

(1998) 07 AP CK 0030

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11641/97 and WA No's. 995 and 1025 of 1997

M.Mohan Rao and ohters

APPELLANT

Vs

Revenue Divisional officer and others

RESPONDENT

Date of Decision : 31-07-1998

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 153, 153(1), 171(1), 181, 243(F)
Andhra Pradesh Panchayat Raj Rules, 1997 — Rule 8
Constitution of India, 1950 — Article 14, 243(F)

Citation : (1998) 5 ALD 193 : (1998) 5 ALT 323

Hon'ble Judges : P. Venkatarama Reddi, J;A. Hanumanthu, J

Bench : Division Bench

Advocate : V. Ravikiran Rao, for the Appellant; S.R. Deshmukh, for the Respondent

Judgement

P. Venkatarama Reddi, J.—In writ petition No. 11641 of 1997, the petitioners who were members of Mandal Parishad, Manoor Mandal, Medak District, have challenged the declaration issued by the first respondent in Form No. VII declaring that the petitioners ceased to be the members of Mandal Parishad in view of the disqualification under Rule 8 of the Rules framed u/s 245 of A.P. Panchayat Raj Act. The said declaration was made pursuant to the proviso introduced to Rule 8 by G.O. Ms.No. 171, Panchayat Raj Department, dated 19-4-1997. The proviso to Rule 8 of the Rules for moving the motion of non-confidence against President or Vice-President of Mandal Parishad etc., introduced by G.O.Ms.No. 171 reads as follows:

"Provided that an elected member of a recognised political party shall cease to be a member if he votes in disobedience to the directions issued by the party whip."

2. Clause (iii) of the Explanation to the said Rule is also relevant. It says:

"The said Officer shall, on receipt of a written report sent by the Party Whip to the effect that a Member belonging to his party has disobeyed the Whip issued in connection with the meeting convened to express no-confidence within three

days of the said meeting, declare in Form VII that the said member has ceased to hold office and the order of the said Officer shall be final".

3. Writ Appeal No. 1025 of 1997 is filed by co-opted member of Mandal Parishad, Sripur, Adilabad district on whose intimation, the petitioners in Writ Petition No. 12403 of 1997 were disqualified as members on the basis of proviso to Rule 8. The writ petitioners challenged Form No.VII declaration issued by the Sub-Collector, Asifabad declaring that the petitioners ceased to be the members of the Mandal Parishad territorial constituencies and sought for a direction to allow them to continue as members. The writ petition was allowed by the learned single Judge. Following his judgment in W.P.No. 13412 of 1997. Against this order, the writ appeal is filed by co-opted member, as already mentioned.

4. Writ Appeal No.995 of 1997 is preferred by the State Government and other official respondents in W.P.No. 13412 of 1997. That writ petition was filed by four members of Mandal Parishad territorial constituencies of Yadagirigutta Mandal, Nalgonda district. Apprehending that they will be disqualified under the proviso to Rule 8 for voting in favour of no-confidence motion against President on the ground of violation of party whip, the said writ petition was filed. The Prayer in the Writ petition is to declare the G.O.Ms.No. 171, Panchayat Raj Department, dated 19.4.1997 as violative of Constitutional provisions viz., Article 243F etc., and the provisions of A.P. Panchayat Raj Act. By a judgment dated 19-8-1997, the learned single Judge struck down the amendment to Rule 8 made by G.O. Ms.No. 171 and allowed the writ petition. The learned Judge held that the amendment to Rule 8 by G.O.Ms.No.171 was beyond the rule-making power of the State Government and it violates Article 14 of the Constitution for the reason that the said amendment is in breach of the fundamental principles of fair play and natural justice and therefore unreasonable and arbitrary.

5. In the light of the facts narrated, the first question that arises for consideration in these writ appeals and writ petition is whether the proviso to Rule 8 introduced by G.O.Ms.No. 171, dated 19.4.1997 is ultra-vires the provisions of the A.P. Panchayat Raj Act or the relevant provisions of the Constitution. The first aspect of the above said question is whether the State Government has authority to frame the impugned rule in exercise of its Rule-making power u/s 268 read with Section 245 of the A.P. Panchayat Raj Act. The learned single Judge was of the view that just as in the case of Section 153(1) and Section 171(1) dealing with elections to the posts of Presidents and Vice-Presidents of Mandal Parishad and Chairman and Vice-Chairman of Zilla Parishad, there is no provision in Section 245 providing cessation of membership in case a member votes in disobedience to the directions issued by a party whip. The learned Judge observed in Paragraph 66 as follows :

"In the absence of such a provision in the main Section 245 of the Act, the amendment effected to Rule 8 in G.O. Ms.No,171,dated 19.4.1998 adding proviso and the explanations under the delegated authority of rule making power, is in excess of delegative authority and is also not sustainable in law- for

the rule made under the delegated authority cannot over-ride the provisions of the Act, that is to say, where Law does not provide, that cannot be done by a rule making authority."

6. Section 245 is a provision dealing with the Motion No-Confidence against Upa Sarpanch of Grama Panchayat, President/ Vice-President of Mandal Parishad and Chairman/Vice-Chairman of Zilla Parishad. Section 268 empowers the Government to make Rules for the purposes of the Act. Besides emphasising the generality of the rule-making power, Section 268 enumerates the specific subjects regarding which rules can be made.

7. The learned Additional Advocate-General argued that the proviso introduced to Rule 8 by the State Government in exercise of rule-making power, does not in any way go beyond the competence of the State Government. The amplitude of the Rule-making power envisaged by Section 268 is wide enough to make Rules generally to carry out the purposes of the Act whether or not a particular subject is expressly mentioned in the body of the Section. Referring to Article 243(F) of the Constitution, it is pointed out that the disqualification can be provided for by or under any law made by the Legislature of the State and statutory rule made under A.P. Panchayat Raj Act will duly satisfy the requirements of Section 243(F) (1)(b). It is submitted that the impugned rule is only in furtherance of the policy of the Legislature as discernible from Sections 153 and 181 etc., and the avowed objective of the Legislature to curb the defections of elected representatives chosen by a particular political party.

8. The rule, it is submitted, carries out and fosters the purposes of the Act and therefore, it does not in any way go counter to the provisions of the Act. It is also pointed out that the learned Judge is not right in characterising the impugned rule as being in excess of "delegated power". Though we do find considerable substance in the contentions of the learned Additional Advocate-General, we refrain from expressing any final opinion in the matter, as we consider it unnecessary to do so in view of what we are proposing to hold. It is also not necessary to us to decide the question whether the machinery for resolving the dispute as to disqualification in terms of clause (2) of Article 243(F) can be provided for by means of a Rule or a provision should be incorporated in the Act itself, as contended by the learned Counsel appearing for respondents in W.A.No.995 of 1997.

9. Before we proceed further, we must note that after the judgment of the learned single Judge, a specific provision was introduced in Section 245 by A.P. Ordinance No. 13 of 1997 on similar lines as the proviso to Rule 8. It lays down that any member who votes in disobedience to the party whip shall cease to hold the Office forthwith and the vacancy caused by such cessation shall be filled as a casual vacancy. Soon after the Ordinance was promulgated, G.O.Ms.No.399, dated 29-10-1997 was issued re-casting the Rules in regard to the moving of No-Confidence Motion so as to plug the deficiencies pointed out by the learned single Judge. The said Rules were superseded by G.O.Ms.No.200 dated 28-4-1998. The

Rule providing for cessation of membership in case of casting vote against the directions of the party whip was deleted. Ordinance No. 13 of 1997 was allowed to lapse. The result is that there is no provision now for bringing about the result of cessation of membership of Mandal Parishad or Zilla Parishad, if a member acts in defiance of party whip in connection with a Motion of Non-Confidence. The events leading to these writ proceedings have arisen during the interregnum between introduction of the proviso to Rule 8 and the abolition of a similar provision. The embargo against holding the Office as member on voting against the directives of the party whip, in connection with No-Confidence Motion is no longer there.

10. We shall now proceed to discuss whether the question as to how the impugned Rule, assuming it is valid, should be read and understood and whether the Rule, as literally interpreted, is open to objection from Constitutional angle. While on this point, we must take note of the observations of our learned brother, that Explanation (iii) to the proviso to Rule 8 does not contemplate an opportunity being afforded or to hold an enquiry" with regard to the factum of service of whip on the member and therefore it clothes the party whip with unchecked power. It is also observed that the Explanation insofar as it disregards the rules of natural justice and fairplay in the decision-making process, offends Articles 14 of the Constitution. In other words, the learned Judge took into account the procedural unreasonableness of the impugned provision and its potentialities for arbitrary exercise of power. We are to a certain extent, concurring with the view expressed by our learned brother, though we are not prepared to go so far as to invalidate the rule on that ground. As rightly pointed out by the learned Judge, questions may arise whether the directive has been issued by the authority party whip and served on the member in a manner known to law before the members concerned attend the meeting convened for discussing the No-Confidence Motion. No doubt, the disputes that may arise within the framework of the proviso to Rule 8 may be very limited in scope and elaborate enquiry is not required or contemplated. At the same time, when disputes do arise in that limited sphere, there must be some procedure or machinery to deal with such disputes, atleast in a summary way. Providing an opportunity to the affected person to espouse his grievance before a designated authority before disqualifying the member from continuing in Office, will not only be in consonance with the principles of natural justice, but would also be necessary to cater to the mandatory requirement of clause (2) of Article 243(F). The Rule that the principles of natural justice ought to be read into a provision involving a decision resulting in adverse consequences to a party, unless it is expressly or by necessary implication excluded, is so firmly implanted in our jurisprudence that it needs no authority to be cited. A provision having regard to the nature of power to be exercised thereunder and the consequences that ensue therefrom, has to be read, as far as possible, consistent with the principles of natural justice. Such an approach is necessary to remove the sting of procedural unreasonableness. Viewed in this perspective, we have no reason to exclude the operation of

principles of natural justice to the minimal extent necessary before declaring that a person ceases to hold the elective Office by reason of infringement contemplated Rule 8, Atleast in two writ petitions with which we are dealing, there is an allegation that the directive issued by the party whip, had not been communicated to them. The allegation may be true or may not be true. But such complaint deserves to be looked into before passing an order or issuing a declaration that the person ceased to hold the Office as member on account of the disqualification. Soon after the intimation sent by the party whip was received, Form No.VII declaration was mechanically issued by the RDO/ Sub-Collector. The principles of natural justice require that before issuing such a declaration, an opportunity of making representation should have been afforded to the affected person and his grievance should have been examined, may be in a summary way, and then an order should have been passed. Of course, in the very nature of things, the concerned functionary ought not to take too long a time to go through this process. 2 to 3 days time should have been given to the members concerned to file their representation if any against the proposed action. These steps are required to be taken not only to take care of principles of natural justice, but also to comply with the mandatory requirement of clause (2) of Article 243(F). The said Constitutional provision requires adjudication of a dispute as to disqualification by a designated authority. If a declaration has to be made by that authority as soon as the intimation is received from party whip, the said provision would be impossible of compliance, more so when there is no other forum prescribed by the Act or the Rules for deciding the dispute raised by any member disqualified under the proviso to Rule 8. Explanation (iii) has to be read consistent with the principles of natural justice and in the tune with the spirit of clause (2) of Article 243(F). So, viewed, the Officer who is authorised to issue the declaration in Form No.VII will have to take a decision on the dispute raised by the member and then only proceed to take the final step of issuing declaration. Thus, we are inclined to read the Rule in harmony with the principles of natural justice and requirements of clause (2) of Article 243(F). So read, it is obvious, the Rule contemplates giving an opportunity to the affected person to put forward his grievance before the authorised Officer and authorised Officer taking a decision thereon. Admittedly, in the present case, no such procedure was adopted and the Revenue Divisional Officer/Sub-Collector straightaway proceeded to issue the declaration in Form No.VII as soon as intimation was received from the party whip. The impugned action though not the rule is thus violative of principles of natural justice.

11. Having regard to the interpretation we have given to the proviso to Rule 8 read with Explanation (iii), we must hold that the declarations in Form No.VII issued by the R.D.O7 Sub-Collector in Writ Petition No.11641 of 1997 and Writ Appeal No.1025 of 1997 (arising out of Writ Petition No. 12403 of 1997), have to be declared null and void and notwithstanding the said declaration and the consequential action, the writ petitioners shall be deemed to continue in Office. As observed earlier, it is not necessary to go into the further question whether

Clause (2) of Article 243(F) enjoins the Legislature of the State itself to make the law prescribing the authority who is to decide the dispute about the disqualification or the Legislature can leave it to the State Government to make a Rule in this behalf.

12. As regards writ appeal No.995 of 1995 is concerned, no declaration was issued in Form No. VII on account of the stay granted by this Court. The learned Counsel for respondents has informed us that the meeting to consider No-Confidence Motion did not take place at all. The question as regards the validity of proviso to Rule 8 has become academic in this case, more especially because there is no occasion to apply that rule now as it stands deleted. In the other cases, we hold that the declaration issued by the competent authority shall be invalid and of no effect on account of violation of principles of natural justice which, in our considered view, have to be read into the impugned Rule. In the normal course, we would have, subject to the determination of the other questions raised, directed the concerned authorities to take a fresh action after duly observing the principles of natural justice. But, in view of the change of law and removal of the provision disqualifying the elected member on the above ground, we consider it inappropriate and improper to set the clock back and direct the concerned authorities to apply the provision which has since been removed from the Statute Book. We are not inclined at this stage to give this opportunity to the prescribed authorities to act in accordance with the Rule as interpreted by us and set right the illegality committed by them.

13. We therefore, quash the declarations in Form No.VII issued in Writ Petition No.11641 of 1997 and Writ Appeal No. 1025 of 1997 (arising out of W.P.No.12403 of 1997) and direct that the writ petitioners shall be restored to Office or allowed to continue in Office, as the case may be, as members of the Mandal Parishad territorial constituencies. In W.A.No.995 of 1997, apart from clarifying the legal position as above, no other direction needs to be passed. In the view we have taken we leave open the question as to the vires of proviso to Rule 8 and Explanation (iii) thereto. The writ petition and the writ appeals are, accordingly, disposed of. No costs.