

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

CIVIL REVISION PETITION Nos.5314 and 5316 OF 2016

COMMON ORDER:

Civil Revision Petition No.5314 of 2016 is filed challenging the order, dated 16.08.2016, in I.A.No.92 of 2016 in E.O.P.No.1 of 2013, passed by the Junior Civil Judge, Atmakur, in refusing to reopen the ballot papers polled to the 1st respondent and also for marking statements of the 2nd respondent.

Civil Revision Petition No.5316 of 2016 is filed challenging the order, dated 16.08.2016, in I.A.No.78 of 2016 in E.O.P.No.1 of 2013 passed by the Junior Civil Judge, Atmakur, in refusing to inspect the validity of Ballot papers produced before the Court and to count the votes polled to the petitioner and the 1st respondent.

Since the parties and the issue involved in both the Civil Revision Petitions are similar in nature, they were heard together and being disposed of by this common order. The parties as arrayed in C.R.P.No. 5316 of 2016 are referred to hereinafter as such for the sake of convenience.

The petitioner filed I.A.No.78 of 2016 in E.O.P.No.1 of 2013 contending that the drum containing the ballot paper bundles of Sarpanch election is not kept openly on the table and it was kept under the table by the side of 2nd respondent's legs; that the counting was done slowly to carry on the same to the night time; that the respondents 2 to 5 and the agents of the 1st respondent colluded and some of the bundles of votes are substituted with fake votes. Further contended that the 2nd respondent-Election Officer did not wait and give an opportunity to the petitioner to give recounting requisition in writing and declared the result.

Therefore, the petitioner sought for the reliefs as prayed in I.A.Nos.78 and 92 of 2016 in E.O.P.No.1 of 2013.

A counter affidavit has been filed by the 2nd respondent-Election Officer denying various allegations and submitted that the petition for recounting of polling votes is premature and filed the petition with bad motives. Further submitted that Order XI Rule 15 and Section 151 of C.P.C. has no application, as the said provision is applicable only enabling the party to a suit entitling to produce the documents for the inspection of the opposite party in respect of the verifying those documents. Further submitted that the main E.O.P. is posted for arguments and in order to get undue advantage the petitioner filed the present petition with false and misleading grounds. Hence, prayed for dismissal of the Petition.

Learned Junior Civil Judge, Atmakur, after considering the point for consideration i.e., “Whether the petition is to inspect the validity of ballot papers polled to the 1st respondent and also permit the petitioner to inspect the same and recount the votes is to be allowed or not?”, held that the main E.O.P.No.1 of 2013 coming up for arguments and at that stage present petition is filed by the petitioner praying for inspection of validity of ballot papers and to count the votes of petitioner and 1st respondent and permit him to inspect the same, and as the matter is coming up for arguments and this petition is a premature one, as the Court after passing order in Election Petition if at all comes to the conclusion and satisfies that there is justification and necessity of recounting of votes polled, then only the Court orders recounting, and at this stage allowing petition, as prayed for, is nothing but to get undue advantage to the petitioner and further there is no provision to

open the ballot box for inspecting the ballot papers and its validity and, therefore, dismissed the petition.

The reasoning of the trial Court does not call for interference. It may be noted that this Election Petition is of the year 2013 and it is at the fag end of the trial. The Election Petition is ripe for arguments. At this stage, this application has been filed. If as prayed by the petitioner ballot box has to be opened and verified nothing survives in the Election O.P. As a matter of fact, the allegation of the petitioner are two folds; one is that the Election Officer had played fraud and the second is that the votes, which were polled in favour of the petitioner, were counted in favour of the respondent. Unless the first aspect is proved and the court comes to a definite conclusion that the entire process of counting is vitiated, the second aspect cannot be decided. In those circumstances, the trial Court dismissing the Interlocutory Application cannot be found fault. At any rate, as the Election O.P. itself ripe for arguments, there shall be a direction to the Junior Civil Judge, Atmakur, to dispose of the same, preferably within a period of three months from the date of this Order.

With the above direction, these Civil Revision Petitions are disposed of. No order as to costs. Miscellaneous Petitions pending, if any, shall stand closed.

CHALLA KODANDA RAM, J

Date:23.03.2017.
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