
(2003) 03 AP CK 0076

In the Andhra Pradesh High Court

Case No : CRP No's. 1607 and 1620 of 2002

Penumatcha Jaya Rao

APPELLANT

Vs

Paidipamula Nehru and Others

RESPONDENT

Date of Decision : 17-03-2003

Acts Referred:

Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads) Rules, 1995 — Rule 3

Citation : (2003) 3 ALD 26 : (2003) 3 ALT 638

Hon'ble Judges : A. Gopal Reddy, J

Bench : Single Bench

Advocate : A. Ramanarayana, for the Appellant; O. Manohar Reddy, for the Respondent

Final Decision : Dismissed

Judgement

A. Gopal Reddy, J.—These two revision petitions are filed under Article 227 of the Constitution of India assailing the orders passed by the Election Tribunal under A.P. Gram Panchayat Act, 1994-cum- Junior Civil Judge, Avanigadda dated 18-3-2002 in IA No. 190/2000 and 189/2000 in EP No.8/ 2001 respectively.

2. As the parties and facts in both the revision petitions are one and the same, they are being heard together and disposed of by this common order.

3. The revision petitioner-(respondent No. 1 in OP) got elected himself as Sarpanch to the Teluguraopalem Grampanchayat, Ghantasala Mandalam, Krishna District in the elections held on 17-8-2001. The first respondent herein (petitioner in OP) and the eighth respondent contested the election and first respondent (petitioner in OP) who lost the election by margin of one vote challenged the election of the revision petitioner u/s 233 of A. P. Gram Panchayat Act, 1994 before the Election Tribunal-cum-Junior Civil Judge, Avanigadda on various grounds. In ground No.4, it was asserted that the first respondent distributed arrack, liquor and money to the voters and accordingly influenced the voters to cast their votes, which fact was brought to the notice of the election

authorities. In ground No.6, it was mentioned that the first respondent and the seventh respondent resided in one house previously and the seventh respondent exercising his undue influence allotted works under Neeru Meeru Scheme and withdrew an amount of Rs. 1,00,000/- and with the undue influence of the seventh respondent, several irregularities and corrupt practices have been done by the first respondent. In ground No.9 it was alleged that on completion of counting, the seventh respondent entered the counting hall and took three invalid ballot papers and decided them as valid in favour of the first respondent which resulted in declaration of the first respondent herein as duly elected Sarpanch with one vote and in ground No. 10, it was alleged that the seventh respondent played an active role in getting the first respondent elected to the office of the Sarpanch by abusing his power. On receiving the notice, the first respondent-revision petitioner herein entered his appearance through his Counsel and the case was adjourned from time to time for filing counter. Respondents 2 to 6 in the election OP filed their counter. As the revision petitioner herein has not filed his counter, the Election Tribunal adjourned the matter on payment of costs. Though the revision petitioner deposited the costs did not choose to file counter, but filed two IAs, namely, IA No. 189/2002 under Order 7 Rule 11 and Section 151 CPC seeking rejection of the election petition for non-disclosing of valid cause of action in the election petition which was not verified as contemplated under law and IA No. 190/2002 under Order 6 Rule 16 read with Section 151 CPC seeking to strike of the pleadings in respect of the paragraphs 4 to 15 in the main election petition. The learned Election Tribunal by the impugned orders dated 8-3-2002 dismissed both the IAs holding that after granting several adjournments for enabling the revision petitioner to file counter, the revision petitioner has not filed any counter but filed the IAs. to protract proceedings. Whether there is any cause of action and the verification was proper or not for entertaining the election petition can be decided only on filing of a counter and framing of issues. Striking of the pleadings at the initial stage is not desirable unless the Court feels that such paragraphs delayed the trial and such paragraphs abuse the process of Court. It is not the stage to come to the conclusion that certain paragraphs are unnecessary, scandalous, frivolous and vexatious which may tend to source or embarrass. Assailing the above orders, the present revision petitions i.e., 1620/2002 and 1607/2002 respectively are filed.

4. Sri A. Ramnarayan, learned Counsel for the revision petitioner in both the revision petitions contends that election petition filed by the first respondent herein is bereft of particulars and same was not verified in the manner prescribed under Order 6 Rule 15, therefore EP No. 8/2001 has to be dismissed in limine without proceeding further in the matter. Though written arguments were submitted as to how the pleading are insufficient in material facts and material particulars, the Election Tribunal has not adverted to the sufficiency of pleadings as to the corrupt practices and in the absence of same, the Election Tribunal cannot proceed further in the matter. The averments made in the election petition particularly in paras 3, 4, 5 and 6 do not contain material facts

and they are liable to be struck off by placing reliance on the judgments of the Apex Court in *Mr. V. Narayanaswamy Vs. Mr. C.P. Thirunavukkarasu*, , and *Amar Nath Vs. Janardan Prasad Ojha*, . Learned Counsel for the revision petitioners invited my attention to Rules 7 and 12 of the Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads Rules, 1995 (for short "the Election Rules") issued in G.O. Ms. No. 111 Panchayat Raj, Rural Development & Relief (Elec. III) Department dated 3-3-1995 and contended that verification was not done in accordance with the rules.

5. Sri O. Manohar Reddy, learned Counsel for the respondent No. I herein in both the revision petitions would contend that the revision petitioner (petitioner in OP) without filing any counter is not entitled to file the present IAs and they were filed only to protract the proceedings. He further contends that material facts were stated in the election petition which will be supplemented through evidence, hence the same cannot be thrown out at the threshold by placing a judgment of the Apex Court in *D. Ramachandran Vs. R.V. Janakiraman and Others*, .

6. Rule 3 of Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads Rules, 1995 (for short "the Election Rules") issued in G.O. Ms. No. 111 Panchayat Raj, Rural Development & Relief (Elec. III) Department dated 3-3-1995, reads as under:

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

Explanation: x x x xx.

(ii) The petition shall contain a statement in concise form, 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 numbered consecutively. It shall be signed by the petitioner and verified in the manner prescribed for the verification of pleadings in the Code of Civil Procedure, 1908.

Rule 7 of the Election Rules contemplates enquiry by the Election Tribunal in every election petition and while deciding the election petition, the Election Tribunal shall have powers which are vested in Court under the Code of Civil Procedure, 1908 in respect of the matters enumerated in clauses (a) to (f) under Rule 7(ii). Rule 12 authorizes the Election Tribunal to grant reliefs after conclusion of trial.

7. The Supreme Court in *Mr. Narayanaswamy (supra)* while considering Section 83(1) of Representation of People Act, 1951 (for short "the Act") held as follows:

"Material facts and material particulars certainly connote two different things. Material facts are those facts which constitute the cause of action. In a petition on the allegation of corrupt practices the cause of action cannot be equated with the cause of action as is normally understood because of the consequences that follow in a petition based on the allegations of corrupt practices. An election petition seeking a challenge to the election of a candidate on the allegation of

corrupt practices is a serious matter; if proved, not only does the candidate suffer ignominy, he also suffers disqualification from standing for election for a period that may extend to six years. Reference in this connection may be made to Section 8A of the Act. It was for this purpose that the proviso to Sub-section (1) of Section 83 was inserted by Act 40 of 1961 (with effect from 20-9-1961) requiring filing of the affidavit in the prescribed form where there are allegations of corrupt practice in the election petition. Filing of the affidavit as required is not a mere formality. By naming a document as an affidavit it does not become an affidavit. To be an affidavit it has to conform not only to the form prescribed in substance but has also to contain particulars as required by the rules".

In view of the above, the election petition not only lacked the material facts, it lacked material particulars, defective verification and the affidavit filed was not in the form prescribed and under those circumstances and in view of the fact that election petition did not disclose any cause of action or triable issue the Apex Court upheld the dismissal of the election petition by the High Court in limine.

8. Similarly in the case of D. Ramachandran (supra), which arose under the Representation of People Act, was dismissed by the Madras High Court on a preliminary issue and on appeal the Supreme Court held that in all cases of preliminary objection, the test is to see whether any of the reliefs prayed for could be granted to the petitioner if the averments made in the petition are proved to be true. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the Court has to find out whether those averments disclose a cause of action or a triable issue as such. The Court cannot probe into the facts on the basis of the controversy raised in the counter. While considering the provisions of Order 6 Rule 16 and Order 7 Rule 11, the Apex Court further held thus:

"Under Order 6 Rule 16, the Court is enabled to strike out a pleading (a) which may be unnecessary, scandalous, frivolous or vexatious; or (b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or (c) which is otherwise an abuse of the process of the Court. We have already pointed out that it is not the case of the first respondent that the pleading in the election petition is vitiated by all or any one of the aforesaid defects mentioned in the Rule. Hence striking out parts of the pleading in this case was not at all justified. (Para 9)

".....There is no merit in the contention that some of the allegations are bereft of material facts and as such do not disclose a cause of action. It is elementary that under Order 7 Rule 11 (a) CPC, the Court cannot dissect the pleading into several parts and consider whether each one of them discloses a cause of action. Under the Rule, there cannot be a partial rejection of the plaint or petition. See *Roop Lal Sathi v. Nachhattar Singh Gill* (1982) 3 SCC 487. We are satisfied that the election petition in this case could not have been rejected in limine without a trial. (Para 10).

9. The Allahabad High Court in *Amor Nath v. Janardan Prasad* (supra) which was

a case again under Representation of People Act, 1951, after considering the pleadings held as follows:

"...Once the allegation of collusion with the returned candidate and arbitrary action of the Assistant Returning Officer, who was allegedly anxious to convert the majority of the election petitioner into minority in favour of the first respondent is, prima facie, treated to be correct. The circumstance that as full details as could have been given out, where the requisite rules relating to counting of votes contained in the Conduct of Election Rules, 1961, are said to have been followed, were not available to the petitioner will have to be kept in mind before insisting upon the furnishing of those details by way of material facts in the petition..... Quite apart from it, the allegations at least in paras 19 and 23 are such which, if proved, would make out a prima facie case for going into the question whether an inspection and recounting of votes, as prayed for by the election petitioner, was called for. These allegations would raise a triable issue to be decided on evidence. The petition cannot be thrown out as disclosing no cause of action...." (Para 20)

10. The reliance placed by the learned Counsel for the petitioner in *Preeti Mohinder Singh v. Kirpal Singh*, JT 2000 (10) SC 472, and *Vadivelu v. Sundaram and others* 2000 (7) Sup 57, are misplaced to the facts of the present case for the reason that Supreme Court interfered with the decision of the Tribunal after recount was ordered as the pleadings are insufficient for ordering recount.

11. Section 83 of the Representation of People Act, 1951 prescribes contents of election petition which (a) shall contain a concise statement of the material facts on which the petitioner relies; (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 for the verification of pleadings. Proviso to Sub-section (1) of Section 83 further contemplates where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegations of such corrupt practice and particulars thereof. Whereas Sub-section (2) of Section 83 contemplates any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition. Whereas Rule 3(ii) of the Election Tribunal as stated above is not in pari materia with Section 83 of the Representation of People Act as no form, as such, is prescribed which shall be accompanied by an affidavit in support of the allegations of such corrupt practice and particulars thereof under Rule 3 of the Election Rules as envisaged under the Act. But whereas Rule 3 (ii) of the Election Rules prescribes particulars of any corrupt practices which he alleges and shall where necessary be divided into paragraphs numbered consecutively. What all rules contemplate is that the corrupt practices which the petitioner alleges should be in a concise statement of facts divided into

paragraphs and shall signed by the petitioner. From the pleadings as referred to above, it is obvious from those averments that the first respondent is alleged to have taken the assistance of the seventh respondent, who not only helped him in undertaking certain developmental activities but withdrawing the amount of Rs. 1 lakh which influenced the voters. Apart from the same, the first respondent took the assistance of the seventh respondent who entered the counting hall and took three invalid votes and validated them in favour of the petitioner, which will be supported through evidence adduced during the course of trial. When the averments mentioned in paragraphs 4,6, 9 and 10 have disclosed the material facts and triable in nature, the election petition, however, is required to contain a concise statement of material facts, which being equivalent to a cause of action. The entire evidence in support of such material facts is not required to be set up. From the contents of the election petition, it is not possible to hold that a concise statement of material facts is not to be found in the petition, which require to be proved during the course of trial by leading evidence.

12. It is well settled that an election petition should not be rejected at the threshold on the slightest pretext on one kind or other, which may or may not have any material bearing on the factors to be strictly adhered to in such matters. It is substance not form which would matter. (See: Ram Prasad Sarma Vs. Mani Kumar Subba and Others, .

13. In view of the same, the contention of the learned Counsel for the revision petitioner that the verification is not in accordance with the rules cannot be accepted.

14. In view of the same and in the absence of any form or affidavit prescribed for verification under the Rules, what he verifies of his knowledge and information believed to be true is sufficient verification. In the present case, the election petitioner verified that all the facts mentioned in the election petition are true to the best of his knowledge and belief and information to be true and correct. In view of the same, it is not desirable to reject the election petition at the threshold.

15. The Civil Revision Petitions are accordingly dismissed. No costs.