

(2014) 11 AP CK 0079

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 30790 of 2014

Edara Haribabu

APPELLANT

Vs

The District Collector cum Presiding Officer

RESPONDENT

Date of Decision : 07-11-2014

Acts Referred:

Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 — Section 11
Andhra Pradesh Panchayat Raj Act, 1994 — Section 181A, 22(5), 7
Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 43 Rule 1, 104, 151
Constitution of India, 1950 — Article 226, 227

Citation : (2015) 1 ALD 595 : (2015) 1 ALT 20

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : C.V. Mohan Reddy, Learned Senior Counsel for M. Karthik Kumar, Learned Counsel, Advocate for the Appellant; V.V. Prabhakar Rao, B.V. Subbaiah, Learned Senior Counsel for K. Aruna, Learned Counsel, Advocate for the Respondent

Judgement

M.S. Ramachandra Rao, J.—Heard Sri C.V. Mohan Reddy, learned Senior Counsel for Sri M. Karthik Kumar, learned counsel for the petitioner in W.P. Nos. 30790 and 30791 of 2014, learned Government Pleader for Panchayat Raj for respondent No. 1 in W.P. No. 30790 of 2014, W.P. No. 30791 of 2014 and W.P. No. 30799 of 2014; Sri V.V. Prabhakar Rao, learned counsel for 2nd respondent in all three cases; Sri B.V. Subbaiah, learned Senior Counsel for Smt. K. Aruna, learned counsel for 3rd respondent in W.P. No. 30790 of 2014, 30791 of 2014 and for the petitioner in W.P. No. 30799 of 2014.

2. As the subject matter of these Writ Petitions is inter-related, they are being disposed of by this common order.

3. The petitioner in W.P. No. 30790 of 2014 and in W.P. No. 30791 of 2014, Sri E. Haribabu (hereinafter referred to as the petitioner) was disqualified by separate orders in Rc. No. P1/4598/indirect elections/13 dt. 11-08-2014 passed by the

District Collector-cum-Presiding Officer, Prakasam District, Ongole as ZPTC Member, Ponnaluru Mandal and also as Chairperson of Zilla Parishad, Prakasam District on the ground that he had disobeyed the directions of the Telugu Desam Party whip in relation to the election for the offices of the Chairperson and Vice-Chairperson, Zilla Praja Parishad, Prakasam District held on 13-07-2014 and for not voting in favour of Sri Manne Ravindra, the candidate proposed by the said party for the office of Chairperson and Smt. P. Koteswaramma for the office of Vice-chairperson.

4. He filed E.O.P. No. 8 of 2014 before the I Additional District Judge, Ongole (for short the District Court) challenging the order dt. 11-8-2014 of 1st respondent invoking Section 181-A of the AP Panchayat Raj Act, 1994 (for short the Act) in so far as disqualification incurred by him for not voting in favor of Sri Manne Ravindra for office of Chairperson is concerned. He also filed E.O.P. No. 9 of 2014 before the I Additional District Judge, Ongole challenging the order dt. 11-8-2014 of 1st respondent invoking Section 181-A of the AP Panchayat Raj Act, 1994 (for short the Act) in so far his disqualification for not voting in favor of Smt. P. Koteswaramma for office of Vice-Chairperson is concerned.

5. In the said E.O.P. 8/2014 and E.O.P. No. 9/2014, he filed I.A. No. 1697 of 2014 and I.A. No. 1684/2014 respectively under Order 39 Rules 1 and 2 and Section 151 CPC to grant ad-interim injunction suspending the orders dt. 11-08-2014 passed by 1st respondent pending disposal of the main election petition.

6. By separate orders dt. 07-10-2014, the District Court dismissed the said applications.

7. Questioning the same, he filed W.P. No. 30790 of 2014 and W.P. No. 30791 of 2014.

8. In view of the disqualification of Sri E. Haribabu, the petitioners in W.P. No. 30799 of 2014, submitted a representation dt. 28-08-2014 to 2nd respondent and 3rd respondent therein to again conduct elections for the post of Chairperson of Zilla Praja Parishad, Ongole, Prakasam District. Since the said representation was not considered, they sought a Writ of Mandamus to respondent Nos. 2 and 3 to forthwith conduct elections to fill up the said post.

9. Having given a brief overview of the litigation, I will now set out more facts.

10. The petitioner Sri E. Haribabu had contested the Zilla Parishad Territorial Constituency (ZPTC) elections conducted by 2nd respondent from Ponnaluru Mandal, Prakasam District on behalf of the Telugu Desam Party (for short TDP party). He won the said election and was consequently elected as ZPTC Member, Prakasam District.

11. On 26-06-2014, the 2nd respondent issued orders directing various District Collectors including 1st respondent to conduct election to the office of Chairperson and Vice Chairperson of Zilla Praja Parishads (for short ZPPs) on

05-07-2014.

12. In so far as ZPP, Prakasam is concerned, the election to the said offices could not be conducted on that day and consequently 4th respondent issued orders dt. 07-07-2014 directing 2nd respondent to hold the election on 13-07-2014.

13. The State President of the TDP party addressed a letter dt. 09-07-2014 to 2nd respondent informing that one Bonda Uma Maheswara Rao (General Secretary of the said party) is authorized to issue Form A and B and also to authorize the appointment of whip for the said elections in the Andhra Pradesh State.

14. Bonda Uma Maheswara Rao issued Form-A dt. 10-07-2014 authorizing one D. Janardhana Rao (District President of the Prakasam District TDP party Unit) to issue Form-B to the candidates set up by the TDP party in the aforesaid election insofar as ZPP, Prakasam is concerned.

15. Bonda Uma Maheswara Rao informed 1st respondent vide Annexures-I dt. 10-07-2014 that the TDP party is authorizing D. Janardhana Rao (District President) to appoint a whip on behalf of that party in relation to the aforesaid elections.

16. On 12-07-2014, D. Janardhana Rao informed 1st respondent in Annexures-II dt. 12-07-2014 that 3rd respondent is appointed as whip on behalf of TDP party in relation to the aforesaid elections.

17. The 3rd respondent allegedly issued a whip dt. 12-07-2014 directing all ZPTC Members belonging to TDP party to vote in favour of Sri Manne Ravindra for office of Chairperson and another whip dt. 13.7.2014 to vote in favor of Smt. P. Koteswamma for office of Vice-Chairperson in the aforesaid election proposed to be held on 13-07-2014.

18. It is the case of the petitioner that he was not in Ongole at that time and he did not receive it and it was not served on him. It is also his case that his signature acknowledging receipt of the said whips is either forged or the said whips were fabricated.

19. D. Janardhana Rao issued Form-B dt. 13-07-2014 setting up Sri Manne Ravindra as TDP partys candidate in the election to the office of the Chairperson, ZPP, Prakasam and another Form-B dt. 13-7-2014 setting up Smt. P. Koteswamma as that partys candidate in the election to the office of Vice-Chairperson, ZPP, Prakasam.

20. On 13-07-2014, election was conducted by 1st respondent to the office of Chairperson, ZPP, Prakasam. Petitioner also contested to the said office independently. The petitioner cast his vote in his own favour for office of Chairperson and in favor of one N. Balaji, and independent candidate for office of Vice-Chairperson. Petitioner won election to office of Chairperson by one vote. Sri Manne Ravindra, candidate set up by the TDP party for office of Chairperson was

defeated.

21. The 3rd respondent lodged complaints dt. 14-07-2014 against the petitioner before 1st respondent alleging that he was appointed as whip by TDP party in relation to the aforesaid elections held on 13-07-2014 and that the petitioner cast his vote in the said elections to office of Chairperson and Vice-Chairperson in violation of the party whips/directions dt. 12-07-2014 issued by him and he did not vote in favor of Sri Manne Ravindra, the candidate proposed by the TDP party for office of Chairperson and Smt. P. Koteswaramma for office of Vice-Chairperson.

22. Show cause notices dt. 16-07-2014 were issued by 1st respondent calling upon petitioner to show cause as to why action should not be taken against him for violating the directions issued in the aforesaid whips and why he should not be disqualified as per G.O.Ms. 173 dt. 10.5.2006 and Sec. 22(5) of the Act.

23. Petitioner submitted his explanations dt. 04-08-2014 to the aforesaid show cause notices denying that he had violated the whips. He contended that the signatures on the whips showing that the petitioner received the whip to attend the special meeting on 13-07-2014 and vote in favour of Sri Manne Ravindra and Smt. P. Koteswaramma at Ongole were not his signatures, although they look like his signatures; that he did not receive the whips or intimation regarding the issuance of whips; and they are fabricated documents. He stated that he was at Hyderabad from 07-07-2014 to 12-07-2014; that he stayed in Anupama Guest House at Indira Nagar at Hyderabad in Room No. 317, till 9 p.m. on 12-07-2014 and reached Ongole only in the early house on 13-07-2014; that he was not in Ongole town on 12-07-2014 and there was no possibility for him to receive the alleged whips at Ongole on 12-7-2014. He also referred to an incident on 4-7-2014 where his signatures were allegedly obtained on 04-07-2014 on blank whip papers by TDP party functionaries in respect of the aforesaid elections which were scheduled on 05-07-2014 and stated that on that day he was informed that the names of the candidates proposed by the Party for the office of Chairperson and Vice Chairperson for Prakasam ZPP were not yet decided; he was told that that he would be informed about the full particulars of the said whip on 05-07-2014 well before commencement of the swearing ceremony of ZPTC Members, by duly serving the fully filled up whip copy on which his signatures were obtained; that his signatures were taken in advance on 04-07-2014 to save time; the said whips do not attain validity without furnishing of material details therein; since the meeting on 05-07-2014 did commence but the election did not take place, whips got annulled; and since fresh notification was issued on 07-07-2014 to hold another meeting on 13-07-2014, his signatures on the whip for election on 05-07-2014 automatically ceased to have any effect and were not valid and nonest.

24. By orders dt. 11-08-2014, 1st respondent rejected the defence of petitioner. He held that petitioner did receive the whips dt. 12-07-2014 and the signatures on the copy of the whips belong to him; that he had got elected as Member,

ZPTC on a B Form issued by TDP party, and being an Ex. MLA and a well educated man, he is supposed to have acquired political knowledge; and his statement that he is not aware of the issuance of the party whips in ZPP elections is far from truth since it was widely covered in all newspapers and electronic media. He also held that the acknowledged copy of the whips duly signed by the petitioner were served by the party whip appointed by the TDP party to the petitioner along with authorization given by the competent person of the State Party and they were submitted well within time as per schedule i.e. by 1 p.m. before commencement of the process of election on 13-07-2014; it was not within the scope of his enquiry to decide where the petitioner had stayed on the date of service of the whip by the TDP party or when and how it was served; the signatures of the petitioner on the served copies of the whips produced before him on 13-07-2014 appear to tally with the signatures of petitioner on the attendance sheet of the Special Meeting held at 3 p.m. on 13-07-2014 for electing Chairperson and Vice Chairperson of ZPP, Prakasam and with the signature on the oath given by him immediately on being elected as Chairperson, ZPP, Prakasam on 13-07-2014; and just to escape from the order of disqualification, the petitioner might have taken such a stand. He therefore held that the petitioner Sri E. Haribabu violated the whip issued by TDP party and so he declared him to have ceased to be Member of ZPTC, Ponnaluru as well as office of Chairperson, ZPP, Prakasam.

25. As stated supra, questioning the said orders, the petitioner filed E.O.P. No. 8 of 2014 and E.O.P. No. 9 of 2014 before the District Court and also filed I.A. No. 1697 of 2014 and I.A. No. 1684 of 2014 therein under Order 39 Rules 1 and 2 CPC read with Section 151 CPC to grant ad-interim injunction suspending the orders dt. 11-08-2014 in R.C. No. P1/4598/indirect elections/13 of 1st respondent pending disposal of the main E.O.P.

26. By orders 07-10-2014, the said Court dismissed the said I.As.

27. It rejected the submission of the petitioner that under Rule 22(1)(4) of the Rules relating to conduct of elections of Member (Co-opted) and President/Vice President of Mandal Parishad and Member (Co-opted) and Chairperson and Vice Chairperson of Zilla Praja Parishad framed under G.O.Ms. No. 173, Panchayat Raj and Rural Development (Elections) Department dt. 10-05-2006 (hereinafter referred to as Rules), there cannot be further delegation of the power to issue whip; hence the intimation by the TDP party to the 1st respondent about the person authorized to appoint whip (Annexure-I) (whereunder Bonda Uma Maheswara Rao, State General Secretary of the said party authorized D. Janardhana Rao, District President and M.L.A., Ongole to appoint whip)(marked as Ex. X-1 before the District Court) and the intimation by the said party about the persons appointed as whip (Annexure-II) (whereunder Sri D. Janardhana Rao, District President, Prakasam District appointed 3rd respondent as the whip for the said party) for the election to Chairperson/Vice Chairperson of ZPP, Prakasam District (marked as Ex. X-1 before the District Court), are binding on

him. It held that whip issued under Ex. X-1 is not confined to one person and Annexures I and II mention about specimen signatures of authorized persons and not one person; therefore legislature permitted further delegation of powers; news items Ex. B-15 dt. 07-07-2014 in Andhra Jyothi daily and Ex. B-16 publication in the District edition of Eenadu Telugu newspaper were published in all leading Telugu newspapers and the petitioner, being a senior politician and a former M.L.A. having rich experience in politics, cannot say that he was not served with the whips and therefore his contention of non-service of whip cannot be accepted. It held that the petitioner failed to discharge the initial burden to show that he was not served with the whip and did not make any efforts to know what decision was taken by TDP party as to the persons in whose favour its party members should vote. It held that at the stage of consideration of the interim application, it is not possible to decide whether the signatures of the petitioner on the whips issued by the party on 12-07-2014 for Offices of Chairperson and Vice Chairperson of Zilla Parishad belong to him or not, unless a detailed enquiry is conducted and documents are sent to a handwriting expert. It therefore held that the petitioner has failed to make out a prima facie case, that there is no balance of convenience in his favour and his application for grant of temporary injunction is therefore not maintainable and is dismissed.

28. As stated above, these orders are challenged by the petitioner in W.P. No. 30790 of 2014 and W.P. No. 30791 of 2014.

THE CONTENTIONS OF PETITIONERS COUNSEL

29. The learned counsel for the petitioner contended that the order passed by the 1st respondent is vitiated by error apparent on the fact of record in as much as 1st respondent has not even adverted to the contents of Rules 21 and 22 of the above Rules; that under sub-clause (1) of Rule 22, while every recognized political party may appoint on its behalf a whip, (i) intimation of such appointment shall be sent by the State President or a person authorized by him (ii) under his seal and signature and (iii) such intimation shall be sent to the Presiding Officer so as to reach him on or before 11 a.m. on the day preceding the election to the Office of the Chairperson and Vice Chairperson of ZPP and this was not done in the present case. He also referred to the circular No. 1377/SEC-B1/2014 dt. 21-05-2014 containing procedural instructions with regard to holding of special meeting for conduct of elections to the above offices. Para-III (1) thereof, he contended, empowers the State President of a recognized political party to authorize a party functionary at local level/District level in Annexure-I to appoint a whip for the ZPPs or directly appoint a whip in Annexure-II; and Para-III (5) makes appointment of a whip valid only if the State President or a person authorized by him intimates the name of the whip to the Presiding Officer; and in the present case Ex. B-14 intimation was given by the State President of the TDP party on 09-07-2014 to the State Election Commission authorizing Sri Bonda Uma Maheswara Rao, State General Secretary to issue Form-A and B and also authorized him to appoint whips for the elections mentioned to offices of

Chairperson/Vice Chairperson of ZPPs etc. in Andhra Pradesh State; that this intimation of the State President cannot be equated with intimation of appointment made by political party; that Bonda Uma Maheswara Rao issued Annexure-I intimations dt. 10-07-2014 to 1st respondent informing that D. Janardhana Rao, District Party President, Prakasam District is authorized to appoint whip for election to the above offices; and the latter issued Annexure-II intimations dt. 12-07-2014 to 1st respondent informing that the 3rd respondent is appointed as whip by the said party for election to the above offices in ZPP, Prakasam. He contended that under the Rule 22(1), there was no possibility of a further delegation by Bonda Uma Maheswara Rao to D. Janardhana Rao authorizing the latter to appoint a whip or intimate the 1st respondent of the appointment of a whip; since the intimation to the 1st respondent of the appointment of 3rd respondent as whip was not given by the State President or by Sri Bonda Uma Maheswara Rao, and the intimation was by D. Janardhana Rao, the appointment of the 3rd respondent as whip of TDP party is illegal, and consequently the whips issued by 3rd respondent to vote in favour of Dr. Manne Ravindra or Smt. P. Koteswaramma, the party's candidates are null and void.

30. He further contended that under sub-rule (1) of Rule 21, if any candidate claims to be contesting on behalf of a recognized political party, he shall produce an authorization from the President of the party in the State or a person duly authorized by the State President before the Presiding Officer; that in the present case Sri Manne Ravindra had not produced such an authorization, but had produced only one issued by D. Janardhana Rao (Ex. B-1, Form-B), who was not the State President or the person authorized by the State President i.e. Bonda Uma Maheswara Rao; therefore, Sri Manne Ravindra or Smt. P. Koteswaramma cannot be said to be candidates proposed validly for the post of Chairperson and Vice-Chairperson by the TDP party. Since the candidature of Sri Manne Ravindra and Smt. P. Koteswaramma was not in accordance with Rule 21, it has to be treated as if there was no official candidate at all for both offices.

31. He pointed out that Form-B (Ex. B-1) issued by D. Janardhana Rao informing the 1st respondent of the candidature of Sri Manne Ravindra and Annexure-II (Ex. B-2) issued by D. Janardhana Rao informing 1st respondent that 3rd respondent is appointed as a whip do not bear the seal or signature of the State President or the person authorized by him as required by Rule 22(1) and that it bears the signature of the District President D. Janardhana Rao and the seal of the Ongole District Office. He therefore contended that this is impermissible and both Ex. B1 and Ex. B2 are null and void.

32. He relied on Arikala Narasa Reddy vs. Venkata Ram Reddy Reddygari and another and contended that statutory requirements relating to election law have to be strictly adhered to; all the technicalities prescribed/mandated in election law have been provided to safeguard the purity of the election process; and the Courts have a duty to enforce the same with all rigours and not to minimize their operation. He relied upon S. Jyothi vs. Presiding Officer/Election Officer,

Thottambedu Mandal, Chittoor District and Others and contended that provisions of sub-rule (6) of Rule 13 of the Rules relating to A.P. Conduct of Elections of Member (Co-opted), President/Vice President of Mandal Parishad and Member (Co-opted) Chairman and Vice Chairman of Zilla Parishad Rules, 1992 which are in pari materia with Rule 22 were held to be mandatory by this Court, that non-compliance with Rule 22 by the TDP party voids the appointment of whip and its intimation and it has to be treated as if there is no whip valid in law which could have been violated by the petitioner.

33. He contended that the maxim delegates non-potest delegare is clearly attracted and in absence of any power, a delegatee like Bonda Uma Maheswara Rao cannot sub-delegate his power to another person like D. Janardhana Rao. He relied on Pramod K. Pankaj vs. State of Bihar and others and Barium Chemicals Ltd. And another vs. Company Law Board and others in this regard.

34. He therefore contended that the appointment of the whip and the communication of the appointment of the whip are not in compliance with the provisions of the Rules, and since the rules must be strictly construed, even assuming for the sake of argument without conceding that there was valid service of whip, violation by the petitioner thereof, is of no consequence and the petitioner could not have been declared by 1st respondent as having ceased to hold the office of Member, ZPTC, Prakasam District and consequently as Chairperson of ZPP, Prakasam District.

35. He urged that the Court below having noted this contention of petitioner at page-21/22 of its order did not deal with the same by referring to Rule 22 at all; that the reasoning of the Court below that Ex. X-1 mentions not one authorized person but authorized persons and empowers further delegation, is totally perverse; that Exs. B-15 and B-16 were relied upon by the Court below to hold that the petitioner had knowledge of the whip through news papers, but contents of Exs. B-15 and B-16 nowhere referred to issuance of a whip by the TDP party to vote in favour of Sri Manne Ravindra or Smt. P. Koteswaramma and the said news items merely mention that the former was a candidate proposed by the said party; and therefore the petitioner cannot be said to have knowledge of the issuance of the whip. He contended that the petitioner never received the whip for the election scheduled for 13-07-2014 to the above offices since he was not at Ongole on 12-07-2014 when it was alleged to have been served on him, and the documents produced by 3rd respondent that petitioner put his signature acknowledging receipt of whip, are forged.

36. Although he conceded that the issue of forgery can be gone into during trial, still he contended that since the petitioner has prima facie established that the TDP party had not validly appointed 3rd respondent as a whip and the intimation of the whip was not validly given to the 1st respondent, even if such whip is served it is void; this aspect was not gone into by the trial court; thus there is error apparent on the face of record; law mandates that election of a candidate cannot be lightly interfered with (Sadashiv H. Patil vs. Vithal D. Teke and others);

and so balance of convenience lies in favour of the petitioner and irreparable injury would be caused to him if this Court does not interfere with the impugned order in exercise of its jurisdiction under Article 226 of the Constitution of India. He relied upon *Surya Dev Rai vs. Ram Chander Rai* and others.

37. He contended that even though I.As. in the E.O.Ps. were filed under Order 39 Rules 1 and 2 r/w Section 151 CPC, on the dismissal of the I.As., the petitioner cannot file an appeal under Order 43 Rule 1 r/w Section 104 CPC and that he has no choice but to approach this Court under Article 226 of the Constitution of India. He relied upon a Full Bench decision in *G.V. Ranga Rao and another vs. A.P. State Electricity Board Engineers Association and Another* where a Full Bench of this Court had held that a Civil Miscellaneous Appeal under Or. 43 Rule 1 CPC is not maintainable against an order of a District Court constituted under A.P. (T.A.) Public Societies Registration Act, 1350 Fasli as a forum to decide the disputes arising among the Managing Committee or members of Society in respect of any management or dissolution of the Society rejecting an application for interim relief.

CONTENTIONS OF COUNSEL FOR 3RD RESPONDENT

38. Sri B.V. Subbaiah, learned Senior Counsel appearing for 3rd respondent in W.P. No. 30790/2014 and W.P. No. 30791/2014, on the other hand contended that the orders of the Court below cannot be challenged under Article 226 of the Constitution of India by the petitioner and he should file appeals under Order 43 Rule 1 CPC r/w Section 104 CPC in this Court. He further contended that there is no error apparent on the face of record in the impugned order and the Writ Petition be dismissed directing the Court below to decide the O.P. expeditiously. He contended that in his explanations dt. 04-08-2014 to the show cause notice dt. 28-07-2014 issued by the 1st respondent, the petitioner had not raised the plea that his signatures were forged on the acknowledgments of the whips; that a reading of the explanation suggests that the petitioner is implying that blank whip forms on which his signatures were obtained for the election scheduled on 05-07-2014 and which later got postponed to 13-07-2014 were misused by filling them up and utilized for election on 13.7.2014; that this is a matter for trial; even the issue of forgery can be gone into at the trial; the Court below had prima facie come to the conclusion that the petitioner had received the whips issued by the TDP party through 3rd respondent; the maxim delegates non-potest delegare has no application to the present case; it is confined only to exercise of legislative power or power conferred by Constitution and cannot apply to non-statutory powers; authorization given in the exercise of non-statutory power by functionaries of a political party to others of that party are permitted; and even otherwise, it is only for the political party concerned to raise an issue about the validity of a whip and not for anybody else.

39. He also contended that the provisions of Rule 21 and 22 are not mandatory and even if the State President or his authorized representative had not appointed the whip for the subject elections or communicated the same to 1st

respondent, and their delegate the District President D. Janardhana Rao did so, there is nothing wrong; and the appointment of 3rd respondent as the whip for the subject elections and the communication/intimation thereof by D. Janardhana Rao are valid and the whip issued by 3rd respondent binds the petitioner.

40. He relied upon Radhey Shyam and another vs. Chhabi Nath and others and Guntur United Cricket Club, Guntur and another vs. III Additional District Court, Guntur and others and contended that in the former case the Supreme Court had doubted the correctness of the law laid down in Surya Dev Rai (supra) and referred the matter to a larger Bench on the issue of interference under Article 226 of the Constitution with a judicial order passed by a Court of competent jurisdiction in a property suit where all parties are private parties and that the decision in Radhey Shyam (supra) was followed in Guntur United Cricket Club (supra) by referring to the decision in Naresh Sridhar Mirajkar vs. State of Maharashtra; and therefore, this Court ought not to entertain the Writ Petitions under Article 226 of the Constitution of India.

41. He also relied upon M. Anandamma vs. Revenue Divisional Officer and contended that where contents of a whip are published in local news papers, service of the contents of the whip on the person violating the whip has to be presumed and it would amount to substantial compliance with the requirement of law relating to service of whip. He also relied upon the decisions in Bathutmal Raichand Oswal vs. Laxmibai R. Tarta and Another, (1975) 1 SCC 858 and Abdul Rehman and others vs. The State Transport Appellate Tribunal and others and contended that the High Court, in dealing with applications of Certiorari under Article 226 of the Constitution of India, does not exercise the jurisdiction of an appellate Court and findings or conclusions on questions of fact cannot be re-examined or disturbed by it.

42. I have noted the submissions of both sides.

THE POINTS FOR CONSIDERATION

43. The points for consideration are:

(1) Whether the petitioner should have invoked the remedy of appeal under Order 43 Rule 1 CPC read with Section 104 CPC instead of filing Writ Petitions under Article 226 of the Constitution of India to quash the impugned orders?

(2) Whether the impugned orders of 1st respondent suffers from an error apparent on the face of record warranting interference by this Court under Article 226 of the Constitution of India?

THE ANALYSES BY THIS COURT

Point No. 1:-

44. There is no dispute that the impugned orders were passed in interlocutory applications filed under Order 39 Rule 1 and 2 CPC read with Section 151 CPC in election petitions filed by the petitioner E. Haribabu invoking Section 181-A of

the Act. Thus the District Court was acting as a statutory Tribunal. There is no right of appeal provided under the Act either against the interlocutory orders passed by the District Court nor against the final order which it may pass later.

45. In my opinion, the right of appeal is a substantive right and unless the legislature provides for such a right, there cannot be an appeal under the Act.

46. Under the AP (Telangana Area) Public Societies Registration Act, 1350 Fasli disputes arising among the Managing Committee or Members of the Society, in respect of any management or dissolution of the society could be got resolved by any member of the society filing an application under Section 11 of the said Act in the District Court concerned and the said Court was empowered to pass such order as it deems fit after necessary enquiry. No appeal was provided in the said Act also like in the AP Panchayat Raj Act, 1994 either from an interlocutory order or from a final order passed in the proceedings. A question arose whether an order of the District Court in an interlocutory proceeding under AP (Telangana Area) Public Societies Registration Act, 1350 Fasli rejecting an application for interim injunction filed under Order 39 Rules 1 and 2 read with Section 151 CPC restraining the opposite party from conducting election scheduled on a particular date by an association registered under the said Act, could be appealed against, invoking Order 43 Rule 1 CPC read with Section 104 CPC. A Full Bench of this Court in G.V. Ranga Rao (supra) held that no appeal is provided under the provisions of the said Act against orders of this nature; that provisions of CPC were also not made applicable specifically in relation to the proceedings under the Act; the District Court, while adjudicating on an application under Section 11 of the said Act, can pass an interim order, but the same does not mean that it has power to grant injunction in terms of Order 39 Rule 1 of CPC; any interim order passed would therefore have to be construed as one passed in exercise of the inherent jurisdiction under Section 151 CPC; and no appeal lies from an order under Section 151 of the Code granting or refusing to grant injunction; and Section 104 also has no application. The Full Bench therefore held that no appeal is maintainable in this Court under Order 43 Rule 1 CPC r/w Sec. 104 CPC from the impugned order and a Revision Petition is maintainable.

47. In my opinion, this judgment applies on all fours to the present cases. In view of the lack of specific provision for appeal against orders of this nature under the AP Panchayat Raj Act, 1994, an appeal under Order 43 Rule 1 read with Section 104 CPC is not maintainable questioning the impugned order of 1st respondent. Therefore the contention of the counsel for 3rd respondent that the petitioner should have filed CMA against the impugned order is rejected.

48. It is settled law that existence of a remedy of Revision would not bar a Writ proceeding since Revision is not considered to be an effective alternative remedy (see Collector of Customs Excise vs. A.S. Bava). Therefore, in my opinions, the Writ petitions No. 30790 and 30791 of 2014 filed by the petitioner E. Haribabu are maintainable in this Court. This point is answered accordingly in favor of petitioner E. Haribabu and against 3rd respondent.

Point No. (2):-

49. It is no doubt true as held in Babhutmal Raichand Oswal (supra) and Abdul Rehman and others (supra), that in exercising Certiorari jurisdiction under Article 226 of the Constitution of India, this Court does not exercise the jurisdiction of an appellate Court and normally conclusions and questions of fact would not be interfered with unless well recognized tests in that behalf are fulfilled.

50. In this regard it is beneficial to refer to the decision of the Supreme Court in B.K. Muniraju vs. State of Karnataka and others. The Supreme Court declared in that case:

24. It is clear that whether it is a writ of Certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby. It is also clear that the High Court in exercise of Certiorari or supervisory jurisdiction will not convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(emphasis supplied)

51. In State of A.P. v. P.V. Hanumantha Rao, the Supreme Court reiterated:

32. This Court has recognised the right of the High Court to interfere with orders of subordinate courts and tribunals where (1) there is an error manifest and apparent on the face of the proceedings such as when it is based on clear misreading or utter disregard of the provisions of law, and (2) a grave injustice or gross failure of justice has occasioned thereby.

33. No doubt, it was held that neither in exercise of the power of writ under Article 226 nor in supervisory jurisdiction under Article 227, the High Court will convert itself into a court of appeal and indulge in re-appreciation or evaluation of evidence. The power of the High Court in writ jurisdiction to interfere where important evidence has been overlooked and the legal provisions involved are misinterpreted or misapplied has been recognised even in the case of Sawarn Singh¹ on which strong reliance was placed on behalf of the State. The relevant observations are: (SCC p. 872, para. 13)

13. In regard to a finding of fact recorded by an inferior tribunal, a writ of Certiorari can be issued only if in recording such a finding, the tribunal has acted on evidence which is legally inadmissible, or has refused to admit admissible evidence, or if the finding is not supported by any evidence at all, because in such cases the error amounts to an error of law.

(emphasis supplied)

52. In Surya Dev Rai (supra) also the Supreme Court declared:

38(3) Certiorari, under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate court is found to have acted (i) without jurisdiction by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

The Court also held that a Writ of Certiorari is issued against the acts or proceedings of a judicial or quasi judicial body conferred with power to determine questions affecting the rights of subjects and obliged to act judicially and that such a Writ is directed against the act, order or proceedings of the subordinate Courts and it can issue even if the lis is between two private parties. It held that interlocutory orders passed by the Courts subordinate to the High Court, against which remedy of Revision has been excluded by CPC Amendment Act 46 of 1999, are nevertheless open to challenge in, and continue to be subject to, Certiorari and supervisory jurisdiction of the High Court under Article 226 and 227 respectively. It also held that parameters for exercising jurisdiction to issue a Writ of Certiorari and those calling for exercise of supervisory jurisdiction are almost similar and there is hardly any distinction between them in India. (para. 37, 38(2) and 38(9) of *Surya Dev Rai*).

53. No doubt in *Radhe Shyam* (supra), another Two Judge Bench of the Supreme Court doubted the correctness of the proposition laid down in *Surya Dev Rai* (supra) that judicial orders passed by Civil Court can be examined and corrected/reversed by Writ of Certiorari and the issue was referred to a Larger Bench in para. 33 thereof, but the judgment in *Surya Dev Rai* (supra) continues to hold the field and has not been reversed or overruled since by any Larger Bench of the Supreme Court.

54. However a Division Bench of this Court in *Guntur United Cricket Club, Guntur* (supra), followed the decision in *Radhe Shyam* (supra) and held that a Writ petition does not lie for setting aside a judicial order passed by a Civil Court stating that in *Surya Dev Rai* (supra), the judgment of the Nine Judge Bench of the Supreme Court in *Mirajkar* (supra) (which held that Certiorari does not lie to quash judgment of inferior Court at Civil jurisdiction) was not considered by the Bench which decided *Surya Dev Rai* (supra). This statement in *Guntur Cricket Club* (supra) is incorrect as the above quoted portion in *Mirajkar* (supra) was considered at para. 16 in *Surya Dev Rai* (supra).

55. In *Central Board of Dawoodi Bohra Community v. State of Maharashtra*, a Constitution Bench of the Supreme Court declared:

7A ruling making a specific reference to an earlier binding precedent may or may not be correct but cannot be said to be per incuriam. It is true that *Raghubir Singh* case 7 was not referred to in any case other than *Chandra Prakash* case AIR 1967 SC 295 but in *Chandra Prakash* case AIR 1967 SC 295, *Raghubir Singh*

case and Parija case (2004) 3 SCC 723 both have been referred to and considered and then Parija case (2004) 3 SCC 723 followed. So the view of the law taken in a series of cases to which Parija case (2004) 3 SCC 723 belongs cannot be said to be per incuriam.

56. It is settled law that if an earlier judgment of Supreme Court has been understood by subsequent judgment of Supreme Court in a particular manner, the principle explained therein becomes the legal principle that should be followed by Courts or Tribunals. (see Government of Andhra Pradesh v. Kapitan Distilleries, Hyd and Sheela Bai vs. State of Andhra Pradesh).

57. Therefore with great respect to the Division Bench which decided Guntur United Cricket Club, Guntur (supra), I am unable to follow the law laid down therein that a Writ of Certiorari does not lie for setting aside a judicial order passed by a Civil Court not only on the ground that (i) Mirajkar (supra) was considered in Surya Dev Rai (supra) (which took a view that it would lie) (ii) but also because the Division Bench followed the decision in Radhe Shyam (supra), which although differing with the view in Surya Dev Rai (supra) only referred the matter to a Larger Bench to consider the said issue; and no Larger Bench of Supreme Court till date has held that the law laid down in Surya Dev Rai (supra) is wrong.

58. In this view of the matter, I hold that the impugned order passed by 1st respondent can be questioned by the petitioner in these Writ petitions seeking a writ of Certiorari to quash it and this Court may grant relief to him in case he is able to satisfy this Court that these are fit cases for issuance of the said Writ of Certiorari.

59. Now I will consider whether petitioner has been able to make out a case for quashing of the impugned orders of 1st respondent by a Writ of Certiorari?

60. Before I deal with this issue, I wish to state that any observations/findings hereinafter given would be only prima facie and not conclusive and it will always be open to the District Court to finally dispose of the matter after trial uninfluenced by this judgment.

61. First, I will consider the question whether Rule 21 and 22 of the rules are mandatory or directory.

62. In my opinion, Rule 22 has to be considered to be mandatory in view of the law declared in Arikala Narsa Reddy (supra) by the Supreme Court that statutory requirements relating to election law have to be strictly adhered to and all technicalities prescribed/mandated in election law have to be enforced by the Courts with all rigours and the Courts cannot minimize their operation.

63. A provision in pari materia to Rule 22 i.e. Rule 13(6) of the A.P. Conduct of Elections of Member (Co-opted) President/Vice President of Mandal Parishad and Member (Co-opted) Chairman and Vice Chairman of Zilla Parishad Rules, 1994 has been held to be mandatory by a Division Bench of this Court in S. Jyothi

(supra). In that case, it was held that as per Rule 13(6), whips should be appointed by the political party only and intimation of that appointment may be communicated either by the State President or any other person authorized by him under his seal and that the practice to authorize District Unit Heads of the party to issue whips, cannot be said to be in conformity with Rule 13(6). In that case also intimation was given by the President, Andhra Pradesh Congress Committee authorizing one M. Sikhamani, MLA to issue B Forms to the candidate set up by the Congress party. It was held that the letter issued by M. Sikhamani appointing one Smt. N. Nirmala as party whip cannot be equated to intimation of the appointment already made by the political party since the letter states that he is informing that his party appointed her as a whip for the elections. The Bench concluded from this letter that Sri M. Sikhamani himself appointed her as a whip and not the party. It relied upon the decision of the Supreme Court in R.P. Moidutty vs. P.T. Kunju Mohammed.

64. In Sadashiv H. Patil (supra), the Supreme Court declared:

14. A finding as to disqualification under the Act has the effect of unseating a person from an elected office held by him pursuant to his victory at the polls in accordance with the democratic procedure of constituting a local authority. The consequences befall not only him as an individual but also the constituency represented by him which would cease to be represented on account of his having been disqualified. Looking at the penal consequences flowing from an elected councillor being subjected to disqualification and its repercussion on the functioning of the local body as also the city or township governed by the local body the provisions have to be construed strictly. A rigorous compliance with the provisions of the Act and the Rules must be shown to have taken place while dealing with a reference under Section 7 of the Act.

(emphasis supplied)

65. In view of the above decisions, I am of the opinion that Rules 21 and 22 of the Rules are mandatory and reject the contention of the counsel for 3rd respondent that they are not mandatory.

66. Now I will consider whether these Rules 21 and 22 have been complied with in the facts of the present cases.

67. In the present case the State President of TDP party addressed Ex. B-14 letter dt. 09-07-2014 to the State Election Commission authorizing Sri Bonda Uma Maheswara Rao, the State General Secretary to issue Form-A and B and also to authorize the appointment of whip for the elections to posts of Chairperson/Vice Chairperson of ZPP in the State of Andhra Pradesh; the State General Secretary gave intimation in Annexure-I dt. 10-07-2014 (Ex. B-2 dt. 10-07-2014) to the 1st respondent authorizing Sri D. Janardhana Rao, District Party President, Prakasam District to appoint whip for ZPP, Prakasam District; Sri D. Janardhana Rao. The District President, Prakasam District appointed the 3rd respondent as whip for the said elections and intimated the same to the 1st

respondent vide Annexure-II (Ex. B-2 dt. 12-07-2014). He also issued Form-B for proposing the name of Sri Manne Ravindra for the post of Chairperson of ZPP, Prakasam District (Ex. B-1 dt. 13.7.2014) and issued another Form-B proposing the name of Smt. P. Koteswaramma for the office of Vice Chairperson and communicated the same to the 1st respondent (Ex. B-4 dt. 13.7.2014). Annexures-I and II referred to above as well as the Forms-B bear only the signature of the District President, Prakasam District of the TDP party and bear his seal and do not bear the seal and signature of the State president or his authorized representative Sri Bonda Uma Maheswara Rao. These facts are not disputed by 3rd respondent.

68. Prima facie the Form-B issued to both the candidates was not issued by the State President of the TDP party or Sri Bonda Uma Maheswara Rao, the State General Secretary (authorized under Ex. B14 by the State President) and also do not contain the office seal of the State President or the State General Secretary as mandated by Rule 21(1) of the Rules.

69. Also the appointment of 3rd respondent as whip of the TDP party was done by the District President of TDP party D. Janardhana Rao on 12-07-2014 and the same was intimated under Ex. B2 to 1st respondent by D. Janardhana Rao under his seal and signature and not under the seal and signature of the State President or Bonda Uma Maheswara Rao, the State General Secretary. Under Rule 22(1) of the Rules, the appointment of the whip must be by the political party and intimation of such appointment shall be sent by the State President or a person authorized by him under his signature and seal. Prima facie, this rule is not complied with since the appointment of 3rd respondent as whip was by the District President and the intimation of such appointment is not by the State President or the State General Secretary authorized by him under Ex. B-14.

70. Since the mandatory provisions of Rule 21(1) and Rule 22(1) of the Rules have not been complied with, prima facie, the appointment of 3rd respondent as a whip and the intimation of such appointment to the 1st respondent or the candidature of Sri Manne Ravindra as the candidate proposed by the TDP party for the office of Chairperson and Smt. P. Koteswaramma for the office of Vice Chairperson of ZPP Prakasam District, are invalid. Consequently, in the absence of a valid candidate having been set up for the said posts by the TDP party, and in the absence of a valid appointment of a whip by the said party, and valid communication of such appointment to 1st respondent, there is prima-facie no question of violation of the whip by the petitioner.

71. In my opinion, the reasoning given by the District Court referring to the contents of the Annexures-I and II (Ex. X-1) and stating that more than one person could be authorized there under to appoint a whip and also to issue Form-B, is clearly perverse because the said Annexures cannot prevail over the statutory rules.

72. The District Court has not adverted to Rule 21 and 22 at all in spite of fact

that petitioner raised a contention about their non-compliance. Such disregard to mandatory statutory rules constitutes an error apparent on face of record.

73. In this view of the matter, irrespective of the service of the whip (which is also disputed by the petitioner), the petitioner cannot be said to have violated the whip and therefore prima facie, he cannot be said to have ceased to hold the office of ZPTC, Ponnalur and Chairperson of ZPP, Prakasam.

74. In *R.P. Moidutty (supra)*, the Supreme Court has held that election of a successful candidate shall not be lightly interfered with. It observed:

14. It is basic to the law of elections and election petitions that in a democracy, the mandate of the people as expressed at the hustling must prevail and be respected by the courts and that is why the election of a successful candidate is not to be set aside lightly. A heavy onus lies on the election petitioner seeking setting aside of the election of a successful candidate to make out a clear case for such relief both in the pleadings and at the trial. The mandate of the people is one as has been truly, freely and purely expressed. The electoral process in a democracy such as ours is too sacrosanct to be permitted to be polluted by corrupt practices. If the court arrives at a finding of commission of corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent then the election of the returned candidate shall be declared to be void. The underlying principle is that corrupt practice having been committed, the result of the election does not echo the true voice of the people. As the consequences flowing from the proof of corrupt practice at the election are serious, the onus of establishing commission of corrupt practice lies heavily on the person who alleges the same. The onus of proof is not discharged merely on preponderance of probabilities; the standard of proof required is akin to that of proving a criminal or a quasi-criminal charge. Clear-cut evidence, wholly credible and reliable, is needed to prove beyond doubt the charge of corrupt practice. (See *Ram Chandra Rai Vs. State of Madhya Pradesh and Others*, *Manphul Singh Vs. Surinder Singh*, *Rahim Khan Vs. Khurshid Ahmed and Others*, *Bir Chandra Barman Vs. Shri Anil Sarkar and Others*, *Lakshmi Raman Acharya Vs. Chandan Singh and Others*, and *Amolakchand Chhazed Vs. Bhagwandas Arya and Another*, .

75. This decision was followed by a Division Bench of this Court in *S. Jyothi (Supra)*. This Court held that the burden of proof that the whip was properly served on the petitioners and despite service of whip, the petitioners disobeyed it thereby incurring a liability to be disqualified from membership under Rules is on the respondents; it is not discharged merely on preponderance of probabilities; and the standard of proof required is akin to that of proving the criminal or quasi-criminal charge. Clear cut evidence, wholly credible and reliable is needed to prove the disobedience of the whip.

76. Since, prima-facie this burden of proof is not discharged by respondents, balance of convenience clearly lies in favor of the petitioner and irreparable loss

would be caused to him if the orders of 1st respondent are not suspended pending suit.

77. In the present case, the District Court relied on certain newspaper reports (Exs. B-15 and B-16) to hold that there is press coverage regarding the election to the post of Chairperson/Vice Chairperson to the ZPP, Prakasam District and therefore the petitioner is deemed to have constructive knowledge of the whip. A reading of these two news items shows that there is no mention of issuance of a whip by the TDP party directing to vote in favour of any candidate in the said election. In this view of the matter, it has to be held that this finding of the District Court is based on no evidence/deliberate misreading of evidence and perverse.

78. I also do not agree with contention of Counsel for 3rd respondent that in his explanations dt. 04-08-2014 to the show cause notice dt. 28-07-2014 issued by the 1st respondent, the petitioner had not raised the plea that his signatures were forged on the acknowledgments of the whips. The petitioner had clearly stated that he was not in Ongole town on 12.7.2014 and there was no possibility for him to sign the alleged whips. Thus petitioner has implied that his signatures were forged on acknowledgements. I do not agree with plea of 3rd respondent that a reading of the explanations of petitioner suggest that the petitioner is implying that blank whip forms on which his signatures were obtained for the election scheduled on 05-07-2014 and which later got postponed to 13-07-2014 were misused by filling them up. I have read the explanations and it does not appear to be so.

79. When the petitioner had disputed his signatures on the acknowledgments of whips and contended that they are forged and the whips are fabricated, by wrongly placing the burden of proof on the petitioner to prove that he did not sign the whips, the District Court appears to have come to a wrong conclusion.

80. In this view of the matter, prima facie, the impugned order passed by the District Court suffers from error apparent on the face of record in as much as it has not considered mandatory statutory Rules 21 and 22 of the Rules; has given findings based on no evidence/deliberate misreading of evidence perversely; and also wrongly placed burden of proof of petitioner to prove that he did not sign the acknowledgements of whips. This, in my opinion, has resulted in grave injustice to the petitioner warranting interference in Writ jurisdiction.

81. I also disagree with the observation in the impugned orders that applications 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 of 2014 are not maintainable. The said applications are maintainable in view of law declared in G.V. Ranga Rao (supra).

82. Therefore, since the Writ Petitions Nos. 30790 and 30791 of 2014 satisfy the parameters for interference in a Writ of Certiorari by this Court; they are accordingly allowed and the orders dt. 07-10-2014 in I.A. No. 1697 of 2014 in E.O.P. No. 8 of 2014 and I.A. No. 1684 of 2014 in E.O.P. No. 9 of 2014 on the file

of the I Additional District Judge, Ongole are quashed; consequently, the orders in Rc. No. P1/4598/Indirect election/13 dt. 11-08-2014 of the 1st respondent disqualifying the petitioner as ZPTC Member, Ponnaluru and consequently, as Chairperson, Zilla Praja Parishad, Prakasam District, are suspended. The District Court is directed to dispose of both E.O.Ps. in accordance with law uninfluenced by the order dt. 11.7.2014 or its order dt. 7.10.2014 or this order, expeditiously within 6 months from date of receipt of copy of this order.

83. In view of the above orders in W.P. No. 30790 of 2014 and W.P. 30791 of 2014, W.P. No. 30799 of 2014 filed by the petitioners therein cannot be entertained and no relief can be granted to them.

84. Accordingly, W.P. Nos. 30790 and 30791 of 2014 are allowed as above and W.P. No. 30799 of 2014 is dismissed. No costs.

85. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.