

THE HONOURABLE SRI JUSTICE A. RAJASHEKER REDDY

W.P.No.79 of 2015

ORDER

This writ petition is filed questioning the order dated 30.12.2014 passed in I.A.No.24 of 2014 in E.O.P.No.4 of 2013 on the file of Election Tribunal-cum-Principal Junior Civil Judge, Kadiri, wherein the Tribunal appointed an Advocate Commissioner for recounting the poled votes in the custody of the Deputy District Election Authority-cum-RDO, Kadiri, in the presence of both parties.

2. The case, in brief, for disposal of this writ petition is that the petitioner and respondents 1 and 2 have contested the election for the post of Sarpanch of Inagaluru Gram Panchayat, and the petitioner was elected as Sarpanch. Thereafter, the first respondent, defeated candidate, filed E.O.P.No.4 of 2013 for setting aside the said election of the petitioner. She also filed I.,A.No.24 of 2014 seeking to appoint an Advocate Commissioner for recounting of poled votes and the same was allowed by the Tribunal. Aggrieved by the same, the present writ petition is filed.

3. Learned counsel for the petitioner has cited a decision of this Court in **CHALLA SWAROOPA v. DISTRICT COLLECTOR (DISTRICT ELECTION AUTHORITY), KHAMMAM DISTRICT**^[1] wherein it was held that the Election Tribunal lacks inherent jurisdiction to pass an interlocutory order for recounting of votes even before the trial has commenced. He further submits that though the said judgment was placed before the Tribunal, the same was not considered and that the Tribunal has no power to pass such an order.

4. On the other hand, learned counsel appearing for the first respondent has supported the impugned order stating that in view of the facts and circumstances, the Tribunal passed the said order.

5. In **Challa Swaroopa's** case (1 supra), this Court held as under;

“While stipulating the manner in which every election should be enquired into by the Election Tribunal, Rule 7(1) & (2) of the 1995 Rules make no reference to Order 39 of the Code of Civil Procedure. An Election Tribunal is a specially constituted Court of limited jurisdiction and has no authority to pass any order outside those limits. In the absence of any specific provision to the contrary, an Election Tribunal has no inherent jurisdiction like that vested in an ordinary Civil Court. The Election Tribunal must be held to have out-stepped the limits of its jurisdiction in granting the application for interim relief as no law has vested such a jurisdiction in it. (**Kundan Singh v. Executive Magistrate, 1st Class**”, **Barnala [20]** ; **Kartar Singh v. Sub-Divisional Officer, Rampura Phul [21]**; **Bhupinder Singh v. State of Punjab [22]**; and **Sukhdev Singh¹⁸; Sham Lal¹⁷**). There is no power under the Act or the Rules to grant any interim relief or even an ad interim relief. Only a final relief can be granted. (**Sham Lal¹⁷; Morgan Stanley Mutual Fund v. Kartick Das [23]**). If the jurisdiction of the Tribunal to grant relief is confined to the cases mentioned under Rule 12 of the 1995 Rules, an interim order for recounting of votes cannot be passed even before evidence is adduced, by parties on either side, in the Election O.P. The impugned order passed at the very inception in I.A. No.840 of 2013, filed on the very same day on which Election O.P. No.16 of 2013 was presented before the Election Tribunal on 19.08.2013, even before evidence has been adduced by parties, must be held to suffer from inherent lack of jurisdiction. This does not mean that the Tribunal is precluded from directing recount of votes after the parties to the Election Petition have

adduced evidence either oral or documentary or both.

While the impugned order must be set aside on the ground of inherent lack of jurisdiction in the Election Tribunal to pass an interlocutory order at the very inception, more so one which has the effect of partly allowing the Election Petition itself, the fact remains that any delay in adjudication of the Election Petition may well result in the statutory right of the election petitioner, to hold the elected office of Sarpanch, being deprived thereby. The inconsistencies in the recount of votes, variations in the number of invalid votes at the time of each recount, and the power of the Returning Officer to order a third recount, have been put in issue, in his Election Petition, by the 6th respondent herein. While the submission of Sri K. Rathangapani Reddy, Learned Counsel for the 6th respondent, that the action of the Returning Officer in this regard is *ex-facie* illegal cannot be readily brushed aside, these are matters for adjudication by the Election Tribunal and not for examination in proceedings under Article 226 of the Constitution of India. I consider it appropriate therefore, while setting aside the impugned order, to direct the Election Tribunal to adjudicate the Election Petition with utmost expedition and, in any event, not later than four months from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the dispute and the Election Tribunal shall adjudicate the Election O.P. on its merits uninfluenced by any observations made in this Order or in its earlier order in I.A. No.840 of 2013 in Election O.P.No.16 of 2013 dated 25.02.2014”.

6. This Court in a catena of judgments categorically held that the Election Tribunal has no incidental power to entertain an interlocutory application and pass orders for recounting of the votes even before the trial has commenced. Though the petitioner cited the said judgment before the Tribunal, it is unfortunate that the Tribunal has ignored the said judgment and it has not applied its mind to the facts of the case. Therefore, the Tribunal without considering the judgment of this Court has passed the impugned order contrary to the said judgment.

7. Accordingly, the Writ Petition is allowed, setting aside the order dated 30.12.2014 in I.A.No.24 of 2014 in E.O.P.No.4 of 2013 on the file of the Election Tribunal-cum-Principal Junior Civil Judge, Kadiri. The Tribunal is directed to dispose of E.O.P.No.4 of 2013 within a period of four months from the date of receipt of a copy of this order.

As the Presiding Officer of the Tribunal has not followed the judgment of this Court cited supra, the concerned Registrar is directed to take necessary steps calling explanation from the said Officer.

No order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand dismissed.

A. RAJASHEKER REDDY, J.

6th February, 2015

sj

Note:

Communicate a copy of this order to the Registrar (Judicial), High Court of Judicature at Hyderabad for the State of Telangana and the State of A.P., Hyderabad.

[\[1\]](#) 2014(4) ALT 584