
(2008) 09 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No. 17363 of 2008

Challa Satyanarayana

APPELLANT

Vs

Tadi Lakshmana Rao and Others

RESPONDENT

Date of Decision : 12-09-2008

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 19(3)
Andhra Pradesh Panchayat Raj Rules — Rule 7

Citation : (2008) 6 ALD 153 : (2009) 1 ALT 300

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : A.V. Sesha Sai, for the Appellant; S.R. Sanku, for the Respondent

Final Decision : Allowed

Judgement

L. Narasimha Reddy, J.—The elections to the Chittavaram Grampanchayat were held in the year 2006. The petitioner, 1st respondent and certain others contested in the election, and the petitioner was declared elected as Sarpanch. The 1st respondent filed E.O.P. No. 4 of 2006, before the Election Tribunal-cum-Principal Junior Civil Judge, Narsapur, pleading inter alia that the petitioner incurred disqualification, u/s 19(3) of the A.P. Panchayat Raj Act (for short "the Act"), and that he had third child after the notified date. The petitioner filed counter, opposing the Election Petition. The trial of the OP commenced.

2. The petitioner filed I.A. No. 1257 of 2007, before the Tribunal, with a prayer to receive certain documents. The application was opposed by the 1st respondent. Through its order dated 14.7.2008, the Tribunal dismissed the I.A. Hence, this writ petition.

3. Sri A.V. Sesha Sai, learned Counsel for the petitioner, submits that the view taken by the Tribunal that it is not conferred with the power, under Rule 7 of the A.P. Panchayat Raj Rules (for short "the Rules"), cannot be sustained in law. He submits that the power to record oral and documentary evidence is inherent in a

Tribunal, and at any rate, Rule 7 clearly empowers the Tribunal to receive evidence.

4. Sri S.R. Sanku, learned Counsel for the 1st respondent, on the other hand, submits that the Tribunal is not a Civil Court, and only on limited aspects, power is conferred upon it, such as summoning of witnesses, recording of evidence of witnesses, ordering discovery and inspection of documents, etc. He submits that the Tribunal has discussed the matter elaborately, with reference to decided cases, and the impugned order does not warrant interference.

5. The short question that arises for consideration in this writ petition is, as to whether the Election Tribunal, constituted under the A.P. Panchayat Raj Act, is conferred with the power to receive documents, during the course of trial of an Election Petition.

Rule 7 of the Rules assumes significance, in this regard. It reads as under:

Rule 7: (1) Every election petition shall be enquired into by the Election Tribunal, as early as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 for the trial of suits;

Provided that it shall only be necessary for the Election Tribunal to make a memorandum of the substance of evidence of any witness examined by him.

(2) The Election Tribunal shall have the powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters;

(a) discovery and inspection;

(b) enforcing the attendance of witness and requiring the deposit of their expense;

(c) compelling the production of documents;

(d) examining witnesses on oath;

(e) reception of evidence taken on affidavit; and

(f) issuing commissions for examination of witnesses, and may summon and examine suo motu any person whose evidence appears to him to be material.

From a perusal of this, it becomes clear that the Tribunal is conferred with specific power to record evidence and even to compel production of documents. Any Court or Tribunal, which is conferred with the power to record evidence, is axiomatically empowered to record not only oral, but also documentary evidence. Hardly one comes across an instance, where a Tribunal or the Authority is conferred with the power, only to record oral evidence. At any rate, once the Tribunal is conferred with the power to cause discovery and inspection of records and to compel production of documents, it is rather unimaginable that it is not empowered to receive documents when produced by the witnesses, on behalf of

the parties. If such contention is accepted, it would lead to, in fact, absurdities.

Learned Counsel for the 1st respondent places reliance upon the judgments of this Court in Kummari Ramulu Vs. Gangaram Penta Reddy and Others, and Challa Satyanarayana Vs. Tadi Lakshmana Rao and Others, . In Kummari Ramulu Vs. Gangaram Penta Reddy and Others, , the question was about the power of the Election Tribunal to order amendment of the pleadings and to implead the parties. In Challa Satyanarayana Vs. Tadi Lakshmana Rao and Others, , the question related to the power of the Tribunal to frame a preliminary issue and to decide it. Admittedly, none of those powers are conferred on the Tribunal, under Rule 7. The power of a Tribunal to record evidence and to receive documents is certainly conferred upon it, and at any rate, it is almost axiomatic. Hence, the view taken by the Tribunal cannot be sustained in law.

6. Hence, the writ petition is allowed, and the impugned order is set aside. Consequently, the I.A. is allowed, and the Tribunal is directed to receive the documents, subject to the admissibility, and to proceed to decide the O.P., as early as possible. There shall be no order as to costs.