application filed by the first respondent herein under Order 7 Rule 14 C.P.C. is only for receiving of the document, it can be marked, if the condition under Section 65(b) of C.P.C., is satisfied.

In view of facts and circumstances of the case, I am of the opinion that the impugned document can be received in evidence, but, however, for the petitioner to raise his objections before the court below and basing on the judgment of the Supreme Court reported in **SATISH VS. SMT.A. PARIJATHAM** (Supra-2), the admissibility of the said document has to be considered at the time of marking of the document.”

6. The first respondent, thereafter, filed these two applications, firstly to reopen and secondly to condone the delay in filing the documents. The documents sought to be brought on record are as under:

1. Encyclopedia of Baig Community and with the Certificate.
2. Certificate issued by the District B.C. Welfare Office.
3. Certificate issued by the R.D.O Kurnool.

7. The trial Court has passed a detailed order in I.A.No.86 of 2016. The trial Court has observed that when the Court was considering the objections, as directed by this Court in the CRP, the present applications are filed for reopening and receiving the documents, which, according to the first respondent, are certified copies showing the social status of revision petitioner. The learned trial Judge has proceeded on the ground that the certificate of registration is original in nature and taking a lenient view, so as to arrive at just decision, allowed the prayers for reopen and condone the delay.

8. Mr. Venkat Reddy, appearing for revision petitioner, contends that the orders impugned in the revision petitions are untenable, for at the first instance, the first respondent filed I.A.No.203 of 2014, the application was allowed and this Court directed specific consideration of objections at the time of marking of those documents. The first respondent, realizing the impact of proposed objection, has filed these two applications and they have been erroneously allowed by the learned trial Judge after recording a finding that lenient view is taken to arrive at just decision, such discretion is not available to him. Learned counsel prays for setting aside the orders impugned in the revision petitions.

9. Mr. Shafath Ahmed Khan stoutly opposes the civil revision by contending that the tribunal has exercised the discretion vested in it by invoking its inherent power under Section 151 CPC and the first respondent is unable to appreciate the error in the order under revision and the orders impugned in the revisions do not, for all purposes, decide the legality or otherwise of any issue. Now the delay alone is condoned and the documents sought to be now placed on record are certified copies issued by the competent authority and the first respondent should not be shut out from

placing the documentary evidence on record. He prays for dismissal of the revisions.

10. I have heard the learned counsel in great detail and perused the material available on record.

11. In normal circumstances, this Court would have given due weight and consideration to the discretion exercised by the tribunal but in the case on hand, after perusing the averments in EOP.No.4 of 2013 and the counter of revision petitioner, this Court is of the view the learned trial Judge is deciding the applications without appreciating the context in which they are sought to be placed on record.

In CRP.No.4566 of 2015, this Court clearly directed consideration of objections on documents sought to be marked through I.A.No.203 of 2014. Such exercise ought to have been undertaken and completed by the parties. Without deciding the objections on those documents, entertaining and deciding these two applications as well, reflects irregular exercise of the jurisdiction. To prevent parties from undertaking roving enquiry or seeking reopen of the trial often, the definite case of parties in EOP ought to have been noticed. The learned trial Judge is considering and deciding an election OP. The Rules are framed under A.P. Panchayat Raj Act. Keeping in mind the rigour of Rules, the trial ought to have been completed with the time schedule.

12. As rightly pointed out by Mr. Shafath Ahmed Khan that this Court, while considering the scope of legality of revisions, cannot and could not record a finding, which would ultimately prejudice the interest of the first respondent in the ongoing trial. This Court has taken a balanced view and also considered the rival submissions.

To meet the ends of justice and to direct the trial Court to consider the entire material available on record and pronounce orders,

in accordance with law, this Court is satisfied, the orders under revisions are

set aside, the matters are remitted to the tribunal for consideration of every aspect of the matter and decide these applications, as are required by law. The decision of the trial Court shall advert to the submissions of both parties and record findings. Learned trial Judge is forthwith directed to complete the trial and dispose of EOP.No.4 of 2013, as expeditiously as possible, preferably within three (3) months from the date of receipt of a copy of this order.

The civil revision petitions are allowed and remanded.

As a sequel, the miscellaneous applications, if any pending, shall stand closed. There shall be no order as to costs.

S. V. BHATT, J

July 1, 2016
DSK