
(2015) 08 AP CK 0016
In the Andhra Pradesh High Court
Case No : Writ Petition No. 32144 of 2014

N. Suharlatha

APPELLANT

Vs

The State Election Commission

RESPONDENT

Date of Decision : 03-08-2015

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 153, 153(1), 153A, 153-A
Constitution of India, 1950 — Article 226

Citation : (2015) 5 ALD 464 : (2015) 6 ALT 164

Hon'ble Judges : P. Naveen Rao, J

Bench : Single Bench

Advocate : Vedula Venkata Ramana, for the Appellant; V.V. Prabhakar Rao, SC, Advocates for the Respondent

Final Decision : Dismissed

Judgement

P. Naveen Rao, J—In the elections conducted to Panchayat Raj bodies in the year 2014, petitioner was elected to the post of Member of Utukuru-2 Mandal Praja Parishad Territorial Constituency (MPTC) as candidate of Yuvajana Shramika Rythu Congress Party (YSRCP). The State Election Commission conducted elections to the President and Vice-President of Mandal Praja Parishad, Rajampeta Mandal on 04.07.2014 to Rajampeta Mandal Praja Parishad. On 3.7.2014, the YSRCP issued whip directing its members to cast their votes to the candidate sponsored by the party as a President of the Rajampet Mandal Praja Parishad. In defiance of the said whip, petitioner contested to the post of President as a candidate sponsored by the Telugu Desam Party and was successful. On the same day, YSRCP has complained to the State Election Commission to disqualify the petitioner as Member of MPTC and also as President of Mandal Praja Parishad. In response to the said intimation given by the party, the Presiding Officer of the Mandal Praja Parishad issued notice dated 15.07.2014 calling upon the petitioner to submit her explanation as to why she should not be disqualified. Petitioner filed her explanation on 20.07.2015. She denied of issuance of any whip by YSRCP and that the question of disobedience of the said

whip would not arise. The Presiding Officer, Mandal Praja Parishad, Rajampeta Mandal, passed orders on 18.08.2014 disqualifying the petitioner as President of MPP and as primarily member of Mandal Parishad Territorial Constituency. Aggrieved thereby this writ petition is filed.

2. Heard learned senior counsel Sri Vedula Venkata Ramana for the petitioner, learned senior counsel Sri D. Sudarshan Reddy for the 4th respondent and Sri V.V. Prabhakar Rao, learned standing counsel for the State Election Commission.

3. Learned senior counsel contends that provision in Section 153 of Panchayat Raj Act, 1994 (for short, Act, 1994) is not attracted inasmuch as YSRCP was not recognized political party as on the date of election of the petitioner as Member of Utukuru-2 Mandal Parishad Territorial Constituency. Only a recognized political party can issue such whip and whip issued by the recognized political party is alone valid. YSRCP was only a registered political party by 30.03.2014 and it was granted recognition by Election Commission of India only on 27.06.2014. He, therefore, submits that disqualification impugned in the writ petition is ex facie illegal and is liable to be set aside. Learned senior counsel further contends that even assuming that petitioner was disqualified as President of Mandal Praja Parishad, the disqualification is applicable only to that post and it can not automatically result in disqualifying the petitioner as Member of the Mandal Parishad Territorial Constituency. He further submits that, in reiteration of the first contention that YSRCP was not a recognized political party by the time the elections to Mandal Parishad Territorial Constituency was held on 30.03.2014 and, therefore, she is not bound by the whip issued by such party as on that date and, therefore, she cannot be disqualified on the said provision to the post of Member of Mandal Parishad Territorial Constituency.

4. Learned senior counsel placing reliance on the decision of the division bench of this Court in the case of Singam Satyanarayana and others v. Election Officer and Deputy Chief Executive Officer, Zilla Parishad, Ranga Reddy District and others, contends that as YSRCP did not have recognition by the time elections were held on 30.03.2014, the provision in Section 153 of the Act is not attracted.

5. With reference to the objection on maintainability of the writ petition, when an alternative remedy by way of appeal to the District Court is provided under Section 153-A of the Act, 1994, learned senior counsel contended that since the order ex facie vitiates as without power and jurisdiction inasmuch as the whip issued by the YSRCP is not binding on the petitioner and that such whip is not valid in law, as YSRCP did not have recognition by the time elections to Mandal Parishad Territorial Constituency was held on 30.03.2014 and therefore petitioner cannot be compelled to avail remedy of appeal. In the facts of this case, he therefore contends, the remedy of appeal is not an alternative and efficacious remedy and petitioner cannot be relegated to avail such remedy.

6. The facts which are not in dispute are that election to Mandal Parishad Territorial Constituency was held on 30.03.2014, that YSRCP got recognized from

the Election Commission of India on 27.06.2014. The elections to President of Mandal Praja Parishad was held on 04.07.2014 and whip to vote in a particular manner by the members of YSRCP was issued by the party whip on 03.07.2014. By the said date, petitioner continued to be a member of YSRCP.

7. In the above factual background, whether provision of Section 153(1) of the Act, 1994 is attracted and whether petitioner ought to have availed the remedy of appeal under Section 153-A of the Act are in issue?

8. To appreciate the contentions of the learned senior counsel, relevant provisions which are relevant for consideration are Sections 153, 153-A of the Act, 1994 and the Rules notified vide G.O. Ms. No. 173 Panchayat Raj and Rural Development (Elections & Rules) Department, dated 10.05.2006. Insofar as this case is concerned, the relevant provisions of Sections 153 and 153-A read as under:

Section 153 - Election, reservation and term of office of President and Vice-President:

(1) For every Mandal Parishad there shall be one President and one Vice-President who shall be [by show of hands duly obeying the party whip given by such functionary of the recognised political Party, as may be prescribed). If at an election held for the purpose no President or Vice-President is elected, fresh election shall be held. The names of the President and the Vice-President so elected shall be punished in the prescribed manner:

Xxxx

Xxxxx

Xxxxx

[Provided further that a member voting under this sub-section in disobedience of the party whip shall cease to hold office [in the manner prescribed] and the vacancy caused by such cessation shall be filled as a casual vacancy.]

Section 153A - Resolution of disputes relating to cessation for disobedience of party whip: Where a member against whom a proceeding that he ceased to hold office as a consequence of the disobedience of the party whip is issued in pursuance of the second proviso to sub-section (1) of Section 153 and the affected member disputes the correctness of the proceedings, he may apply to the District Court having jurisdiction over the area in which the office of the Mandal Parishad is situated, for a decision.

9. Part III of the Rules deal with Election of President and Vice-President of Mandal Parishad. According to Rule 10, a person contesting as President or Vice-President of the Mandal Parishad, has to claim that he is contesting on behalf of a recognized political party and should provide authorization from the State President of the party or a person duly authorized by the State President. Rule 11 deals with disqualification for disobedience of party whip. Sub-rule (1) of Rule

11 prescribes mode of appointment of whip on behalf of the recognised political party who can issue whip of the party to vote in a particular manner. Such person should furnish copy of the contents of the whip issued by him and the acknowledgement obtained from the members belonging to the party to the Presiding Officer. According to sub-rule 4, any member of the Mandal Parishad elected on behalf of the recognized political party shall cease to be a member of the Mandal Parishad for disobeying the directions of the party whip so issued, in the manner provided. Sub-rule (5) vests power in the Presiding Officer to take consequential action on a complaint given by party whip and to pass appropriate orders.

10. Neither the Act nor the rules referred to above defined the word recognized political party. It does not prescribe the method of granting such recognition. It is not disputed by learned counsels appearing for respective parties to the case that the recognition of political party for the purpose of applying various provisions of Act, 1994 is based on the recognition accorded by the Election Commission of India. The Election Commission of India accorded recognition to YSRCP as a political party on 27.06.2014. Thus, before the election to the President of Mandal Praja Parishad, YSRCP was recognized by the Election Commission of India. Therefore, YSRCP answers the description of recognized political party as envisaged by Section 153 of the Act.

11. On a careful reading of the provision under Section 153, I am of the considered opinion that a person suffers disqualification when he acts against party whip represented by him on a particular day. If a MPTC member belonging to a recognised political party participates in the election to the post of President and gets elected contrary to whip issued by said party, and if it is established that whip was violated, such person is liable to be disqualified not only as President but also as member of MPTC. By the time the elections to the Mandal Parishad President was held i.e., on 04.07.2014, YSRCP was already recognized as political party i.e., on 27.6.2014. On 03.07.2014, Whip was issued. The said whip is binding on the petitioner. In disobedience of the said whip, petitioner contested the election to the post of President representing Telugu Desam Party and voted against the whip. Thus, on 04.07.2014 petitioner earned disqualification as prescribed in Section 153(1) of the Act, 1994. As per Section 153(1) of the Act and the Rules made there under, a complaint was made by person authorised to issue whip of YSRCP on 4.7.2014. On receipt of complaint from YSRCP, procedure envisaged was set in motion by Presiding Officer to disqualify petitioner as President of MPP and as MPTC member. The impugned decision is in accordance with the mandate of Section 153 and the rules made thereunder. The provision is express and clear leaving no ambiguity. Thus, such disqualification having been earned by petitioner on 04.07.2014, by which time, YSRCP was already recognized as political party, there was no error much less patent error in exercise of jurisdiction by the Presiding Officer of the Zilla Parishad warranting interference by this Court in exercise of extraordinary jurisdiction under Article 226 of the Constitution of India.

12. Against order of disqualification under Section 153-A of the Act, 1994, right of appeal to the District Court is provided. Section 153-A is applicable on an order passed disqualifying a person as President of MPP and a member of MPTC in accordance with the second proviso to Section 153(1) of the Act. It is not the case of petitioner that the remedy of appeal is not an effective and efficacious remedy. Petitioner challenges order of disqualification on the ground that YSRCP was not a recognised political party when she was elected as member of MPTC and therefore question of issuing a whip its disobedience and consequential disqualification does not arise. As contended by the learned senior counsel, the writ petition is instituted on the premise that since the YSRCP was not a recognized political party when the election to the Mandal Parishad Territorial Constituency was held on 30.03.2014, the order impugned *ex facie* vitiates and, therefore, petitioner cannot be compelled to avail remedy of appeal. The date of earning disqualification is crucial to applying provision in Section 153 and not the date of election as MPTC member. By the date of election i.e., 4.7.2014, YSRCP was recognised as political party. Thus, the contention of petitioner has no merit and there is no error in exercising jurisdiction by presiding officer. Once, petitioner failed to cross this hurdle, petitioner has to avail remedy of appeal to agitate all other grounds against her disqualification.

13. It is settled principle of law from long line of precedents from Supreme Court as well as this Court and needs no reiteration that though mere availability of an alternative remedy is not a bar to entertain a writ petition under Article 226 of the Constitution of India, ordinarily when an alternative and efficacious remedy by way of appeal is provided by the statute, the writ Court do not entertain the writ petition. Ordinarily when statutorily engrafted right of appeal is available, question of not availing the said remedy and invoking the jurisdiction of this Court under Article 226 of the Constitution of India does not arise. The extraordinary jurisdiction under Article 226 of the Constitution of India can be exercised when right of a citizen is affected by a decision/order of statutory authority and there is no other effective redressal mechanism available to ventilate the grievance. Under Section 153-A of the Act, forum to prefer appeal against disqualification is the District Court. Thus, it cannot be said that the remedy of appeal is not effective and efficacious. Moreover, in exercise of power of judicial review under Article 226 of the Constitution of India, is limited and the writ Court cannot sit and consider the issues as appellate authority, whereas the appellate Tribunal can go into all aspects concerning the claim.

14. In *Singam Satyanarayana* (cited *supra*) bench of this Court held that Whip contemplated under Section 153 of the Act, 1994 can only be issued only by a recognized political party. As noticed from the facts of the said case, the election to the Mandal Praja Parishad took place on 03.07.2001. TRS party applied for recognition to the Election Commission for registration as a political party on 12.06.2001. On 21.08.2001, TRS Party was registered as a political party. After the general elections to the State Legislative Assembly in April, 2004, party was recognized as political party. Thus, by the time, when the election to the Mandal

Praja Parishad was held in the year 2001, TRS party was not a recognized political party. It is thus seen that the facts in issue in the said case are different from the facts in the present case. Thus, the said decision does not come to the aid of the petitioner.

15. I therefore see no merit in the contention urged by the learned senior counsel and writ petition is liable to be dismissed and accordingly dismissed. However, since writ petition is dismissed on the ground that petitioner has effective and efficacious remedy of appeal, reasons assigned and views expressed above, are only for the purpose of consideration of the issue on maintainability of the writ petition and it is made clear that if petitioner prefers an appeal under Section 153-A of the Act, 1994, the competent Court shall consider the grounds as may be urged in the said appeal and issues that may be raised by rival parties, uninfluenced by the observations made by this Court in this judgment. As and when such appeal is filed, the District Court shall consider the same and dispose of the appeal as expeditiously as possible.

Miscellaneous petitions if any pending in the writ petition shall stand closed. No costs.