
(2005) 04 AP CK 0093

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5713 of 2005

Talachintala Paidayya

APPELLANT

Vs

Toleti Jeevaratnam and Others

RESPONDENT

Date of Decision : 28-04-2005

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 35, 35(2)

Citation : (2005) 4 ALD 155

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

Bench : Single Bench

Advocate : V. Raghu, for the Appellant; D. Ramalinga Swamy, for Respondent No. 1, K.G.K. Prasad, for Respondent Nos. 2 to 5 and 9, Government Pleader, for Panchayat Raj and Rural Development and Srinivas Dammalapati, for the Respondent

Judgement

C.Y. Somayajulu, J.—Petitioner and Respondents 1 to 5 contested the Gram Panchayat Elections, whereat the Election Officer (7th respondent) declared the petitioner as elected. Aggrieved thereby, first respondent filed Election O.P. No. 9 of 2001 before the Election Tribunal questioning the election of the petitioner. After evidence was adduced by both sides, the Election Tribunal ordered recount of the votes. Questioning the said order of the Election Tribunal, petitioner, who is the first respondent before the Election Tribunal, preferred this writ petition.

2. Heard both sides.

3. The admitted case is during the initial counting, first respondent herein i.e. the petitioner before the Election Tribunal is said to have polled more votes than the petitioner. When the petitioner sought a recount, 7th respondent ordered a recount and during that recount petitioner is found to have got 4 votes more than the 1st respondent and was declared elected. As per 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 (for brevity "the Rules"), every decision of the Election Officer, under Sub-rule (2), for recount shall be in writing and contain reasons therefor. From the judgment of the Election Tribunal it is seen that 7th respondent did not pass any order in writing containing the reasons for recount. In Para 18 of the judgment, the Tribunal held:

"R-7 to R-9 documents it clearly reveals that the Election Officer, without filling the columns mentioning the votes secured by each candidate, in the recounting, he simply declared R-1 as elected candidate of recounting without put his initial at the correction portion on Ex.R-8 the Election Officer simply put his signature on R-8 by round off the votes secured by the candidates No. 3 and 4, i.e. petitioner and R-I, on Ex.R-8".

As per Rule 35 of the Rules, recording of the reasons for ordering a recount by the Election Officer is mandatory. In this case, there is no order in writing by the 7th respondent for a recount. Thus there is clear breach of Rule 35 of the Rules.

4. In the above circumstances, the Tribunal ordering recount cannot be said to be erroneous, and so I find no merits in the writ petition.

5. Accordingly, the writ petition is dismissed. No costs.