

HON' BLE Dr. JUSTICE B. SIVA SANKARA RAO

Civil Revision Petition No.6297 of 2016

ORDER

The petitioner in the revision is the 1st respondent to the E.O.P.No.7 of 2013 on the file of the Junior civil Judge, Tandur, Ranga Reddy District, which petition is filed in respect of the Gram Panchayat Navalga village, Basheerabad Mandal of Ranga Reddy district. The 1st respondent of the EOP is the elected candidate. The election petitioner is the contested candidate and the EOP 2nd respondent is another contested candidate and the other two respondents are Election Officer and Executive Officer of the panchayat respectively.

2. Pending the EOP taken on file, I.A.No.136 of 2016 is filed by the 1st respondent of the EOP for rejection of the election petition invoking Order VII Rule 11 and Section 151 CPC with the averments that he was declared as duly elected on 31.07.2013 and the EOP filed by the EOP petitioner on 27.08.2013 without deposit of Rs.100/- as security for the costs as prescribed by the Rule 5(i) of the Rules and in the absence of said amount, the tribunal should have rejected at the threshold for no enquiry is required in the matter. It is the version that the EOP petitioner deposited the amount of Rs.100/- only on 11.09.2013 covered by challan issued on 06.09.2013 which is beyond the 30days from the date of declaration of the result as prescribed in the rules so that the EOP is liable to be rejected.

3. The EOP petitioner as 1st respondent to the I.A.No.136 of 2016 contended in opposing the rejection petition saying that the rejection petition is filed only to drag on the proceedings and to continue as a sarpanch for full tenure if possible though he admitted in his cross-examination of the EOP under part heard regarding the disqualification that he is having 3 children. It is further contended that apart from the fact of the matter is part heard, the EOP petitioner filed the lodgment petition on 27.08.2013 itself along with the main EOP and deposited Rs.100/- as security in cash before the Chief Ministerial Officer, of the Court with said lodgment schedule however the petition was placed before the Court and Court passed the order for deposit on 06.09.2013 in bank and in between there are holidays and deposited in the bank on 11.09.2013 by the Court authorities therefrom, there is no role of him and thereby the rejection petition is liable to be dismissed to proceed with the main EOP dispute.

4. The learned Junior Civil Judge-cum-Election Tribunal by the impugned order, dt.28.11.2016 in dismissing the rejection petition observed that a perusal of the record shows the EOP petitioner deposited a cash of Rs.100/- towards the costs along with the EOP on 27.08.2013 itself and the same was placed before the then Presiding Officer only later on 06.09.2013 got deposited in the bank through challan on 11.09.2013. The EOP petitioner thereby once complied with the provisions required under Rule 5(i) and (ii) of the Rules by deposit of the cash of Rs.100/- on

27.08.2013 itself along with the EOP which within 30days, there is no need of discussing in detail to say there is compliance with the mandatory provisions of the said Rule and there are no grounds to reject the election petition.

5. Heard both sides and perused the material on record.

6. Undisputedly the relevant Rule 5 speaks of cash deposit.

The learned counsel for the unsuccessful rejection petitioner/ revision petitioner being elected candidate and the 1st respondent to the EOP relied upon the stray observation of the Single Judge of this Court in Maddipatla Jagan Mohan Rao Vs. Akula Nagamallswari¹ of para-10 of the Judgment, the Rule 5 of the Rules 1995 are reproduced and of which 5(i) speaks at the time of presentation of the petition, the petitioner shall deposit with it in cash of Rs.100/- as security for the costs of the same. Now the explanation of it no way relevant so also the 5(ii) of the Rules, consequence of non-compliance of the above deserves dismissal of the election petition. With reference to it and by referring to Rule 3 at para-9 of the expression, the election petition shall be presented within 30 days from the date of declaration of the result of the election what is observed in para-10 of Maddipatla supra is that there is no prescribed format to make said deposit. In the absence of such procedure prescribed under any law including the Rules, the known procedure is that by way of lodgment schedule alone such deposit can be received by

¹ (2008) 4 ALD 71

the Court. In other words, the Court cannot receive in cash against a receipt towards deposit of Rs.100/- as contemplated by the Rules. In fact, the learned Single Judge did not interpret the Rule of cash deposit of Rs.100/-. At best the combined reading of Rule 5(i) and 3(i) respectively speak the filing of the election petition limitation is 30 days and the deposit shall be within that outer limit of 30days and not beyond. Here, the deposit is from the very rule clearly speak cash deposit. What the learned Judge observed in Maddipatla supra is Court cannot receive cash against a receipt towards deposit but for lodgment schedule also to be filed. In the facts of the case on hand format of lodgment schedule also filed with cash deposit is clear and on the format, the officers order is to be obtained to get lodgment schedule challan to deposit the amount in any bank as ordered by the Court. In fact, the criteria is date of filing election petition and the compliance with the deposit of Rs.100/- in cash with lodgment schedule before the Court within the 30 days prescribed period as also observed by another Single Judge of this Court in Mohd.Mukhtar Ahemed Vs. Syed Habeed² and the same is reiterated by this Court in another latest expression in Mekala Sathyanarayana Vs. Angadala Veera Raju³.

7. Having regard to the above, there is nothing to reject the EOP for the election petitioner complied with the requirement of Rules 3 and 5 of the relevant Rules in filing of the

² (2016) 4 ALT 461

³ (2016) Law Suit(Hyd) 452

EOP within time and also deposit of cash within time with lodgment schedule to issue. Having regard to the above, there is nothing to interfere with order impugned herein.

8. Accordingly and in the result, the Civil Revision Petition is dismissed by confirming the order, dt.28.11.2016 in I.A.No.136 of 2016 on the file of the learned Junior Civil Judge, Tandur. Consequently, miscellaneous petitions, if any, pending in this Civil Revision Petition shall stand closed.

Date:17.11.2017
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Dr. B. SIVA SANKARA RAO, J

