

(2015) 09 SC CK 0070

In the Supreme Court Of India

Case No : Civil Appeal No. 7115 of 2015 (Arising out of SLP (C) No. 36764/2014) and Civil Appeal No. 7116 of 2015 (Arising out of SLP (C) No. 36773/2014) and Special Leave Petition (C) Nos. 5896-5897 of 2015

Edara Haribabu and Others

APPELLANT

Vs

Tulluri Venkata Narasimham and Others

RESPONDENT

Date of Decision : 15-09-2015

Acts Referred:

Andhra Pradesh Conduct of Election of Member (Co-opted), President and Vice-President of Mandal Parishad and Member (Co-opted), Chairperson and Vice-Chairperson of Zilla Parishad Rules, 2006 — Rule 21, Rule 22, Rule 22(1)
Andhra Pradesh Panchayat Raj Act, 1994 — Section 181A, 22(5), 22A
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 41 Rule 5
Constitution of India, 1950 — Article 136

Citation : (2015) 12 AD (SC) 558 : (2016) AIR (SC) 597 : (2016) 1 ALT 24 : (2015) 6 AWC 6512 : (2015) 7 MLJ 120 : (2015) 9 SCALE 832 : (2015) 10 SCJ 649

Hon'ble Judges : Jasti Chelameswar, J;Abhay Manohar Sapre, J

Bench : Division Bench

Advocate : P.P. Rao, B. Adinarayana, A.K. Ganguli, Senior Advs., Y. Vismai Rao, M. Karthik Pavan Kumar, Hitender Nath Rath, P. Govindaiah, Sandeep Singh, Y. Raja Gopala Rao, Prerna Singh, G. Pramod Kumar, Prashant Chaudhary, Venkateswara Rao Anumolu, Goli Ramakrishn

Final Decision : Disposed Of

Judgement

Abhay Manohar Sapre, J.

In S.L.P. (c) Nos. 36764/2014 & 36773/2014

1. Leave granted.

2. These appeals are filed against the common interim order dated 10.12.2014 passed by the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh in W.A.M.P. No. 3416 of 2014 in W.A. No. 1386

of 2014 and W.A.M.P. No. 3418 of 2014 in W.A. No. 1388 of 2014 whereby while disposing of the applications filed in these appeals, the High Court directed the Vice-Chairperson of Zilla Praja Parishad (in short "ZPP"), Prakasam District, Ongole to discharge the functions of the Chairperson for the office of Zilla Praja Parishad, Prakasam District, Ongole until further orders.

3. In order to appreciate the issue involved in these appeals, which lie in a narrow compass, it is necessary to state a few relevant facts which were taken from the record of the S.L. Ps.

4. The Appellant is the duly elected member of Zilla Parishad Territorial Constituency (in short "ZPTC") of Ponnaluru Mandal, Prakasam District. He had contested this election as a candidate of Telugu Desam Party (in short "TDP") for Prakasam District, Ongole. On 26.06.2014, the Election Commission for the State of Andhra Pradesh (in short "the State Election Commission")-Respondent No. 3 herein issued orders directing various District Collectors including the District Collector-cum-Presiding Officer, Prakasam District (Respondent No. 2 herein) to conduct election to the office of Chairperson and Vice-Chairperson of the Zilla Praja Parishads (in short "ZPP") on 05.07.2014.

5. However, the elections to the offices of Chairperson and Vice-Chairperson of ZPP, Prakasam District could not be held on the said date, i.e. 05.07.2014, and were accordingly postponed to a later date.

6. On 07.07.2014, an order was issued by the District Collector, Prakasam District (Respondent No. 4 herein) requesting the State Election Commission (Respondent No. 3 herein) to hold the election on 13.07.2014.

7. On 09.07.2014, the State President of the TDP addressed a letter to the State Election Commission (Respondent No. 3) informing that one Shri Bonda Uma Maheswara Rao, General Secretary of the TDP, is authorized to issue Form-A and Form-B as prescribed in Rule 22(1) of the Andhra Pradesh Conduct of Election of Member (Co-opted), President and Vice-President of Mandal Parishad and Members (Co-opted), Chairperson and Vice-Chairperson of Zila Parishad Rules, 2006 (hereinafter referred to as "The Rules") and is also authorized to issue the appointment of whip for the said elections in the State of Andhra Pradesh. Shri Bonda Uma Maheswara Rao then issued Form-A dated 10.07.2014 authorizing one Shri D. Janardhana Rao, the District President of the Prakasam District TDP to issue Form-B to the candidates set up by the TDP in the aforesaid election insofar as ZPP, Prakasam district was concerned and on the same day he also informed the same to the District Collector-cum-Presiding Officer, Prakasam District, Ongole.

8. On 12.07.2014, Shri D. Janardhana Rao informed the District Collector-cum-Presiding Officer (Respondent No. 2) that Shri Tulluri Venkata Narasimham (Respondent No. 1) has been appointed as whip on behalf of the TDP in relation to the election to the office of Chairperson and Vice-Chairperson of ZPP, of Prakasam District. Shri Tulluri Venkata Narasimham (Respondent No. 1) then

issued a whip on 12.07.2014 directing all the ZPTC members belonging to the TDP to vote in favour of Shri Manne Ravindra for the office of Chairperson. On the next day, i.e. 13.07.2014, Respondent No. 1 issued another whip directing all the TDP members of the ZPTC to vote in favour of Smt. P. Koteswaramma for the office of Vice-Chairperson.

9. According to the Appellant, when the whip was issued, the Appellant was not present in Ongole but was at Hyderabad from 07.07.2014 to 12.07.2014. It was for this reason, the Appellant alleged that he neither received nor served with the copy of two whips which were alleged to have been issued. He also alleged that his signature acknowledging receipt of the said whips were either forged or fabricated.

10. On 13.07.2014, the said elections were conducted by the District Collector-cum-Presiding Officer. The Appellant, however, contested the election to the office of Chairperson, ZPP, Prakasam District as an "independent candidate" and cast his vote in his own favour and in favour of one Shri N. Balaji, an independent candidate for the office of Vice-Chairperson. The Appellant won the election and was accordingly declared elected as the Chairperson by one vote defeating Sri Manne Ravindra, the candidate proposed by the TDP as a candidate to the post of Chairperson.

11. This led to filing of a complaint by Shri Tulluri Venkata Narasimham (Respondent No. 1) against the Appellant on 14.07.2014 before the District Collector-cum-Presiding Officer (Respondent No. 2) alleging inter alia that he was appointed as a whip by the TDP in relation to the said election held on 13.07.2014 and that the Appellant cast his vote in the said election in violation of the whips issued by the TDP on 12.07.2014 and 13.07.2014.

12. On 16.07.2014, a show cause notice was issued to the Appellant calling upon him to show cause as to why action should not be taken against him for violating the directions issued in the whips and why he should not be disqualified as per G.O. Ms. No. 173 dated 10.05.2014 and Section 22(5) of the Andhra Pradesh Panchayat Raj Act, 1994 (hereinafter referred to as "the Act").

13. The Appellant submitted his explanation on 04.08.2014 stating inter alia that he had not violated the whips. It was also his case that he had not received any whip and his signatures on the whips' receipts were either fake or fabricated by someone. He also stated that he was at Hyderabad from 07.07.2014 to 12.07.2014 and hence did not receive the alleged whips even if issued. He, therefore, prayed the District Collector-cum-Presiding Officer (Respondent No. 2) to conduct a detailed inquiry in the matter.

14. By order dated 11.08.2014 in Rc. No. P1/4598-Indirect election/13, the Presiding Officer & District Collector, Prakasam District, Ongole disqualified the Appellant as the member of ZPTC, Ponnaluru and directed him to vacate the office of the Chairperson, ZPP, Prakasam Dist., Ongole.

15. On 12.08.2014, the Chief Executive Officer (in short "CEO"), ZPP, Ongole by proceedings in Rc. No. P1/4959/2014, directed Shri N. Balaji, Vice-Chairperson to temporarily take over the charge of the office of Chairperson until a new Chairperson is duly elected.

16. Challenging the order dated 11.08.2014 passed by the Presiding Officer & District Collector, Prakasam District, Ongole, the Appellant filed W.P. No. 23541 of 2014 before the High Court. Vide order dated 22.08.2014, the High Court dismissed the petition granting liberty to the Petitioner therein to approach the District Court by taking recourse to the remedy available Under Section 181A of the Act.

17. The Appellant accordingly filed E.O.P. No. 8 of 2014 and E.O.P. No. 9 of 2014 before the Ist Additional District Judge, Ongole against the order dated 11.08.2014 passed by the Presiding Officer on the grounds pleaded therein. He also filed I.A. Nos. 1697 of 2014 in E.O.P. No. 8/2014 and I.A. No. 1684 of 2014 in E.O.P. No. 9/2014 to grant ad interim injunction by suspending the order dated 11.08.2014 passed by the Presiding Officer, Ongole in Rc. No. P1/4598-Indirect Election/B. By orders dated 07.10.2014, the Ist Additional District Judge dismissed the said I. As. and declined to grant injunction prayed by the Appellant.

18. Questioning the order dated 07.10.2014 passed by the Ist Additional District Judge, Ongole, in I.A. No. 1697 of 2014 in E.O.P. No. 8 of 2014 & I.A. No. 1684 of 2014 in E.O.P. No. 9 of 2014, the Appellant filed W.P. Nos. 30790 and 30791 of 2014 before the High Court of Judicature at Hyderabad for the State of Telangana and the State of Andhra Pradesh.

19. In view of the disqualification of the Appellant herein, a representation was submitted by Mr. Garinipudi Steeven & 24 others on 28.08.2014 to the State Election Commission and the District Collector-cum-Presiding Officer for conducting fresh elections. Since the said application was not being considered by the State Election Commission, the abovesaid Petitioners filed W.P. No. 30799 of 2014 before the High Court.

20. The learned Single Judge of the High Court heard W.P. Nos. 30790, 30791 and 30799 of 2014 together and by common order dated 07.11.2014, allowed W.P. Nos. 39790 and 30791 of 2014 filed by the Appellant herein and quashed the order dated 07.10.2014 passed by the Ist Additional District Judge. The learned Single Judge then suspended the proceedings dated 11.08.2014 by which the Appellant was disqualified as ZPTC member and consequently as Chairperson of ZPP. So far as W.P. No. 30799 of 2014, which was filed for conducting fresh election in view of the disqualification of the Appellant herein, was concerned, it was dismissed.

21. On 08.11.2014, the Appellant addressed a letter to the CEO, ZPPs, Prakasam District, Ongole informing him that the order dated 11.08.2014 passed by the District Collector-cum-Presiding Officer, Prakasam District regarding disqualification of his membership as ZPTC and also Chairperson of ZPP was

suspended vide order dated 07.11.2014 passed by the learned Single Judge of the High Court in W.P. Nos. 39790 and 30791 of 2014 and hence the Appellant be allowed to resume the office of the Chairperson, ZPP, Prakasam District.

22. The Appellant accordingly on 08.11.2014 resumed the office of Chairperson and took over the charge of the office of the Chairperson, ZPP, Prakasam District and started conducting various meetings and took various decisions.

23. To complete the narration of the facts, it may here be mentioned that one Rajendra Prasad, felt aggrieved of the order dated 12.08.2014 passed by the CEO in Rc. No. P1/4959/2014, by which Mr. N. Balaji Vice-Chairperson was temporarily allowed to take over the charge of the office of Chairperson consequent upon declaration of Appellant's disqualification for the post of Chairperson and filed a writ petition bearing W.P. No. 31113 of 2014 before the High Court.

24. Vide order dated 12.11.2014, the learned Single Judge of the High Court allowed W.P. No. 31113 of 2014 filed by M. Rajendra Prasad and suspended the proceedings dated 12.08.2014 subject to further orders.

25. In the meantime, Shri Tulluri Venkata Narasimham-Respondent No. 1 herein filed W.A.M.P. No. 3416 of 2014 in W.A. No. 1386 of 2014 and W.A.M.P. No. 3418 of 2014 in W.A. No. 1388 of 2014 before the High Court challenging the order dated 07.11.2014 passed by the learned Single Judge.

26. On 12.11.2014, the Chief Executive Officer (CEO), ZPP addressed a letter in Rc. No. P1/4598/High Court Cases/2013 to the Commissioner, Panchayat Raj & Rural Development stating that pursuant to the order dated 07.11.2014 passed by the High Court, the Appellant has resumed the office of the Chairperson, ZPP, Prakasam District on 08.11.2014. However, Respondent No. 1, on his part informed that he had preferred an appeal against the order dated 07.11.2014 before the High Court. Though there was no interim order passed in the writ appeals filed by Respondent No. 1 herein before the High Court yet the CEO sought clarifications from the Commissioner on this issue as to what should be done in the case.

27. On 13.11.2014, the Appellant, was constrained to send a legal notice to the CEO to ensure compliance of the order dated 07.11.2014 passed by the learned Single Judge and co-operate with the Appellant to enable him to discharge the duties as Chairperson and forthwith withdraw the clarification letter dated 12.11.2014 sent by him to the Commissioner, which according to Appellant was not at all necessary.

28. On 14.11.2014, the Appellant also addressed a letter to the Commissioner against the CEO and Dy. C.E.O. and requested him to take disciplinary action against them. By letter dated 15.11.2014, the Commissioner informed to the Secretary to the Government that the Appellant has resumed the office of the Chairperson from 08.11.2014.

29. On 25.11.2014, one Shri Lakshminarayana filed W.P. No. 36421 of 2014 seeking suspension of proceedings dated 12.08.2014 of the CEO directing the Vice-Chairperson to act as the Chairperson which was already the subject matter of pending Writ Petition No. 31113/2014. On 26.11.2014, the Appellant filed an application for bringing on record the documents to show that he has already resumed the office as the Chairperson pursuant to the final order dated 07.11.2014 passed by the learned Single Judge in W.P. Nos. 30790 & 30791 of 2014 and has been functioning since 08.11.2014. He, therefore, contended that there arise no occasion to allow anyone to resume the post of Chairperson and secondly, no vacancy arises for the post of Chairperson at least till the final disposal of the main election petitions pending before the District Court.

30. The High Court, in the meantime, by order dated 28.11.2014 in W.P. No. 36241 of 2014 suspended the proceedings dated 12.08.2014 of the CEO by which he had directed the Vice-Chairperson to act as Chairperson, as was already done in identical Writ Petition No. 31113/2014 by order dated 12.11.2014.

31. Against the said orders, i.e. order dated 12.11.2014 passed in W.P. No. 31113 of 2014 and order dated 28.11.2014 passed in Writ Petition No. 36241/2014, two writ appeals bearing W.A. Nos. 1484 and 1485 of 2014 were preferred.

32. On 01.12.2014, the Appellant filed application bearing WAMP No. 3690 of 2014 in W.A. No. 1386/2014 and W.A.M.P. No. 3691 of 2014 in W.A. No. 1388 of 2014 inter alia praying for considering the additional documents in support of his contention that there is no vacancy for the post of Chairperson.

33. By impugned interim order dated 10.12.2014 passed in W.A.M.P. No. 3416 of 2014 in W.A. No. 1386 of 2014 and W.A.M.P. No. 3418 of 2014 in W.A. No. 1388 of 2014, the Division Bench directed the Vice-Chairperson to discharge the functions of the Chairperson until further orders and further restrained the Respondents from filling up the vacancy of Chairperson. The Division Bench also directed the District Judge to decide the pending Election Petitions within three months and posted the appeals for hearing after two months.

34. Against the aforesaid interim order, the Appellant has filed these appeals by way of special leave before this Court.

35. Mr. P.P. Rao, learned Senior Counsel, appearing for the Appellant while assailing the legality and correctness of the impugned order contended that the Division Bench of the High Court erred in allowing the interlocutory applications filed by Respondent No. 1 herein and giving impugned directions. He submitted that in the light of well reasoned order passed by the learned Single Judge allowing the writ petitions filed by the Appellant herein and keeping his disqualification of membership/Chairpersonship under suspension till disposal of the election petitions, both intra court appeals and applications had virtually become infructuous and hence were liable to be dismissed as such.

36. Learned Senior Counsel then contended that no prima facie case was made out for passing the impugned order because the Appellant herein had already resumed the office of the Chairperson on 08.11.2014 pursuant to the order dated 07.11.2014 passed by the learned Single Judge.

37. Learned Counsel pointed out that once the Appellant resumed the post of the Chairperson pursuant to order passed by the learned Single Judge, the only direction that should have been given while disposing of the appeal/application by the Division Bench was to decide the Appellant's election petitions by the Ist Additional District Judge, Ongole on merits expeditiously.

38. Learned Counsel further contended that even assuming that the High Court could go into the merits of the controversy, though it should not have, yet it was the Appellant who was able to make out prima facie case as was rightly held by the learned Single Judge in his favour when he allowed Appellant's writ petition arising out of the interim order of the Additional District Judge.

39. Referring to Rules 21 and 22, learned Counsel contended that the alleged whips issued by the TDP in relation to the election in question were not legal because it did not satisfy the requirements of the twin rules. Learned Counsel while criticizing the manner in which the Division Bench recorded certain findings against the well settled principles of law and contended that the impugned order besides being interim in nature is wholly legally unsustainable and hence deserves to be set aside.

40. In contra, Mr. A.K. Ganguli, learned Senior Counsel appearing for Respondent No. 1, while supporting the impugned order contended that the same being interim in nature, no interference is called for Under Article 136 of the Constitution of India.

41. Having heard the learned Counsel for the parties and on perusal of the record of the case and the written submissions, we find force in the submissions of the learned Senior Counsel for the Appellant.

42. The short question, which arises for consideration in these appeals, is whether the Division Bench was justified in allowing the applications filed in pending writ appeals and was, therefore, justified in issuing mandatory directions?

43. The impugned directions read as under:

We, therefore, direct the Vice-Chairperson, until further orders of this Court, to discharge the functions of the Chairperson in terms of the aforesaid legal provision. However, we restrain all the official Respondents from taking any steps or further steps to fill up the vacancy which resulted because of the disqualification order.

It would be ideal if the District Judge decides the matter pending on his file within three months instead of six months from the date of communication of

this order.

These two appeals will come up for hearing two months hence.

WAMPs are ordered accordingly.

The aforementioned directions are based on following two findings recorded by the High Court:

We are of the opinion that until and unless the order of disqualification is set aside, it remains operative. Unlike the Court, the Collector has no power to grant an order of injunction. In our view, of course, *prima facie*, the order of suspension of the learned Trial Judge in the above legal and factual scenario is futile and cannot even be implemented.

...We think that some sort of workable interim order was passed keeping in view the balance of convenience, as under the Constitution, there is no express provision that in case of vacancy in the office of Prime Minister, anyone will function as a Prime Minister, as a Head of the Council of Ministers. On the contrary, on the vacancy, the entire Cabinet would stand dissolved.

44. In our considered opinion, the aforementioned two findings are not legally sustainable for the reasons mentioned *infra*.

45. It is a well settled principle of law that the Courts are always vested with inherent and statutory power to stay/restrain the execution of the action impugned in the *lis* during pendency of the *lis*. These powers are contained in Order 39 Rules 1 and 2, and Order 41 Rule 5 of the Code of Civil Procedure, 1908.

46. This Court in *Mulraj Vs. Murti Raghonathji Maharaj*, AIR 1967 SC 1386 : (1967) 3 SCR 84 had the occasion to take note of this well settled principle wherein Justice K.N. Wanchoo speaking for the Bench explained the subtle distinction between the grant of injunction and stay and explained the effect of both including consequence after their termination.

47. Keeping in view this well settled principle, which we need not elaborate herein, we are of the view that the Division Bench was not right in observing that so long as the order of disqualification was not set aside, it remained operative.

48. In our considered view, the Division Bench failed to see that so long as the final adjudication is not done in accordance with law on merits in the election petitions, the District Court was vested with the power to pass appropriate interim orders in relation to the impugned action Under Section 22A of the Act which reads as under:

22-A Bar of jurisdiction: No order passed or proceedings taken under the provisions of this Act, shall be called in question in any Court, in any suit, or application, and no injunction shall be granted by any Court except District Court in respect of any action taken or about to be taken in pursuance of any power

conferred by or under this Act.

(Emphasis supplied)

49. The Division Bench also failed to appreciate that once writ petitions filed by the Appellant herein were allowed on 07.11.2014 by suspending the proceedings dated 11.08.2014, the Respondents had no option but to allow the Appellant to function as the Chairman of ZPP.

50. Similarly the Division Bench was also not right in giving an illustration quoted above in support of the impugned order. In our opinion, the illustration is wholly misplaced and has nothing to do with the short question involved herein.

51. Now coming to the issue, we find that indisputably though the District Court declined to grant any injunction to the Appellant for grant of any interim order in his favour but the learned Single Judge by order dated 7.11.2014 in W.P. Nos. 30790 of 2014 had stayed the operation of the disqualification order dated 11.8.2014 passed by the District Collector.

52. In our considered opinion, the effect of the suspension order dated 07.11.2014 of the learned Single Judge was that the Appellant's disqualification from the post of member of ZPTC and the Chairperson of ZPP was kept in abeyance till the disposal of the election petitions. In other words, no effect was to be given to the Appellant's disqualification in relation to his status as member and the Chairperson till the disposal of the election petitions.

53. It is also not in dispute that the learned Single Judge simultaneously in other two pending writ petitions (W.P. No. 31113 of 2014 and W.P. No. 36421 of 2014) by separate interim orders one dated 12.11.2014 and other dated 28.11.2014 had stayed the order dated 12.08.2014 by which the Vice-Chairperson of the ZPP was asked to assume the charge of the post of Chairperson and this stay was in operation.

54. In the light of these undisputed facts, we are of the view that there was no legal impediment for the Appellant to have assumed the post of the Chairperson, ZPP, Prakasam District, which he did assume on 08.11.2014 pursuant to the order dated 07.11.2014 of the learned Single Judge. Once the Appellant assumed the office of the Chairperson, the Division Bench should have dismissed the interlocutory applications as having rendered infructuous because the prayer made therein, namely, to restrain the Appellant from assuming the office of the Chairperson and asking the vice-Chairperson to assume the charge of the Chairperson was already implemented prior to consideration of the applications and there was no apparent justification to oust the Appellant from the post of Chairperson by another interim order.

55. In our considered opinion, the impugned order of the Division Bench in directing removal of the Appellant from the post of Chairperson and asking the Vice-Chairperson to take over the charge of the Chairperson in his place is not only untenable in law but also perverse.

56. Though learned Senior Counsel for the Appellant also urged the issues relating to legality of the whip issued by the TDP contending inter alia that it was not in conformity with the requirements of Rules etc. but we refrain from going into this question at this stage in these appeals for the simple reason that these issues are sub judiced in the election petitions and hence need to be tried by the District Judge on merits in accordance with law as directed by the learned Single Judge vide order dated 7.11.2014.

57. This takes us to the last submission urged by the learned Senior Counsel for Respondent No. 1 that impugned order being interim in nature, this Court should not interfere in the same Under Article 136 of the Constitution of India. We do not agree with this submission.

58. In our considered view, if we find that the reasoning given by the High Court while passing the interim order is perverse and legally unsustainable being against the settled principle of law laid down by this Court then interference of this Court in such order is called for regardless of the nature of the order impugned in appeal.

59. In this case, having noticed that the two reasonings extracted above are wholly unsustainable being against the well settled principle of law, it is necessary for this Court to interfere.

60. The fate of the Appellant about his membership and Chairpersonship would depend upon the outcome of the election petitions.

61. Let the election petitions be decided within 3 months as an outer limit from the date of this Court.

62. In view of foregoing discussion, the appeals succeed and are accordingly allowed. Impugned order is set aside. As a consequence, all the pending appeals/petitions before the High Court also stand finally disposed of in the light of this judgment because there remains nothing for the High Court now to decide in pending appeals/writ petitions.

S.L.P. (c) Nos. 5896-5897 of 2015

In view of the detailed judgment passed in the appeals @ S.L.P. (c) Nos. 36764 of 2014 and 36773 of 2014, these special leave petitions stand disposed of accordingly.