

**THE DECISION REPORTED IN 2004 (3) ALD 280 = 2004 (3) ALT 788 (D.B.) HOLDING, THAT ELECTION TRIBUNAL CONSTITUTED UNDER THE PROVISIONS OF A.P. PANCHAYAT RAJ (ELECTION TRIBUNALS IN RESPECT OF GRAM PANCHAYATS, MANDAL PARISHADS AND ZILLA PARISHADS, RULES 1995) HAS ONLY CERTAIN POWERS OF CIVIL COURT CONFERRED UNDER RULE 7(2) OF THE SAID RULES AND NOT ALL POWERS EXERCISABLE BY CIVIL COURT UNDER CIVIL PROCEDURE CODE 1908 IN TRIAL OF SUITS AND THAT POWERS NOT MENTIONED IN THE SAID RULE 7(2) CANNOT BE EXERCISED BY THE ELECTION TRIBUNAL IS *PER INCURIAM* AS EARLIER DIVISION BENCH DECISIONS OF A.P. HIGH COURT REFERRED AND FOLLOWED IN 2003 (1) ALD 271, HELD OTHERWISE**

By

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Rule 1(3)(iii) defines “District Munsif” as meaning the District Munsif appointed under the Andhra Pradesh Civil Courts Act, 1972. Rule 2(1) is as follows: “save as otherwise provided, no election held under the Act, whether of a Member, Sarpanch or Upa-sarpanch of Gram Panchayat, President and Vice-President of Mandal Praja Parishad and Member of Mandal Praja Parishad Territorial constituencies and Chairman and Vice-Chairman of Zilla Praja Parishad and Member of Zilla Praja Parishad Territorial constituencies thereof, shall be called in question, except by an election petition, presented in accordance with these rules to the Election Tribunal as defined in sub-rule (2) by any candidate or elector against the candidate, who has been declared to have been duly elected (hereinafter called as returned candidate) or, if there are two or more returned candidates against all or any such candidates.

Rule 2(2) is as follows: The Election Tribunal shall be (i) except in cases falling under Clause (ii)(a) the District Munsif, if there is more than one District Munsif, the Principal District Munsif having territorial jurisdiction over the place in which the Office of the Gram Panchayat is located, in respect of the election of members, Sarpanch and Upa-Sarpanch of Gram Panchayat.

(b) the Sub-Ordinate Judge, if there are more than one Sub-Ordinate Judge at the Head quarters having territorial jurisdiction over the place in which the Office of Mandal Praja Parishad or Zilla Praja Parishad as the case may be, is located, in respect of the election disputes and matters pertaining to the election of President, Vice-President and Members of Mandal Praja Parishad Territorial constituencies and Chairman, Vice-Chairman and Members of Zilla Praja Parishad Territorial constituencies.

*Explanation* :—For purpose of these Rules, the expressions “Sub-Ordinate Judge” and “District Munsif” shall in relation to the schedule Areas mean Agency Divisional Officer.

(ii) where the Government so direct, whether in respect of Gram Panchayat generally, or, in respect of any class of Gram Panchayat, Mandal Praja Parishads and Zilla Praja Parishads, such Officer or Officers of the Government as may be designated by the Government in this behalf by name or by virtue of office.

Provided that an election petition may, on the application to transferred (a) If presented to a Sub-Ordinate Judge or the District Munsif, as the case may be, under Clause (1) by District Judge concerned to

another Sub-Ordinate Judge or Munsif Magistrate as the case may be within his jurisdiction.

(b) If presented to an Officer of the Government under clause (ii) by the Government to another Officer of the Government, where an election petition is so transferred, the authority to whom it is transferred shall be deemed to be the Election Tribunal.

An Election Tribunal exercising jurisdiction under these Rules shall be deemed to exercise such jurisdiction as a *persona designate* and not in his capacity as a Judge or other Officer of the Government, as the case may be.

Rule 7(i) Every election petition shall be enquired into by the Election Tribunal, as early as may be, in accordance with the procedure applicable under the Code of Civil Procedure 1908 for the trial of suits.

Provided that it shall only be necessary for the Election Tribunal to make a memorandum of the substance of evidence of any witness examined by him.

(ii) The Election Tribunal shall have the powers which are vested in a Court under the Code of Civil Procedure when trying a suit, in respect of the following matters :

- (a) discovery and inspection;
- (b) enforcing the attendance of witnesses and requiring the deposit of their expenses;
- (c) compelling the production of documents;
- (d) examining witnesses on oath;
- (e) reception of evidence taken on affidavits, and
- (f) issuing commissions for examination of witnesses and may summon and examine *suo motu* any person whose evidence appears to him to be material

From a close reading of the above rules, it comes to the forefront

- (i) Election Tribunals are from two fields, to wit, one from the hierarchy of judicial sector *i.e.*, District Munsif and Sub-Ordinate Judges; as declared in Rule 2(2)(i)(a) and (b); the other, from the Government officials as declared in Rule 2(2)(ii)
- (ii) Election Tribunals constituted from Judicial sphere are already Judicial Officers, appointed under A.P. Civil Courts Act, 1972, who have got every right by virtue of their office itself to exercise all their functions under Civil Procedure Code; in other words, the moment one is appointed as a Judicial Officer, no further notification is required to say that all such Judges are vested with the rights to invoke certain powers as are mentioned in Rule 7(ii).
- (iii) Election Tribunals, which are appointed by Government, in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads by virtue of directions by the Government, are headed by Government Officers, who cannot invoke any power in conducting the election disputes filed before them, unless they are vested with certain powers under Civil Procedure Code, 1908.
- (iv) It is only for those Election Tribunals, constituted by the directions of the Government, Rule 7(ii) is incorporated, giving certain rights under the Civil Procedure Code 1908 to such Tribunals and not to District Munsiffs and Sub-Ordinate Judges, who are already vested with powers under Civil Procedure Code.
- (v) If District Munsifs and Sub-Ordinate Judges are appointed as Election Tribunals, the appointment of the said Courts as Election Tribunals will only

be additional duties that are entrusted to the said Courts, so the respective Judges appointed as Election Tribunals are not *Persona Designata* and the Government Officers appointed as Election Tribunals in Agency Area are only *Persona Designata* and Rule 7(ii) has application to such Election Tribunals only, as they cannot deal with the election petitions, unless they are vested with certain powers and they, being *Persona Designate* cannot have any powers vested in them, unless they are vested with the requisite powers. It is only with this view that Rule 7(ii) is incorporated and so it cannot be said that Election Tribunals filled up with Judicial Officer, who are having inherent powers in them to implement the provisions of C.P.C., shall also be vested with certain powers as stated in Rule 7(ii), as all those powers are already vested in the said Judicial Officers, immediately as they are appointed as such Judges under A.P. Civil Courts Act 1972.

Under Rule 2(2), The Election Tribunal shall be

- (i) except in cases falling under Clause (ii)
  - (a) a District Munsif
  - (b) a Sub-Ordinate Judge
- having jurisdiction; and

the Explanation further states that the District Munsif or the Sub-Ordinate Judge in Agency Area mean the Agency Divisional Officer.

- (ii) where the Government so direct, such officer shall be Election Tribunal. (3) An Election Tribunal shall be deemed to be a *Persona Designata*. From a reading of these rules, it is evident that under sub-rule (2) of Rule 2 Jurisdiction is conferred upon the Court of District Munsif or Sub-Ordinate Judge,

as the case may be, *per se*. It is only under Rule 2(2)(ii) that the Government has reserved to itself the power to designate the officer or officers to act as Election Tribunals; while those constituted under Rule 2(2)(i) squarely fit into the description of *persona designata*, the Election Tribunal referred to under Rule 2(2)(i) are Courts with expanded jurisdiction to try the election petitions.

Coming to the case law, in (1962) 1 An.WR 296 (D.B.) it was held that, if the Election Tribunal is a Judicial Officer or a Court and is intended by the statute to act not otherwise than in a judicial capacity or a Court, certainly he cannot come within the expression *persona designata*, so that he may, irrespective of his continuing in office, perform the duty. In this decision another decision was referred which is reported in (1959) 2 An. WR 265, which held as reported

“...The effect of all these decisions is that if the Presiding Officer was selected to act in a particular manner in his private and individual capacity, he acts as a *persona designata* and not in his capacity as a Judge. But, if additional duties are entrusted to him as the Presiding Officer of the Court, he discharges them as a Court attracting all the incidents of such jurisdiction, such as appeal revision etc., attached to it. When new functions are assigned to him, his jurisdiction as a Presiding Officer is enlarged, quite dissimilar to the situation where the officer is constituted as a special authority and does not act in the discharge of these functions as a Presiding Officer. So, it is evident that the emphasis is only on the nature conferment of jurisdiction, to wit, as to whether the Presiding Officer was chosen to head the Tribunal in his private or individual capacity or additional duties were entrusted to him, as the Presiding Officer of the Court. It is evident in the Present case, that the Election Tribunal which was trying the election petition is the one constituted under Rule 2(2)(1) and not one constituted

under Rule 2(2)(ii) of the Rules. Though Rule 2(3) is to the effect that the Election Tribunal exercising jurisdiction under the Rules shall be deemed to exercise jurisdiction as *Persona Designata*, a combined reading of the entire Rule indicates that such presumption shall apply to the Tribunals constituted by the Government under Rule 2(2)(ii) of the Rules”.

Whoever, functioning as the District Munsif, is empowered to hear and dispose-off the election petitions by virtue of his being the Presiding Officer of that Court, he is conferred with the jurisdiction without the necessity of issuing any special notification in this regard. Therefore, on an election petition being filed in a Court of District Munsif, what actually happens is that the jurisdiction of the Presiding Officer is enlarged, quite dissimilar to the situation where the officer constituted as a special authority does not act in discharge of these functions as a Presiding Officer. Therefore the consequences as indicated by the Division Bench 1959 (2) An. W.R. 265, to wit, that the enlarged jurisdiction shall attract the incidence of appeal, revision *etc.*, would follow. Since the provision conferring jurisdiction upon the District Munsif adds finality in the decision rendered in election petition, remedy of appeal will not be available. However the remedy of revision does not got effected.

In view of the discussion undertaken above, the presumption under Rule 2(3) is confined to those Election Tribunals constituted under Rule 2(2)(ii) and not to those referred to in Rule 2(2)(i).

In 2003 (1) ALD 271 = 2003 (1) An.WR 145, all the above mentioned earlier Division Bench decisions were interpreted and followed and ultimately it was held by the A.P. High Court that an application under Order 9 Rule 7 C.P.C., is maintainable in an election dispute before an Election Tribunal constituted under Rule 2(2)(i) of the Rules.

But in 2004 (3) ALD 280 = 2004 (3) ALT 788, a Division Bench of A.P. High Court held that a petition under Order 1 Rule 10 Civil Procedure Code is not maintainable before an Election Tribunal constituted under the aforesaid Rules, as the said provision does not find place in Rule 7(ii) of the Rules and also holding that the Election Tribunal being a *persona designata* cannot exercise powers *de hors* the provisions contained in Rule 7(ii).

There are also other decisions of A.P. High Court reported in 2008 (1) ALT 435 and 2008 (5) ALD 415 = 2008 (6) ALT 303, that Election Tribunal cannot exercise powers under Order 9 Rule 7 C.P.C. But in 2007 (6) ALD 26 = 2008 (1) ALT 388 (D.B.) it was held that a petition under Order 7 Rule 11 is perfectly maintainable.

But, in either of these decisions, *Thurupu Vasantha v. Rudraboina Balamani*, 2003 (1) ALD 271 = 2003 (1) An. WR 148, in which two earlier Division Bench decisions of A.P. High Court were referred and following the same, the Single Judge of A.P. High Court in the above citation hold that provisions of C.P.C. are applicable to Election Tribunals, which are presided over by civil Courts like District Munsif and Sub-Ordinate Court and provisions in Rule 7(ii) of the Rules apply only to Government Officers appointed by the Government under Rule 2(2)(ii) of the Rules, was not referred.

So, if this decision and the earlier two Division Bench decisions of A.P. High Court are cited for consideration before the Bench decision reported in 2004 (3) ALT 788 and the other two Single Judge decisions, they would not have pronounced in their judgments that the Election Tribunal constituted under the above said Rules, whether it is a Court under Rule 2(2)(1)(a) and (b) or a Government Officer appointed by the Government under Rule 2(ii) the Election Tribunal cannot exercise jurisdiction in respect of all the provisions of C.P.C. but only those powers referred to Rule 7(ii).

So the Division Bench decision reported in 2004 (2) ALT 788 and the Single Judge decisions reported in (1) 2008 (1) ALT 435 and (2) 2008 (6) ALT 303 are *per incuriam* and they do not lay the correct law and hence not binding. The Election Tribunals under Rule 2(2)(i)(a) and (b) are civil Courts and hence they can exercise powers under

C.P.C., as usual under Rule 7(i) of the Rules and they are not *persona designata* and the Election Tribunal constituted by Government Under Rule 7(2)(ii) of the Rules is *persona designata* and so can exercise such powers as are mentioned under Rule 7(ii) only and not powers, which are not mentioned in Rule 7(ii) of the Rules.

### ARE THE PRESENT PROCEDURES FOR APPOINTMENTS OF JUDGES TO HIGH COURTS AND SUPREME COURT IN ACCORDANCE WITH THE PROVISIONS OF CONSTITUTION? IF NOT, WHAT IS THE ALTERNATIVE?

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Under our Constitution, there are three independent wings, discharging the various Constitutional mandates, to wit,

- (1) The Legislature
- (2) The Executive, and
- (3) The Judiciary

The function of the Legislature, which is a representative body of the people coming into existence through, the mandate of the people, is to make laws, which are beneficial, advantageous and for uplift of the weaker sections of the society and women and other down-trodden categories of people, because they are elected by the people in a democratic way and so it knows full well of the necessities and requirements of the common man and so they enact the laws which promote the interests of common man. The Executive, *i.e.*, the Government, which is formed from out of the majority of the members of the Legislature, implement the various laws that are enacted by the Legislature, so, the executive is responsible to the Legislature and it is in existence so long as it wins the confidence of the Legislature. It is duty of the judiciary to scrutinise and

hold whether the thus enacted laws and the manner in which the executive has been implementing the said Acts, are in consonance with the Constitutional mandate and spirit and if the said laws are not in accordance with the various provisions of Constitution, especially relating to the fundamental rights of citizens enshrined in Constitution, to strike-off such laws and their implementation and protect and safeguard the rights of the general public. These three organisations are independent of each other and no one such wing shall interfere with the powers and rights of the other, against the Constitutional mandate and each one of them is supreme in its sphere.

2. Even in the preamble of our Constitution, it is said that, 'We, the people of India, hereby..' and it is the spirit of our Constitution that the whole of the people of India are participants of the Constitution. So, the fundamental fibre of our Constitution is involvement of the entire public in the progressive ways of implementation of various activities, taken in pursuance of the various Articles of Constitution. So only, it is often being reminded that no citizen of this country shall plead ignorance of law. (*Ignorantia Juris Non-excusat*).