

(1996) 12 AP CK 0016
In the Andhra Pradesh High Court
Case No : Writ Petition No. 19995 of 1996

Matta Surya Satya Prakasam	Vs	APPELLANT
The Collector and District Election Authority and Another		RESPONDENT

Date of Decision : 03-12-1996

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 153

Citation : (1996) 4 ALT 1122

Hon'ble Judges : Lingaraja Rath, J; C.V.N. Sastri, J

Bench : Division Bench

Advocate : M.S.R. Subramanyam, for the Appellant; G.P. for Panchayat Raj, for the Respondent

Final Decision : Allowed

Judgement

C.V.N. Sastri, J.—When this writ petition initially came up for admission on 23-9-1996, after hearing the learned counsel for the petitioner, we directed the learned Government Header for Panchayat Raj to file counter-affidavit within two weeks and to produce the records relating to the cessation of the membership of the petitioner and posted the matter to 8-10-1996 indicating that the writ petition will be disposed of finally. On 8-10-1996 at the request of the learned Government Pleader, we granted two weeks further time for filing counter-affidavit. The matter was again posted to 4-11-1996 from 29-10-1996. As no counter-affidavit was filed and as the records were also not produced, we heard the learned counsel for the petitioner and reserved judgment on 4-11-1996. While preparing the judgment, we noticed that there was no service of notice on the second respondent. We, therefore, directed the learned counsel for the petitioner to take out notice personally on the second respondent by registered post and file proof of service. Accordingly the learned counsel for the petitioner has served notice by registered post on the second respondent and filed proof of service. In spite of service of notice on him, the second respondent has not appeared. In the meantime on 28-11-1996, a counter-affidavit was filed on

behalf of the first respondent. We now, therefore, proceed to deliver the judgment.

2. The writ petition is directed against the order passed by the first respondent i.e., the Collector and District Election Authority on 10-9-1996 declaring the petitioner to have ceased to be a Member of the Kovvada Mandal Territorial Constituency of Kakinada (Rural) Mandal Parishad, on the ground that he disobeyed the whip issued by his party i.e., the Indian National Congress Party in connection with the election to the office of the President and the Vice-President of the Mandal Parishad held on 18-3-1995 and thereby incurred disqualification u/s 153 of the A.P. Panchayat Raj Act.

3. The relevant facts in brief are that the petitioner was elected as a Member of the Kakinada (Rural) Mandal Parishad from the Kovvada Mandal Territorial Constituency in the election held on 12-3-1995 as a candidate of the Congress Party. The election of the co-opted Member, President and Vice-President of the Mandal Parishad was scheduled to be held on 18-3-1995- According to the petitioner, his party did not issue any whip to him regarding the manner of voting in the said election and as such he voted according to his conscience to the Telugu Desam candidates for the offices of the President and the Vice-President. As the candidates belonging to the rival parties got equal number of votes, lots were drawn and the Congress Party candidate was declared elected as President while the Telugu Desam Party candidate was declared elected as Vice President on 18-3-1995. It appears that after the results of the election were declared on 18-3-1995, the second respondent, who claims to have been appointed as the whip of the Congress Party, raised an objection before the Election Officer that the petitioner has violated the whip issued by the Congress Party in voting for the Telugu Desam Party candidates and as such he incurred disqualification and ceased to be a Member. Acting on the said objection raised by the second respondent, the Election Officer, without giving any show-cause-notice or opportunity to the petitioner, passed an order on 18-3-1995 declaring that the petitioner ceased to be a Member of the Kovvada Mandal Territorial Constituency. Questioning the said order, the petitioner filed W.P.No.5695 of 1995. A Division Bench of this Court, by order dated 29-11-1995, disposed of the said writ petition quashing the said order dated 18-3-1995 and remitting the matter to the first respondent herein for fresh disposal after issuing a show-cause-notice to the petitioner and also affording a personal hearing. Thereafter a show-cause-notice was issued to the petitioner on 10-7-1996 to which the petitioner submitted his explanation on 17-7-1996 contending, inter alia that no whip was appointed by the Indian National Congress Party, that no intimation of any such appointment was sent to the Presiding Officer and that no whip was, however, issued to him (petitioner) in writing before or at the time of election of the President/Vice-President directing the petitioner to vote for any particular candidate and, therefore, the question of his violating any whip did not arise. The petitioner asserts in his affidavit that though it was stated in the show-cause-notice that personal hearing would be given to him, the first respondent never sent any

notice fixing the time, date or place of hearing and when the petitioner went to the office of the first respondent personally to find out about the date of hearing, he was told in the office of the first respondent that notice of hearing would be sent in due course, but to his surprise the first respondent passed the impugned order dated 10-9-1996 which was received by the petitioner on 18-9-1996 declaring that the petitioner ceased to be a member of the Kovvada Mandal Parishad Territorial Constituency. Challenging this order, the present writ petition is filed.

4. The petitioner first contends that to his knowledge, the second respondent was never appointed as the party whip by the Congress Party and that at any rate, no intimation of any such appointment was sent to the Presiding Officer within the time specified in Rule 6 (sic. 13(6)) of the Rules issued in G.O.Ms. No. 756 Panchayat Raj, Rural Development and Relief (Elec.III) Department, dated 30-11-1994 as subsequently amended by G.O.Ms. No. 31 (sic. 81) dated 7-12-1994 and G.O.Ms. No. 138 dated 15-3-1995. It is the further contention of the petitioner that no whip was ever issued to him in writing before or at the time of election of the President/Vice-President directing him to vote for any particular candidate and therefore, the question of his violating any whip did not arise. It is finally submitted that the impugned order dated 10-9-1996 is ex-facie violative of the order passed by this Court in W.P. No. 5695 of 1995 dated 29-11-1995.

5. We are of the view that all the above contentions of the petitioner are well founded. Firstly there is no material on record to show that there is any order appointing the second respondent as the party whip by the Congress Party. There is also nothing on record to show that the appointment of any such whip was intimated to the Presiding Officer so as to reach him on or before 10 a.m. on the day of the election to the office of the President/Vice President as required by Rule 6 (sic. 13(6)) of the Rules mentioned above. In the counter-affidavit filed by the first respondent, it is stated that the second respondent was appointed as whip by the President of the District Congress Committee of the Indian National Congress Party and intimation of the same was received by the Election Officer on 18-3-1995. After completion of the election of the President and Vice-President of the Mandal Parishad, a complaint was received from the second respondent stating that the petitioner, who belongs to the Indian National Congress Party has cross-voted to the Telegu Desam Party. On receipt of the said complaint, the Election Officer has declared that the petitioner ceased to be a Member of Kovvada Mandal Parishad Territorial Constituency in Form V-C. But neither the alleged intimation of the appointment of the second respondent as whip nor the complaint alleged to have been given by the second respondent to the Election Officer has been produced in Court. Thus there is no material on record to substantiate the said averments in the counter-affidavit of the first respondent. The impugned order merely states that the whip of the above party in his letter dated 18-3-1995 has reported that the petitioner has disobeyed the party whip in connection with the election to the President and Vice-President of

the Mandal Parishad held on 18-3-1995 and he is, therefore, liable for disqualification u/s 153 of the Act. There is no consideration and there is also no finding on the question as to whether there was any valid appointment of Party Whip by the Congress Party and whether the same was intimated to the Presiding Officer within the time prescribed by law. The impugned order does not also show that any personal hearing was afforded to the petitioner as directed by this Court.

6. For all the above reasons, we are satisfied that the impugned order is illegal and unsustainable. Accordingly the writ petition is allowed and the impugned order is quashed. There will be no order as to costs.