

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.136 of 2017

ORDER:

Challenge in the present writ petition filed under Article 226 of the Constitution of India is to the order and decretal order dated 19.12.2016 passed by the Election Tribunal-cum-Principal Junior Civil Judge, Bhimavaram, West Godavari District.

2. Elections to the office of the Sarpanch and Ward Members of Bondada Grampanchayat, Kalla Mandal, West Godavari District were held on 31.07.2013. In the said elections, petitioner and the second respondent had contested for the post of Sarpanch and the petitioner was declared elected as Sarpanch. Questioning the said election of the petitioner herein, the first respondent filed ELOP.No.4/2014 on the file of the Election Tribunal-cum-Principal Junior Civil Judge, Bhimavaram, West Godavari District (hereinafter called 'the Tribunal').

3. The Tribunal partly allowed the said ELOP.No.4/2014 on 19.12.2016 and the decree passed by the Tribunal reads as under:

"1. That the petition be and the same is hereby allowed partly.

2. That the respondents be and are hereby directed to recount the unopened 14 small covers containing 14 postal ballots out of total 17 postal ballot covers received by R2 in the sarpanch elections of Bondada Grampanchayat by the District election authority cum District Collector in the presence of petitioner and R.1 along with the persons who are their representatives in his office.

3. That R2 and R3 be and are hereby is directed to declare the duly elected sarpanch of Bondada Grampanchayat basing

on the counting and after considering the result of the said 14 postal ballots: and

4. that there is no order as to costs.”

4. This writ petition assails the said order and decretal order.

5. Heard Sri V.V.L.N.Sarma, learned counsel for the petitioner and Sri CH.Dhanunjay, learned counsel for the first respondent apart from perusing the material available before the Court.

6. Submissiions/contentions of Sri V.V.L.N.Sarma, learned counsel for the petitioner:

6.1. The order of the Tribunal is erroneous, contrary to law and opposed to the provisions of the A.P. Panchayat Raj Act, 1994 and the Rules framed thereunder.

6.2. The Tribunal went wrong in holding that the procedure adopted by the Election Officer/**second** respondent is contrary to the instructions contained in Exs.R.1 and R.2.

6.3. The Tribunal ought to have seen that as per the procedure small cover “A” containing the ballot paper should not be opened in the absence of placing declaration in larger cover ‘B’ and in the event of the declaration being defective and in the present case 14 larger “B” covers did not contain declaration as such the second respondent Election Officer rightly did not open the “A” cover.

6.4. The Tribunal ought to have seen that its jurisdiction is to see whether the election authorities adhered to the statutory procedure and the Tribunal cannot sit in judgment over the procedure.

6.5. The Tribunal failed to take note of the fundamental and cardinal principle of law that any amount of oral evidence is of no consequence contrary to the documentary evidence.

6.6. The Tribunal lost sight of the vital aspect of secrecy to be maintained in the matter of opening of postal ballots.

6.7. The findings of the Tribunal on the entries in Ex.P.1 result sheet are erroneous.

6.8. The Tribunal ought to have seen that the election authorities initially took up all the postal ballot covers for scrutiny and three valid covers, containing declarations were considered and 14 invalid covers were not considered and that there after counting of other votes was taken up and neither the first respondent nor her agent raised any protest for the same at the time of counting and the present election OP is to harass the petitioner.

6.9. The reasons assigned by the Tribunal are neither sound nor sustainable.

7. Submisisions/contentions of Sri CH.Dhanunjay, learned counsel for the first respondent:

7.1. There is no illegality nor there is any infirmity in the impugned order and in the absence of the same the order impugned is not amenable for any judicial review under Article 226 of the Constitution of India.

7.2. Since the Tribunal assigned valid and convincing reasons, petitioner herein is not entitled for any indulgence of this Court and the impugned order warrants no interference of this Court.

7.3. In the absence of any complaint of perversity, lack of jurisdiction and violation of principles of natural justice, no Writ in the nature of Certiorari can be issued.

8. In the above backdrop, now the issues that emerge for consideration of this Court are:

1. Whether the questioned order passed by the Tribunal is sustainable and tenable or whether the same warrants any interference of this Court under Article 226 of the Constitution of India?

2. Whether, in the facts and circumstances of the case, a Writ in the nature of Writ of Certiorari can be issued?

9. On the basis of the pleadings available on record, the Tribunal framed the following issues for trial:

1. Whether the petitioner is entitled to declare the election of 1st respondent as Sarpanch of Bondada Gram Panchayat as null and void?

2. Whether the petitioner is entitled to get recounting as prayed for?

3. Whether the petitioner is entitled to declare her as duly elected Sarpanch?

10. During the course of Trial, the election petitioner who is the first respondent herein, in order to substantiate her case examined herself as PW.1 and also examined one Sri Dokala Krishna as PW.2 and filed Exs.P.1 to P.5 documents. On the other hand, the first respondent in the election O.P, who is the petitioner herein examined herself as RW.1 and also examined one Sri Buraga Gabriel as RW.2 on her behalf and did not file any documents.

11. On behalf of the respondents 2 and 3, second respondent was examined as RW.3 and Exs.R.1 and R.2 documents were filed on their behalf.

12. The entire case on hand obviously revolves around Ex.P.5 and Form No.XX appended to the Rules. The sum and substance of the case of the writ petitioner is that the authorities strictly followed the instructions in Form XX appended to the Rules, as such, the authorities are perfectly justified in not opening small "A" cover and not counting votes in small (A) cover in the absence of any declaration in larger ((B) cover.

13. On the other hand, it is the case of the election petitioner/first respondent herein that the persons who exercised franchise through postal ballots scrupulously followed Ex.P.5 instructions issued by the election authorities in Form.No.XX Part II, as such, the respondent authorities ought to have counted the postal ballot papers contained in (A) cover wherein the voters kept their respective declarations also and that having issued the instructions as contained in Exs.P.5, there was absolutely no justification on the part of the authorities in not opening small (A) covers which contained declaration forms also.

14. As pointed out by the learned counsel for the petitioner, it is a fact that as per instructions in Part II of Form XX appended to the Rules, it is incumbent that Form XVII declaration should be kept in large (B) cover and the ballot paper in Form XVIII should be kept in small (A) cover and the same should be placed in big larger (B) cover. But, as per Ex.P.5 guidelines issued by the election authorities, in Telugu, both the declaration and the ballot papers were instructed to be kept in (A) cover and the same was required to be placed in larger (B) cover. The Tribunal, in fact, took note of this crucial and important fact and directed opening of small (A) cover obviously keeping in view the democratic object and spirit which needs to be

maintained in the process of elections and keeping in mind that for the fault if any, on the part of the authorities, the candidates should not suffer and the election process and the mandate of the people should not be allowed to be frustrated. It is a settled and well established principles of law that the procedures of law are intended for advancement and betterment of the system, but not for nullifying the constitutional and statutory rights.

15. A perusal of the order under challenge shows, in clear terms, that the Tribunal meticulously and thoroughly considered and analysed various issues including the procedural lapses on the part of the authorities and arrived at the conclusions supported by a valid and cogent reasons. In fact, the Tribunal took notice of the admission of RW.1 with regard to supply of Ex.P.5 in Form XX to the voters who sent the postal ballots and also the admission of RW.1 as to the request made by the agent of the election petitioner to open the remaining 14 unopened covers and refusal of the authorities to consider the same. The Tribunal also considered the instructions issued in Ex.P.5. The Tribunal also elaborately considered and analysed the evidence of RW.3 and the representations made to the authorities also as regards the instructions.

16. Coming to the scope of Judicial Review_ while dealing with the power to issue Writs in the nature of Certiorari, the Apex Court in the case of *SYED YAKUB v. SRI K.S.RADHAKRISHNAN AND OTHERS*¹ held as under:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or Tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it,

¹ AIR 1964 SC 477

or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal a writ of certiorari can be issued if it is shown that in recording the said finding, the Tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmed Ishaque*), *Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam* ([1958] S.C.R. 1240.), and *Kaushalya Devi v. Bachittar Singh*.”

17. In the instant case this Court does not find any patent perversity, lack of jurisdiction and violation of principles of natural justice in the impugned order. Therefore, this Court has absolutely no scintilla of hesitation nor even a shade of doubt to hold that the petitioner herein has not made out any case, warranting interference or indulgence of this Court under Article 226 of the Constitution of India. Therefore, the issue Nos.1 and 2 are answered against the petitioner and in favour of the first respondent holding that the order passed by the Election Tribunal does not warrant any interference of this Court under Article 226 of the Constitution of India.

18. For the aforesaid reasons, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

Date: 16.03.2017
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A.V.SESHA SAI, J

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



W.P.No.136 of 2017

Dated:16.03.2017

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