

(2014) 10 AP CK 0023

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 24849, 24851 and 24928 of 2014

Rayipalli Bharati

APPELLANT

Vs

Government of Andhra Pradesh

RESPONDENT

Date of Decision : 21-10-2014

Acts Referred:

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

Citation : (2015) 1 ALD 310 : (2015) 2 ALT 788

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

Bench : Single Bench

Advocate : A. Satya Prasad, Sr. Counsel for Prakash Buddarapu, Advocate for the Appellant

Judgement

M.S. Ramachandra Rao, J.—Heard Sri A. Satya Prasad, learned Senior Counsel for Sri Prakash Buddarapu, learned counsel for the petitioners, Sri V.V. Prabhakar Rao, learned Standing Counsel for respondent No. 2, Sri G. Elisha, learned Standing Counsel for 3rd respondent and Sri Vedula Venkata Ramana, learned Senior Counsel for Sri B.M. Patro and Sri S. Sridhar, learned counsel for respondent No. 4/Caveator in both the cases.

2. As common issues arise for consideration in these Writ Petitions, they are being disposed of by this common Order.

3. On 6.4.2014, elections were conducted to Komarada Mandal Praja Parishad and Jiyyammavalasa Mandal Praja Parishads of Vizianagaram District. Petitioners in all these Writ Petitions contested for office of member of Mandal Parishad Territorial Constituencies (for short "MPTC") in those Mandal Praja Parishads (for short "MPPs") supported by the Telugu Desam Party (TDP party) and were elected.

4. The State Election Commission had issued orders on 26-06-2014 to conduct elections to the Mandal Co-option Members, President and Vice Presidents of

Mandal Parishad. Notices were issued to the Members of MPTC requesting them to be present in a special meeting to be held on 04-07-2014 for the elections. The respective 4th respondents issued a whip to members (including the petitioners) who got elected as members of MPTCs on behalf of the TDP Party intimating that Smt. Killada Padamvathi and Smt. Atchireddy Uma Maheswari were its candidates for the post of President in Komarada and Jiyyammavalasa MPPs and directed them to vote in their favour.

5. The petitioner in W.P. No. 24928 of 2014 Smt. Nangireddy Priyanka's name was proposed by the 1st petitioner in W.P. No. 24851 of 2014 Smt. V. Lavanya Latha as against Smt. Killada Padmavathi in respect of office of President of MPP Komarada. The petitioner in W.P. No. 24928 of 2014 Smt. Nangireddy Priyanka had contested as an independent candidate to the post of President of the MPP Komarada and all the petitioners in W.P. No. 24851 of 2014 voted in her favour in violation of the whip issued by 4th respondent to them to vote in favour of Smt. Killada Padmavathi. Consequently the petitioner in W.P. No. 24928 of 2014 Smt. Nangireddy Priyanka got elected as President of MPP Komarada.

6. Likewise the 4th respondent in W.P. No. 24849 of 2014 had issued a whip directing the petitioners in the said Writ Petition to vote in favour of Smt. Atchireddy Uma Maheswari, M.P.T.C., Jiyyammavalasa who was the candidate proposed by the TDP party for the MPP Jiyyammavalasa. In violation of the said whip, the petitioners in the said Writ Petition voted in favour of Smt. Datti Kameswari, the rival candidate. Therefore, the latter got elected as President of MPP Jiyyammavalasa.

7. The respective 4th respondents lodged complaints with the 3rd respondent to disqualify all the petitioners as members of MPTCs on the ground that they had all disobeyed the whip issued by them on behalf of the TDP party. Thereafter show cause notices were issued to all the petitioners by the 3rd respondent to show cause why they should not be disqualified as members of MPTCs on the said ground.

8. Explanations were submitted by the petitioners to the said show cause notices. In substance their plea was that they did not receive any notice of whip from the respective 4th respondents and they had no knowledge of the same; therefore the question of violating the whip does not arise; the respective 4th respondents were not appointed as whips by the TDP State President because they were not members of TDP party and in no way concerned with the activity of the TDP party or with the process of making choice of the said party's candidate for MPP elections in the respective Mandals; that the respective 4th respondents had contested for the post of MPTC, Vikramapuram and Peda Buddidi respectively as independent candidates against the TDP party candidate and got elected. They further contended that the whip issued by the respective 4th respondents was not communicated to the respective 3rd respondents; that they did not know who the respective 4th respondents were; and therefore they cannot be disqualified.

9. By separate orders Rc. No. 43 dt. 21-08-2014, Rc. No. 43 dt. 21-08-2014 and Rc. No. 9/2014/Elections dt. 20-08-2014 respectively, the respective 3rd respondents disqualified all the petitioners as members of their respective MPTCs on the ground that they had violated the whip issued by the respective 4th respondents. The respective 3rd respondents held that the respective 4th respondents were appointed as whips by TDP Party; that they had informed the petitioners to vote in favour of the candidates proposed by the said party; that the petitioners had refused to receive the said whip; that the candidature of the official candidates proposed by the said party were announced by the said party and all the petitioners were also informed of the same in the special meeting; and yet the petitioners voted against the official candidate and so incurred disqualification of membership of MPTC for that reason.

10. These orders are challenged in these Writ Petitions.

11. Sri A. Satya Prasad, learned Senior Counsel appearing for the petitioners contended that the impugned orders cannot be sustained as procedure contemplated under Section 153 and Rules 10 and 11 of the Rules relating to conduct of Election of Member (Coopted) and President/Vice President of Mandal Parishad and Member (Coopted) and Chairperson and Vice Chairperson of Zilla Praja Parishad as notified under G.O.Ms. No. 173, Panchayat Raj and Rural Development (Elections) Department dt. 10-05-2006 have been violated; therefore the petitioners are entitled to approach this Court under Article 226 of the Constitution of India and need not avail the alternative remedy provided in Section 153-A of the AP Panchayat Raj Act, 1994 (for short "the Act"). He contended that the petitioner in W.P. No. 24928 of 2014 contested as independent candidate (rebel TDP candidate) as against Smt. Killada Padmavathi, the official candidate proposed by the TDP party for the office of President of Komarada MPP which took place on 04-07-2014; that no whip was issued by the said party through its functionary as stipulated under Section 153 of the Act; even if such a whip was issued, it was not served upon the petitioners; that 4th respondent in W.P. No. 24928 of 2014 and 24851 of 2014 was not a functionary of the said party and he was not elected on behalf of the said party in the election held for MPTC Members; that in fact he had contested against the official TDP candidate Sri D. Venkatarao; and therefore he cannot be said to be a functionary of a recognized political party within the ambit and scope of Section 153 of the Act and was not entitled to issue any whip. He further contended that the impugned orders passed therein cannot be sustained since the whip was itself not served on the petitioners and this fact was not appreciated by 3rd respondent and therefore his orders are vitiated. Similar contentions were advanced with regard to W.P. No. 24849 of 2014.

12. The learned counsel for 4th respondent contended that petitioners have an effective alternative remedy under Section 153-A of the Act to question the orders passed by 3rd respondent; the contentions being raised by the petitioners could as well be raised before the District Court which is empowered to decide

disputes of this nature under Section 153-A of the Act; and therefore the writ petitions should be dismissed leaving it open to the petitioners to avail the alternative remedy provided under Section 153-A of the Act. He also disputed the fact that the 4th respondent was not a functionary of the TDP party or that he was not competent to issue any whip to vote in favour of the official candidate proposed by the said party or that he was not authorised to issue said whip or that the petitioners had no knowledge of the issuance of whip.

13. I have noted the submissions of both sides.

14. The point for consideration is "whether the Writ Petitions filed by petitioners should be entertained by this Court or whether the petitioners should be relegated to the District Court for challenging the impugned orders?".

15. Section 153A of the Act states:

"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]."

16. It is settled law that non-entertainment of Writ Petitions under Article 226 of Constitution of India by this Court when an effective alternative remedy is available is a self-imposed limitation. It is essentially a rule of policy, convenience and discretion rather than a rule of law. The Supreme Court of India in Commissioner of Income Tax and Others Vs. Chhabil Dass Agarwal, , after reviewing the legal position categorically held that the High Court must not interfere if there is an adequate efficacious alternative remedy available to the petitioner and he has approached the High Court without availing the same unless he has made out an exceptional case warranting such interference or there exists sufficient grounds to invoke the extraordinary jurisdiction under Article 226. It also observed that if there is a breach of natural justice, or procedure required for decision has not been adopted, or where the statutory authority has acted not in accordance with the provisions of the enactment in question, or in defiance of fundamental principles of judicial procedure, or resorted to invoke provisions which are repealed, alternative remedy would not be a bar for entertaining a Writ Petition.

17. In Nivedita Sharma Vs. Cellular Operators Assn. of India and Others, , the Supreme Court held:

"15. In the judgments relied upon by Shri Vaidyanathan, which, by and large, reiterate the proposition laid down in Baburam Prakash Chandra Maheshwari v. Antarim Zila Parishad, it has been held that an alternative remedy is not a bar to

the entertaining of writ petition filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order under challenge is wholly without jurisdiction or the vires of the statute is under challenge.

16. It can, thus, be said that this Court has recognised some exceptions to the rule of alternative remedy. However, the proposition laid down in Thansingh Nathmal v. Supt. of Taxes and other similar judgments that the High Court will not entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person or the statute under which the action complained of has been taken itself contains a mechanism for redressal of grievance still holds the field. "

18. In Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , the Supreme Court has held:

"15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

19. In Seemala Babu Bhuvana Mohana Rao vs. Dati Kameswari and others W.A. No. 1243 of 2014 dt. 07-10-2014 a person was disqualified as President of a Mandal Praja Parishad, Jiyammavalasa Mandal, Vizianagaram District on the ground that he violated a whip issued by the TDP party. A Division Bench of this Court presided over by the Hon'ble the Chief Justice found fault with a learned single Judge of this Court for entertaining a Writ Petition and granting interim relief to that person when there was no violation of principles of natural justice and observed:

"9.....From the contentions raised by the writ petitioner before the impugned order was passed, it is clear that the authority of appellant as Whip has been questioned. The Presiding Officer on this issue has rightly or wrongly held that there are documents of appellant's authorization. Whether the appellant could function as Whip for any reason is highly disputed question of fact and the same requires evidence for decision. It is also contended that the writ petitioner-respondent refused to receive the Whip and such assertion and al legate on has been denied and disputed. This factual issue also requires evidence. We think that all these factual aspects cannot conveniently be gone into in writ jurisdiction. We agree with the contention of Sri Satya Prasad, learned Senior Counsel, appearing for the writ petitioner-respondent, that in case of breach of

principles of natural justice, alternative remedy cannot be a hindrance in entertaining the writ petition. The learned trial Judge has noticed that there has been breach of principles of natural justice.

10. We have examined this aspect and find impugned order of disqualification was not passed in violation of principles of natural justice. Accordingly, the matter of this nature should not have been entertained ignoring the aforesaid statutory mechanism as narrated above.

11. As Statutory remedy is available, we permit the writ petitioner, if so advised, to avail statutory remedy.

12. We are not oblivious of the fact that with setting aside the impugned order there will administrative vacuum as it is office of the President of the Mandal Praja Parishad and more over on the strength of the interim order passed by the learned trial Judge, the writ petitioner-respondent has assumed the office. A copy of the communication dt. 25-09-2014 from the Mandal Parishad Development Officer, Mandal Praja Parishad, Jiyyammavalasa, to the Chief Executive Officer, Zilla Praja Parishad, Vizianagaram, has been produced before us wherefrom it appears that the writ petitioner-respondent Smt. Datti Kameswari, has assumed office from 25-09-2014 onwards.

13. We, therefore, modify the order of the learned trial Judge to the effect that for a period of fortnight she will continue in the office. However, no major policy decision, including decisions involving financial matters exceeding Rs. 10,000/- shall be taken. She may take routine decisions for running administration during the period of fortnight. On expiry of fortnight she will stand vacated. The observations and findings of the Hon'ble trial Judge as well as of ours will not be a binding factor upon the learned District Judge, if action is taken by the writ petitioner-respondent and it would be open for both the parties, all the parties for that matter, to pray for appropriate interim relief before the District Judge, if so advised. If action is taken, we desire and expect that the learned District Judge shall decide the matter within a period of six weeks from the date of filing of the appeal and no unnecessary adjournment shall be granted in the matter."

20. The said decision relates to the same MPP as in W.P. 24849 of 2014 and therefore applies on all fours to the present case.

21. In my opinion, the questions whether the respective 4th respondents were validly appointed as whips of the TDP party, or whether their appointment was communicated to respective 3rd respondents, or whether the whips issued were served on the petitioners or not, are all disputed question of fact which require evidence and cannot be conveniently gone into in Writ Jurisdiction.

22. It is true that the counsel for the petitioners had relied upon an order dt. 01-10-2014 in W.P. No. 29857 of 2014 of a learned Single Judge of this Court entertaining and granting interim relief in similar cases and also orders dt. 02-09-2014 in W.A.M.P. No. 2766 of 2014 in W.A. No. 1149 of 2014 and W.A.M.P.

No. 2767 of 2014 in W.A. No. 1150 of 2014 and sought to persuade this Court to entertain and grant interim relief as in those cases.

23. I am unable to agree with the said submission for the reason that interim orders do not constitute precedents. This is well settled. Reference may be made to *State of Assam Vs. Barak Upatyaka D.U. Karmachari Sanstha*, wherein the Supreme Court declared:

"21. A precedent is a judicial decision containing a principle, which forms an authoritative element termed as *ratio decidendi*. An interim order which does not finally and conclusively decide an issue cannot be a precedent. Any reasons assigned in support of such non-final interim order containing *prima facie* findings, are only tentative. Any interim directions issued on the basis of such *prima facie* findings are temporary arrangements to preserve the status quo till the matter is finally decided, to ensure that the matter does not become either infructuous or a *fait accompli* before the final hearing.

22. The observations and directions in *Kapila Hingorani Vs. State of Bihar*, and *Jai Singh B. Chauhan Vs. Punjab National Bank and Others*, being interim directions based on tentative reasons, restricted to the peculiar facts of that case involving an extraordinary situation of human rights violation resulting in starvation deaths and suicides by reason of non-payment of salaries to the employees of a large number of public sector undertakings for several years, have no value as precedents. "

24. Moreover, in the light of the final order in *Seemala Babu Bhuvana Mohan Rao* (*supra*) where this Court has taken a view that where disputed questions of fact arise, in the absence of violation of principles of natural justice, a person disqualified under Section 153 of the Act should avail of the alternative remedy provided in Section 153-A of the Act and the Writ Petitions should not have been entertained by this Court, I am inclined to dismiss the Writ Petitions giving liberty to the petitioners to avail the said remedy.

25. Although the learned counsel for petitioners contended that the District Court, which is the forum provided under Section 153-A of the Act, would not ordinarily grant interim relief, in my opinion the said submission is without any merit. In case the petitioners approach the District Court invoking Section 153-A of the Act, this Court expects the said Court to exercise the jurisdiction conferred on it in accordance with law and decide, whether in the facts and circumstances of the case, the petitioners would be entitled to any interim relief or not. There is no basis for the apprehension of the petitioners that the District Court has no capacity to appreciate the facts and points of law which would arise if a challenge to the orders impugned herein is made before it.

26. Therefore I am of the opinion that the Writ petitions are liable to be dismissed granting liberty to the petitioners to avail the alternative remedy under sec. 153-A of the Act.

27. The learned counsel for the petitioners relied upon para-13 in the decision in Seemala Babu Bhuvana Mohan Rao (supra) and contended that similar direction may be given to the petitioner in W.P. No. 24928 of 2014 who was elected a President of the Mandal Praja Parishad, Komarada. Although the learned counsel for 4th respondent opposed the same, in order to maintain consistency, it is directed that the order of the 3rd respondent shall not be given effect to for a period of two (02) weeks from today subject to the condition that the petitioner in the said W.P. shall not take any major policy decisions including decisions involving financial matters exceeding Rs. 10,000/- and shall take only routine decisions for running administration during this period. On expiry of this period, the petitioner would cease to be the President of the Mandal Praja Parishad, Komarada.

28. If the petitioners were to approach the competent District Court invoking Section 153-A of the Act, it would be open to them to pray for appropriate interim relief, if so advised, and the said Court shall decide the same without being influenced by any observations herein within six (06) weeks from the date of the filing of the said proceedings before him without granting unnecessary adjournments.

29. Subject to the above, the Writ Petitions are dismissed. No costs.

30. Miscellaneous petitions, pending if any, in this Writ Petition, shall stand closed.