

(2005) 01 AP CK 0056
In the Andhra Pradesh High Court
Case No : CRP No. 3531 of 2002

Mala Bandlaiah

APPELLANT

Vs

Bathina Utcheerappa and Others

RESPONDENT

Date of Decision : 25-01-2005

Acts Referred:

Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads) Rules, 1995 — Rule 3
Civil Procedure Code, 1908 (CPC) — Order 6 Rule 16

Citation : (2005) 2 ALD 493 : (2005) 3 ALT 663

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : K.V. Chalapathi Rao, for the Appellant; A. chandraiah Naidu, for the Respondent

Final Decision : Allowed

Judgement

C.Y. Somayajulu, J.—Revision petitioner filed O.P. No. 5 of 2001 questioning the election of the first respondent as Sarpanch of Devanakonda Gram Panchayat in which first respondent filed his counter contesting the said O.P. After the O.P. was posted for trial first respondent filed I.A. No. 152 of 2002 under Order VI Rule 16 of C.P.C. read with Section 151 C.P.C to strike out Paragraphs 4 and 5 of O.P. No. 5 of 2001. After contest by the revision petitioner, the Tribunal allowed I.A. No. 152 of 2002 and consequently dismissed O.P. No. 5 of 2001 on the ground that no cause survives for his decision. Hence, this revision by the petitioner in O.P. No. 5 of 2001.

2. The ground on which revision petitioner filed the O.P. is that the counting of the votes which took place in a small hall in a crowded place was not done properly and that votes polled in his favour were treated as invalid overruling the objections by his agents and in some cases his agents were not allowed to properly scrutinize the ballot papers etc. The learned Junior Civil Judge, relying on the decision rendered by this Court and Supreme Court under Representation

of People Act held that since the revision petitioner failed to mention material facts in the election petition, ordered striking out Paragraphs 4 and 5 of the O.P.

3. The contention of the learned Counsel for the petitioner is that in view of the ratio in *D. Ramachandran v. R.V. Janakiraman and Ors.*, 1999 (2) Supreme 454, even assuming that the provisions of Representation of People Act, 1951 apply to election petitions filed under the Panchayat Raj Act, the Tribunal was in error in allowing I.A. No. 152 of 2002 and ordering deletion of Paragraphs 4 and 5 of the election petition. The contention of the learned Counsel for the first respondent is that in view of the ratio in *N.V. Narasimha Rao Vs. Somepalli Sambaiah and others*, and *Y. Venkat Reddy Vs. The Court of the District Munsif, Atmakur and Others*, , there are no grounds to interfere with the order under revision.

4. At the outset, it should be stated O.P. No. 5 of 2001 filed by the revision petitioner is governed by the A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (the Rules). As per Rule 3(ii) of the Rules, the election petition shall contain a statement, in concise form, of the material facts on which the petitioner relies and the particulars of any corrupt practices, which he alleges and shall, where necessary, be divided into paragraphs consecutively. What are "material facts" is considered by the Apex Court in *Mahendra Pal Vs. Ram Dass Malanger and Others*, , where it held that facts which are essential to disclose a complete cause of action are material facts and that "material particulars" are details of the case set up by the party and the function of "particulars" is to present a full picture of the cause and that the distinction between "material facts" and "material particulars" is important because failure to plead even a single material fact leads to incomplete cause of action, which is not the case in respect of "material particulars". Since revision petitioner pleaded all the material facts, it cannot be said that petition is lacking of material facts.

5. In *A Ramachandran* case (supra) relied on by the learned Counsel for the revision petitioner, the respondent in an election petition had, after filing his counter in the election petition, filed a petition to strike out certain paragraphs in the election petition, though there is no whisper in the counter filed by him that the allegations in the election petition are vague or scandalous, unnecessary, vexatious or frivolous, the High Court allowed the said petition and struck off some paragraphs in the election petition. On appeal the Supreme Court held that Order VI Rule 16 C.P.C. enables the Court to strike out a pleading if the allegations therein (a) are unnecessary, scandalous, frivolous or vexatious or (b) tend to prejudice, embarrass or delay the fair trial; or (c) are an abuse of the process of the Court, and since there is no plea in the counter that the allegations in the election petition are vague, scandalous, unnecessary, vexatious or frivolous, the High Court was in error in allowing the petition under Order VI Rule 16 C.P.C. The ratio in that decision applies on all four to the facts of this case, as first respondent did not take a plea in his counter that the allegations in Paras 4 and 5 of the election petition are either scandalous or vexatious or vague.

6. In my considered opinion, the ratio in N.V. Narasimha Rao case (supra) have no application to the facts of this case Y. Venkat Reddy case, (supra) relied by the learned Counsel for the petitioner was decided after full dressed trial of an election petition. Question whether objection, as required by A.P. Panchayat Raj Conduct of Election Rules, 1994, was taken or not and if those Rules relating to counting were complied with or not can be decided only on the basis of the evidence adduced during the course of trial. Without there being evidence it cannot be presumed that provisions of A.P. Panchayat Raj Conduct of Election Rules 1994 were not followed by the revision petitioner at the time of Counting.

7. In view of the above, the order under revision is liable to be set aside and hence is set aside and consequently IA No. 152 of 2002 is dismissed with costs. Advocate fee is fixed at Rs. 500/-.