

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

Civil Revision Petition Nos.4993 and 4999 of 2018

COMMON ORDER :

Since these two Revisions arise between the same parties out of the same Election O.P., they are being disposed of by this Common order.

2. The petitioner herein is the returned candidate and was elected to Ward No.49, Ghansi Bazar, Greater Hyderabad Municipal Corporation (G.H.M.C.) in the elections held pursuant to the notification dt.08.01.2016 issued by the Election Commission.

3. The 1st respondent filed O.P.No.491 of 2016 challenging the election of petitioner.

4. Counter-affidavit was filed by petitioner opposing grant of relief to 1st respondent and engaging Sri N. Subbarao, Advocate to represent her in the case.

5. The petitioner was initially set *ex parte* in the Election O.P. She then filed I.A.No.454 of 2007 to set aside the order setting her *ex parte*. The said petition was dismissed.

6. Later, she filed I.A.No.5377 of 2017 to condone the delay in filing application for restoration of I.A.No.454 of 2017, and a separate application I.A.No.5373 of 2017 to restore I.A.No.454 of 2017.

7. Both these applications were allowed by the Trial Court on 28.04.2017.

8. The 1st respondent was examined in chief, and the case was posted for cross-examination by the petitioner and other respondents.

9. The respondent nos.2 and 3 cross-examined PW.1 on 25.3.2017, but petitioner did not cross-examine the said witness on that day.

10. The petitioner then filed an application to re-call PW.1 for cross-examination, and it was allowed on 12.02.2018 fixing a date for cross-examination and an Advocate-Commissioner was appointed to record the cross-examination.

11. The petitioner did not cross-examine PW.1, through her counsel and the Advocate-Commissioner filed a report fixing 17.02.2018 as the date for cross-examining PW.1. On that date also, the petitioner did not cross-examine PW.1 though the 1st respondent was present.

12. On 20.02.2018, the Advocate-Commissioner filed a Memo to that effect.

13. The Court below however gave another chance by permitting the petitioner to cross-examine PW.1 on 24.02.2018.

14. Even on that date, the petitioner did not cross-examine the witness.

15. The Advocate-Commissioner then filed a report on 26.02.2018 and the Court recorded that the evidence of PW1 was closed, and the matter was posted for the evidence of respondent nos.4, 5 and 8.

16. Thereafter, another application was filed by petitioner to re-call PW.1 which was the third application and fifth opportunity to petitioner. That application was also allowed subject to the condition that 1st respondent be cross-examined on 01.05.2018. Though the witness was present, the 1st respondent failed to cross-examine the witness.

17. The Court then posted the matter to 02.05.2018 for cross-examine the witness, and on that date also, though witness was present and the Court waited till 04:30 p.m., cross-examination was not done, but a representation was made that the Senior Counsel went to the High Court.

18. The Trial Court then noted that sufficient opportunity was given to the petitioner and she had failed to avail the same, and that conditional orders were not complied with and the right to cross-examination was forfeited.

19. The petitioner then filed I.A.No.2956 of 2018 to re-open the evidence of PW.1 by setting aside the order dt.02.05.2018, closing the right of cross examination of PW.1 on behalf of petitioner; and I.A.No.2957 of 2018 to re-call PW.1 for submitting to cross-examination by petitioner.

20. In the affidavits filed in support of these applications, it was stated that health condition of petitioner's counsel was bad; that she was advised complete bed rest and was unable to attend to Court; after the evidence was closed and the matter was posted to 08.06.2016 for evidence on behalf of other respondents in the O.P., the petitioner changed the Advocate and filed these applications seeking opportunity to cross-examine PW.1; otherwise grave and irreparable loss would be caused to petitioner.

21. These applications were opposed by 1st respondent giving the various dates mentioned above as to how though opportunities to cross-examine PW.1 were given to petitioner, she did not avail of it. It was contended that there is no evidence to show that the counsel for petitioner was unwell and the counsel was attending all the courts and attending professional work also at that time. It was also contended that change of counsel cannot be a ground to now give a fresh opportunity, when several opportunities given to petitioner were not availed of by petitioner.

22. By separate orders dt.04.07.2018, both the applications were dismissed by the Court below. The Court below held that the Docket Order passed by the Court indicates that in spite of granting several opportunities, petitioner could not cross-examine the witness and so her right to cross-examine the witness was forfeited, and by simply changing the counsel she has now come up with these applications to re-open the evidence and re-call PW.1. It observed that petitioner had

displayed an attitude to procrastinate the proceedings, that there was also a direction by this Court to dispose of the matter early, and the Court did not commit any error in forfeiting her right after duly granting sufficient opportunities.

23. Assailing the same, the present Civil Revision Petitions are filed.

24. The counsel for petitioner reiterated that petitioner would suffer grave and irreparable loss if petitioner is not allowed to cross-examine PW.1. He contended that the counsel for petitioner was unwell and petitioner therefore could not avail the opportunities granted to her to cross-examine PW.1, and lenience should be shown by the Court.

25. From the record, it is clear that one N. Subbarao filed *Vakalat* in the Election O.P. for petitioner. The matter was coming up for cross-examination of PW.1 by petitioner from 25.03.2017 onwards. After 25.03.2017, the petitioner did not cross-examine PW.1 on 12.02.2018, 17.02.2018, 20.02.2018, 24.02.2018, 01.05.2018 and 02.05.2018. These facts were not disputed by the counsel for petitioner. When several opportunities to cross-examine a witness were granted to petitioner and petitioner did not avail of it, the petitioner cannot complain of lack of opportunity to cross-examine P.W.1. If the counsel for petitioner was unwell she could have engaged another counsel and got completed the cross-examination of PW.1.

26. Though the counsel for petitioner sought to contend that Sri N. Subbarao, who was not attending to the matter, but another female advocate was dealing with the matter, and she had some gynecological problems, the petitioner cannot rely on the same since Sri N. Subbarao or any other counsel could have cross-examined PW.1.

27. Having regard to the above conduct of petitioner, it appears that petitioner was only keen on to procrastinate the proceedings and was not having any intention to co-operate with the Court to complete the cross-examination of PW.1 when opportunity was given to her more than once.

28. I therefore do not find any error of jurisdiction in the order passed by the Court below warranting interference by this Court under Article 227 of the Constitution of India.

29. Accordingly, the Civil Revision Petitions fail, and they are dismissed. No order as to costs.

30. As a sequel, miscellaneous petitions pending if any in these Civil Revision Petitions, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 27.03.2019

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