
(2004) 01 AP CK 0023

In the Andhra Pradesh High Court

Case No : WA No's. 1497 and 1502 of 2003 and WP No. 25378 of 2003

Pandranki Parvathi and Others

APPELLANT

Vs

Akula Gangaraju and Others

RESPONDENT

Date of Decision : 28-01-2004

Acts Referred:

Andhra Pradesh Conduct of Election of Member (Co-opted) and President/Vice-President of Mandal Parishad and Member (Co-opted) and Chairman/Vice-Chairman of Zilla Parishad Rules, 1994 — Rule 13(7)
Andhra Pradesh Panchayat Raj Act, 1994 — Section 153, 200, 201
Constitution of India, 1950 — Article 243K, 324

Citation : (2004) 2 ALD 261 : (2004) 1 ALT 617

Hon'ble Judges : K.C. Bhanu, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : N. Subba Reddy, SC for K. Venkatesh, in WA No. 1497 of 2003, K.L.N. Swamy, in WA No. 1502 of 2003, C.V. Mohan Reddy, in WP No. 25378 of 2003, for the Appellant; N. Subba Reddy, SC for K. Venkatesh, for Respondent Nos. 4 and 6 in WA No. 1502 of 2003 and Respondent No. 2 in WP No. 25378 of 2003, C.V. Mohan Reddy, for Respondent Nos. 1 and 2 in WA Nos. 1497 and 1502 of 2003, Government Pleader for Panchayat Raj for Respondent No. 3 in WA Nos. 1497 and 1502 of 2003 and D. Srinivas, in WP No. 25378 of 2003, for the Respondent

Final Decision : Dismissed

Judgement

B. Sudershan Reddy, J.—These writ appeals and writ petition are being disposed of by a common judgment since the issue involved is one and the same in all these matters.

W.A. Nos. 1497 and 1502 of 2003

2. These two writ appeals are directed against the order of the learned Single Judge dated 14-8-2003 made in W.P. No. 23288 of 2001. They raise questions relating to the disqualification of some of the members of Mandal Parishad, Yeleswaram Mandal (appellants herein) u/s 153 of the Andhra Pradesh Panchayat

Raj Act, 1994 (Act 13 of 1994) (for short "the Act") read with the Andhra Pradesh Conduct of Election of Member (Co-opted) and President/Vice-President of Mandal Parishad and Member (Co-opted) and Chairman/Vice-Chairman of Zilla Parishad Rules, 1994 (for short "the Rules").

3. The elections for Mandal Parishad, Yeleswaram Mandal of East Godavari District were held on 14-7-2001. In all, 19 members were elected from different Mandal Parishad Territorial Constituencies (MPTCs). After the elections, the strength of the members of the political parties was as under:

1. Congress (I) Party 12 Members 2. Telugu Desam Party 7 Members

4. A special meeting to elect the President and Vice-President of the Mandal Parishad, Yeleswaram Mandal was scheduled to be held on 22-7-2001 at 1-00 p.m.

5. The first respondent-writ petitioner having been named as Whip by the President of the District Congress Committee, East Godavari District intimated the same to the Presiding Officer as is required under the Rules. The admitted case of the first respondent-writ petitioner is that he tried to serve a copy of the Whip on the appellants herein personally in the fore-noon on 21-7-2001 and when they refused to receive the same, a telegram was issued to them and as an abundant caution the Presiding Officer was also informed about the issuance of Whip directing all the members of the Congress Party to vote in favour of the candidate set up on behalf of the said party. As a measure of further caution, the first respondent-writ petitioner alleged to have visited the houses of the appellants in the evening on 21-7-2001 and pasted a copy of the Whip issued on the main door/walls of the houses of the appellants in the presence of elders of the village. It is admitted in the affidavit filed in support of the writ petition that "with the permission of the first respondent I tried to serve copies of the whip just before the commencement of Meeting for electing office bearers at 1-00 p.m. However, Respondents 2 to 5 refused to receive the same and the same was witnessed by the 1st respondent, who I also understand has recorded in the minutes book. Thereafter he permitted me to read out the contents of the whip over public address system so as to enable all the members who are assembled to know about the issuance and contents of the whip. I read out the whip and asked all the members of the Congress Party to vote for the official party nominee the 2nd petitioner herein for the President..... However, in spite of having knowledge of issuance of the whip Respondents 2 to 5 did not vote for the Congress Party candidate and in fact Respondent No. 2 herein contested for the Presidentship of Yeleswaram Mandal Praja Parishad as an independent candidate and got herself elected with the support of the members elected on behalf of Telugu Desam Party."

6. The first respondent-writ petitioner submitted a complaint on the same day before the Presiding Officer. The Presiding Officer acting on the said complaint, issued proceedings dated 25-7-2001 holding that the appellants herein have

ceased to be the members of the Mandal Parishad for violating the Whip issued by the first respondent-writ petitioner.

7. The appellants herein filed WP Nos. 15567, 15568, 15569 and 15645 of 2001 in this Court challenging the validity of the said orders of the Presiding Officer dated 25-7-2001. A learned Single Judge of this Court allowed the said writ petitions on the sole ground that the appellants herein were not served with any notice before passing the orders disqualifying them from being continued as members of the Mandal Parishad. The Presiding Officer was accordingly directed to issue notice to the appellants herein requiring them to submit their explanation in the matter and the objections to be so preferred shall be taken into consideration by the Presiding Officer before passing an appropriate order in accordance with law.

8. That pursuant to the said orders of this Court, the Presiding Officer issued a show-cause notice dated 15-10-2001 to the appellants herein requiring them to show-cause as to why they should not be disqualified from being continued as members of the Mandal Parishad under the provisions of the Act and the Rules made thereunder for violating the Whip issued on behalf of the Congress Party. The appellants herein submitted their explanations on 17th October, 2001. The Presiding Officer having considered the objections of the appellants and the entire material available on record found that there is no proof to the effect that the Whip issued has been served on the appellants before the schedule time. The Presiding Officer held:

"A reading of the complaint reveals that the whip seems to have been issued while special meeting was going on. According to the Circular No. 853/SEC-B1/2001, dated 19-7-2001 issued by the Election Commission containing the guidelines with regard to the procedure to be followed in holding the Special Meeting of Mandal Parishad and Zilla Parishad with regard to the issue of whip by political parties instruction (e) contemplates that the political party has to furnish copy of the whip issued by him to the members of his party duly getting their acknowledgments in terms of Annexure-II to the Presiding Officer before 12 noon on the same day but this has not been complied with in the present case. Hence the complaint is devoid of merits.

Even otherwise no proof is forthcoming that the whip is served on the above 4 MPTC members before the schedule time. The complaint therefore deserves no consideration."

9. This order of the Presiding Officer has been challenged by the respondents-writ petitioners in W.P. No. 23288 of 2001 on various grounds. The learned Single Judge allowed the said writ petition by order dated 14-8-2003 and accordingly set aside the order passed by the Presiding Officer and further declared the appellants herein to have incurred disqualification for being continued as members of the Mandal Parishad on the ground that they have defied the Whip issued by the party. The learned Judge held that the appellants had the

knowledge of the Whip "though express or constructive service of the same." The learned Judge found that the actual service of a copy of the Whip is not the requirement in law.

10. In these writ appeals, learned Senior Counsel, Sri N. Subba Reddy, contended that there is no material available on record that a copy of the Whip was served on the appellants as is required under the rules read with the instructions issued by the Election Commission. The telegrams alleged to have been sent by the Whip have not been received by the appellants. It was further submitted that the very admission made by the first respondent-writ petitioner that an attempt was made to serve a copy of the whip issued upon the appellants after the meeting was assembled itself suggests that the copy of the Whip has not been served upon the appellants before the actual commencement of the meeting convened for the purpose of electing the President of the Mandal Parishad. The service of a copy of the Whip, according to the learned Senior Counsel, is a mandatory requirement in law before a member could be disqualified under the provisions of the Act and the Rules made thereunder.

11. Sri C.V. Mohan Reddy, learned Counsel for the respondents-writ petitioners, submitted that neither the Act nor the Rules contemplate service of Whip on the members in any particular manner. The appellants herein have deliberately refused to receive the Whip when it was sought to be served both in person as well as through the registered post. It is under those circumstances, the first respondent-writ petitioner had to issue telegrams to all of them and to be on safe side obtained permission of the Presiding Officer to serve the Whip even before the meeting is commenced. The appellants have refused to receive the Whip on the ground that they have resigned from Congress Party and became independent members. The learned Counsel submitted that the conduct of the appellants speak for itself. Section 153 of the Act and the Rules framed thereunder and the instructions issued by the Election Commission have to be read in such a manner to advance the purpose for which the provisions have been incorporated in the Act and the Rules to disqualify the defectors. The learned Counsel submits that the appellants herein having been elected on the Congress Party ticket voted for a candidate set up by the Telugu Desam Party and, therefore, the principle of "purposive interpretation" should be invoked.

12. Section 153 of the Act mandates that for every Mandal Parishad there shall be one President and one Vice-President who shall be elected by and from among the elected members specified in Clause (i) of sub-section (1) of Section 149 by show of hands duly obeying the party Whip given by such functionary of the recognized political party as may be prescribed, in the prescribed manner. The consequences of violating the Whip given by such functionary of the recognised political party are provided for under second proviso to sub-section (1) of Section 153 of the Act and Rule 13(7) of the Rules. The said provisions read as under:

"Proviso to sub-section (I) of Section 153 of the Act.--Provided further that a

member voting under this sub-section in disobedience of the party whip shall cease to hold office forthwith and the vacancy caused by such cessation shall be filled as a casual vacancy."

Rule 13(7)(i). Any member of the Mandal Parishad elected on behalf of a recognised political party shall cease to be a Member of the Mandal Parishad for disobeying the directions of the Party Whip so issued.

(ii) 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, forthwith declare in Form V-C that the Member has ceased to hold Office and the decision of the Presiding Officer shall be final."

13. The Rules do not prescribe any procedure as to how the functionary of a recognised political party is required to issue Whip. Nor there is any prescribed manner of service of notice.

14. Rule 13(6), however, provides that every recognised political party may appoint on behalf of that political party a Whip and intimation of such appointment shall be issued by the State President or a person authorised by him under his seal and such intimation shall be sent to the Presiding Officer to reach him on or before 11.00 a.m., on the day preceding the day of election. There is no dispute that the intimation of appointment of the first respondent-writ petitioner as Whip has reached the Presiding Officer on 21-7-2001 itself and there is no controversy about the same.

15. The State Election Commission in purported exercise of its power u/s 201 of the Act issued instructions with regard to the procedure to be followed in holding special meeting for election of Chairman/Vice-Chairman and Co-opted members of Zilla Parishads and President/ Vice-President and Co-opted members of Mandal Parishads vide Circular No. 853/SEC/ B1/2001-3, dated 19-7-2001. The said instructions require to be followed by all the Presiding Officers inter alia declare that the appointment of Whip is valid only if the State President or a person authorised by him intimates the name of the whip to the Presiding Officer before 11.00 a.m., on the day preceding the day of election. If a person who is not a member of the house is appointed as whip, he will not be permitted to participate in the meeting. The political parties are required to appoint only one whip for election to a particular body; The provisions pertaining to whip are applicable only to members of Mandal Parishads/Zilla Parishads elected on behalf of a recognised political party. The said provisions do not apply to the members elected on behalf of other political parties and to independent candidates.

16. Clause 3(e) of the Instructions with which we are concerned for the present reads as follows:

"The whip so appointed by a recognised political party has to furnish a copy of the contents of the whip issued by him to the Presiding Officer at least one hour

before the commencement of the special meeting i.e., by 12.00 Noon."

17. The format for intimating the appointment of whip by the political parties is given in Annexure-I and the format for issuance of whip to the members is given in Annexure-II appended to the instructions issued by the Election Commission.

18. The instructions further provide that any member of Mandal Parishad/Zilla Parishad elected on behalf of a recognised political party, if casts vote in disobedience of the Party Whip so issued, he ceases to be Member of Mandal Parishad/Zilla Parishad, as the case may be.

19. It is thus clear that the whip appointed by a recognised political party is under mandatory obligation to furnish a copy of the contents of the whip issued by him to the Presiding Officer one hour before the commencement of the special meeting. The contents of the whip and directions to be issued are provided for in Annexure-II referred to hereinabove, which is to the following effect:

ANNEXURE II

PARTY WHIP

I,appointed as whip of.....party for elections to Chairman/Vice-Chairman, President/Vice-President of.....Zilla Parishad/Mandal Parishad..... District, hereby, direct that the elected members of the Zilla Parishad/Mandal Parishad belonging to..... Party shall be present in the special meeting to be held on and vote in favour of.....candidate.

Party Seal

Signature and Name Authorised Party Whip

Date:

Place:

To

Sri..... Member,.....ZP/MP Copy to the Presiding Officer.....ZP/MP Special Meeting.

20. A fair reading of Section 153 of the Act and the Rules referred to hereinabove together with the instructions of the Election Commission clearly reveals that the whip, if any, appointed by a recognized political party is to serve a copy of the contents of whip and directions to every member of such political party requiring them to vote in favour of the candidate set up by the said party. The same must be duly sent and served upon the elected member of such political party and a copy of the same must be made available to the Presiding Officer at least one hour before the commencement of the special meeting i.e., by 12.00 Noon. Such a procedure, obviously, has been devised in order to prevent any subsequent manipulations by the political parties or whips appointed by them to disqualify

the members of the elected bodies according to ones own whims and fancies. The duty to declare that a member of the Mandal Parishad elected on behalf of a recognised political party ceases to be a member of the Mandal Parishad for disobeying the directions of the party whip is cast on the Presiding Officer. It would be in fitness of things that the Presiding Officer should have advance intimation as to the nature of the directions issued by the whip and contents thereof and also the details of the candidates set up by the recognised political parties, which would enable him to go into the question whether any member of the Mandal Parishad elected on behalf of a recognised political party had disobeyed the directions of the party whip and thereby incurred disqualification.

21. Likewise, every member of the Mandal Parishad elected on behalf of a recognised political party is required to be put on advance notice as to the details of the candidates set up by such party for the Presidentship/Vice-President ship of the Parishad and the directions, if any, on behalf of the party for being present in the special meeting and to vote in favour of the candidates set up by such political party. It is, therefore, a mandatory requirement in law that a copy of the whip containing the contents and directions must be served upon the member of the Zilla Parishad/Mandal Parishad, as the case may be. Annexure-II appended to the instructions issued by the Election Commission referred to hereinabove provides for such service of contents of the party whip and a copy thereof to be made available to the Presiding Officer of the special meeting.

22. In the case on hand, admittedly, the whip having been issued by the authorised party whip in terms of Annexure-II was not served upon the appellants. It is not as if the first respondent-writ petitioner is not aware of the procedure and the requirement in law. A copy of the party whip in Annexure-II has been duly served upon eight other members of the Mandal Parishad belonging to Congress Party and their signatures have been duly obtained and a copy thereof has been made available to the Presiding Officer on 22-7-2001 one hour before the meeting commenced as is required in law. There is no evidence of service of any party whip in Annexure II to any of the appellants. The telegram purported to have been issued by the first respondent-writ petitioner addressed to the Presiding Officer intimating him that he was appointed as party whip and accordingly issued a whip to all the Congress Party candidates including the appellants herein reached the Presiding Officer only on 23-7-2001. Even otherwise, it is a matter of no consequence.

23. The impugned proceedings reveal that on 22-7-2001 the whip appointed on behalf of the Congress Party made available a copy of the whip issued by him to the eight members of the Congress Party requiring them to vote in favour of the candidates set up by the party. All the 19 members elected to Yeleswaram Mandal Parishad from different MPTCs assembled at the meeting hall at 1.00 p.m., to elect the President as well as the Vice-President of the Mandal Parishad. After the special meeting was assembled at 1.00 p.m., the whip has taken permission from the Presiding Officer to serve the whip to the appellants who

were admittedly elected on Congress Party ticket. All the appellants have refused to receive the party whip stating that they had already resigned from the party and that they were independent members as on the said date. In the affidavit filed in support of the writ petition, the first respondent-writ petitioner himself in clear and categorical terms admitted that he tried to serve copies of the whip "just before commencement of the meeting for electing office bearers at 1.00 p.m."

24. These facts as is evident from the record as well as the averments made in the affidavit filed in support of the writ petition clinchingly establish that the party whip in Annexure II of the instructions referred to hereinabove had never been served upon the appellants herein until the special meeting assembled at 1.00 p.m. to transact the business of electing the President and Vice-President of the Mandal Parishad. The instructions issued by the Election Commission require the service of whip in Annexure II and furnishing a copy thereof to the Presiding Officer one hour before the commencement of the meeting. There is obvious failure on the part of the whip in complying with the requirement. In the result, it cannot be said that the appellants have defied the whip and voted in favour of a candidate set up by other political party in violation of whip issued by the Congress Party.

25. The learned Single Judge while adverting to the Circular Instructions issued by the Election Commission dated 19-7-2001 observed that they have nothing to do with the matter. The learned Judge observed that the State Election Commission is not assigned any role in the matter of issue of whip for conducting elections. "Its role is confined to the declaration of the programme for conducting the elections. The proceedings thereafter are completely in the realm of the Presiding Officer." With great respect, we are unable to subscribe to the view expressed by the learned Judge that the State Election Commission is not assigned any role in the matter of issue of whip for conducting elections.

26. Article 243K of the Constitution of India commands that the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor. The State Legislature in compliance with the mandatory constitutional requirement provide for constitution of Andhra Pradesh Election Commission for Local Bodies for the superintendence, direction and control of the preparation of electoral rolls for, and the conduct of elections to, all the Panchayat Raj Institutions governed by the Act. Article 243K of the Constitution of India and Section 200 of the Act are analogous to Article 324 of the Constitution of India, which provides that the superintendence, direction and control of elections should be vested in an Election Commission. Section 201 of the Act mandates that all elections to the Panchayat Raj Institutions shall be held under the supervision and control of the Andhra Pradesh Election Commission for Local Bodies and for the said purpose, it shall have power to give such directions as it

may deem necessary to the Commissioner, District Collector or any officer or servant of the Government and the Panchayat Raj Institutions so as to ensure efficient conduct of the elections under the Act.

27. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, , the Supreme Court while considering the ambit and import of Article 324 of the Constitution of India observed that Article 324 is a plenary provision vesting the whole responsibility for national and State elections and, therefore, the necessary powers to discharge that function. "Article 324, in our view, operates in areas left unoccupied by legislation and the words "superintendence, direction and control" as well as "conduct of all elections" are the broadest terms. Myriad may be too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election." It is further observed:

"The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection, with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition."

28. The same principle would be applicable while construing the breadth, amplitude and depth of Article 243K of the Constitution of India as well as Sections 200 and 201 of the Act. The special meeting convened to elect the President or Vice-President of Mandal Parishad or Chairman or Vice-Chairman of Zilla Parishad, as the case may be, is integrally connected to "election", which in the context has a very wide connotation commencing from the notification calling upon the electorate to elect the members and culminating in a final election of President and Vice-President of Mandal Parishad and Chairman and Vice-Chairman of Zilla Parishad, as the case may be. It is one integral process. "Election" does not mean direct election of members of Mandal Parishad from the MPTCs by the people, but includes the election of President, Vice-president and Co-opted members in turn by the elected members of Mandal Parishad.

29. Therefore, we are unable to subscribe to the view taken by the learned Judge that the State Election Commission is not assigned any role in the matter of issue of whip and procedure thereof for conducting elections and its role is confined only to the declaration of the programme for conducting the elections. Directions by party whip directing the members to exercise their franchise in a particular manner, which ultimately may have a bearing upon the result of election of

President or Vice-President, as the case may be, form an integral part of the electoral process. The State Election Commission is well within its jurisdiction to issue appropriate instructions prescribing the mode and method of issuing party whip and service of the same upon the members who are required to comply with the whip. There is neither any law made by the State Legislature nor any statutory rule framed in this regard and precisely for the said reason, the State Election Commission intervened in the matter and accordingly issued instructions regarding the procedure to be adopted in the matter of issue of whip by recognised political parties. It needs no restatement that the Election Commission cannot issue any instructions or guidelines contrary to the statutory provisions or rules, but it is entitled and, in fact, duty bound to supplement the legal provisions by issuing necessary instructions in order to ensure free and fair elections.

30. Like the Election Commission of India, the State Election Commission, insofar as the elections for the local bodies is concerned, is entitled to exercise certain powers on its own right in areas not covered by the Acts and rules. Whether the power is exercised in an arbitrary or capricious manner is completely a different question. The words "superintendence, direction and control" have a wide connotation so as to include therein such powers which though not specifically provided but are necessary to be exercised for effectively accomplishing the task of holding the elections to their completion. The instructions were obviously issued in exercise of such power by the State Election Commission.

The requirement of service of copy of party whip:

31. In *M.Mohan Rao and others Vs. Revenue Divisional officer and others*, , a Division Bench of this Court while dealing with the proviso to Rule 8 of the Andhra Pradesh Panchayat Raj Rules for moving Motion of No Confidence, 1997, which says that an elected member of a recognised political party shall cease, to be a member if he votes in disobedience to the directions of the party whip, observed:

"....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 within . the framework of the proviso to Rule 8 may be very limited in scope and elaborate enquiry is not required or contemplated.....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."

32. It is implicit in the observations made by the Division Bench that the Rule cannot be read in a manner clothing the party whip with unchecked power. In a given case, even without serving the directive the party whip in whimsical

manner may file an application before the Presiding Officer against the chosen members alleging disqualification on the ground of defying the whip issued by the party. Procedural reasonableness has to be read into the provisions of the Act and the Rules referred to hereinabove so as to avoid any such unchecked power with the party whip. Therefore, in every case it must be clearly established that party whip has been served upon the member directing him to vote in a particular manner.

33. That another Division Bench of this Court in *Madhava Rao Desai Vs. Union of India and Others*, while upholding the constitutional validity of Section 153 of the A.P. Panchayat Raj Act, 1994 observed:

".....independent of the declaration made by the Election Officer about the whip issued by the party, the petitioner is entitled to be served with the same through his party prior to the commencement of the election process. There is no indication from the order of the Election Officer that such a whip had been served on him."

34. It is thus clear from the observations of the Division Bench that every member is entitled to be served with party whip through his party prior to the commencement of election process. In the instant case, there is a clear finding by the Presiding Officer that no such party whip has been served upon the appellants prior to commencement of the meeting. In fact, an attempt was made to serve party whip after the meeting convened for the purpose of election was assembled at 1.00 p.m. Therefore, it is a clear case where the party whip was not served upon the appellants before the commencement of the meeting. There is no material produced before the Court suggesting the service of any party whip so far as the appellants are concerned.

35. In *S. Jyothi Vs. Presiding Officer/Election Officer, Thottambedu Mandal, Chittoor Dist. and Others*, , a Division Bench of this Court while construing the provisions of sub-rule (6) of Rule 13 of the A.P. Conduct of Elections of Member (Co-opted), President/Vice-President of Mandal Parishad and Member (Co-opted), Chairman/Vice-Chairman of Zilla Parishad Rules, 1994 observed that the provisions of sub-rule (6) of Rule 13 are mandatory in nature. In that case, the notice of the Whips issued were received by the Presiding Officer only on 22-7-2001 at 9.15 a.m., and at 9-30 a.m., respectively and not before 11.00 a.m. on 21-7-2001 as required under sub-rule (6) of Rule 13 of the Rules. The Division Bench took the view that the practice to authorise the District Units Heads of the Party to issue Whip cannot be said to be in conformity with the provisions of Rule 13(6) of the Rules. In the instant case also the Whip has been nominated by the District Unit Head and not by the State President or any other person authorised by him under his seal. In the said decision, it is further held:

"It is trite, the burden of proof that the Whip was properly served on the petitioners and despite the service of the Whip, the petitioners disobeyed the Whip thereby incurring a liability to be disqualified from membership under Rule

13 (7) of the President/Vice-President Election Rules is on the respondents. The burden of proof placed on the respondents is not discharged merely on preponderance of probabilities; 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 despite service of intimation of the Whip. Such a standard of proof should be insisted because it is basic to the law of elections that in a democracy, the mandate of the people as expressed at the hustings must prevail and be respected by the Courts and the elected candidate as a member of Mandal Parishad "cannot be disqualified for the alleged disobedience of the Whip lightly and in the absence of clear-cut and satisfactory substantive evidence to show that he has disobeyed the Whip." (Emphasis is of ours).

36. In the instant case, we have also noticed that there is no evidence of the first respondent-writ petitioner serving the party Whip on the appellants and making a copy thereof available to the Presiding Officer by 12.00 Noon i.e., one hour before the commencement of the meeting. The attempt made to serve the party whip after the assembly of the meeting, in our considered opinion, is not in conformity with the instructions issued by the Election Commission, which are binding in nature.

37. We find it difficult to accede to the submission made by the learned Counsel for the respondents-writ petitioners that knowledge of contents of Whip arc enough to attract the proviso to Section 153 of the Act and Rule 13(7) of the Rules. It is unnecessary to go into the distinction between "express notice" and "implied notice" since we are not agreeing with the contention that the constructive notice, which the appellants had, itself would be enough to attract disqualification.

38. The word "notice" is not a technical one and, while it can have various meanings, - the meaning given by the Courts is to be controlled largely by the context and by the purpose and intent of the statute which provides for or requires it. (Corpus Juris Secundum).

39. In conclusion, we find that the orders passed by the Presiding Officer refusing to disqualify the appellants herein do not suffer from any legal infirmities.

40. For the foregoing reasons, we set aside the order of the learned Single Judge and accordingly uphold the order dated 4-11-2001 passed by the Presiding Officer refusing to disqualify the appellants herein as Members of Mandal Parisahd, Yeleswaram Mandal.

41. The writ appeals are accordingly allowed. The parties arc directed to bear their own costs.

WP No. 25378 of 2003

42. For the very same reasons recorded in W.A. Nos. I497 and 1502 of 2003

supra, we do not find any merit in this writ petition. The same shall accordingly stand dismissed. No order as to costs.