

HONOURABLE SRI JUSTICE P. NAVEEN RAO

CIVIL REVISION PETITION NO.3113 OF 2019

Date :18.02.2020

Between:

Golkonda Uma Devi, w/o. G.Sadanandam,
Aged about 45 years, occu: Agriculture,
R/o. H.No.9-91, Dharmaram village,
Parkal Mandal, Warangal Rural District.

.... Petitioner/Respondent/
Respondent no.6

And

Enti Manjula w/o. Ramana Reddy,
Aged about 41 years, occu: Agriculture,
R/o. Dharmaram village, Parkal
Mandal, Warangal district.

.... Respondent/petitioner/
Petitioner

The District Collector-District Election Authority,
Warangal Rural District and others.

.... Respondents/respondents/
Respondents 1 to 5

The Court made the following:

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ORAL ORDER:

Heard learned counsel for petitioner Sri A.Prabhakar Rao and learned counsel for respondent No.1 Sri K Buchi Babu.

2. This revision petition is filed by 6th respondent in Election O.P.No.1 of 2019 questioning the order dated 20.11.2019 in I.A.No.2131 of 2019.

3. Election O.P.No.1 of 2019 is filed by the first respondent herein challenging the election of revision petitioner as Sarpanch of Dharmaram village, Parkal mandal, Warangal district. The challenge to the election of petitioner as Sarpanch is on the ground that she is blessed with three children born after 31.05.1995, therefore is not qualified to contest the election. It was alleged that at the stage of scrutiny of nominations, first respondent raised objections on entitlement of petitioner to contest the election but said objection was illegally rejected and as petitioner was not qualified to contest, declaration is sought to declare that the election of the petitioner as Sarpanch as void and to declare that the 6th respondent has violated the provisions of Section 21(3) of the Telangana Gram Panchayat Act, 2018. Petitioner entered her appearance and filed counter opposing the stand of first respondent. Petitioner asserted that three children were born to her prior to 31.05.1995, therefore, the embargo imposed in the Panchayat Raj Act, 2018 to contest the election for the post of Sarpanch is not attracted to her.

4. In said Election O.P. first respondent filed I.A.No.2131 of 2019 under Order VII Rule 14 (3) of C.P.C. praying to receive the documents. In paragraph-3 of the affidavit filed in support of the application, first respondent has listed out nine documents which she intended to present in support of her contention that children of petitioner were born after the cut off date and therefore disqualification is applicable. The documents sought to be presented are: i) and ii) Marriage certificate issued by Executive Officer (Additional Commissioner), Sri Bhadrakali temple along with memo; iii) proceedings of the Additional Commissioner/ Information Officer, Municipal Corporation, Warangal with regard to date of birth of sons of petitioner; iv) Certified copies of date of births of children of petitioner from Correspondent, Baby Sainik High School, Gopalpur, Hanamkonda; v) Proceedings of the Additional Commissioner, GWMC, Warangal addressed to Sub Inspector of Police, Parkal; vi) certified copies of two types of date of birth certificates of children of petitioner; vii) memo issued by the Revenue Divisional Officer, Warangal with regard to the proceedings pertaining to non availability of date of birth certificates of petitioner; viii) Copy of F.I.R and ix) Charge sheet. The application to receive the enlisted documents was allowed by the Election Tribunal. Hence, this revision.

5. According to learned counsel for petitioner, while filing the Election Petition, the petitioner therein should file list of documents in her possession to support her claim, where as, the documents mentioned in I.A. were not filed along with Election Petition. Some of the documents relate to post institution of Election O.P. It is not permissible to file any document

subsequently once Election Petition is filed. By placing reliance on provision in Order VII Rule 14(3) of CPC he would submit that no sufficient cause was shown in the I.A., as to why those documents were not filed along with the Election Petition and the relevancy of those documents. It is not the case of first respondent that those documents were not within her knowledge and in possession when the Election Petition was filed. When there was no explanation to satisfy the Court on *bona fides* of first respondent in not filing the documents along with the Election Petition, the Election Tribunal erred in accepting the plea and permitting the documents to be received. In support of his contention, learned counsel placed reliance on decisions of this Court in **Nyayapathi Srinivas Raghavan Vs Burra Adinarayana Sastry¹** and **Choudari Rajesham Vs Choudari Lingaiah (died) and another²**.

6. *Per contra*, learned counsel for first respondent submitted that revision petitioner was making false statements about birth of her children and children were born to her after the cut off date. First respondent has applied for the documents to show the date of marriage and the date of birth of the children and those documents were obtained later and therefore Election Tribunal has validly passed orders granting leave to present the documents. In support of his contentions, he placed reliance on decision of this Court in **Bada Bodaiah and another Vs Bada Lingaswamy and others³**.

¹ 2012 (6) ALD 452

² 2019 (6) ALD 583 (TS)

³ 2003 (1) ALD 790

7. In this Civil Revision Petition, the only issue for consideration is whether Election Tribunal was right in allowing the application filed by first respondent to receive additional documents mentioned in the Election Petition.

8. Before considering the scope of Order VII Rule 14 (3) of CPC, it is necessary to look into the contents of the affidavit filed in support of the application praying to receive additional documents. The affidavit contains three paragraphs and prayer. In paragraph-2, first respondent state that she filed Election Petition to declare the election of respondent no.6 therein for the post of Sarpanch as void. In paragraph-3, she refers to the complaint filed by her and her husband against the revision petitioner and registration of crime and filing of the charge sheet. It is not stated as to what was the complaint filed and what were the charges mentioned against the petitioner in the charge sheet filed before the competent Court and immediately jumps to obtaining of the documents listed out therein and prayer ends with words 'charge sheet'. There is no explanation on relevancy of the documents, when those documents were obtained and why those documents could not be obtained earlier. In other words, it is a bland affidavit.

9. A party to a suit should present his evidence at the earliest point of time. That being so, it has become routine for parties to introduce new evidence during various stages of the suit. Filing petition after petition by parties to the litigation on one plea or the other is the major impediment in disposal of civil cases expeditiously. In order to curb the practice of parties producing

documents at any stage of the suit proceedings resulting in protracting the litigation causing inordinate delay in conclusion of the cases in the civil Courts, Order VII Rule 14 CPC was amended by Act 46 of 1999. Sub-Rule (1) mandates, plaintiff to furnish the list of documents on which reliance is placed by him, to produce the same in the Court when the plaint is presented and shall deliver the documents and copies thereof to be filed with the plaint. Sub-Rule (2) requires that if a document is not in possession or power of the plaintiff, he should state in whose possession and power the said document is available. Sub-Rule (3) carves out an exception to Sub-Rules (1) and (2) and enables plaintiffs to file additional documents which were not shown in the list of documents filed along with the plaint. Sub-Rule (3) vests discretion in the trial Court to permit additional documents which could not be filed along with the plaint.

10. The plaintiff has to seek leave of the Court to present documents which were not shown in the list of documents filed along with the plaint and/or shown but documents were not filed as they were not in his possession/unavailable/could not be discovered. He must also explain relevancy of those documents. Thus, presentation of additional evidence after the plaint was filed is not a matter of course. Only on satisfaction of the reasons assigned and on consideration of the relevancy of the documents, the trial Court may exercise its discretion to permit presentation of the additional documents. Satisfaction of the Court to accept the plea of plaintiff to present additional evidence at a later stage depends on the facts of the case, the nature of documents sought to be presented, reasons assigned, genuineness of the claim and

the stage of the suit. The trial Court would assess the *bona fides* of the claim and whether such additional evidence would aid in proper adjudication of the suit claim while exercising its discretion. Similar provision is incorporated in Order VIII Rule 1-A CPC with reference to defendant's plea.

11. Amendments carried out to Order VII CPC are intended to curb the tendency of filing documents after plaint was filed and to discipline the parties. It is no doubt true that, *'Procedural law not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice'* (**Shaikh Salim Haji Abdul Khayumsab Vs. Kumar and others**⁴- paragraph-14), at the same time, as observed by the Supreme Court, *'no person has a vested right in any course of procedure. He has only the right of prosecution or defence in the manner for the time being by or for the court in which the case is pending, and if, by an Act of Parliament the mode of procedure is altered, he has no other right than to proceed according to the altered mode.'* (see *Blyth Vs. Blyth* (1996) 1 All ER 524). (paragraph 13 of **Shaikh Salim Haji**).

12. In **BAGAI CONSTRUCTION Vs GUPTA BUILDING MATERIAL STORE**⁵, the Trial Court rejected the applications filed under Order VII/Rule 14 read with Section 151 of CPC and Order 18/Rule 17 of CPC. On filing revision, the High Court reversed the decision of Trial Court. On appeal Supreme Court

⁴ (2006) 1 SCC 46

⁵ (2013) 14 SCC 1

upheld the decision of the Trial Court. Supreme Court observed as under:

“15. After change of various provisions by way of amendment in the Code of Civil Procedure, it is desirable that the recording of evidence should be continuous and followed by arguments and decision thereon within a reasonable time. This Court has repeatedly held that courts should constantly endeavour to follow such a time schedule. If the same is not followed, the purpose of amending several provisions in the Code would get defeated. ***In fact, applications for adjournments, reopening and recalling are interim measures, could be as far as possible avoided and only in compelling and acceptable reasons, those applications are to be considered.....***” (emphasis supplied)

13. Noticing the object behind introducing stringent provisions in CPC, learned single Judge of this Court cautioned the Courts below in **Voruganti Narayana Rao Vs. Bodla Rammurthy and others**⁶ by observing that the amendments are carried out ‘to curb the phenomenal delays in the procedural aspects leading to procrastination of the proceedings before the Civil Court..... Undoubtedly, unduly liberal approach in this regard would frustrate the purpose for which the provisions of the Code of Civil Procedure are amended’. (paragraph 7)

14. From the pleadings in paragraph-4 of the O.P. it is seen that opposing the nomination of the petitioner, first respondent raised objection by contending that the petitioner is having three children who are all born after 31.05.1995 and therefore is not qualified to contest. It is also stated that the certificates issued by Correspondent, Baby Sainik High School, Gopalpur, Hanamkonda, disclosing the dates of birth of three children was also placed before the Election Officer. The first

⁶ 2011 (6) ALT 299

respondent also stated that SSC memo of the first son of the petitioner was also filed. This would disclose that first respondent obtained relevant documents to prove her case that petitioner had three children born after cut off date and therefore not qualified to contest the election. It is not stated why these documents were not filed along with O.P. Further there is no averment in the O.P., as to whether first respondent has knowledge of any other documents but those documents were not in her possession and has also not stated as to in whose possession those documents were available. As noticed above, the averments in the affidavit filed in support of the application to receive the additional evidence, is silent as to the reasons why those documents were not presented earlier, their relevancy and why those documents are sought to be presented after filing of O.P.

15. In an Election O.P. allegation that contestant having three children is a crucial issue going to the root of validity of the election of successful candidate. When person makes such allegation, files Election O.P. and asserts that candidate has more than two children, she must secure relevant documents and file along with the Election O.P., more so when she claims to have filed objections against nomination filed by petitioner by relying on school records. Thus, first respondent requires to assign detailed reasons as to how those documents could not be obtained earlier and were obtained later, but cannot file a bald affidavit as if such a relief can be sought as a matter of course. It is to be noted that Election O.Ps do not stand on a par with civil disputes and merely because the Junior Civil Judge/ Senior Civil Judge is also acting

as Tribunal, he cannot convert the proceedings before the Tribunal as a civil Court.

16. Except stating that petitioner was not in possession of the documents earlier, obtained the same recently, she therefore should be given opportunity to file the documents, no reasons are assigned as to how the Tribunal was satisfied about relevance of the documents and why those documents were not presented earlier. Even if the Election Tribunal was satisfied with the plea to allow leading additional evidence, having regard to the amendment to CPC and the law on the scope of Order VII Rule 14, the Tribunal could not have granted the relief when I.A. did not satisfy the primary ingredients to seek leave of even a civil Court and when first respondent did not show due diligence in prosecuting his grievance. Further, what is noted by the learned Judge in paragraph-8 was not part of the affidavit filed in support of the application.

17. The Telangana Panchayat Raj (Authority To Dispose Petitions in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads) Rules, 2018 (Rules, 2018) regulate issues concerning elections to local bodies including election disputes. To try election disputes, Election Tribunals are constituted. Tribunals are headed by the Junior Civil Judge/Senior Civil Judge. According to Rule 7(ii) of the Rules, 2018, Tribunals are vested with same powers as available to a civil Court under the Code of Civil Procedure, 1908 to regulate its procedure. According to Rule 7(i) of the Rules, 2018, the Election Petition shall be enquired into as early as may be. Thus, having regard to the

object in establishing Special Tribunals to deal with election disputes and the object behind amending Order VII Rule 14 CPC the issue requires to be considered. As noticed above, there were no reasons assigned why those documents could not be filed earlier and their relevance. In civil dispute where substantive rights inter parties are required to be adjudicated, the Courts would be inclined to relax the rigors of Order VII Rule 14 CPC, subject to its satisfaction, more so, if such applications are filed before commencement of trial or at the early stage of the recording of evidence. As the Election Tribunals are required to decide the disputes expeditiously [Rule 7(i)], strict scrutiny of the applications filed to bring in additional evidence is required. The Tribunal below failed to consider the aspects in proper perspective and proceeded to decide the application to bring additional evidence in a routine manner. It is true that ordinarily appellate/revisional Court should not interfere with an order made by lower Court in exercise of its discretion. However, it is also the responsibility of the appellate/revisional Court to correct errors committed by lower Court and to discipline them. In the case on hand, the Election Tribunal clearly erred in exercising its discretion.

18. In the result, Civil Revision Petition is allowed. It is made clear that there is no expression of opinion on merits and Election Tribunal should consider the issue objectively on due assessment of evidence brought on record. Miscellaneous petitions, if any pending, are closed.

JUSTICE P.NAVEEN RAO

Date: 18-2-2020
tvk/kkm

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