
(2008) 07 AP CK 0063
In the Andhra Pradesh High Court
Case No : CRP No. 5555 of 2007

Peddireddy Venkata Satyanarayana Murthy @ Chittibabu APPELLANT
Vs
Danisetty Babu Rao and Others RESPONDENT

Date of Decision : 11-07-2008

Acts Referred:

Andhra Pradesh Panchayat Raj (Conduct of Election of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad) Rules, 1994 — Rule 32, 34, 35, 76
Constitution of India, 1950 — Article 227

Citation : (2008) 5 ALD 264 : (2008) 6 ALT 127 : (2009) 2 APLJ 1 : (2008) 3 APLJ 96

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : V.V.N. Narayana Rao, for the Appellant; C. Subba Rao, represented by A.S.C. Bose, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—Heard Sri V.V.N. Narayana Rao, learned Counsel representing revision petitioner and Sri C. Subba Rao, representing Sri A.S.C. Bose, learned Counsel representing first respondent.

2. The civil revision petition is filed under Article 227 of the Constitution of India by the first respondent in IA No. 1552 of 2007 in Election OP No. 7 of 2006 on the file of Election Tribunal (in respect of Gram Panchayat) cum-Principal Junior Civil Judge, Yellamanchili.

3. The said application was filed praying for the relief of recounting of votes. The Election Tribunal-cum-Principal Junior Civil Judge, Yellamanchili (hereinafter in short referred to as "the Tribunal" for the purpose of convenience) made a common order in IA No. 1550 of 2007, IA No. 1551 of 2007, IA No. 1552 of 2007 and IA No. 1553 of 2007 in EOP No. 7 of 2006. The Tribunal, after recording reasons, allowed IA No. 1550 of 2007 praying for reopening of the matter and

also IA No. 1552 of 2007 praying for recounting of votes. However, the application praying for amendment of the Election O.P. aforesaid by adding respondents 7 to 9 (IA No. 1551 of 2007) as well as praying for exhibiting Ex.A.4, Video disk, (IA No. 1553 of 2007) were dismissed. Aggrieved by the order granting relief of recounting of votes in IA No. 1552 of 2007, the present civil revision petition had been preferred.

4. Sri V.V.N. Narayana Rao, learned Counsel representing the revision petitioner had taken this Court through the respective stands taken by the parties and would maintain that the Tribunal ought to have arrived at a conclusion that the application is a misconceived remedy. The learned Counsel also would maintain that the first respondent did not raise any objections at the time of counting and also after declaration of results. The learned Counsel also made elaborate submissions in the light of the evidence available on record and would maintain that even on merits it is not a case where the recounting could have been ordered on an interlocutory application, that too, when such relief had been prayed for even in the Election O.P. itself. Instead, the Tribunal could have disposed of the Election O.P. as such instead of reopening the matter and also directing the recounting of votes. The Counsel while further elaborating his submissions had taken this Court through Rule 35 of the Andhra Pradesh Panchayat Raj (Conduct of Elections of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad) Rules, 1994 (hereinafter in short referred to as "the Rules" for the purpose of convenience) and would maintain that in the light of the said Rule 35, the order impugned in this civil revision petition cannot be sustained. Further, the learned Counsel would maintain that no concerned officer had been impleaded and the application moved for such amendment had been dismissed. The Counsel also further would maintain that the Election Officer was not examined and in view of non-raising of objections at the appropriate time, such relief cannot be granted on the strength of an interlocutory application. Even otherwise, the allegations are vague and in the absence of specific clear allegations in this regard, allowing an application by making such an order cannot be sustained. The learned Counsel relied on several decisions to substantiate his submissions.

5. On the contrary, Sri C. Subba Rao, learned Counsel representing the first respondent would maintain that the civil revision petition is filed under Article 227 of the Constitution of India and there is no illegality in the procedure adopted by the Tribunal. The learned Counsel also would maintain that the mere fact that Rule 35 had not been complied with would not come in the way of making appropriate order in Election O.P. The learned Counsel also pointed out to the scope and ambit of the Article 227 of the Constitution of India and would maintain that this being only supervisory jurisdiction, if this Court is satisfied that there is no error committed in following the procedure by the Tribunal below, such order normally not to be interfered with. The learned Counsel in all fairness would submit that the Tribunal could have disposed of the main Election O.P. itself, but however, after recording reasons had chosen this method and the

method adopted by the Tribunal below cannot be found fault, since such order can be made by the Tribunal and such application being perfectly maintainable in the light of the reasons recorded by the Tribunal below, the impugned order does not suffer from any illegality. The learned Counsel also placed strong reliance on certain decisions to substantiate his submissions.

6. Heard the Counsel on record, perused the impugned common order and the reasons recorded thereunder.

7. Respondent No. 1 herein filed IA No. 1550 of 2007, IA No. 1551 of 2007, IA No. 1552 of 2007 and IA No. 1553 of 2007 in EOP No. 7 of 2006 on the file of the Tribunal and after recording reasons the Tribunal allowed the application to reopen the matter (IA No. 1550 of 2007) and further allowed the application for recounting of the votes (IA No. 1552 of 2007), but however, disallowed the application praying for amendment of the Election O.P. for adding respondents 7 to 9 as parties (IA No. 1551 of 2007) and also for exhibiting Ex.A.4 video disk (IA No. 1553 of 2007). It appears that the order made in IA No. 1552 of 2007 alone had been challenged.

8. The stand taken by the first respondent as petitioner is that the election staff colluded with the present revision petitioner, first respondent in the Election O.P. and committed gross errors in the counting and the schedule prescribed for counting of votes shall be started precisely by 2-00 p.m., but the same was not commenced till 4-00 p.m. and votes polled by the presidential candidate for 6 wards were separated and bundled into ballots of 25 bundles but not counted. During the process of counting at about 9-00 p.m. the counting personnel staged a dharna unduly refraining from carrying out their counting duty by demanding the presence of Mandal Revenue Officer and Mandal Divisional Officer, Payakaraopeta, and they need additional DA and night meals. The delay in this regard and the presence of local M.L.A and other allegations also had been made. The mistakes pointed out in the main Election O.P also had been referred to and the said application was resisted by filing counter, but however, after recording reasons the application was allowed by the Tribunal.

9. Rule 35 of the Rules dealing with recount of votes reads as hereunder

(1) After such announcement has been made under Sub-rule (7) of Rule 34, a candidate or, in his absence, his election agent or any of his counting agents may apply in writing to the Election Officer for recounting of the votes either wholly or in part stating the grounds on which, he demands such recount.

(2) On such an application being made the Election Officer shall decide the matter and may allow the application in whole or in part or may reject it wholly if it appears to him to be frivolous or unreasonable.

(3) Every decision of the Election Officer under Sub-rule (2) shall be in writing and contain the reason therefor.

(4) If the Election Officer decides under Sub-rule (2) to allow a recount of the

votes either wholly or in part, he shall:

- (a) arrange for the recounting in accordance with Rules 32 and 34;
- (b) amend the result sheet in Form 17 to the extent necessary after such recount; and
- (c) announce the amendments so made by him.

(5) After the total number of votes polled by each candidate has been announced under Sub-rule (4), the Election Officer shall complete and sign the Result Sheet in Form 17 and no application for a further or second recount shall be entertained thereafter.

10. In the Election O.P. also the following prayers had been prayed for.

- (a) For the recounting of the votes;
- (b) For a declaration that declaration of the Election Officer that the 1st respondent won the election to the post of the President of the Payakaraopeta Gram Panchayat as illegal;
- (c) To declare that the petitioner was the duly elected President of the Payakaraopeta Gram Panchayat;
- (d) For costs of this petition and for such other relief or reliefs as the Hon'ble Court deems fit and proper in the circumstances of the case.

11. Several contentions had been advanced pointing out to certain of the defects. It is suffice to state that the main Election O.P. is pending disposal and specifically the relief of counting of votes also had been prayed for in the said Election O.P. After the evidence was closed, instead of deciding the main Election O.P., the Tribunal no doubt dismissed two applications, but allowed two applications, one to reopen the matter and yet another for recounting of the votes.

12. Sri V.V.N. Narayana Rao and Sri C. Subba Rao placed strong reliance on several decisions in support of their respective stands.

In *P. Prabhavathi Vs. Election Tribunal-cum-Junior Civil Judge and Another*, , while dealing with election of Gram Panchayat it was held that the Election Tribunal has got power to direct for recount of votes polled in case the Election Petitioner has made out a ground for the same and non-submission of a written representation before Election Officer for recounting not a fetter for Tribunal to order recounting. Evidence of Election Officer in cross-examination establishing discrepancies in votes polled in respect of contesting candidates and total votes polled, it is a fit case for ordering recounting of votes. Hence, the matter was remanded to Tribunal to summon ballot boxes, recount the votes in the presence of both parties and declare the result.

In *Vanguri Mariamma Vs. Kandukuri Gangamma and Others*, , a learned Judge of

this Court observed that the Tribunal can order recounting of ballot papers even in the absence of an application in that regard.

In *K. Prabhavatamma Vs. B. Indiramma and Others*, , the learned Judge observed at Paras 6 and 7 as hereunder.

It is settled proposition of law that the only event that the ballot boxes can be opened after declaration of the results is when the unsuccessful candidate comes forward with an application for recounting, leads evidence and makes out a case therefor. Time and again, the Hon"ble Supreme Court cautioned that maintenance of secrecy of ballots is one of the important aspects of the democratic process, and recounting of votes was held not to be in a matter of course.

Reverting to the facts of the case, it is not in dispute that the 1st respondent has not come forward with an application for recounting. Evidence was adduced only on the general allegations. The evidence was not at all focused on or directed towards any specific plea and grounds, warranting recounting of the votes. It was during the cross-examination of the Election Officer, a request for opening of ballot box was made on behalf of the 1st respondent. The request itself was not supported by any provision of law. While law requires that evidence has to be adduced to make out a case for opening of the ballot boxes and ordering recounting, the 1st respondent has chosen a reverse process, namely to open ballot boxes to make out a case. Unfortunately, the Tribunal had acceded to the request.

Further strong reliance was placed on the decision in *Michael B. Fernandes Vs. C.K. Jaffer Sharief and Others*, , wherein the Apex Court while dealing with parties to election petition observed that the Returning Officer and Chief Electoral Officer need not be impleaded as party-respondents in the election petition even if they have been alleged in the petition to have not complied with the provisions of Conduct of Elections Rules and the guidelines issued by Election Commission of India.

Further reliance was placed on the decision in *Sadhu Singh v. Darshan Singh and Anr.* 2006 (5) ALD 12 (SC), wherein the Apex Court in relation to the Panchayat Elections and recounting of ballot papers and the factors relevant thereof observed that the appellant was elected to the post of Sarpanch by margin of 11 votes and election petition was filed by respondent/petitioner on the ground that while counting, 147 votes were wrongly rejected and that counting staff intermingled about 25 ballot papers, polled in favour of petitioner, in bundles of elected candidate recounting directed by Election Tribunal-Revision against the same dismissed by the High Court. The finding of fact was arrived as to raising of objection by 1st respondent as regards manner of counting of ballot papers respondent found to have made out a prima facie case for recounting of votes, conditions necessary for a direction of recounting of votes being satisfied, held it was not a case for interference.

In *Talachintala Paidayya Vs. Toleti Jeevaratnam and Others*, , it was held that recording of reasons for ordering recount by Election Officer, being mandatory, Election Officer ordering recount of votes without recording reasons in writing would be breach of mandate.

Reliance was placed on the decision in *P.H. Pujar Vs. Kanthi Rajashekhar Kidiyappa and Others*, , wherein the Apex Court observed that recount should be ordered in rare cases on the basis of specific allegations in the pleadings in the election petition and proof of improper acceptance of votes or improper rejection of valid votes. It should not be casually ordered on mere ipse dixit of the election petitioner and merely because margin of defeat of the petitioner is meagre.

In *M.R. Gopalakrishnan Vs. Thachady Prabhakaran and Others*, , while dealing with when recounting should be granted it was held that prima facie case for recount must be made out on the basis of the material and secrecy of vote should be kept in mind, being the paramount consideration and errors must be of such magnitude as to materially affect the result of the election.

In *Smt. Ram Rati v. Saroj Devi and Ors.* 1997 (6) Supreme 6, while dealing with election petition under M.P. Panchayat Elections Rules, 1994, it was held that the appellant was duly elected. Election petition by respondent that election was not properly conducted and an application for recounting was made, but was not done. The Tribunal directed recounting which was affirmed by High Court, the Rule mandates upon candidate or his agent to make an application in writing giving reasons in support thereof seeking recounting. No such application had been made on the date of declaration of results. The Tribunal committed manifest error in directing recounting. In the light of the mandatory language of Rule 76 of the Rules, it is incumbent upon a candidate or an agent, if the candidate was not present, to make an application in writing and give reasons in support thereof, while seeking recounting. If it is not done, then the Tribunal or the Court is not empowered to direct recounting even after adduction of evidence and consideration of the alleged irregularities in the counting. The essential condition precedent is that an application in writing should be made and the Returning Officer should pass an order with reasons in support thereof either to recall the order of otherwise, the writing and the fact that the officer had not passed any order in writing would indicate that the respondent had not made any application. Obviously, some subsequent manipulation, as contended by the appellant, would have taken place, as a result of which the election petition was filed and the arguments were addressed for recounting. It is settled legal position that secrecy of ballot should not be breached and as far as possible, the secrecy of ballot should be maintained. In rare cases, the Tribunal or the Court is required to order recount, that too on giving satisfactory grounds for recounting. In view of the fact that the rule itself provides that, as soon as the result of the election is announced, an application in writing must be made at the first instance and the fact that no such application has been placed before the Court indicate that no such application had made on the date of the declaration of the

result. The allegation that an application having been made, would be an after thought. The Tribunal, therefore, committed manifest error in directing recount.

13. Relevant portions of the evidence which had been pointed out by the respective parties need not be dealt with in elaboration.

14. In Mahendra Pal Vs. Shri Ram Dass Malanger and Others, , while dealing with recounting of votes under the Representation of the People Act, 1951, it was held that excess votes found in ballot boxes than ballot papers issued and no witness, however, examined to establish that excess ballot papers were unauthorisedly added by someone, Returning Officer was not examined and no objection also taken during the course of counting and in the absence of any evidence showing improper reception, refusal or rejection of any vote, recounting of votes cannot be ordered merely on ground of discrepancy in number of votes found and number of ballot papers issued. Discrepancy could be attributed to accidental slip or clerical or arithmetical mistake.

15. In Kanhaiyalal Vs. Mannalal and Others, , while dealing with appreciation of oral testimony in the case of Election Petition and duty of the Court it was held that the oral testimony will have to be judged with the greatest care and an electoral victory cannot be allowed to be nullified by a mouthful of oral testimony without contemporaneous assurance of a reliable nature from an independent source. An election dispute is not a private feud between one individual and another. The whole constituency is intimately involved in such a dispute. Shaky and wavering oral testimony of a handful of witnesses cannot still the dominant voice of the majority of an electorate.

16. In M. Chinnasamy Vs. K.C. Palanisamy and Others, , it is held that recount cannot be ordered on mere asking or merely because margin of votes between the Returned Candidate and election petitioner is narrow. Where irregularities in counting of votes was alleged in the election petition but details of names of Polling Stations, counting centres, tables, round of counting of votes in relation to which alleged irregularities had taken place and basis of material facts and particulars not disclosed, the election petitioner failed to make out a prima facie case of scrutiny of ballot papers.

17. In P.K.K. Shamsudeen Vs. K.A.M. Mappillai Mohindeen and Others, , the Apex Court at Paras 13, 14 and 15 observed as hereunder:

Thus the settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from hind sight and by the result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount of votes is actually made. The reason for this salutary rule is that the preservation of the secrecy of the ballot is a sacrosanct principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The right of a defeated candidate to assail the validity of an election result and seek recounting of votes

has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the recount of votes being ordered by the Election Tribunal in the interests of justice, a Tribunal or Court should not order the recount of votes.

Viewed in the light of these well enunciated principles, we find that the petitioner has neither made such averments in the petition nor adduced evidence of such a compulsive nature as could have made the Tribunal reach a prima facie satisfaction that there was adequate justification for the secrecy of ballot being breached in the petitioner's case. Factors urged before us by Mr. Padamanabhan such as that the first respondent had accepted the correctness of the recount, and that he had conceded his defeat and wanted a re-election to be held cannot constitute justifying materials in law for the initial order of recount of votes made by the Tribunal.

Mr. Padamanabhan also contended that the purpose and object of the election law is to ensure that only that person should represent the constituency who is chosen by the majority of the electors and that is the essence of democratic process, and this position has been observed by a Bench of this Court in their order of reference of the case of N. Gopal Reddy Vs. Bonala Krishnamurthy and Others, , and hence it would be a travesty of justice and opposed to all democratic canons to allow the first respondent to continue to hold the post of the President of the Panchayat - when the recount disclosed that he had secured 28 votes less than the petitioner. We are unable to sustain this contention because as we have stated earlier an order of recount of votes must stand or fall on the nature of the averments made and the evidence adduced before the order of recount is made and not from the results emanating from the recount of votes.

18. In Vadivelu Vs. Sundaram and Others, , it was held that where allegation that electoral roll contained names of dead persons and that some persons impersonated and cast votes in favour of elected candidate had been made and no details had been given as to who committed such irregularity or as to how many such votes were cast in favour of elected candidate and no mention as to in what manner there was improper acceptance or rejection of votes and the petitioner when examined as witness could not supplement anything by way of evidence, order of recount cannot be made.

19. Reliance was also placed on the decision in Y. Venkat Reddy Vs. The Court of the District Munsif, Atmakur and Others, , wherein Rules 34 and 35 of the Rules had been dealt with.

20. Further reliance was placed on the decision in T. Venkataram Reddy Vs. Kimidi Kala Venkata Rao and others, , wherein certain observations were made relating to the relief of recounting and counting process.

21. Further strong reliance was placed on the decision in Duvvuru Madhusudhan

Reddy Vs. The Election Court and Another, , wherein the learned Judge of this Court referred to the under noted decisions:

1. P.K.K. Shamsudeen Vs. K.A.M. Mappillai Mohindeen and Others,
2. 1990 (1) ALT 669 at 678
3. R. Chandran Vs. M.V. Marappan,
4. Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others,
5. B.M. Ramaswamy Vs. B.M. Krishnamurthy and Others,
6. Chirala Goverdhanareddy and Another Vs. Election Tribunal, Bapatla and Others,
7. S.V. Viswanathan Vs. G.P. Rangaswamy and Others,
8. Mahmadhusein Kurbanhusein Mithiborwala Vs. Onali Fidaali and Others,
9. Ghulam Mohiuddin Vs. Election Tribunal for Town Area Sakit and Another,
10. Jagannath Pundlik and Others Vs. Sukhdeo Onkar Wankhede and Others,
11. Roop Lal Mehta Vs. Dhan Singh and Others,
12. Addigiri Vengamumi Vs. Chukkalooru Narayanappa and Another,
13. Vijaya Kari Vs. Kondamuri Swarnalatha and Another,
14. Birad Mal Singhvi Vs. Anand Purohit,
15. 1985 (2) ALT 270

and ultimately came to the conclusion that ordering of recounting by Election Court on vague grounds without particulars of ballot papers invalidated and in the absence of raising objection at the time of counting cannot be sustained.

22. It is pertinent to note that certain of the respective stands taken in the Election O.P. and also certain portions of the evidence available on record had been pointed out by both the Counsel. It would be appropriate to state that at the fag end, and application to reopen the matter and another application praying for recount had been made along with two other applications as already aforesaid and the Tribunal ordered reopening of the matter and further permitted the relief relating to recounting. As already specified supra even in the Election O.P. such prayer had been made and when the complete material is available on record instead of entertaining an interlocutory application and deciding the matter on appreciation of the whole evidence available on record, the Tribunal below could have decided the main Election O.P. itself. For the reasons best known, this procedure had not been adopted. However, Sri C. Subba Rao, learned Counsel representing respondent No. 1 would maintain that when there is no serious procedural infirmity and the Tribunal below opted a particular method that cannot be found fault by this Court, especially, while deciding a civil

revision petition under Article 227 of the Constitution of India. This Court has no hesitation in rejecting the said contention for the reason that in the light of the nature of the averments made in the application praying for recounting and also the nature of the averments made in the Election O.P. and the stand taken in the counter and in view of the fact that the oral evidence already had been recorded and inasmuch as the said relief also had been specifically prayed for in the Election O.P., the Tribunal below erred in allowing such application praying for recounting at that stage. However, it is made clear that though several decisions had been cited and certain observations had been made by this Court, in the light of the respective stands taken by the parties, it is made clear that the main Election O.P. to be disposed of by the Tribunal being uninfluenced by any of the observations made in this order.

23. In view of the peculiar circumstances, this Court does not see any justifiable ground to sustain the order impugned in the civil revision petition.

24. Accordingly, the same is hereby set aside and the civil revision petition is allowed. No order as to costs. However, inasmuch as the matter had been reopened, let the parties make their submissions before the Tribunal below and let the Tribunal below decide the matter in accordance with law inclusive of the relief relating to recounting which had been prayed for in the main Election O.P.