

THE HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.5698 OF 2016
AND
CIVIL REVISION PETITION No.5706 OF 2016

COMMON ORDER:

The revision petitioner in both these Revision Petitions, was declared elected for the post of Sarpanch of Gram Panchayat, Tembi Village, Bazarhathnoor Mandal, reserved for BC (General) on 27.7.2013 by the official respondents. Challenging his election, the 1st respondent, who is 1st Ward Member of the same Village and Mandal of erstwhile Adilabad District, filed O.P. No.2 of 2013 on the file of Election Tribunal-cum-Junior Civil Judge at Boath, whereas one Somu Ram Reddy, a voter filed O.P. No.1 of 2013 on the very same file. The relief sought for by both the petitioners is similar and identical.

2. The Election Tribunal, by its orders dated 8.11.2016, allowed both the petitions unseating the revision petitioner and gave further direction, as required by clause (b) of sub-rule (ii) of Rule 15 of Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Praza Parishads and Zilla Parishads) Rules, 1995 (for short, 'the Rules') to the respondents 4 to 7 and respondents 2 to 4 in O.P. No.1 of 2013 and O.P. No.2 of 2013 respectively, to take steps to hold fresh elections to the post of Sarpanch of the said village.

3. For the sake of convenience, the parties hereinafter referred to as they were arrayed in the original petitions.

4. The Tribunal below in O.P.No.1 of 2013 observing that the petitioner and unofficial respondents 2 and 3 failed to secure votes second to the respondent No.1 to enable the Tribunal to declare as

Sarpanch, invoked the provisions of sub-rule (b) (ii) of Rule 15 of the Rules.

5. Aggrieved over the aforesaid orders, the 1st respondent in original petitions preferred these two revisions.

6. Briefly, adverting to the factual aspect, the Tribunal in paragraph-2, has extracted Election Schedule issued by the A.P. State Election Commission. The process commenced with the issue of election notification on 9.7.2013 and concluded with the declaration of result on 27.7.2013. The other details are unnecessary.

7. In both the Election Petitions, two main grounds have been agitated. The first ground is that the 1st respondent is a contractor and undertaking the works in RWS & S Division, Adilabad, executing work of commercial augmentation to L.W.S. scheme at Mankaguda Gram Panchayat Lingapur of Gudihatnoor Mandal on 14.7.2013, which date was fixed for scrutiny of nominations in the election schedule. Therefore, he attained disqualification.

8. Second ground is, the 1st respondent is having two sons and one daughter. Thus, on the date of filing of nomination and even thereafter, that was even on the date of filing nomination the 1st respondent was having three living children. The petitioners in original petitions have given their names as (1) Niste Sai Raj Singh, born on 24.5.2001 (2) Niste Sai Yuv Raj Singh, born on 6.8.2003 and (3) Sai Rathna, daughter born on 3.3.2005 respectively. They were pursuing 7th class, 4th class and 3rd class in Pragathi Patasala of Ichoda respectively.

9. To substantiate their stand, the petitioners in the election petition have obtained *bona fide* certificates of all the three children of the 1st respondent.

10. According to the petitioners, they approached the Revenue Divisional Officer, Adilabad - Appellate Authority - on 16.7.2013 and they apprised the same by way of a representation and requested to disqualify the 1st respondent by rejecting his nomination and, though, he assured the petitioners that he would look into the matter and take necessary action, but he has not taken any action till the process was completed on 27.7.2013 and declared him as elected Sarpanch. According to them, thereafter, they submitted an application to the District Collector on 12.8.2013, requesting him to take action against the 1st respondent's election and to declare the election null and void, but the District Collector referred the matter to the District Panchayat Officer, Adilabad for immediate disposal on the same day, but again no action was taken even by the date of filing of election petitions.

11. Thus, the petitioners were constrained to file the election petitions.

12. Substantially, the stand taken by the respondent No.1 is that he made an application before the Executive Engineer, RWS & S Division, Adilabad requesting him to cancel agreement work of augmentation to PWS scheme at Mankaguda Gram Panchayat on the ground that he has filed nomination to the post of Sarpanch of Gram Panchayat, Tembi Village and accordingly the Executive Engineer cancelled the agreement and that was the reason the returning officer did not reject his nomination and allotted the symbol of 'ring'. He has no knowledge of the petitioners approaching the District Collector, Revenue Divisional Officer and District Panchayat Officer, Adilabad.

13. Concerning the second ground that he is having three children, the 1st respondent instead of directly answering the allegation gives evasive reply in paragraph-6 of his counter in O.P.No.2 of 2013 which reads thus:

“6. That the contents of para 7 & 8 of the petition are false hence denied. It is unaware to the respondent No.1 that the petitioner intimated about the disqualification of respondent No.1 to the Panchayat Secretary, G.P. Tembi, District Collector and District Panchayat Officer, Adilabad on 10.9.2013 and the petitioner entertained a doubt in the month of August, 2013, that the respondent No.1 is having more than two children and disqualified to continue as Sarpanch of G.P. Tembi. The allegations made are false hence denied so that disqualification of respondent No.1 to continue as Sarpanch does not arise at all. Due to political rivalry this petition is filed to harass the respondent No.1.”

14. In his counter in O.P. No.1 of 2013, he did not give any reply at all as to the allegation that he has three living children.

15. Of course, it is pertinent to mention that in none of the counters filed by him did he take a specific plea of bar of limitation to entertain the election petitions by the Tribunal.

16. Before the Tribunal, in O.P. No. 1 of 2013 the petitioner examined himself as P.W.1 and marked Exs.P1 to P4, which are attested copy of Election programme, attested copy of Voters' list, Letter of the Executive Engineer, RWS & S Division, Adilabad along with proceedings dated 28.2.2013 and Ex.P4 office copy of election petition along with receipt respectively. Strangely, on behalf of the 1st respondent, he did not step into the box. The other respondents who are unofficial respondents 2 & 3 in O.P. No.1 of 2013 and official respondents 4 to 7 in O.P. No.1 of 2013 have also not filed any counter and of course, the tribunal at one place mentioned that the respondents 2 and 3 joined the petitioner, which indicates that they sail with the petitioner. The respondents 2 to 7 are shown as *pro forma* parties by the petitioner in the election petition.

17. In O.P. No.2 of 2013 the petitioner himself examined as P.W.1 and marked Exs.A1 to A8. Even in that petition also the official respondents 2 to 4 were shown as *pro forma* parties. That was the reason why notices were not ordered so far as those respondents are concerned except the

1st respondent, who is the present revision petitioner in both the election petitions.

18. Identical grounds have been raised in both these revision petitions. The first ground relates to bar of limitation in filing the election petition resting on Rule 3 of the Rules. According to the revision petitioner, Rule 3 (i) of the Rules is mandatory and the election petition ought to have presented within 30 days from the date of declaration of result of the election. Though, results were declared on 27.7.2013, election petition in O.P. No.2 of 2013 was filed on 24.9.2013, beyond the period of limitation prescribed in the said Rules. So far as Election Petition in O.P. No.1 of 2013 is concerned, the petitioner agitates that the 1st respondent has not filed the election petition within limitation.

19. Second ground is, the petitioners in both the election petitions failed to implead any of the returned candidates or contesting candidates which is an infraction of Rule 4 (ii) of the Rules and the Election Tribunal, after considering the same, ought to have dismissed the petitions.

20. Third ground is, non-adherence to the procedure contemplated by the provisions of Rule 6 of the Rules which mandates that as soon as may be the Election Tribunal shall cause a copy of the petition to be served on each respondent and on the Executive Authority of the Gram Panchayat, Mandal Parishad or Zilla Parishad concerned and copies shall also be affixed to the notice board of the Tribunal and the office of the Gram Panchayat, Mandal Parishad and Zilla Parishad concerned. Non-service of copies as contemplated by Rule 6, on the mere ground that the petitioners added the respondents other than the 1st respondent as *pro forma* parties would not obviate with the observance thereof.

21. Usual grounds, that the Tribunal has not followed the procedure and has not appreciated the material on record have also been urged and finally sought to set aside the orders under challenge herein.

22. Heard Sri K.G. Krishna Murthy, learned Senior counsel, assisted by Sri S. Surender Reddy, learned counsel for the revision petitioner and Sri Rudresh Deshpande, learned counsel for the 1st respondent, learned Government Pleader for Panchayat Raj & Rural Development (TG) and learned Government Pleader for Arbitration (TG) for other official respondents.

23. In course of arguments, learned senior counsel for the revision petitioner would confine to two main grounds in getting the orders under challenge set aside. Concerning the issue that the revision petitioner having three living children, the finding recorded by the Tribunal is given up on the main ground that the very election petition ought to have been dismissed by the election tribunal at the threshold on the ground of bar of limitation. Thus, the learned Senior counsel for the petitioner would confine to the ground of bar by **limitation** in filing the election petition and infraction of Rule 6 of the Rules. According to the learned Senior counsel, both the provisions are mandatory as could be gathered from the language employed and drawn the attention to the said provisions. To fortify his argument, learned Senior Counsel also placed reliance in **Pragnapuram Indira v. Akkinapally Parvathamma and others**¹ and **Burra Soundarya v. Thoutam Rama Devi and others**². Both are rendered by a learned Single Judge of this Court.

24. Adverting to the first submission that both election petitions were barred by limitation, Rule 3 of the Rules and Section 22 of the Andhra

¹ 2004 (3) ALD 38

² 2008 (2) ALT 284

Pradesh Panchayat Raj Act, 1994 (for short, 'the Act') need to be referred to. Section 22 of the Act 1994 provides for the authority to decide the question of disqualification of members. It would be convenient if the provisions of Section 22 are extracted, which read thus:

“22. Authority to decide questions of disqualifications of members:-

(1) Where an allegation is made that any person who is elected as a member of a gram panchayat is not qualified or has become disqualified under Section 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether, or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the gram panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, apply to the District Court having jurisdiction over the area in which the office of the gram panchayat is situated for decision.

(2) Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.

(3) Where a person ceases to be the Sarpanch or Upa-Sarpanch of a gram panchayat as a consequence of his ceasing to be a member of the gram panchayat under clause (b) of Section 20 and is restored later to his membership of the gram panchayat under sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa-Sarpanch, as the case may be.”

25. It would be appropriate to extract even Rule 3 of the Rules at this stage itself for convenience sake and comparison. Rule 3 reads thus:

“3. (i) The election petition shall be presented within thirty days from the date of the declaration of the result of the election.

Explanation:- If the Court of the Subordinate Judge or the District Munsif, as the case may be, or the Office of the Officer of the Government who is the Election Tribunal is closed on the last day of the thirty days aforesaid, the petition may be presented to the Election Tribunal on the next day afterwards on which such Court or Tribunal is open.

(ii) The petition shall contain a statement in concise form, the material facts on which the petitioner relies and the particulars of any corrupt practices which he alleges and be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908.”

26. Learned Senior counsel would submit that the petitioners in both the election petitions have referred to the provisions of Section 22 of the

Act, 1994 in paragraph-13 in O.P.No.1 of 2013 and paragraph-14 in O.P.No.2 of 2013 respectively. His submissions are two-fold. Firstly, in case the election petitions are treated as having been filed under the provisions of Section 22 of the Act, 1994 the District Munsif has no jurisdiction to entertain the election petitions as by virtue of the amendment introduced, the “District Court” has jurisdiction over the area in which, office of the Gram Panchayat is situated for the decision. The other submission is, in case the present petitions are treated as having been filed under Rule 3, then, though, the forum chosen by the petitioners is correct, but the petitions were filed beyond the period of limitation prescribed in Rule 3 (i). Therefore, his submission is that the District Munsif i.e., the present Junior Civil Judge since decided the election petitions only by virtue of Rule 3, he, deemed to have assumed the jurisdiction and in which case Rule 3 (i) is mandatory, and, therefore, both election petitions ought to have filed within 30 days from the date of declaration of the result.

27. Learned Senior Counsel would submit that according to the date mentioned in the election petition, O.P. No.1 of 2013 was filed on 27.8.2013 whereas O.P.No.2 of 2013 was filed on 24.9.2013. Since Rule 3 (i) mandates that the election petition shall be presented within 30 days from the date of declaration of the result of the election, the period of 30 days would expire even before filing of original petition in O.P. No.1 of 2013 on 27.8.2013.

28. Concerning O.P. No.2 of 2013, his submission has been that the said Original Petition was filed on 24.9.2013 and, therefore, it was also beyond the period of limitation. Thus, according to him, both the petitions were filed beyond the period of limitation prescribed by Rule 3 (i).

29. So far as O.P. No.2 of 2013 is concerned, in paragraph-9 there is reference to filing of the original petition by paying the fee through Challan No.00001724, dt. 24.9.2013 at State Bank of Hyderabad, Boath branch, and thus, it indicates that the original petition was filed on 24.9.2013. Thus, undoubtedly, it was filed beyond the period of limitation i.e., 30 days, prescribed under Rule 3 (i) of the Rules. On this short ground, the order in O.P. No.2 of 2013 is liable to be set aside irrespective of probing into other submissions made. Therefore, consequently, C.R.P. No.5698 of 2016 deserves to be allowed and accordingly allowed.

30. Turning to O.P. No.1 of 2013, the submission of the learned counsel for the petitioner has been that true copy of the original petition served on the 1st respondent would show the date as 27.8.2013, mentioned at the relevant place after the list of the documents have been detailed. Photostat copy of the petition is filed and it shows the date as 27.8.2013, but, surprisingly does not show the signature of the petitioner or the counsel for the petitioner where they were indicated to subscribe their signatures. Basing on mentioning of this particular date, it is the submission of the learned counsel that even O.P. No.1 of 2013 was filed beyond the period of 30 days from the date of declaration of result of the 1st respondent which was declared on 27.7.2013. This particular submission requires an in-depth probe for the reason, the learned Election Tribunal, in paragraph-20 of the order under challenge refers to the date of filing of the petition as '23.8.2013' and final result of Sarpanch of Gram Panchayat, Tembi village was declared on 27.7.2013 and, therefore, the petition is within limitation.

31. Basing on such positive finding recorded by the Tribunal, the original records in O.P. No.1 of 2013 were secured from the Tribunal and

examined. It shows that the original petition was filed on 23.8.2013. The said date finds place in page-3 and also in verification clause and on page-4 of the petition. Even seal of the election Tribunal would show that initially it was filed on 23.8.2013 and it was returned by raising certain objections on 23.8.2013 itself. Again it was resubmitted on 23.8.2013 by answering the objection, but it appears that it was finally numbered on 27.8.2013. Thus, the very filing of the petition in O.P. No.1 of 2013 since was on 23.8.2013, it cannot be said that the election petition in O.P. No.1 of 2013 was filed beyond the period of limitation.

32. Learned counsel for the revision petitioner has also gone through the original petition and the dates finding place in the petition and would agree that the petition was filed on 23.8.2013. Therefore, that ground is now not open to the petitioner.

33. But the question is, as to how the date 27.8.2013, is occurring on the Photostat copy filed in to the Court which copy of the petition said to have served on the revision petitioner. There is no explanation from the revision petitioner's side as to how the date has been put mentioning it as 27.8.2013, though, in fact original petition contains the date as 23.8.2013. Therefore, on this point the revision petitioner cannot succeed as the ground of bar of limitation is unavailable insofar as O.P. No.1 of 2013 is concerned, which relates to C.R.P. No.5706 of 2016.

34. Turning to the ground of disqualification as stated by the petitioner, it is not in dispute that the first respondent has neither stepped into witness box to examine himself as a party-witness nor did he adduce any evidence at all, though, during the course of arguments it was contended that he got submitted that one of the three issues was given in adoption. There is no factual foundation laid in the pleadings

nor there is any proof therefor. Therefore, that ground is not available to the petitioner.

35. Learned counsel for the petitioner now mainly rests on non-compliance of the provisions of Section 6 of the Act. Learned counsel, while drawing attention of this Court to Rule 6, would state that it is mandatory and the Tribunal ought to have caused a copy of the petition be served on the Executive Authority of the Gram Panchayat, Mandal Parishad or Zilla Praja Parishad concerned and the Election Authority. Copies shall also be affixed to the notice board of the Election Tribunal and of the Court, as the case may be, and of the Office of the Gram Panchayat, Mandal Praja Parishad or Zilla Praja Parishad concerned.

36. Rule 6 of the said Rules reads thus:

“6. The Election Tribunal shall, as soon as may be, cause a copy of the petition to be served on each respondent and on the Executive Authority of the Gram Panchayat, Mandal Parishad or Zilla Praja Parishad concerned and the Election Authority. Copies shall also be affixed to the notice board of the Court of Tribunal as the case may be, of the Election Tribunal and of the Court of Tribunal as the case may be, of the Election Tribunal and of the Office of the Gram Panchayat, Mandal Praja Parishad or Zilla Praja Parishad concerned. The Election Tribunal may also call on the petitioner to execute a bound for such amount and with such sureties as he may require for the payment of any further costs. At any time within fourteen days after such publication, any other candidate shall be entitled to be joined as a respondent on furnishing similar such security as may be demanded by the Election Tribunal.”

37. As contended by the learned counsel for the petitioner, the word ‘shall’ is occurring in Rule 6, but to decide whether it is mandatory or directory it only depends on the consequence of non-compliance thereof whether it goes to the root of the case of the petitioner in the original petition or whether can it be construed as a mere technicality to be observed. Except referring to that the Rule 6 contains the expression ‘shall’, the consequences that flow on account of non-compliance thereof have not been projected by the learned counsel for the revision

petitioner. It is true, the petitioners in both the original petitions have got stated that except the revision petitioner herein, who is the first respondent in both the original petitions, the other respondents are not necessary parties and the same appears to be the reason why the Tribunal has not followed the procedure prescribed in Rule 6. The revision petitioner/1st respondent has not stated anything as to non-observance of Rule 6 in his counter filed in the original petition.

38. A reading of Rule 6 shows that it prescribes the procedure in serving copies of the election petition. Thus, it is mainly directed towards service of election petition. It is no doubt true that the purport appears to be that within fourteen days after the petition is taken as mentioned in the said Rule any other candidate would be entitled to join as respondent on furnishing similar security as may be demanded by the Election Tribunal. But even otherwise, when examined in the light of the ground of disqualification in the present case basing on which election of the revision petitioner/1st respondent is challenged, non-observance of procedure prescribed by Rule 6 of the Rules cannot be viewed seriously, as already observed hereinabove, the petitioners in both the original petitions were successful in establishing that the revision petitioner/1st respondent has got three living children and the relevant details have been furnished by them and proved the said plea. The revision petitioner/1st respondent has not controverted the allegation when he filed counters and he did not even get into witness box to discharge the onus that shifted on to him. When a definite finding is recorded by the Tribunal on this aspect of the case and it constitutes main ground for setting aside the election of the revision petitioner/1st respondent, non-observance of Rule 6 of the Rules need not be viewed so seriously as to annul the order passed by the Tribunal.

39. The learned counsel tried to impress upon this Court contending that when the Election Tribunal has given every regard to the provisions of Rule 15 by even directing to hold fresh elections, on the same analogy, the observance of the procedure prescribed by Rule 6 also shall be treated as mandatory.

40. The answer is, since it is more in the nature of prescribing procedure in effecting the election petition on the respondents and affixture at various places as mentioned therein to enable, if any other party who feels affected can join as respondents, the same cannot be viewed as having the effect of dismissing the election petition, when weighed in the context of the ground of disqualification basing on which the election of the revision petitioner was challenged, which is positively proved by the petitioners in both the election petitions that the petitioner has three (3) living children, which stood un-rebutted. Thus, there is no merit in C.R.P. No.5706 of 2016.

41. In view of the foregoing discussion, the first submission made by the learned counsel that the cause in both the election petitions was barred by limitation as they are filed beyond the period of thirty (30) days from the date of declaration of result, is not correct so far as filing of O.P. No.1 of 2013 is concerned as it was filed on 23.08.2013 itself i.e. within thirty days. However, so far as O.P. No.2 of 2013 is concerned, the cause is beyond the period of limitation. Therefore, the revision petitioner succeeds so far as O.P. No.2 of 2013 is concerned, but fails in O.P. No.1 of 2013.

42. Since the election petition in O.P. No.2 of 2013 was filed beyond the period of thirty days, the order under challenge in C.R.P. No.5698 of 2016 is liable to be set aside and the same is accordingly set aside.

However, the same would not affect the order passed by the Tribunal in O.P. No.1 of 2013 unseating the revision petitioner and the direction given by the Tribunal to hold election to the post of Sarpanch as the said order does not suffer from any legal infirmity nor can it be viewed as patently illegal.

43. With the above observations, C.R.P. No.5706 of 2016 is dismissed and C.R.P. No.5698 of 2016 is allowed. No order as to costs.

As a sequel thereto, Miscellaneous Petitions, if any, pending in both the revision petitions stand closed.

February 22, 2017

GBS/PV

A. SHANKAR NARAYANA, J

