
(2008) 03 AP CK 0043

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 3612 of 2007

Maddipatla Jagan Mohan Rao

APPELLANT

Vs

Akula Nagamalleswari and Others

RESPONDENT

Date of Decision : 07-03-2008

Acts Referred:

Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads) Rules, 1995 — Rule 3, 5
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2008) 4 ALD 71 : (2008) 3 ALT 332

Hon'ble Judges : D.S.R. Varma, J

Bench : Single Bench

Advocate : K. Chidambaram, for the Appellant; V.V. Prabhakara Rao, for the Respondent

Final Decision : Dismissed

Judgement

D.S.R. Varma, J.—Heard Sri K.Chidambaram, learned Counsel appearing for petitioner and Sri V.V. Prabhakara Rao, learned Counsel appearing for respondent No. 1, since respondents 2 to 5 were shown as "not necessary" vide Cause Title.

2. This civil revision petition is directed against the order and decretal order, dated 06-8-2007, passed by the Principal Junior Civil Judge, Avanigadda, Krishna district in dismissing the application I.A. No. 775 of 2007 in Election O.P. No. 12 of 2006, filed under Rule 5(i) and (ii) of Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for brevity, "the Rules, 1995") and u/s 151 C.P.C., seeking to dismiss the main Election O.P., for non-compliance of mandatory provisions laid down under Rule 5(i) and (ii) of the Rules, 1995 and to decide the non-compliance of it as a preliminary objection.

3. The petitioner herein is respondent No. 5, respondent No. 1 is petitioner and respondents 2 to 5 are respondents 1 to 4, respectively, in the Election O.P., before the Court below.

4. The petitioner is the successful candidate in the election for the Gram Panchayat, Pedaprolu as Sarpanch. Challenging his election, respondent No. 1 filed the present Election O.P. Along with the presentation of the Election O.P., prescribed amount of Rs. 100/- as postulated under Rule 5 of the Rules, 1995 was not paid. Office of the Court below had returned the papers for presentation of the same after complying the objections. After complying the office objections, the election petition had been represented and trial had commenced. During the trial, the present I.A. No. 775 of 2007 was filed by the petitioner stating that the election petition filed by respondent No. 1 itself has to be dismissed in limini on the ground that there was no compliance of Rule 5 of the Rules, 1995. The Court below dismissed the said application. Hence, the present civil revision petition.

5. The facts, which are not in dispute, are that the petitioner was declared as elected on 06-8-2006 as the Sarpanch of Pedaprolu Gram Panchayat. The election petition was filed by respondent No. 1 on 14-8-2006. The presentation of Election O.P., was moved "out of order" along with lodgment schedule to deposit the security costs of Rs. 100/- with a request to issue challan on that date itself for being complied with, but the office of the Court below returned the same with regard to the maintainability of the petition basing on jurisdiction. However, four days thereafter i.e., on 18-8-2006 the election petition was represented by respondent No. 1 after paying required deposit of Rs. 100/- as envisaged under Rule 5(i) of the Rules, 1995 and thereafter, the trial had commenced.

6. During the course of trial, the present objection regarding non-compliance of Rule 5(i) of the Rules, 1995 was brought to the notice of the Court below by way of the present interlocutory application and sought for dismissal of the election petition as such.

7. For ready reference, Rule 5 of the Rules, 1995 is extracted hereunder, to the extent relevant:

5. (i) At the time of presentation of the petition, the petitioner shall deposit with it in cash Rs. 100/- (Rupees one hundred only) as security for the costs of the same.

Explanation: Where the election of more than one returned candidate is called in question a separate deposit shall be made in respect of each such returned candidate.

(ii) If the provisions of Sub-rule (1) are not complied with, the Election Tribunal shall dismiss the petition.

(iii) ...

8. From the above, it is obvious that Rule 5 is mandatory in nature, which postulates deposit of Rs. 100/- as security towards the costs along with the presentation of the election petition. Non-compliance of the said provision would ex facie renders the election petition as invalid.

9. In this context, it is also necessary to look into Rule 3 of the Rules, 1995, which prescribed the period of limitation, which is extracted hereunder:

3. (1) The election petition shall be presented within thirty days from the date of the declaration of the result of the election.

Explanation: If the Court of the Subordinate Judge or the District Munsiff, as the case may be, or the Office of the Officer of the Government who is the Election Tribunal is closed on the last day of the thirty days aforesaid, the petition may be presented to the Election Tribunal on the next day afterwards on which such Court or Tribunal is open.

(ii) ...

10. From a conjoint reading of the above two provisions, it is obvious that the election of any candidate should be challenged by way of an election petition before the Court along with a security deposit of Rs. 100/-. But, there is no prescribed format to make the said deposit. In the absence of any such procedure prescribed under any law including the rules, the known procedure is that by way of lodgment schedule alone, such deposit can be received by the Court. In other words, the Court cannot receive in cash against a receipt towards deposit of Rs. 100/-, as contemplated under Rules. This procedure is nowhere prescribed under the Rules, 1995.

11. What all is said is -- the election petition can be filed within 30 days from the date of the declaration of the result of the election and such petition should be coupled with deposit of Rs. 100/- as security for the costs of the same.

12. As could be seen from the impugned order of the Court below, it appears that since no procedure was prescribed to pay the deposit of Rs. 100/- nor the Court can be permitted to receive any amount towards Court fee or such deposits under Rule 5 of the Rules, 1995, the Court below had resorted to issue lodgment challan on 16-8-2006 for proper presentation. In the absence of any such rule, I am of the considered view that the procedure adopted by the Court below cannot be faulted.

13. The one and only thing that is to be followed scrupulously without any deviation is that the election petition should be filed within 30 days, strictly from the date of the declaration of the result of the election along with the deposit of Rs. 100/- as security for the costs of the same. In other words, the deposit of Rs. 100/- along with the election petition shall be made within the prescribed period of 30 days from the date of the declaration of the result of the election, as postulated under Rule 3 of the Rules, 1995.

14. To put in a different way, both the filing of the election petition as well as the deposit also should imperatively be filed and paid within the prescribed period of 30 days from the date of the declaration of the result of the election only.

15. For any reason if the election petition is filed within the time stipulated under

Rule 3 of the Rules, 1995 and the deposit is made, after the papers are returned for proper presentation beyond the time of prescribed period of 30 days from the date of the declaration of the result of the election, then, undoubtedly, the filing of election petition would be defeated for non-compliance of Rule 3 read with Rule 5 of the Rules, 1995.

16. Having regard to the combined effect of Rules 3 and 5 of the Rules, 1995, the deposit of Rs. 100/- is concerned, there are no two standards. On the other hand, both the filing of the election petition coupled with the deposit of Rs. 100/- shall be within 30 days from the date of the declaration of the result of the election, as contemplated under Rule 3 of the Rules, 1995. But, the election petitioner is not precluded from complying with the conditions stipulated under Rules 3 and 5 of the Rules, 1995 on two different dates, provided if those two postulates are complied with within the prescribed period of 30 days from the date of the declaration of the result of the election for filing the election petition.

17. As already pointed out, no clear procedure has been prescribed anywhere in this regard and therefore, the Court below was absolutely right in following the known procedure that too, when the postulates under Rules 3 and 5 of the Rules, 1995 are complied with. So long as the election petition and the money towards deposit are paid within the total period of 30 days from the date of the declaration of the result of the election, the procedure adopted by the Court below cannot, at any stretch of imagination, be faulted.

18. My view gains support from judgment of a Division Bench of this Court in *Anajamma Vs. S. Pushpamma and another*, . The facts and circumstances of that case are quite similar of the case on hand.

19. For ready reference, para-19 of the judgment of the Division Bench of this Court in *Anajamma's case* (1 supra) is extracted hereunder, which is thus:

19. ...a combined reading of Rule 5(i) and (ii) mandates that whenever an Election Petition is presented, the petitioner shall deposit a sum of Rs. 100/- with it. If the petitioner fails to comply with the same, the Election Tribunal shall reject the same for non-compliance. Even as per the finding of the Tribunal, though it was returned for compliance, the same was not complied with within the period prescribed i.e., before expiry of 30 days for presentation of Election Petition, it is only after expiry of thirty days, the amount was deposited by the petitioner. Once the mandatory provision is not complied with, the Tribunal has to only dismiss the petition....

20. The learned Counsel for petitioner places reliance on another judgment rendered by a learned single Judge of this Court in *P. Leela Rani Vs. Agency Divisional Officer, (Sub-Collector) and Another*, , wherein it was held that the mandatory provisions should be fully satisfied and the non-compliance of any of the procedure invalidate the election petitions. It was further held that the Election Tribunal is a *persona designata* but it cannot be acted as a Court in strict sense. Though the view taken by the learned single Judge of this Court in *P. Leela*

Rani's case (2 supra) is unexceptionable, the facts and circumstances of that case are totally different from the facts and circumstances of the present case or the present issue did not fall for consideration. In fact, the learned single Judge, who rendered the judgment in P.Leela Rani's case (2 supra), is a party to the judgment rendered by the Division Bench of this Court in Anajamma's case (1 supra).

21. Therefore, having regard to the facts and circumstances and the law laid down by the Division Bench of this Court in Anajamma's case (1 supra), which is binding upon this Court, and for the aforementioned reasons, I am of the view that the civil revision petition is devoid of any merit and accordingly, the same is liable to be dismissed.

22. In the result, the civil revision petition is dismissed, at the stage of admission, confirming the impugned order of the Court below. No costs.