
(2008) 5 ALD 703

Andhra Pradesh High Court

Case No: Writ Petition No. 9862 of 2008

K. Venkat Narasimha
Reddy

APPELLANT

Vs

Y. Sathi Reddy and
Others

RESPONDENT

Date of Decision: July 30, 2008

Acts Referred:

- Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads) Rules, 1995 - Rule 12, 3, 7
- Andhra Pradesh Panchayat Raj Act, 1994 - Section 211, 268(1), 273

Citation: (2008) 5 ALD 703

Hon'ble Judges: G. Rohini, J

Bench: Single Bench

Advocate: V. Brahmaiah Chowdary, for the Appellant; A. Anand Rao, for Respondent No. 1, G. Elisha, SC for ZPPS, MPPS and TEL REG for Respondent No. 3 and Government Pleader for Panchayat Raj, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

1. The writ petitioner was elected as a Member of Mandal Praja Parishad Territorial Constituency of Chithapuram Mandal Parishad of Valigonda Mandal in the elections held on 28.6.2006.

2. The 1st respondent herein filed OP No. 49 of 2006 on the file of the Election Tribunal-cum-the Court of Senior Civil Judge, Bhongir, questioning the election of the writ petitioner alleging that he had adopted corrupt practices and colluded with the Election Officer and the staff with the help and support of the sitting MLA. It was also alleged that the Election Officer played fraud at the time of counting of votes resulting in acceptance

of invalid votes polled in favour of the writ petitioner and rejection of valid votes polled in favour of the 1st respondent. Thus, it was contended that if the counting of votes was done lawfully as per the procedure, the 1st respondent would have become the returned candidate with a majority of 30 votes. Accordingly, the election of the writ petitioner was sought to be set aside.

3. In the Election Petition though notice was served and appearance was entered on behalf of the writ petitioner (returned candidate), no counter was filed and consequently he was set ex parte. Thereafter, the 1st respondent herein/election petitioner got himself examined as P.W.1 and Exs. A1 and A2 documents were marked on his behalf. On the basis of the said evidence by order dated 11.7.2007, the Election Tribunal while holding that the writ petitioner was illegally declared elected, allowed the Election Petition with costs and set aside the election of writ petitioner. Thereafter, the writ petitioner filed I.A. No. 897 of 2007 for setting aside the ex parte order. However, the same was dismissed by the Tribunal below by order dated 21.9.2007. Aggrieved by the same, the writ petitioner filed W.P. No. 20337 of 2007.

4. That apart, the present writ petition is also filed seeking a writ of certiorari to call for the record in O.P. No. 49 of 2006 and to quash the order of the Election Tribunal dated 11.7.2007 declaring the same as arbitrary and illegal.

I have heard the learned Counsel for the writ petitioner as well as the learned Counsel appearing for the 1st respondent/election petitioner and perused the material on record.

5. The learned Counsel for the writ petitioner contended that the impugned order of the Election Tribunal was wholly unsustainable in law since the election petitioner (1st respondent herein) had miserably failed to prove the allegation of corrupt practice and the alleged irregularities in counting of votes, on the basis of which the election of the writ petitioner was sought to be set aside. The learned Counsel further contended that the Tribunal below committed a grave error in concluding that the writ petitioner was illegally declared elected on the sole ground that he remained ex parte. The learned Counsel while submitting that the doctrine of "non-traverse" is not applicable to election petitions, vehemently contended that merely because the returned candidate remained ex parte, it cannot be held that the allegations made by the election petitioner stood proved.

6. On the other hand, the learned Counsel for the 1st respondent submitted that since admittedly the writ petitioner did not choose to contest the Election Petition, the allegations made by the election petitioner must be deemed to have been admitted and therefore the Tribunal below had rightly allowed the Election Petition. The learned Counsel also contended that having failed to challenge the consequential proceedings of the State Election Commissioner dated 12.9.2007 pursuant to which the 1st respondent assumed charge on 24.9.2007 the writ petitioner is estopped from filing the present writ petition belatedly on 28.4.2008.

7. In exercise of the powers conferred by Sections 273 and 268(1) of the A.P. Panchayat Raj Act 1994, the Andhra Pradesh Panchayat Raj (Election Tribunals in Respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 were made under G.O. Ms. No. 111, PR, RD & R (Elec.-III) Dept., dated 3.3.1995. Rule 3(ii) of the said Rules mandates that the election petition shall contain a statement in concise form and the material facts on which the petitioner relies and the particulars of any corrupt practices which he alleges shall be stated. As per Rule 7 the election petition shall be enquired into by the Election Tribunal in accordance with the procedure applicable under the Code of Civil Procedure, 1908 for the trial of suits and that the Election Tribunal shall have the powers which are vested in a Court under the CPC in respect of the matters specified thereunder. Further as per Rule 12 of the Rules, the Tribunal shall declare the election of the Returned Candidate to be void if in its opinion the returned candidate was not qualified, or was disqualified on the date of his election or committed any corrupt practice as laid down u/s 211 of the Act. The election of the Returned Candidate can also be set aside if any nomination has been improperly rejected or where the result of the election has been materially affected either by improper acceptance of any nomination or by any corrupt practice or by any improper reception, refusal, or rejection of any vote or by any non-compliance with the provisions of the Act, or any Rules or Orders made under the Act. For proper appreciation, Rule 12 may be extracted hereunder:

12. If in the opinion of the Election Tribunal,

(a) that on the date of his election, a Returned Candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Act, or

(b) that any corrupt practice as laid down u/s 211 of the Act has been committed by a Returned Candidate or his election agent or by any other person with the consent of the Returned Candidate or his election agent, or

(c) that any nomination has been improperly rejected, or

(d) that the result of the election, insofar as it concerns a Returned Candidate has been materially affected,

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice, committed in the interest of the Returned Candidate by an Agent other than his election agent, with the connivance of the Returned Candidate, or

(iii) by any improper reception, refusal, or rejection of any vote, or the reception of any vote which is void,

(iv) by any non-compliance with the provisions of the Act, or any Rules or Orders made under the Act.

(A) The Election Tribunal shall declare the election of the Returned Candidate to be void.

(B) If the Election Tribunal holds the Returned Candidate guilty under Clause (b) and Clause (d)(ii) of this rule, the Election Tribunal shall in addition to declare the election of the Returned Candidate as void, shall also declare that the Returned Candidate shall be disqualified to contest in any elections under this Act, for a period of six years from the date of the order.

8. On a careful reading of the above Rule, it is clear that the election of the Returned Candidate can be declared to be void only where any of the grounds enunciated thereunder is established before the Election Tribunal.

Coming to the case on hand, the allegations made in the Election Petition on which the election petitioner/1st respondent herein relied upon, can be summed up as under:

(1) the writ petitioner/Returned Candidate had adopted corrupt practice and also colluded with the Election Officer and his staff to get himself declared elected;

(2) the writ petitioner with the support of the sitting MLA and Chairman of Mastya Giri Laxmi Narsimha Swamy Temple, Venkatpuram influenced the Election Officer and his staff;

(3) the Election Officer and his staff played fraud at the time of counting of votes by accepting invalid votes polled to the account of the writ petitioner and by rejecting the validly polled votes in favour of the election petitioner,

(4) though the counting agent of the election petitioner by name Anjireddy raised objection with regard to illegal counting of votes, the Counting Officer refused re-counting of votes.

9. There can be no dispute that having made the said allegations, the burden lies on the election petitioner/1st respondent herein to establish the same by producing acceptable evidence. However, except his own evidence as PW.I, the election petitioner did not choose to examine any other witness. Even his election agent did not come into the witness box. So far as documentary evidence is concerned, he produced two documents namely; nomination deposit receipt and notice notifying the counting place which were marked as Exs. A1 and A2. Except those two documents, which in no way are relevant for the purpose of the alleged corrupt practice or the improper counting of votes polled, no other documents could be marked in evidence by the election petitioner. Even in his oral evidence as PW. 1, the election petitioner merely reiterated the allegations made in the election petition and no particulars could be mentioned to show that the election was vitiated on any of the alleged grounds.

10. It is also relevant to note that even in the election petition except making the allegations of corrupt practice and collusion of the Returned Candidate with the Election

Officer and his staff no material particulars were furnished. Corrupt practices have been defined in Section 211 of the Act and Rule 12 of the Rules made it clear that for declaring the election of the Returned Candidate to be void, the Election Tribunal must be satisfied that any corrupt practice as laid down u/s 211 of the Act has been committed by a Returned Candidate or his election agent or by any other person with the consent of the Returned Candidate or his election agent.

11. In the case on hand, not only the election petition was lacking factual foundation with regard to material facts to make out the alleged corrupt practice, but there was also no evidence to record a finding in favour of the election petitioner.

As per Rule 3(ii) of the Rules made under G.O. Ms. No. 111, dated 3.3.1995, the material facts are required to be set forth on which the petitioner relies apart from the particulars of corrupt practices alleged in a statement in concise form. The election petitioner/1st respondent herein miserably failed to satisfy the above requirements.

12. Moreover, the Tribunal below failed to frame even points for consideration and merely jumped at a conclusion that the allegations in the election petition stood established since the Returned Candidate failed to rebut the allegations and remained ex parte. As rightly contended by the learned Counsel for the writ petitioner, even in the absence of other party, the Election Tribunal is bound to record the findings on the issues that arise for consideration on appreciation of the evidence produced by the election petitioner.

13. It is also relevant to note that Rule 12 of the Rules mandates that the election can be set aside by the Election Tribunal only on formation of an opinion that any corrupt practice has been committed by the Returned Candidate or his election agent or the result of the election has been materially affected by any corrupt practice. It is apparent that the Tribunal below while setting aside the election of the writ petitioner failed to express any such satisfaction.

14. In the circumstances and for the reasons stated above, the conclusion arrived at by the Tribunal below, which suffered from an error apparent on the face of the record, cannot be sustained.

15. Accordingly, the impugned order is hereby set aside and the writ petition is allowed. No costs.