

**THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA
AND
HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

WRIT APPEAL Nos.590 & 591 of 2021

COMMON JUDGMENT :*(per Hon'ble Sri Justice A.Rajasheker Reddy)*

These Writ Appeals are filed against orders dated 18.10.2021 in W.P.No.22479 of 2021 and 22334 of 2021, wherein and whereby the learned Single Judge dismissed the writ petitions filed for quashing the order In I.A.No.787 of 2021 in EOP No.121 of 2020 & I.A.No.789 of 2021 in EOP No.124 of 2020 dated 02.09.2021, respectively, on the file of the Principal District Judge, Ranga Reddy District at L.B.Nagar-cum-Election Tribunal allowing amendment to the Election Petition.

2. Since the issue involved in both the writ appeals is arising out of allowing of an amendment in Election Petition, they are being heard together and disposed of by way of Common Judgment.

3. Heard learned counsel for the parties.

Sri A.Prabhakar Rao, learned counsel for the appellant submits that the Election Petition was filed challenging the election of Chairperson and Vice-Chairperson, without mentioning the name of the returned candidates of Chairperson along with I.A.Nos.787 & 789 of 2021 on 22.04.2021 after expiry of the limitation seeking amendment to declare the candidate who secured second highest votes as Chairperson of Thukuguda Municipality by substituting prayer No.5. He also submits that the Election Petitions are liable to be dismissed for non-joinder of necessary parties and that the judgments relied on by the learned Single Judge have no application to the facts of the present case i.e., as to whether an amendment to the Election O.Ps is permissible or not after expiry of the limitation. He also

submits that the respondents 13 to 15 having failed to add the contested candidates including successful candidate and unsuccessful candidate by name as parties to the Election O.Ps, as required under Rule 7 and 5 of Election Rules, 2020, they cannot seek relief of the candidates who secured second highest vote in the election to the office of the Chairperson of Thukkuguda Municipal Corporation. He submits that the Election Tribunal has no power to allow the amendment to Election Petition and the Code of Civil Procedure is general in nature always yields to special rules issued in G.O.Ms.No.30, dated 11.02.2020.

4. In this case, it is to be seen that the issue whether the Tribunal has power to allow the amendment by applying Order VI Rule 17 of CPC is no longer *res-intergra*, as the said issue fell for consideration in **C.Maniyamma v. Junior Civil Judge, Narayanapet, District Mahaboobnagar [1998 (5) ALD 361]**, wherein it was held that amendment can be permitted in the Election Petition as per the provisions of Order VI Rule 17 of the CPC.

5. Order XIV of the CPC is applicable to Election Petitions being tried by Election Tribunals and that settlement of issues or framing of points for consideration is an essential step in an enquiry of Election Petition for the reason that parties should know on what questions in controversy, necessary may have to be let in **(See Smt. Lagudu Amiradha v. Smt. Gorrepotu Chellayamma [2004 (4) ALT 197])**.

6. The Hon'ble Apex Court while placing reliance in an unreported decision in W.P.No.1145 of 1972 rendered by this Court on 19.10.1973, wherein, this Court held that the Tribunal was justified in invoking Order IV Rule 9 of the CPC and setting aside the order of

dismissal of the Election Petition filed under the Act, before the Election Tribunal.

7. In **Merugu Kousalya v. Thadakamalla Hima Bindu [(2018) (1) ALD 33]**, by considering the principle laid down in similar matters, it is held that when the Tribunal can set a respondent *ex parte* for not filing a counter, the power to set aside the *ex parte* order also inheres in the Tribunal and, therefore, the Tribunal, which has power to set the Respondent *ex parte*, will certainly have the power to entertain an application under Order IX Rule 7 of the Code. The Hon'ble Apex Court also held that the Tribunal was not justified in not invoking Order IX Rule 7 of the Code in refusing to set aside the *ex parte* order.

8. In case of conflict between the provisions of the Representation of People Act, 1951 and the Rules framed there under or the Rules framed by the High Court in exercise of the power conferred by Article 225 of the Constitution on the one hand, and the Rules of procedure contained in CPC on the other hand, the former shall prevail over the latter. As per Rule 10 of the Rules, the Election Tribunal shall be deemed to be a Civil Court while trying a suit in respect of the matters mentioned as 'a' to 'g', as such, the said Rules do not contain any Rule which is 'in conflict' with the provisions of the C.P.C. When there is no Rule which is 'in conflict' with the provisions of the C.P.C., the Election Tribunal can exercise power conferred by the Rules as well as the provisions of the CPC. **[(See Kailash v. Nanhku) (2005) 4 SCC 480]**.

9. Every Election Petition shall be enquired into by the Election Tribunal in accordance with the procedure applicable under the CPC and it is now well settled that all the subsequent amendments to CPC get incorporated into Rule 11 though the amendment to Order XVIII Rule 4 was not there when the Rules were made. (See *M.Ganganna v.*

A.Chitma Guravaiah[2003 (5) ALD 231]]. It is settled law that as per Rule 9 of the rules, every Election Petition shall be enquired into by the Election Tribunal 'as nearly as may be' in accordance with the procedure applicable to the trial of the suits under the CPC and the Election Tribunal shall be deemed to be a civil Court while trying a suit in respect of the matters mentioned under 'a' to 'g' of Rule 10 of the Rules and the Election Rules contained in G.O.Ms.No.30, dated 11.12.2020 do not contain any rule which is contrary to the provisions of the CPC, as such, the contention of the learned counsel for the appellant that the provisions of CPC, have no application that too for amendment of the pleadings, cannot be accepted.

10. As far as the issue of allowing the amendment applications is hit by the limitation, it is to be seen that there is no change in the main prayer, which is intact and also there is no change in the nature of the Election Petition by virtue of such amendment and the amendment sought is also in consonance with Rule 20 of the Rules and the same is only a consequential relief as the main prayer remains the same.

11. Finally, it is contended by the learned counsel for the appellant that limitation for filing Election Petition within 30 days under Rule 3 from the date of declaration of results is only for filing Election Petition. But in the present case, it is not disputed that the Election Petition is not filed within 30 days, but it is only an application filed for seeking amendment to the pleadings, which is found to be only interlocutory in nature, as such, limitation of 30 days found in Rule 3 has no application for filing amendment application. The Rule making authority has provided 30 days limitation for filing Election Petition from the date of declaration of results of Election, but it does not

provide any limitation for filing an application for seeking amendment, as such, the contention of the learned counsel for the appellant that the amendment sought is hit by limitation as contained in Rule 3 of the Rules, cannot be accepted. However, if there is any such issue, it is always open for the appellant to raise the aspect of limitation during the course of trial and the issue of limitation is a question of fact or law, can be decided only after full-fledged trial. By allowing the amendment application, no relief is granted to the respondents/petitioners.

12. Learned Single Judge by referring to several judgments of this Court as well as the Hon'ble Apex Court, referred to supra, came to the conclusion that the amendment is only a clarificatory in nature and is not hit by limitation under Rule 3, as such, no exception can be taken to the order of the learned Single Judge.

13. In view of above facts and circumstances, we are of the considered opinion that it is not a fit case warranting interference under Clause XV of Letters Patent, as such, both these Writ Appeals are liable to be dismissed and accordingly dismissed.

There shall be no order as to costs. As a sequel thereto, miscellaneous applications, pending if any, shall stands dismissed.

SATISH CHANDRA SHARMA, CJ

A.RAJASHEKER REDDY, J

29.11.2021
kvs

**THE HON'BLE THE CHIEF JUSTICE SATISH CHANDRA SHARMA
AND
HON'BLE SRI JUSTICE A.RAJASHEKER REDDY**

WRIT APPEAL Nos.590 & 591 of 2021

.11.2021

kvs

