

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO**WP.No.13553 of 2018****ORDER :**

Though this Writ Petition was listed for 'Admission' and at the request of both sides, the matter was heard finally and is being disposed of by this order.

2. This Writ Petition has been filed seeking a *Writ of Certiorari* to call for the records relating to order dt.10.04.2018 passed in E.O.P.No.1 of 2013 of the Election Tribunal-cum-Junior Civil Judge, Suryapet, and to quash the same.

3. The petitioner herein, the 7th respondent and three others contested for the post of Sarpanch of the Gram Panchayat of Kudakuda Village on 27.07.2013. While the petitioner secured 1562 votes, the 7th respondent secured 1554 votes, and other contestants secured 121, 665 and 21 votes respectively.

4. 215 votes were declared invalid.

5. The 6th respondent declared the petitioner as having been elected.

The pleading of 7th respondent in O.P.No.1 of 2013

6. The 7th respondent filed O.P.No.1 of 2013 before the Junior Civil Judge, Suryapet, under Section 233 of the Andhra Pradesh Panchayat Raj Act, 1994 assailing the petitioner's election.

7. In that O.P., one of the contentions raised by the 7th respondent was that the 6th respondent kept aside 215 votes during the process of sorting of ballot papers of all contestants on the pretext that they were doubtful, to be clarified with the contestants, and without showing the sorted ballots or the alleged doubtful votes, declared them as invalid. The 7th respondent contended though she requested for re-counting, that the 6th respondent promised to re-count the votes at the Mandal Parishad Development Office, Chivemla the next day since there was a law and order problem and it was late at night and the polling staff were not co-operating for re-count, but without doing so declared the result of the election. It is alleged that if those 215 votes were properly scrutinized, the result of the election would have changed, that the 7th respondent would have got highest number of votes and would have been declared as the returned candidate.

8. It is alleged that the 6th respondent neither assigned any reason for declaring the 215 votes as invalid nor did she show and explain to the candidates the reasons for declaring them invalid. It is also alleged that the 5th respondent did not allow the 7th respondent or her agents to inspect the ballots that were rejected, that no endorsement was made by the 5th respondent on the allegedly invalidated 215 votes, and she thus disregarded Rule 34(4) of the Election Rules framed under the Act.

9. It is also alleged that the entire counting process was intentionally delayed till midnight and the 6th respondent arbitrarily

refused to re-count the votes and even refused to acknowledge receipt of written application of the 7th respondent for re-counting, thereby violating Rule 35 of the Election Rules.

10. There are also allegations about corrupt practices levelled against the petitioner. Allegations were also made that the ballots used were not properly accounted for during the counting, and there was variation between the votes polled and votes counted.

The Counter affidavit of the petitioner in the O.P

11. Counter-affidavit was filed by the petitioner denying the allegation that there was any wrongful invalidation of votes by the 6th respondent or indulging of corrupt practices by the petitioner.

12. It is contended that counting of votes started as per scheduled time. The allegation that 215 votes were kept aside as doubtful to be clarified with the contestants and the 6th respondent without showing the said sorted out votes declared them as invalid, was denied. It was alleged that each and every vote was shown to all the contestants who were present and their agents deputed and then only invalid votes were separately sorted out. It is alleged that if really invalid votes were not shown to the 7th respondent she would have raised such objection immediately.

13. It is also contended that after the counting was over signatures of all the candidates were obtained at the time of declaration of the results and the 7th respondent had also endorsed her signature without

putting forth any objection which itself shows that her allegations are false.

14. It is denied that the 7th respondent made any request or made any application for re-counting the votes and it was denied that the 6th respondent promised to re-count the votes as alleged by the 7th respondent.

15. It was denied that there was any violation of the Rules of election or procedure laid down in the Act or the Rules. It was also denied that there was any improper counting of the ballots used and polled.

The counter affidavit of the 6th respondent in the O.P

16. The 6th respondent filed a counter-affidavit denying the allegations levelled by the 7th respondent against her.

17. She stated that the election staff had counted the polled votes in the presence of the contested candidates and their agents with sufficient lighting and the invalid votes were separated after they were accepted. It is contended that the 7th respondent and other contestants or their agents did not make any objection at the time of counting for the invalidation of the 215 votes.

18. It is stated that the 7th respondent and the other contestants also signed on the election counting sheet without making objection for counting or invalidation of the votes. The other allegations levelled by the 7th respondent were also denied.

The trial in the O.P

19. Evidence was led in by the parties and PWs.1 to 3 and Exs.P.1 to 9 were marked by the 7th respondent.

20. The petitioner examined herself as PW.1 and also examined PW.s2 and 3.

The order of the Election Tribunal

21. By order dt.10.04.2018, the Election O.P. was allowed in part ordering re-counting of votes polled for the post of Sarpanch of the said Gram Panchayat ; and the Mandal Parishad Development Officer (4th respondent) was directed to re-count the votes polled in the open Court on 21.04.2018 from 11:00 a.m. in the presence of both parties and their respective counsels and the Assistant Government Pleader by taking the assistance of the Office of the Superintendent to undertake the process of re-counting. This direction was given after giving a finding that the 6th respondent violated the rules and committed other material irregularities during the counting process.

22. The Tribunal relied on the admissions in the cross-examination of the petitioner as R.W.1 in the O.P that the 6th respondent did first declare 215 votes to be doubtful, separated them to be declared as invalid later; that the 6th respondent also stated that after counting they will decide invalid votes one by one; and that petitioner did not remember at what time counting process was completed and when the 6th respondent informed her the reason for declaring the votes as

invalid. It also relied upon the statement of P.W.3, the 6th respondent, that she has not mentioned the reasons for invalidation of votes of any sheet of paper and the reasons for invalidation was mentioned on the ballot papers themselves.

23. It therefore concluded that there was no proper scrutiny of the 215 votes which were invalidated by the 6th respondent, that both the 7th respondent and the petitioner admitted that at about 03:00 a.m., the 6th respondent had informed that re-counting will be done at the next day at the Mandal Parishad Development Office, but, on the next day, they were not called and the 215 ballot papers were rejected and the result of the election was declared.

The present W.P

24. Assailing the same, the present Writ Petition is filed.

25. Initially, at the stage of admission, this Court suspended the order passed by the Election Tribunal-cum-Principal Junior Civil Judge, Suryapet for ten (10) weeks on 20.04.2018.

26. But the said order was set aside in W.A.No.707 of 2018 on 04.06.2018 by the Division Bench of this Court, and the matter was remitted for fresh consideration.

27. The matter was then heard on 14.06.2018 and orders were reserved.

The contentions of Counsel for petitioner

28. Sri V. Ravi Kiran Rao, learned counsel for Writ Petitioner, sought to contend that the findings recorded by the Election Tribunal are not legally sustainable; that no objections were raised at any point of time by the 7th respondent during the process of counting for the invalidation of the 215 votes, nor were any written objections filed during the counting process; that the 6th respondent had taken signatures of all the contestants including the 7th respondent and the petitioner, and at that time also no objections were raised by the 7th respondent, and this itself shows that allegations levelled by the 7th respondent against the petitioner and the 6th respondent are false. He contended that there is no violation of the rules laid down under the Andhra Pradesh Panchayat Raj Act, 1994 and the invalid votes were declared after minute scrutiny by specifically showing them to the agents.

Contentions of Counsel for respondent no.7

29. Sri Virupaksha Dattatreya Gowda, learned counsel appearing on behalf of 7th respondent, supported the findings of the Election Tribunal and contended that there was no error of jurisdiction committed by the said Tribunal in granting relief to the 7th respondent. He also stated that the admissions of the Writ Petitioner were sufficient to establish the allegations levelled by the 7th respondent in the election petition and they were rightly relied upon by the Election Tribunal in coming to the conclusion that there were several

irregularities including the irregularity in invalidation of 215 votes by the 6th respondent.

30. I have noted the contentions of the respective counsel.

The point for consideration

31. The point for consideration is;

“Whether the order passed by the Election Tribunal on 10.04.2018 in E.O.P.No.1 of 2013 warrants any interference in exercise of power of Judicial Review vested in this Court?”

32. It is not in dispute that under Article 226 of the Constitution of India, the Court cannot re-apprise the evidence on record as if it is an appellate authority and interfere with findings of facts recorded on the basis of evidence.(**State of W.B v. Atul Krishna Shaw¹ and State of A.P v. Abdul Khuddus²**)

33. From the facts narrated above, it is clear that 215 votes were declared as invalid by the 6th respondent. The question is :
“While doing so, whether the 6th respondent acted in a transparent manner and informed the reasons for invalidation of the 215 votes to all the contestants and their agents during the process of counting?”

34. In this regard, the pleading of the 7th respondent in the election petition is specific that initially the 215 votes were kept aside on the pretext of being doubtful to be clarified with the contestants, and later

¹ (1991) Supp (1) SCC 414

² (2007) 15 SCC 261

at about 03:00 a.m. the 6th respondent promised to re-count the 215 ballot papers set aside the next day at the Mandal Parishad Development Office, Chivemla on the pretext that counting staff were not co-operating and she would seek instructions from superiors; that there was a law and order problem since it was late night and polling staff were not co-operating for the re-count; and that without showing the alleged doubtful ballot papers, the 6th respondent declared them invalid.

35. The 7th respondent, as PW.1, reiterated the said stand.

36. Though in her chief-examination, the Writ Petitioner as RW.1, denied these statements, in her cross-examination, she admitted that initially 215 votes were stated to be doubtful and to be declared as invalid later and the election officer, 6th respondent, stated that after counting she will decide invalid votes one by one; that the election staff informed her that because it was late they were unable to count the votes and they were shifting the entire material to the Mandal Parishad Development Office, Chivemla, but they have not called the petitioner or the 7th respondent to the said office on the next day.

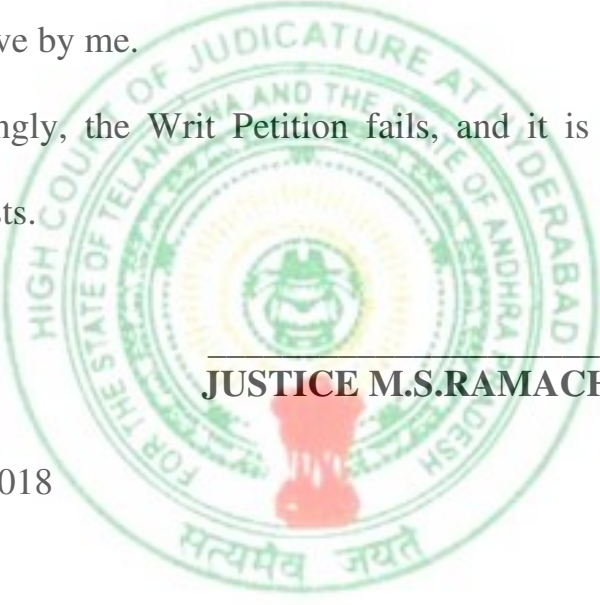
37. These admissions of the Writ Petitioner which corroborate the allegations levelled by the 7th respondent against the 6th respondent, in my considered opinion, were correctly relied upon by the Election Tribunal to grant relief to the 7th respondent. These findings were

rendered on correct appreciation of evidence and cannot be said to be either perverse or based on no evidence.

38. In this view of the matter, I am of the opinion that the impugned order does not suffer from any error of jurisdiction warranting interference by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India.

39. Though certain decisions were cited by counsel on both sides, I do not see any necessity to advert to them in the light of what has been held above by me.

40. Accordingly, the Writ Petition fails, and it is dismissed. No order as to costs.



JUSTICE M.S.RAMACHANDRA RAO

Date: 25.06.2018

Ndr/*