
(2014) 10 AP CK 0083
In the Andhra Pradesh High Court
Case No : Writ Petition No. 26368 of 2014

Muni Krishna

APPELLANT

Vs

The State Election Commission

RESPONDENT

Date of Decision : 30-10-2014

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 11(5), 149, 149(1)(v), 153, 153A
Constitution of India, 1950 — Article 226, 32

Citation : (2015) 1 ALD 485 : (2015) 2 ALT 500

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

Bench : Single Bench

Advocate : A. Sudarshan Reddy, Advocate for the Appellant; V.V. Prabhakar Rao, Government Pleader, Ch. Veda Vani, Standing Counsel and G. Manohar, Standing Counsel, Advocate for the Respondent

Judgement

M.S. Ramachandra Rao, J

1. Heard Sri A. Sudarshan Reddy, learned Senior Counsel for Sri M. Srinivasa Reddy, learned counsel for the petitioner, Sri V.V. Prabhakar Rao, learned Standing Counsel for 1st respondent, learned Government Pleader for Revenue for 2nd respondent, Smt. Ch. Veda Vani, learned Standing Counsel for 3rd respondent and Sri G. Manohar, learned counsel for 4th respondent/caveator.

2. This Writ Petition is filed by petitioners questioning orders in Roc. No. A/08-3/2014, Roc. No. A/08-4/2014 and Roc. No. A/08-6/2014 dt. 28-08-2014 of the 3rd respondent declaring that the petitioners had ceased to hold the office of Members of Mandal Parishad Territorial Constituencies (for short MPTCs) of Settipalli, Sainagar-3 and Padmavathipuram-2 forming part of Mandal Praja Parishad (for short MPP), Tirupathi (Rural) on the ground that they had disobeyed a whip issued by 4th respondent on behalf of the Telugu Desam Party (for short TDP Party) to vote in favour of Smt. Y. Jamuna and Sri A. Madhu, candidates proposed by the said party for the offices of President and Vice President of Mandal Praja Parishad, Tirupathi apart from also declaring that the

1st petitioner ceased to hold the office of President, Mandal Praja Parishad, Tirupathi (Rural) under Section 153 of the AP Panchayat Raj Act, 1994.

3. The petitioners were elected as members of MPTCs of Tirupathi (Rural) mentioned above on 13-05-2014 having contested to the said offices on behalf of the TDP party.

4. The 2nd respondent issued a Notification appointing 3rd respondent as Presiding Officer to convene the special meeting of the Members of Mandal Parishad, Tirupathi for election of Member (Co-opted)/President/Vice President) under Section 149(1)(v) of the Act.

5. Accordingly a special meeting was convened on 04-07-2014 at 3 p.m. by 3rd respondent in the office of Mandal Praja Parishad, Tirupathi (Rural) to elect the President and the Vice President.

6. Form B was issued to the 1st petitioner by the Yuvajana Shramika Rythu Congress Party (for short YSR Congress Party) proposing his name as its candidate for the office of President while the TDP party proposed the name of Smt. Y. Jamuna as its candidate for the said office.

7. The candidature of 1st petitioner was proposed by the 3rd petitioner and Smt. A. Lakshmi, TDP, MPTC Member, Settipalli-6, seconded it.

8. Election was held by show of hands and 1st petitioner secured more votes than Smt. Y. Jamuna. Therefore he was declared elected as President.

9. Likewise, 3rd petitioner was proposed as Vice President by Sri P. Raghupathi, TDP MPTC Member, Padmavathipuram-1 and Smt. M. Ratnamma, TDP MPTC Member, Settipalli-1 seconded it. The official candidate proposed by the TDP party for the said post was Sri A. Madhu, MPTC Member, Vemur. Smt. P. Anuradha, independent MPTC Member, Mallamgunta also contested for the post of Vice President.

10. When election was held by show of hands, Smt. P. Anuradha secured more votes than the other two candidates and was declared elected as Vice President.

11. The 4th respondent made a complaint on 07-07-2014 to 3rd respondent that 1st petitioner acted against a whip issued by him on behalf of the TDP party and casted vote to himself for election to the office of President and also voted in favour of Smt. P. Anuradha for Vice President in disobedience of the whip issued by him; that 2nd petitioner had voted for the 1st petitioner for the office of President and Smt. P. Anuradha for the office of Vice President in disobedience of the whip issued by him; and that 3rd petitioner had also violated the whip issued by him by proposing the name of 1st petitioner for the office of President and voting in his favour and contesting for the office of Vice President; and sought their disqualification under Section 153 of the Act.

12. On receipt of the said complaint, 3rd respondent issued show cause notices dt. 10-07-2014 to each of the petitioners to show cause why they should not be

declared as having ceased to hold the office of Members of Mandal Parishad and to submit explanation within seven days from the date of receipt of said notice.

13. Explanations were submitted by petitioners on 28-07-2014 to the 3rd respondent denying the said allegations. In their explanation they contended that they did not defect to any other party or support any other party; that the allegation of the 4th respondent that he issued the whip and the petitioners had refused to receive it at 10.30 a.m. on 04-07-2014 is untrue since the three petitioners and three others (to whom it was alleged that attempt to serve the whip was made at that time), were not at one place; that they do not belong to same village; to travel from place to other where the petitioners are located would take about 3 to 4 hours and it is next to impossible to attempt to serve the whip at the same time of 10.30 a.m. on all the six persons. It is also contended that the show cause notice did not state as to whether the whip was served on the petitioners or not as no acknowledgment of service of whip was filed to prove that the petitioners had refused to receive the whip. They therefore pleaded to drop the proceedings.

14. On receipt of the explanations of the petitioners, 3rd respondent addressed a letter Roc. No. A/08/2014 dt. 18-08-2014 (Ex. P-6) to Sri M. Chandrasekhar, Government Pleader, Chittoor enclosing the show cause notices issued by her as well as the explanations received from the petitioners thereto and asking him for legal opinion on the matter.

15. Thereafter, the said Government Pleader sent a detailed opinion dt. 22-08-2014 to 3rd respondent that all the petitioners are deemed to have incurred disqualification by violating the whip issued by 4th respondent and advising that necessary consequential proceedings can be taken against them.

16. Thereafter, impugned orders dt. 28-08-2014 were issued by the 3rd respondent declaring that the petitioners have ceased to hold the offices of Members of MPTCs and the 1st petitioner would also cease to hold the office of President of MPP, Tirupathi (Rural). In the reference (9) cited to these orders, the 3rd respondent had referred to legal opinion of the Government Pleader, Chittoor dt. 22-08-2014 also.

17. Challenging these orders, this Writ Petition is filed.

18. The learned Senior Counsel appearing for the petitioners submits that 3rd respondent had abdicated her responsibility to independently decide the issue as to disobedience of whip by the petitioners and acted under the dictation of the Government Pleader, Chittoor; that it was not open to 3rd respondent to consult the Government Pleader, Chittoor in the matter and decide the issue on the basis of his opinion; since this is a fundamental breach of judicial procedure, this Court should entertain this Writ Petition and set aside the impugned orders without compelling the petitioners to avail the alternative remedy provided under Section 153-A of the Act. He also contended that the petitioners had earlier filed WP No. 21223 of 2014 before this Court questioning the show cause notice dt.

10-07-2014 issued by 4th respondent and this Court had directed 3rd respondent to consider the petitioners explanation thereto, pass an order, communicate it to the petitioners, and further directing that for a period of ten days from the date of communication of the order of 3rd respondent to petitioners, the said orders, if adverse to the petitioners, shall not be given effect to; and in violation of the said order of this Court, the 3rd respondent had not kept in abeyance his orders and had not even adverted to the orders passed by this Court; that this amounts to contempt of orders of this Court. He also reiterated that it was impossible for the whip issued by 4th respondent to be served on six persons including the petitioners residing at six different places on the same day at the same time and therefore the finding of 3rd respondent that the petitioners had received the whip and violated it cannot be sustained.

19. The learned counsel for 4th respondent however contended that an effective alternative remedy is provided to the petitioners under Section 153-A of the Act to approach the District Court and challenge the orders impugned herein and when there is such an effective alternative remedy, this Court ought not to entertain the Writ Petition. He contended that the Writ Petition should therefore be dismissed giving liberty to the petitioners to approach the District Court invoking Section 153-A of the Act.

20. The learned Standing Counsel for 1st respondent has placed reliance on in Seemala Babu Bhuvana Mohana Rao Vs. Datti Kameswari and others and contended that this Court has held that orders of this nature have to be questioned before the District Court only and Writ Petition ought not to be entertained.

21. Therefore the point for consideration is whether this the existence of an alternative remedy provided under Section 153A of the Act is a bar to entertaining this Writ Petition, in the facts and circumstances of the case?

22. From the facts narrated above, it cannot be disputed that the 3rd respondent, after receiving explanations dt. 28-07-2014 from the petitioners to the show cause notices dt. 10-07-2014 issued by him addressed a letter Roc. No. A/08/2014 dt. 18-08-2014 to Sri M. Chandra Sekhar, Government Pleader, Chittoor requesting legal advice in the matter of alleged violation of whip by the petitioners and the latter replied thereto on 22-08-2014 with a legal opinion of 6 pages giving out in detail reasons in support of his opinion that the petitioners and 3 others defied the whip issued by the TDP Party knowing fully well the details of the whip and consequential proceedings can be issued against them.

23. In the impugned orders dt. 28-08-2014, the 3rd respondent has referred to the said legal opinion of the Government Pleader at reference (9) and came to the same conclusion as the Government Pleader that the petitioners have defied the whip issued by the TDP Party after having full knowledge of the said whip. The reasons given by the 3rd respondent in his orders dt. 28-08-2014 are identical with those contained in the legal opinion of the Government Pleader

referred to above. Thus, it is clear that the 3rd respondent did not independently apply her mind to the issue and was clearly influenced by the legal opinion obtained by her from the Government Pleader.

24. Rule 11(5) 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 issued under G.O. Ms. No. 173, Panchayat Raj and Rural Development(Elections) Department dt. 10-05-2006 states: 11(5) The Presiding Officer shall, on receipt of a written report from the party whip within three days of the election that a member belonging to his party has disobeyed the whip issued in connection with the election, give a show-cause notice to the member concerned as to why he should not be declared to have ceased to hold office and that he should make any representation within seven days from the date of the notice. The Presiding Officer shall consider any explanation given and pass a speaking order in the matter of cessation for disobedience of the whip. If no explanation is received, the Presiding Officer shall pass an order on the basis of the material available with him.

25. A reading of the above provision of law indicates that it is the Presiding Officer alone who should consider the explanation given by the Member who is alleged to have disobeyed the whip and it does not empower him to outsource his decision making responsibility or abdicate the same in favour of a third party or act under the dictation of a third party. Such conduct, in my opinion, amounts to acting in defiance of fundamental principles of judicial procedure.

26. In State of U.P. v. Maharaja Dharmander Prasad Singh, the Supreme Court held:

55. It is true that in exercise of powers of revoking or cancelling the permission is akin to and partakes of a quasi-judicial complexion and that in exercising of the former power the authority must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party and decide the matter consistent with the principles of natural justice. The authority cannot permit its decision to be influenced by the dictation of others as this would amount to abdication and surrender of its discretion. It would then not be the authorities discretion that is exercised, but someone else's. If an authority hands over its discretion to another body it acts ultra vires. Such an interference by a person or body extraneous to the power would plainly be contrary to the nature of the power conferred upon the authority. De Smith sums up the position thus:

The relevant principles formulated by the courts may be broadly summarised as follows. The authority in which a discretion is vested can be compelled to exercise that discretion, but not to exercise it in any particular manner. In general, a discretion must be exercised only by the authority to which it is committed. That authority must genuinely address itself to the matter before it: it must not act under the dictation of another body or disable itself from

exercising a discretion in each individual case. In the purported exercise of its discretion it must not do what it has been forbidden to do, nor must it do what it has not been authorised to do. It must act in good faith, must have regard to all relevant considerations and must not be swayed by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously. Nor where a judgment must be made that certain facts exist can a discretion be validly exercised on the basis of an erroneous assumption about those facts. These several principles can conveniently be grouped in two main categories: failure to exercise a discretion, and excess or abuse of discretionary power. The two classes are not, however, mutually exclusive. (Emphasis supplied).

27. In *Bahadursinh Lakhubhai Gohil v. Jagdishbhai M. Kamalia and others* the Supreme Court reiterated:

26. It is also well settled that if any decision is taken by a statutory authority at the behest or on the suggestion of a person who has no statutory role to play, the same would be ultra vires. (See *Commr. of Police v. Gordhandas Bhanji and Mohinder Singh Gill v. Chief Election Commr.*)

Similar view was taken in *Joint Action Committee of Air Line Pilots Association of India (ALPAI) and others v. Director General of Civil Aviation and others*.

28. It has to be therefore held that the 3rd respondent has not acted in accordance with the provisions of the law.

29. In the context of these facts, I am of the opinion that the existence of alternative remedy under Section 153A of the Act to challenge orders of this nature passed by the 3rd respondent would not be a bar to entertaining the present Writ Petition.

30. I am fortified in taking the above view by the decision of the Supreme Court of India in *Union of India v. Guwahati Carbon Ltd.*

4. We reiterate that the High Court, under Article 226 of the Constitution of India, has vast powers as this Court has under Article 32 of the Constitution of India, but such powers can only be exercised in those cases where the statutory authority has not acted in accordance with the provisions of the enactment in question, or in defiance of the fundamental principles of judicial procedure, or has resorted to invoke the provisions which are repealed, or when an order has been passed in total violation of the principles of natural justice.

31. This has also been reiterated in *CIT vs. Chhabil Dass Agarwal*. In that case, the Court held

32. In *Seemala Babu Bhuvana Mohana Rao* (1 supra) relied upon by the learned counsel for 1st respondent the Division Bench of this Court while agreeing that an alternative remedy cannot be a hindrance in entertaining a Writ Petition if there is a breach of principles of natural justice opined that on facts of that case,

the impugned order of disqualification of the respondent therein was not passed in violation principles of natural justice and therefore a learned Single Judge of this Court could not have entertained the Writ Petition and should have relegated the respondent to the District Court by invoking Section 153A of the Act.

33. In my opinion the said decision has no application to the facts of the present case in as much as violation of principles of natural justice is not the only ground for entertaining a Writ Petition when there is an alternative remedy available to the petitioner. The decision in *Guwahati Carbon Limited* (7 supra) indicates that there can be other circumstances where Writ Petition can be entertained notwithstanding the existence of an alternative remedy. In *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*, the Supreme Court has indicated other situations where Writ Petition can be entertained even though there is an alternative remedy by declaring:

7. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See *Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others*,

34. Therefore, I reject the contention raised by the respondents that the petitioners ought to be relegated to the remedy of approaching the District Court and challenging the impugned orders invoking Section 153-A of the Act.

35. In view of my conclusion that the 3rd respondent had abdicated its responsibility conferred on her under Section 11(5) of the Act, the impugned orders deserve to be set aside and are accordingly set aside.

36. Rule 3(1) of the above Rules states: 3. Convening of special meeting for election of Member (Co-opted), Mandal Praja Parishad: (1) The election of the member specified in clause(v) of sub-section (1) of Section 149 (hereinafter in this part referred as the Member (Co-opted) shall be held in the office of the Mandal Praja Parishad at a special meeting of the members of the Mandal Praja Parishad specified in clauses (i) to (iv) thereof, convened and presided over by any Gazetted Officer of the Government authorized by the District Collector in Form-I in this behalf.

37. Since the 3rd respondent cannot be again directed to consider the matter afresh in view of her above conduct, the 2nd respondent, in exercise of the power conferred on him under sub-rule(1) of Rule 3 referred to above, shall authorize any other responsible Gazetted Officer of the Government to decide the issue of alleged violation of whip by the petitioners within four weeks from today and the said Official shall then proceed to decide the matter after following principles of natural justice and the applicable principles of law within a period of eight weeks after service of notice on the parties.

38. Writ Petition is allowed with the above directions. No costs.

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