
(2002) 09 AP CK 0037
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1254 of 2002

P. Leela Rani

APPELLANT

Vs

Agency Divisional Officer, (Sub-Collector) and Another

RESPONDENT

Date of Decision : 05-09-2002

Acts Referred:

Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads) Rules, 1995 — Rule 2(3)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 149

Citation : (2002) 6 ALD 251 : (2003) 1 ALT 448

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : K. Vinay Kumar, for the Appellant; Government Pleader for Revenue and Nagesh Bhampaka, for the Respondent

Final Decision : Allowed

Judgement

A. Gopal Reddy, J.—The respondent No. 1 in OP No. 1/2001 before the first respondent-Election Tribunal is the petitioner herein. The petitioner as well as the second respondent contested for the post of Zilla Pasrishad Territorial Constituency (ZPTC) member, Venkatapuram Segment of Khammam District and the petitioner got elected as ZPTC member on 12-7-2001. The second respondent herein filed OP No. 1/2001 before the first respondent questioning the election of the petitioner invoking A.P. Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (for short "the Election Rules, 1995"). The first respondent-Election Tribunal disposed of OP No. 1/1001 setting aside the petitioner's election as ZPTC member from Venkatapuram segment of Khammam District and further declared that the second respondent has been duly elected as ZPTC member by a margin of 5 votes. Questioning the same, the petitioner herein filed WP No. 16661/2001 stating that the first respondent passed ex parte orders on 21-7-2001 without issuing any notice or conducting any enquiry directed the third respondent-Election Officer to deposit all ballot papers and connected records and registers

before it and even though the petitioner filed objections with regard to ex parte order passed on 21-7-2001, the first respondent without appreciating the objections and without recording any findings passed an order dated 30-7-2001 directing the M.R.O. Bhadrachalam for recounting, which was done on 30-7-2001 itself and basing upon the recounting, second respondent has been duly declared as elected ZPTC member. The said writ petition was allowed by this Court. The operative portion of the order reads as under:

In the circumstances, the order passed by the Tribunal in OP No. 1/2001 on 31-7-2001 is set-aside. OP No. 1/2001 shall stand restored to its file. It shall be open to the parties to lead evidence in support of their respective contentions. The evidence to be let in by the parties shall be recorded. The tribunal shall follow the procedure prescribed for recording the evidence and necessary findings shall be recorded.

However, the observations, if any, made in this order shall not have any bearing on the merits of the case. The interlocutory applications, as well as the OP shall be disposed of in accordance with law. It is not necessary to declare that the writ petitioner shall continue to be elected candidate till an appropriate decision is taken by the Tribunal in the election petition in accordance with law."

On such restoration of OP to file, the petitioner herein filed a memo on 2-11-2001 stating that the election petition filed by the second respondent-election petitioner before the first respondent-Election tribunal questioning the election of the petitioner was presented without paying Court fee and the Tribunal also not directed the petitioner to pay deficit Court-fee within the period of which, the second respondent filed a counter stating that the memo filed by the petitioner is not maintainable, but however, the first respondent has got power to collect Court fee at any stage of the suit, and it leaves to the discretion of the Court to waive the limitation in view of the provisions of Section 149 CPC and effect of Order 7, Rule 11 CPC. After considering the contentions of both parties and after following the judgment of the Kerala High Court in Radhakrishna v. Sasidharan, 1983 Ker. 236, the first respondent-Tribunal rejected the contention raised by the petitioner that the election petition is not maintainable for non-payment of Court-fee and posted the matter for counter to 23-11-2001. It is not clear. whether the first respondent collected Court fee even after expiry of limitation period. Questioning the same, the present writ petition is filed stating that the first respondent being a persona designata will not act as civil Court for condoning the delay in payment of deficit Court fee and election petition presented without payment of Court fee is improper presentation and the same will be deemed to have validly presented when the Court fee is paid, therefore, the first respondent cannot proceed with the trial of election petition.

2. Opposing the claim of the petitioner, the second respondent filed a counter-affidavit stating mat once the first respondent has got power in deciding the election petition pending before him, he can always condone the delay in payment of Court-fee in view of Section 149 instead rejecting the petition under

Order 7, Rule 11 CPC, therefore, the order passed by the first respondent rejecting the objection raised by the petitioner do not warrant any interference. It is further stated that the provisions of CPC are applicable while trying election petition by the first respondent, there is no perversity or illegality in the order passed by the first respondent dated 15-11-2001.

3. Learned Counsel for the petitioner as well as the 2nd respondent reiterated the very same contentions which were raised before the Election Tribunal and relied upon the judgments which were cited before it.

4. This Court in *Y. Babu Rao and Ors. v. Musalaiah and Ors.* 1973 APLJ 118 (SN), in a case where the finding of the Election Tribunal that it has power to direct the election petitioner to make up the deficiency and therefore it permitted to make up the deficiency of Court fee and entertainment of the petitions was challenged before this Court, this Court after considering the Sub-rule (4) of Rule 49 of Conduct of Election of Members, Sarpanch, Upa-Sarpanch of Gram Panchayats etc., under the A.P. Gram Panchayats Act, 1964 (for short "Election Rules, 1964"), reading as

"An election Court exercising jurisdiction under these rules shall be deemed to exercise such jurisdiction as a persona designata and not in his capacity as a District Munsif,"

categorically held that when the District Munsif exercises the functions of a Tribunal, he does not act as a Judge but acts as a persona designata and he cannot invoke Section 149 of the Code of Civil Procedure. When there is no dispute regarding fixed Court fee payable under Article 11(v) of Schedule II, it is not open for the election petitioner filing an election petition to file it without payment of proper Court fee and then seek payment of deficit Court fee subsequently after expiry of period of limitation. What is contemplated under Rule 49 of the Election Rules, 1964 is presentation of proper election petition duly complying with the requirements of law. When an election petition is not presented in compliance with the requirements of law, it cannot be said that it has been presented in accordance with the rules. An election Court is not empowered under the rules to cure defects of this nature nor is it open to the election Court to call in aid other provisions of the CPC except those which have specifically vested in it, namely, Sub-rule (2) of Rule 54 of the Election Rules, 1964.

5. The Election Tribunal shall have powers which are vested in a Court under the Code of Civil Procedure, 1908, when trying a suit in respect of the following matters as envisaged under Rules 7(ii) of the Election Rules, 1995:

(a) discovery and inspection;

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

(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. As regard the enquiry into the petition under Rule 7(i) the Tribunal shall enquire into it, as early as may be, in accordance with the Procedure applicable under the CPC for the trial of suits. Rule 7(i) and (ii) is in para materia with Rule 54 of the Election Rules, 1964. Similarly, Sub-rule (3) of rule 2 of the Election Rules, 1995 reading as

"An Election Tribunal exercising jurisdiction under these Rules shall be deemed to exercise such jurisdiction as a persona designata and not in his capacity as a judge or other Officer of the Government, as the case may be."

is in paramateria with rule 4 of Rule 49 of the Election Rules, 1995 referred to in case of Y. Babu Rao (supra).

6. It is relevant to note here that in the judgment of Kerala High Court in the case of Radhakrishna (supra) which was taken aid by the first respondent, the Kerala High Court after considering the similar provision as that of Rule 7(2) of the Election Rules, 1995 held that the power available to the learned District Munsif trying an election petition in considering whether the petitioner should be allowed to make up the deficiency the Court fee is the matter of discretion, which the Court can exercise at any stage of the proceedings and in the case before it the District Munsif has not exercised discretion nor was the question as to the exercise of discretion considered, but the Court came to the conclusion that it had no power at all to allow a person to make up the deficiency of the Court fee payable. Accordingly, the matter has been remitted to the learned Munsif with a direction to reconsider the question as to whether or not the petition upon which full Court fee had been paid in two stages was in the circumstances of the case a properly presented document. If the answer of the learned Munsif was to be in the affirmative, he shall forthwith proceed with the trial of the election petition. But curiously, the High Court has not decided the fact that the District Munsif while trying the election petition has power to exercise all the powers of Civil Court including to condone the delay in payment of Court fee u/s 149 CPC.

7. It is useful and apt to quote the observation of Justice Venkatachalaiah, speaking for the Bench in Dipak Kumar Ghosh Vs. Mrs Mira Sen, :

"There is no common law of elections. The proceedings calling in question the validity of an election are purely statutory proceedings. An election contest is not an action at law or a suit in equity, but is purely a statutory proceeding unknown to the common law and the Court possesses no common law power. It is trite proposition that in such proceedings statutory requirements must strictly be established. It is also well settled that the success of a candidate who has won at an election should not be lightly interfered with." (Para 14)

8. Similarly, this Court in *S. Gangi Reddy v. S. Rama Krishna Reddy* 1972 (1) APLJ 1 (NRC), held that the provisions of the CPC are not applicable to the disposal of election petitions except provided in the rules and Order 1, Rule 10 CPC is not applicable to the elections petitions and the Court deciding such petition cannot add new party as petitioner in exercise of its power under Order 1, Rule 10 CPC.

9. This Court in *Gaddi Venkateswara Rao v. K. Venkat Rao and another* 1971 APHC 3, categorically held that the District Munsif is functioning only as a *persona designata* while trying the election petition under the rules made under A.P. Grampanchats Act, 1964, but not as a Court having jurisdiction and powers of civil Court. While considering Rule 54 of the Election Rules framed under A.P. Grampanchayats Act, 1964 it was established beyond doubt that the election Court is not empowered to issue injunctions just like a civil Court under Order 39, Rule 1 and Section 151 CPC.

10. Similarly, the Supreme Court while dealing with a case arising under the Representation of the Peoples Act, where deposit of security along with the election petition was not made, observed in *Charan Lal Sahu Vs. Nandkishore Bhatt and Others*, , as follows:

"The right to challenge an election is a right provided by Article 329(b) of the Constitution of India, which provides that no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature. The right conferred being a statutory right, the terms of that statute had to be complied with, there is no question of any common law right to challenge an election. Any discretion to condone the delay in presentation of the petition or to absolve the petitioner from payment of security for costs can only be provided under the statute governing election disputes. If no discretion is conferred in respect of any of these matters, none can be exercised under any general law or any principle of equity."

11. The Supreme Court, dealing with a case arising under Presidential and Vice-Presidential Elections Act 1952 in *Dr. N.B. Khare Vs. Election Commission of India*, , upheld the return of election petition by the Registrar for non-compliance of Rule 3 which prescribes payment of Court fee of the value of Rs. 250/- should be paid on the petition and Rule 12 requires the petitioner to deposit cashsecurity of Rs. 2000/- for payment of costs, that may be become payable by the petitioner holding it must satisfy requirement of Act XXXI of 1952 and the rules framed by the Supreme Court in that regard contained in Order XXXVII-A.

12. This Court in the case of *Y. Babu Rao (supra)* after following the dicta laid down in the case of *Charan Lal (supra)* authoritatively held that the election Court being a *persona designata* had no jurisdiction to direct payment of the deficit Court fee after expiry of the period of limitation prescribed under the law

exercising power u/s 149 CPC.

13. In view of the foregoing discussion, in a matter of this kind primary responsibility to file an election petition in full compliance with the provisions of law is on the petitioner who challenges the election. If the Election Tribunal finds non-compliance of the mandatory requirement i.e., payment of Court fee, it has to uphold the preliminary objection and has no option except to dismiss the petition. It is no part of the duty of the Election Tribunal to direct the payment of Court fee after expiry of period of limitation for filing the election petition when objection is raised by the other side, and cannot exercise dispensing powers to waive non-compliance. The election petition is based on the rights, which are purely creature of a statute, the petition has to be rejected on the threshold for non-compliance with the mandatory provisions of law under Order VII, Rule 11 CPC. I hold that the first respondent had not possessed the powers of Civil Court u/s 149 CPC for condoning the delay in payment of deficit Court fee. Once the presentation of election petition by the second respondent without payment of Court fee or with deficit Court fee is not a proper presentation, the first respondent cannot proceed with the trial of the election petition. Accordingly, the order passed by the first respondent suffers from manifest illegality and incurable legal infirmities cannot be sustained and the same is accordingly quashed.

14. Following the above rulings and for the foregoing reasons, the first respondent-Election Tribunal erred in entertaining the election petition filed by the second respondent in OP No. 1/2001, which was not properly presented within the time prescribed and the same is accordingly rejected.

15. The writ petition is accordingly allowed. No costs.