
(2015) 10 AP CK 0012
In the Andhra Pradesh High Court
Case No : Writ Petition No. 27218 of 2015

Nallavelli Ashok

APPELLANT

Vs

The State of Telangana and Others

RESPONDENT

Date of Decision : 05-10-2015

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 153-A
Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (2016) 2 ALD 367

Hon'ble Judges : P. Naveen Rao, J.

Bench : Single Bench

Advocate : C. Hanumantha Rao, for the Appellant

Final Decision : Dismissed

Judgement

P. Naveen Rao, J.—Facts as averred in the affidavit filed in support of writ petition disclose that petitioner is a Secretary of Telangana Parishad Congress Committee. He was appointed as party whip to the elections of Mandal Praja Parishad, Bhiknoor in Nizamabad District. In the elections to Mandal Parishad Territorial Constituencies (MPTC) held in 2014, second respondent in the writ petition was elected as MPTC of Rajampet-1 Constituency of Bhiknoor Mandal as a candidate of Indian National Congress Party. The competent authority convened special meeting of MPTC members on 13.07.2014 to elect President of Mandal Praja Parishad of Bhiknoor Mandal. Petitioner claimed to have issued a whip to all the elected MPTC members belonging to Indian National Congress Party to vote in favour of Smt. Bala Narsavva Pulluri. It appears that in the election held on 13.07.2014, second respondent did not vote in favour of Indian National Congress Party candidate. Accordingly, petitioner lodged a complaint to disqualify the second respondent as MPTC for disobedience of the whip of the party.

2. The third respondent, competent authority, passed orders on 04.02.2015 disqualifying the second respondent as member of MPTC, Rajampet-I on the

allegation of disobeying the whip issued by the party w.e.f. 04.02.2015. Questing the said order, second respondent instituted Election O.P. No. 36 of 2015 on the file of IX Additional District Judge and Election Tribunal at Kamareddi. The said O.P., is pending consideration of the Election Tribunal. In the O.P., second respondent filed I.A. No. 162 of 2015 praying to grant ex parte interim suspension of the order disqualifying him as MPTC member. Petitioner as a respondent in the said O.P., filed counter-affidavit opposing the maintainability of the I.A. and passing of interim orders. Ignoring the objections raised by the petitioner, the Election Tribunal allowed I.A., by order dated 14.08.2015. Aggrieved thereby, this writ petition is filed.

3. Learned counsel for petitioner contended that the Election Tribunal passed orders impugned in the writ petition by relying on the provision in Section 151 of Civil Procedure Code, whereas all provisions of Civil Procedure Code including Section 151 are not applicable to the Election Tribunal. In terms of the provision contained in Rule 7 of A.P. Panchayat Raj (Election Tribunal in respect of Gram Panchayat, Mandal Parishads and Zilla Parishads) Rules, 1995 (for short Rules, 1995) only to a limited extent provisions of Civil Procedure code are applicable.

4. The order impugned in the writ petition amounts to error of jurisdiction and competence of the Election Tribunal as no such power is vested in the Election Tribunal, more so when provision in Section 151 CPC is not attracted. According to the learned counsel, Election Tribunal has no power or competence to pass interlocutory orders in the pending Election OPs.

5. In support of his contention that Tribunal exceeded the jurisdiction in passing interim orders and that only to a limited extent the provisions of CPC are attracted, he placed reliance on the decision of this Court in the following cases:

i) Yarlagadda Venkateswara Rao and others v. Government of Andhra Pradesh, rep. by its Principal Secretary, Panchayat Raj Department and others 2007(2) ALT 65.

ii) Challa Satyanarayana Vs. Tadi Lakshmana Rao and Others, and

iii) Challa Satyanarayana Vs. Tadi Lakshmana Rao and Others, , dated 05.08.2009)

6. The point that arises for consideration is whether Election Tribunal is competent to grant interim orders of suspension of disqualification of a member of MPTC?

7. Admittedly, Election OP is pending consideration of Election Tribunal, Kamareddy. In I.A. No. 162 of 2015 on the claim of petitioner therein to grant interim suspension, contentions were urged including the competence of Election Tribunal to grant interim orders. The Tribunal held that, it has jurisdiction to entertain interlocutory application and pass interim orders by relying on the decision of this Court in Yarlagadda Venkateswara Rao (supra) and passed orders allowing I.A., and granting temporary suspension.

8. The Election Tribunal constituted under the A.P. Panchayat Raj Act to decide disputes relating to the election of Sarpanch/Member, Mandal Parishad Territorial Constituency/Mandal Praja Parishad Presidents/Member, Zilla Parishad Territorial Constituency and Zilla Parishad Chairman, is governed by the Rules, 1995. According to Rule 7, while enquiring into the election dispute, the Election Tribunal is vested with powers which are vested in the Court under Civil Procedure Code when trying suit in respect of matters mentioned therein.

9. While referring to the provisions in Rule 7, in the case of Challa Satyanarayana v. Tadi Lakshmana Rao and others (WP No. 17363 of 2008), learned single Judge of this Court held that the Election Tribunal has limited powers as mentioned in Rule 7(2) and thus Tribunal has no power to receive documents which were not originally filed along with election petition. On appeal carried against this decision, Division Bench of this Court in the case of Tadi Lakshmana Rao v. Challa Satyanarayana and others, held that incidental to conducting of trial of an election OP, all such steps can be opted for and taken recourse to which go as a step-in-aid for proper adjudication. The Division Bench also held that Rules of procedure should be very liberally interpreted to provide equal and sufficient opportunity to both sides. It was thus held that it is permissible for the Tribunal to receive additional documents during the pendency of the election OP. Following the said decision of Division Bench, this Court rejected similar objection raised in W.P. No. 31766 of 2014. Therefore, there is no merit in the contention of the learned counsel for petitioner that only limited powers are vested in Election Tribunal in applying the provisions of CPC while dealing with the election matters.

10. There is no dispute that the IX Additional District Judge cum Election Tribunal, Kamareddy, has jurisdiction to adjudicate the election disputes to the post of Member, MPTC. Section 153-A which is inserted by Act 22 of 2006, vests right in the Member of MPTC to apply to the District Court having jurisdiction over the area against his disqualification on the allegation of disobedience of the party whip. This provision is silent with reference to the competence of the Election Tribunal to pass interlocutory orders in pending Election O.P.

11. This very issue has fallen for consideration in Yarlagadda Venkateswara Rao. This Court on detailed analysis of the relevant provisions of the Act, held as under:

"22.....It is true that under Section 153-A of the Act, specific power to grant interim orders had not been conferred. It is however pertinent to note that the Constitutionality of the said provision had not been called in question by any one of the writ petitioners. It is also pertinent to note that the District Court is conferred with the jurisdiction to adjudicate upon such disputes. When the District Court is conferred with such power and jurisdiction to entertain such disputes, the District Court also has power to grant interim orders in appropriate cases and such power to be inferred by implication though the statutory provision is silent in that regard. Any other interpretation of Section 153-A of the

Act in a way would be defeating the very object with which the said provision had been introduced in the Act. It may also not be out of context to observe that the District Court is the highest Court in Subordinate Judicial hierarchy. It is not a mere remedy or empty formality and the District Court as a competent Court may definitely look into all the aspects involved in a given case and may also pass appropriate orders."

12. It is also appropriate to notice that W.A. No. 174 of 2007 filed against the said decision of this Court was disposed of by order dated 20.02.2007. The Division Bench taking note of the orders passed by learned single Judge of this Court disposed of the writ appeal modifying the earlier order of the single Judge on stay, confining the stay granted by the High Court to a limited extent enabling the aggrieved party to file election OP before the District Court along with the application for grant of interlocutory orders.

13. On a cumulative reading of provision in Section 153-A and Rules, 1995, this Court is of the view that as a consequence to vesting of jurisdiction in the District Court to act as Election Tribunal to decide the disputes concerning disqualification of a Member of Mandal Parishad Territorial Constituency, the Tribunal shall also have power to make interlocutory orders. Such power is incidental to exercising jurisdiction to resolve such dispute. Thus, there is no illegality or irregularity in the decision of the IX Additional District Judge cum Election Tribunal, Kamareddy in passing interim orders.

14. This Court is not sitting in appeal over the orders passed by the Election Tribunal. Once competency of Election Tribunal to grant interlocutory orders is upheld, this Court has limited jurisdiction to consider the justification to pass interlocutory orders. Grant of interlocutory order is at the discretion of Election Tribunal. Writ of Certiorari can be issued to correct jurisdictional error or if the order passed is patently erroneous. This Court cannot go into the merits as to whether the Tribunal was justified in exercising discretion to pass the orders of suspension, when the same is made on due consideration of rival claims. This Court cannot substitute its view to the view of the Election Tribunal. The order impugned herein cannot be termed as patently erroneous. Since, the Election O.P., is pending consideration, this Court cannot go into the merits of the issue involved at this stage.

15. Accordingly, the writ petition is dismissed. There shall be no order as to costs. Miscellaneous petitions if any pending in the writ petition shall stand closed.