

(2002) 07 AP CK 0075

In the Andhra Pradesh High Court

Case No : WA No's. 1907 and 1908 of 2001 and WP No. 20346 of 2001

S. Jyothi

APPELLANT

Vs

Presiding Officer/Election Officer, Thottambedu Mandal,
Chittoor Dist. and Others

RESPONDENT

Date of Decision : 10-07-2002

Acts Referred:

Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Praja Parishads) Rules, 1995 — Rule 11, 12
Andhra Pradesh Panchayat Raj Act, 1994 — Section 153, 153(1), 17, 22, 233

Citation : (2002) 4 ALD 660 : (2002) 6 ALT 18

Hon'ble Judges : S.R. Nayak, J; Dalava Subrahmanyam, J

Bench : Division Bench

Advocate : E. Ayyapu Reddy, for the Appellant; D. Sudershan Reddy, V.V. Prabhakar Rao, Counsel for Respondent No. 1 in WP No. 20346 of 2001 and C.V. Mohan Reddy, for K. Ratangapani Reddy, Counsel for Respondent Nos. 2 and 3 in WP No. 20346 of 2001, for the Respondent

Judgement

S.R. Nayak, J.—WA Nos. 1907 and 1908 of 2001 filed by the unsuccessful petitioners are directed against the common order of the learned single Judge dated 28-11-2001 made in WP Nos. 18953 of 2001 and 18954 of 2001. In the above writ petitions, the petitioners assailed the order passed by the Presiding Officer/ Election Officer, Thottambedu Mandai, Chittoor District, the 1st respondent herein, dated 6-9-2001 declaring that the petitioners cease to be members of the Mandai Parishad Territorial Constituency (for short, MPTC) of Thottambedu and Bonnupalli respectively with immediate effect.

2. The background facts leading to the filing of the writ petitions may be noted briefly as under; Smt. S. Jyothi, the petitioner in WP No. 18953 of 2001 and Mr. K. Chandraiah Naidu, the petitioner in WP No. 18954 of 2001 were elected as MPTC members of Thottambedu and Bonnupalli in the election Held on 17-7-2001. They belong to Telugu Desam Party, a recognised political party. Election to the post of President and Vice-President of Thottambedu Mandai was

held on 22-7-2001. It is the case of Smt. S. Jyothi, petitioner in WP No. 18953 of 2001 that the District Telugu Desam Party President appointed her as Party Whip and he also issued a notice to the Presiding Officer, Thottambedu Mandai intimating her appointment as Party Whip for the election to the posts of President and Vice-President. It is also her case that B-Form was issued in favour of Mr. K. Chandraiah Naidu, petitioner in WP No. 18954 of 2001 for the post of President of Mandai Praja Parishad and according to her a copy appointing her as Party Whip was presented to the Presiding Officer, the 1st respondent on 22-7-2001 at 9.15 a.m., but, however, after sometime, another person by name Mr. K. Dhananjeyulu presented another B-Form to the Presiding Officer alleged to have been issued by the District Telugu Desam Party President to the effect that one Mr. Y Madhavaiah was appointed as Party Whip and B-Form in favour of Mr. K. Dhananjeyulu for the post of President and Mr. K. Chandraiah Naidu for the post of Vice-President was issued on behalf of the Telugu Desam Party. The elections took place as scheduled, but it appears, Mr. Y. Madhavaiah made a complaint to the Presiding Officer, the 1st respondent herein, requesting him to disqualify the petitioners as MPTC members on the ground that they disobeyed the orders of the Party Whip in regard to the elections for the posts of President and Vice-President of Thottambedu Mandai. Pursuant to the said complaint, by order dated 22-7-2001, the petitioners were disqualified as members of MPTC. Aggrieved by the same, the petitioners filed W.P. Nos. 15301 and 15302 of 2001 before this Court and this Court by order dated 6-8-2001 allowed the writ petitions and directed the 1st respondent to issue fresh show cause notice to the petitioners and then to pass appropriate orders. Consequent on the said directions, fresh show-cause notices dated 11-8-2001 were issued to the petitioners to which the petitioners submitted their explanation on 15-8-2001. Thereafter, by the impugned order dated 6-9-2001, the 1st respondent declared that the petitioners cease to be the members of the MPTC.

3. Sri Y. Madhavaiah, the 4th respondent in writ petitions as well as in these writ appeals, has filed counter-affidavit In the counter-affidavit, it is stated that the writ petitions are not maintainable as there is an efficacious and alternative remedy of filing election petition u/s 233 of the A.P. Panchayat Raj Act, 1994 (for short, "the Act") read with Clause (b) of Article 243 of the Constitution. It is also stated that the Rules relating to election Tribunal in respect of Gram Panchayat, Mandai Parishads and Zilla Parishads were framed by the Government in G.O. Ms. No. 111, dated 3-3-1995 and that the Sub-Court (now Senior Civil Judge's Court) is the Election Tribunal and, therefore, the petitioners are required to file election petitions and in that view of the matter, they cannot approach this Court under Article 226 of the Constitution. It is also stated that as disputed questions of fact are raised in the writ petitions as regards the mode and method of dealing with the Whip constituting alleged violation of the provisions of the Act and the Rules made thereunder, that controversy cannot be decided in these writ petitions and, therefore, the writ petitions are not maintainable. It is also stated that the District TDP President of Chittoor appointed the 4th respondent on

21-7-2001 as Party Whip of TDP for the elections of President and Vice-President of the Mandai Parishad that were to be held on 22-7-2001 and also issued B-Form in favour of Mr. K. Dhananjeyulu for the post of President and Mr. K. Chandraiah Naidu for the post of Vice-President. It is also stated that the letter appointing the 4th respondent as Party Whip was handed over to the Assistant Election Officer on 21.7.2001 itself and the B-Forms issued by the District Party President in favour of Mr. K. Dhananjeyulu and Mr. K. Chandraiah Naidu for the posts of President and Vice-President respectively were handed over to the Election Officer on 22-7-2001. It is further stated that the writ petitioner, Mrs. Jyothi secured a form of appointment of Whip and B-Form with the connivance of the local MLA who happens to be the Minister and made use of the same as if Smt S. Jyothi was the Party Whip of TDP and B-Form was also accordingly submitted as the official candidate on behalf of TDP. After coming to know about this, the same was informed to the District President of TDP who in turn sent fax message to the 1st respondent confirming the appointment of Party Whip in favour of the 4th respondent (Mr. Y. Madhavaiah) and also issued B-form in favour of Mr. K. Dhananjeyulu for the post of President and Mr. K. Chandraiah Naidu for the post of Vice-President. The Election Officer, after verifying the appointment of the 4th respondent as Party Whip on 21-7-2001 itself and the confirmation as regards the issuance of B-Form by the District TDP in favour of Mr. K Dhananjeyulu for the post of President accepted Mr. K. Dhananjeyulu as official candidate of TDP for the post of President and Mr. K. Chandraiah Naidu for the post of Vice-President. It is further stated that giving a go-by to the directions of the Party Whip, the petitioner in WP No. 18954 of 2001, Sri Chandraiah Naidu, contested as an independent candidate for the post of President and he was declared elected for the post of President of the Mandai. It is also stated that the petitioner in WP No. 18954 of 2001 was elected with the support of four MPTC members belonging to the Congress Party and Smt S. Jyothi, the petitioner in WP No. 18953 of 2001, and thus they disobeyed the Party Whip and, therefore, a report was made available to the party high command to the effect that the petitioners disobeyed the Party Whip and consequently on a complaint made to the Presiding Officer, the impugned orders were passed and, therefore, the impugned orders are legal and valid. It is further stated that even on merits, no case is made out for interference by this Court under Article 226 of the Constitution.

4. The 1st respondent did not file any counter. The learned single Judge in the order has stated that despite granting several opportunities to the 1st respondent, the 1st respondent did not file the counter.

5. The learned single Judge upholding the preliminary objection raised by the 4th respondent that the writ petitions are not maintainable, because, the election process is complete and, therefore, the only course open to the aggrieved petitioners is to file election petitions, dismissed the writ petitions by order dated 28-11-2001. Hence the above writ appeals.

6. In WP No. 20346 of 2001, Smt. Anandamma and 6 others, who are elected as members of Kurnool Mandai Parishad on behalf of the Indian National Congress Party, have assailed the order of the 1st respondent-M.D.O.-cum-Election Officer, Kurnool Rural Mandal, Kurnool, dated 21-9-2001 declaring the petitioners as having been disqualified as members of the Mandai Parishad, Kurnool Rural Mandal. The background facts leading to the filing of the above writ petition may be briefly noted and they are as follows. In the election to elect 19 members to Kurnool Mandai Parishad, the TOP secured 5 seats, CPI (M) -2, Independent -1, and Congress (I) - 11. The petitioners 1 to 7 and respondents 2 and 3 and two others belong to Congress Party. Since the Congress Party commanded clear majority, the 1st petitioner was proposed for the post of President of Kurnool Mandal Parishad. The 2nd petitioner, Mr. P. Viswanatha Reddy, was appointed as the Chief Whip of the Party. The 1st respondent convened a special meeting for the election of the President and the Vice President on 22-7-2001. The 1st petitioner filed her nomination on behalf of the Congress Party and she also submitted her authorization letter to the 1st respondent, who was the election officer. The 2nd respondent issued the Whip directing all the members of the Congress Party to be present and vote for the first petitioner. The Whip was served on all members of the Congress Party of the Mandai Parishad and it was also served on the first respondent on 22-7-2001. In spite of the issuance of the Whip, respondents 2 and 3 and two other Congress Party MPTC members absented themselves from attending the meeting after colluding with the TDP members. Therefore, on the ground that there was no quorum for the special meeting, the meeting was adjourned to the next day i.e., 23-7-2001 and since there was no quorum on that day also, the meeting was convened on 28-7-2001. On that day, one Mani Gandhi, the 3rd respondent, who is the son of the 3rd respondent herein, who is the son of Sri Sikhamani, Congress MLA, filed his nomination as a Congress Party candidate with an authorization letter stated to have been issued by PCC, Hyderabad. Coming to know about the clandestine efforts of respondents 2 and 3 in collusion with the TDP members, the petitioners 2 to 7 protested against the manipulation and they wanted disciplinary action to be taken against respondents 2 and 3 by the Congress PCC President and all the petitioners lodged their protest with the first respondent. The 1st petitioner also objected to the acceptance of the nomination of the 3rd respondent as the Congress candidate. The 1st petitioner also raised an objection regarding appointment of 2nd respondent as Party Whip. It was also brought to the notice of the 1st respondent that the 2nd respondent did not serve any authorization or Whip on the petitioners 1 to 7 and she did not file any evidence to show that she had served notice of the Whip on the petitioners. However, election was held on 28-7-2001 and the 3rd respondent was declared elected as 5 members of TDP and the defected members of Congress-I Party supported her. The 1st petitioner, being aggrieved by the said action, has filed Election Petition No. 72 of 2001 in the Court of the Senior Civil Judge-cum-Election Tribunal, Kurnool challenging the validity of the election of the 3rd respondent. In the meanwhile, the 1st respondent issued show-cause notice Rc. No. C/178/2001, dated 29-7-2001 to

the petitioners to show-cause as to why they should not be disqualified for the disobedience of the Whip issued by the 2nd respondent. The petitioners sent reply to the said show cause notice to the 1st respondent through their Counsel Sri Chand Basha. The 1st respondent issued the impugned proceedings dated 21-9-2001 declaring the petitioners as having been disqualified as members of Mandai Parishad. Hence the writ petition by the petitioners assailing the above order of the 1st respondent.

7. We have heard Sri E. Ayyapu Reddy, learned senior Counsel for the appellants in the writ appeals and for the petitioners in the writ petition, Sri D. Sudershan Reddy, learned Counsel appearing for the un-official respondents in the writ appeals and Sri C.V. Mohan Reddy, appearing for the unofficial respondents 2 and 3 in Writ Petition No. 20346 of 2001 and the learned Standing Counsel for the State Election Commission. Sri D. Sudershan Reddy, learned Counsel appearing for the contesting unofficial respondent No. 4 in the writ appeals reiterated his contention at the threshold that WP Nos. 18953 and 18954 of 2001, out of which the present writ appeals arise, are not maintainable as rightly held by the learned single Judge. Sri Sudershan Reddy contended that once the election process is complete, the only remedy available to the aggrieved party is to work out his legal remedies by way of election petition and, therefore, the writ petitions are not maintainable. In support of his contention, Sri Sudershan Reddy placed reliance on the decisions of the Apex Court in *Election Commission of India Through Secretary Vs. Ashok Kumar and Others*, *Shri Sant Sadguru Janardhan Swamy v. State of Maharashtra* 2001 (5) DT (SC) 287, and a Full Bench judgment of this Court in *Guttakonda Kanaka Durga Vs. State Election Commissioner, Govt. of A.P., and others*. On the other hand, Sri E. Ayyapu Reddy, learned Senior Counsel contended that the view of the learned single Judge that the writ petitions are not maintainable is erroneous and that the learned single Judge has failed to see that an election petition would not be u/s 233 of the A.P. Panchayat Raj Act, 1994 (for short, "the Act") against a disqualification order passed by the Presiding Officer under Sub-rule 7(ii) of Rule 13 of the A.P. Conduct of Elections of Member (Co-opted) President/Vice-President of Mandai Parishad and Member (Co-opted) Chairman and Vice Chairman of Zilla Parishad Rules, 1994 (hereinafter, for the sake of brevity, referred to as President/ Vice-President Election Rules) read with Section 153 of the Act. Sri Ayyapu Reddy contended that the order made by the Presiding Officer under Rule 13(7)(ii) of the President and Vice-President Election Rules is made final and no remedy is provided under the Act or the Rules framed thereunder and, therefore, the only remedy available to the aggrieved party is to invoke judicial review power conferred on this Court under Article 226 of the Constitution, and not by way of an election petition. Sri Ayyapu Reddy also contended that the decisions cited by the learned Counsel for the contesting unofficial 4th respondent are of no help to substantiate that in the case of disqualification also the only remedy provided under the Act is by way of election petition. The learned Counsel contended that disqualification is an event after the

election and, therefore, the dispute relating to such an event could not be comprehended within the ratio of the Judgments cited by Sri D. Sudershan Reddy. Sri E. Ayyapu Reddy further contended that, in fact, the Election Tribunal has no power at all to consider or go into the issues relating to the disqualification envisaged under Rule 13(7)(ii) of the President and Vice-President Election Rules. Sri Ayyapu Reddy, therefore, contended that the learned single Judge was not justified in dismissing the writ petitions by opining that they are not maintainable, and the learned single Judge should have decided the writ petitions on merits.

8. Sri C.V. Mohan Reddy, learned Counsel appearing for respondents 1 and 2 in WP No. 20346 of 2001 supported the contention of Sri E. Ayyapu Reddy as regards the maintainability of the writ petitions.

9. Learned Counsel for all the parties including the learned Standing Counsel for State Election Commission, Sri V.V. Prabhakar Rao, requested the Court that in the event of the Court holding that the writ petitions are maintainable under Article 226, to decide the merits of the case also. Accordingly, learned Counsel for the parties were heard on merits. The learned Standing Counsel for the State Election Commission also produced the original records relating to the impugned disqualification of the petitioners in all the three writ petitions.

10. Sri E. Ayyapu Reddy, arguing on merits, contended that since it is the admitted case of the Presiding Officer that the Whip was received on 22.7.2001 only in violation of the mandatory provisions of Rule 13(6) of the President and Vice-President Election Rules, the disqualification orders passed by the Presiding Officer cannot be sustained, being illegal and they are liable to be set aside. Sri Ayyapu Reddy also contended that in the circular No. 853/SEC-B1/2001-3 dated 19-7-2001 issued by the State Election Commission it is specifically directed that the appointment of a 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. In the instant case, though the Whip was issued in favour of Mr. Y. Madhavaiah, the 4th respondent is dated 21-7-2001, the same was not served on the Presiding Officer before 11.00 a.m., on the day preceding the day of election. Sri Ayyapu Reddy contended that the learned single Judge failed to appreciate the guidelines issued by the State Election Commission in para 3(c) of the above Circular in which it is stated that even if more than one Whip is appointed and different persons so appointed as Whips give contradictory directions to the Members for voting, in such case, the members obeying the directions of any one of the said Whips cannot be subjected to any disqualification. Sri Ayyapu Reddy also contended that the disqualification orders passed by the Presiding Officers, could not be sustained in the light of the judgment of the Division Bench of this Court in WP Nos. 15635 and 15341 of 2001, dated 4-10-2001 Sri Ayyapu Reddy contended that if both the Whips are found to be invalid for infraction of mandatory provisions of Rule 13(6) of the President and Vice-President Election Rules, the writ petitioners

could not be disqualified. Sri Ayyapu Reddy contended that the letter Roc. No. 35/2000-B dated 22-7-2001 addressed by the Election Officer, Thotambedu to the District Election Officer, Chittoor clearly shows that the Whip was issued in favour of Mr. Y. Madhavaiah, the 4th respondent only at 9.30 a.m. on 22-7-2001 after issuing Whip in favour of Smt. Jyothi on the same day at 9 15 a.m.

11. Sri D. Sudershan Reddy, on the other hand, contended that the District TDP President of Chittoor appointed Mr. Y. Madhavaiah, the 4th respondent, on 21-7-2001 as Whip of the TDP for the election of President/Vice-President to be held on 22-7-2001 and that appointment letter was, in fact, handed over to the Assistant Election Officer on 21.7.2001 itself as the Election Officer was out of station on that day. Sri D. Sudershan Reddy, contended that the appellants/petitioners with the connivance of the local MLA who happens to be the Minister secured the form of appointment of Whip and B-Form of Sathyavedu Assembly Segment and made use of them as if the writ petitioner in WP No. 18953 of 2001 is the Whip of TDP and that B-Form was submitted by the petitioner in WP No. 18954 of 2001 as official candidate on behalf of TDP for the post of Vice-President of Thottambedu Mandai. When this was brought to the notice of the District President of TDP, he sent a fax message confirming the appointment of Mr. Y. Madhavaiah, the 4th respondent as Party Whip and B-Form in favour of Mr. K. Dhananjayulu for the post of President and Mr. K. Chandraiah Naidu, writ petitioner in WP No. 18954 of 2001 for the post of Vice-President. Sri Sudershan Reddy, therefore, contended that no Whip was issued in favour of Smt Jyothi in the first instance and even if it is held that such a Whip was issued in her favour, even then, the Whip was not served on the members as well as the Presiding Officer, as prescribed under the Rules.

12. Arguing on behalf of the petitioners in WP No. 20346 of 2001, Sri E. Ayyapu Reddy, contended that the appointment of Smt. Nirmala, the 2nd respondent, as Whip was not in accordance with the rules. Since Sri P. Viswanatha Reddy, the 2nd petitioner was already appointed as Whip and since that appointment was not cancelled, the 2nd respondent ought not to have been appointed as the Whip by the political party as per the Rules. The 2nd respondent was nominated by Sri Sikhamani, local MLA, who is the father of Mr. Mani Gandhi, the 3rd respondent. The learned Counsel contended that Mr. Sikhamani had no authority to appoint the 2nd respondent as the Whip, because the Whip could be appointed only by the political party. Sri Ayyapu Reddy contended that intimation of appointment of the 2nd respondent as Whip was not served on the Presiding Officer before 11.00 a.m. on 27-7-2001 Sri Ayyapu Reddy further contended that admittedly no written Whip was served on any of the seven petitioners and publication of the notice in the local newspaper cannot be regarded as proper notice on the writ petitioners. Lastly, Sri Ayyapu Reddy contended that the Mandai Revenue Officer in the show-cause notice has stated that the petitioners have voted against the official candidate. But, nowhere he has recorded his finding that the petitioners were served with notice of the Whip and they disobeyed such Whip.

13. Sri C.V. Mohan Reddy, learned Counsel appearing for the 2nd respondent in the writ petition contended that the political party itself did not issue Whips and the established practice is that the political parties authorise the district unit heads of the party to issue Whips. Sri C.V. Mohan Reddy also contended that although Sri Ayyapu Reddy, learned Senior Counsel urged the above grounds to assail the validity of disqualification orders passed against the writ petitioners, those grounds, except the ground relating to non-service of intimation of the Whip issued in favour of the 2nd respondent, are not taken in the affidavit filed in support of the writ petition and, therefore, the 2nd respondent had no opportunity to answer those allegations. Sri C.V. Mohan Reddy contended that the Act and the rules framed thereunder do not prescribe any specific mode of service of notice of Whip on the members and in that view of the matter and for the reasons stated by the 2nd respondent in her counter-affidavit, the notice by way of newspaper publication should be regarded as proper notice of the Whip. The learned Counsel contended that since the petitioners evaded the notice, publication of notice published in the newspapers should be held to be proper notice. Sri C.V. Mohan Reddy further contended that the petitioners have also not stated in the affidavit filed in support of the writ petition that they were not aware of the Whip notice published in the newspaper. Sri C.V. Mohan Reddy also contended that the petitioners in their letter dated 27-7-2001 addressed to the Presiding Officer, but given to the Presiding Officer at 10.05 a.m. on 28-7-2001 have stated that they resigned from the Congress Party and that this fact is not disclosed by the petitioners in the affidavit filed in support of the writ petition and, therefore, the writ petition is liable to be dismissed in limine only on that ground. The learned Counsel relied on a Division Bench judgment of this Court in Ibiza Industries Ltd. and Another Vs. Union of India and Others, , in support of the contention. The learned Counsel also contended that since election was postponed from 22-7-2001 to 28-7-2001, the State Election Commission on 24-7-2001 directed filing of fresh Whip. Therefore, there is no merit in the contention of Sri Ayyapu Reddy that the 2nd respondent should not have been appointed as a Whip without canceling the Whip issued in favour of Sri P. Viswanatha Reddy, 2nd petitioner. By way of reply, Sri, Ayyapy Reddy contended that the petitioners came to know the defects in the proceedings resulting in the impugned disqualification of the petitioners only when the respondents 1 and 2 filed the counters and produced the documents and, therefore, it is permissible to urge the grounds which are based on the pleadings and documents of the respondents themselves. Alternatively, Sri Ayyapu Reddy contended, the contention, that the petitioners have not raised all the contentions now raised at the time of argument in the writ affidavit are also not correct. In the writ affidavit, the petitioners have alleged not only the fact that the intimation of the appointment of respondent No. 2 as Whip was not served on them or on the Presiding Officer before 11.00 a.m., on 27th July, 2001, but also specifically contended that at the time of election, the 1st petitioner objected to the acceptance of the nomination of the 2nd respondent as congress candidate and also questioned the appointment of the 2nd respondent as Party Whip. Sri

Ayyapu Reddy also contended that the non-disclosure of the letter of the petitioner dated 27-7-2001 where they have stated that they resigned from Congress Party is not a relevant fact for the decision-making in the writ petition and, therefore, non-disclosure of such irrelevant fact cannot be a good ground to dismiss the writ petition in limine, as prayed by the learned Counsel for the 2nd respondent Sri Ayyapu Reddy also contended that there is no merit in the contention of the 2nd respondent that the writ petitioners evaded the Whip notice and, therefore, she had to publish the notice in the newspaper. Sri Ayyapu Reddy pointed out that the 2nd respondent did not state in the counter-affidavit that she made any attempt to serve notices on the petitioners and the petitioners refused to receive the same.

14. In these writ appeals and the writ petitions, since the learned Counsel appearing for the contesting non-official respondents has raised the question regarding the maintainability of the writ petitions, it becomes necessary for us to decide that question in the first instance, because, if the contention of the learned Counsel is upheld and it is held that the writ petitions are not maintainable, there will not be any necessity for us to go into and decide the other questions raised in these writ petitions.

15. It is true that by a catena of decisions of the Apex Court and the High Court it is well-settled that once an election process is set in motion, the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules in conducting the election or while preparing the electoral roll etc., and that the aggrieved party should assail the validity of the election after its result is declared in an election petition before the Election Tribunal. It is trite an election process commences from the date of election notification and ends with declaration of the result of the election and between these two events, if any irregularity or illegality creeps in the election process, it is well settled that on those grounds result of the election can be assailed by means of Election Petition before the Election Tribunal and that the High Court in exercise of the judicial review power under Article 226 should not interdict or intercept the election process between these two events.

16. In Shri Sant Sadguru Janardan Swami's case (supra) on which the learned Counsel for the contesting private respondents placed reliance in support of his contention that the writ petitions are not maintainable, one of the contentions raised before the Apex Court was that as the Electoral rolls were illegally prepared in breach of the rules, no election could be conducted on the basis of such illegal electoral rolls, and, therefore, election should be stayed. The Apex Court while rejecting that contention was pleased to observe in paras (7), (8) and (9) thus:

"7. In the light of the aforesaid provisions of Chapter XI-? of the Act and the Rules, we will examine as to whether preparation of electoral rolls is an intermediate stage in the process of election. The provisions referred to above show that Chapter XI-A was enacted and the Rules were framed specially to deal

with the election of the specified societies u/s 73-G of the Act. Section 144-X provides that various stages of election shall also include preparation of the list of voters. Once the statute provides that the preparation of the voters' list shall be part of the election process, there is no reason to hold that the preparation of the electoral roll is not an intermediate stage in the process of the election of a specified society. This matter can be examined from another angle. A perusal of the Rules discloses that the preparation of provisional list of voters, filing of objection against the provisional list of voters, consideration of the objection by the Collector and finalising the list of voters, all occur in the Rules which cover the entire process of the election. The Rules framed for election of specified societies are a complete code in itself providing for the entire process of election beginning from the stage of preparation of the provisional voters' list, decision on the objection by the Collector, finalisation of electoral rolls, holding of election and declaration of result of the election. In view of the scheme of the Act and the Rules, the preparation of voters' list must be held to be part of the election process for constituting the Managing Committee of a specified society. In *Someshwar Sahakari Sakhar Karkhana Ltd. v. Shrinivas Patil, Collector, Pune and Ors.* 1992 MLJ 883, it was held that in the scheme of the provisions of the Act and the Rules, the preparation of the list of voters for election to the Managing Committee of a specified society is an intermediate stage in the process of the election. Similar view was taken in *Shivnarayan Amarchand Paliwal v. Vasantrao Vihalrao Gurjar and Ors.* 1992 (2) MLJ 3052. However, in *Karbhari Maruti Agawan v. State of Maharashtra* 1994 (2) MLJ 1527, although it was held that the preparation of the list of voters is an intermediate stage in the process of election, but that does not debar the High Court from entertaining a petition under Article 226 of the Constitution challenging the validity of the electoral roll. It appears that the consistent view of the Bombay High Court on the interpretation of Chapter XI-? of the Act and the Rules framed thereunder is that the preparation of electoral roll is an intermediate stage of the election process of the specified societies. This being the consistent view of the High Court on the interpretation of provisions of a State Act, the same is not required to be disturbed unless it is shown that such a view of the High Court is palpably wrong or ceased to be good law in view of amendment in the Act or any subsequent declaration of law. We are, therefore, of the view that the preparation of the electoral roll for election of the specified society under Chapter XI-A and the Rules framed thereunder, is an intermediate stage in the process of election for constituting the Managing Committee of a specified society.

8. It was then urged that the Tribunal constituted under the Act has no power to go behind the preparation of the electoral roll and, therefore, the writ petition is maintainable. Learned Counsel also strongly relied upon the decisions in the case of *Bar Council of Delhi and Others Vs. Surjeet Singh and Others*, and *Ramachandra Ganpat Shinde and another Vs. State of Maharashtra and others*, . Learned Counsel also referred to Section 100 of the Representation of the People Act and a decision in the case of *Shri Shreewant Kumar Choudhary Vs. Shri*

Baidyanath Panjiar, . In sum and substance, the argument is that since the breach of rule in preparation of the electoral roll cannot be questioned in an election petition before the Election Tribunal, therefore, the writ petition challenging the preparation of the electoral roll could not have been dismissed on the ground that the appellants had an alternative remedy of filing an election petition. In this regard, it is relevant to notice Rule 81 of the Rules which provides for grounds for declaring election to be void. The relevant portion of the Rule runs as under:

"81, Grounds for declaring elections to be void-- (d)(iv) by any non-compliance with the provisions of the Act or any rules made thereunder, the Commissioner shall declare the election of the returned candidate to be void. "

9. If the contention of the appellants is that there was a breach of rule or certain mandatory provisions of the Rules were not complied with while preparing the electoral roll, the same could be challenged under Rule 81 (d)(iv) of the Rules by means of an election petition. In view that the preparation of electoral roll is part of the election process and if there is any breach of the Rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election by means of an election petition before the Tribunal.

In para (12), the Supreme Court further observed thus :

"12. In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

The ratio of the above judgment of the Apex Court is that if an aggrieved party wants to assail the correctness and legality of any intermediate stage taken by the Election Officer in the process of conduct of the election, the only mode of challenge is by means of an Election Petition after the declaration of the result and the High Court should not intercept or interdict election process at any intermediate stage of the election. In other words, even assuming that the applicant for the writ under Article 226 alleges that the election process is vitiated on account of certain irregularity, illegality or breach of mandatory rules governing conduct of the election and even where the Court prime facie finds substance in such allegations, even then, the Court under Article 226 should not intercept or interdict the election process. The rule is : Once election process is set in motion, it should be allowed to end with the declaration of the result of the election. And, in between these two events, if any irregularity or illegality creeps

in the process of election, the only remedy for the aggrieved party to assail the legality of the election is by means of an election petition and not by way of a Writ Petition under Article 226 of the Constitution. To the same effect, the opinion of the Supreme Court in *Election Commission of India Through Secretary v. Ashok Kumar and Ors.* (supra), where the Apex Court opined that if the Court's intervention is sought after the commencement of the election which has the effect of interrupting, obstructing or protracting the election proceedings, then, judicial remedy should be postponed till after the completion of such proceedings. The Supreme Court in para (29) observed thus :

"29. Section 100 of the Representation of the People Act, 1951 needs to be read with Article 329(b), the former being a product of the latter. The sweep of Section 100 spelling out the legislative intent would assist us in determining the span of Article 329(b) though the fact remains that any legislative enactment cannot curtail or override the operation of a provision contained in the Constitution. Section 100 is the only provision within the scope of which an attack on the validity of the election must fall so as to be a ground available for avoiding an election and depriving the successful candidate of his victory at the polls. The Constitution Bench in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, asks us to read Section 100 widely as "covering the whole basket of grievances of the candidates". Sub-clause (iv) of Clause (d) of Subsection (1) of Section 100 is a "residual catch-all clause". Whenever (here has been non-compliance with the provisions of the Constitution or of the Representation of the People Act, 1951 or of any Rules or Orders made thereunder if not specifically covered by any other preceding clause or sub-clause of the section it shall be covered by Sub-Clause (iv). The result of the election insofar as it concerns a returned candidate shall be set aside for any such non-compliance as the abovesaid subject to such non-compliance, also satisfying the requirement of the result of the election having been shown to have been materially affected insofar as a returned candidate is concerned. The conclusions which inevitably follow are : in the field of election jurisprudence, ignore such things as do not materially affect the result of the election unless the requirement of satisfying the test of material effect has been dispensed with by the law; even if the law has been breached and such breach satisfies the test of material effect on the result of the election of the returned candidate yet postpone the adjudication of such dispute till the election proceedings are over so as to achieve, in larger public interest, the goal of constituting a democratic body without interruption or delay on account of any controversy confined to an individual or group of individuals or single constituency having arisen and demanding judicial determination."

17. In the premise of the well established position in law, the basic question that arises for our consideration is whether the disqualification of the petitioners can be regarded as an intermediate stage in the process of election so as to apply the ratio of the judgment of the Apex Court in *Shri Sant Sadguru Janardhan Swamy's case* (supra) and *Election Commission of India v. Ashok Kumar* (supra).

In order to find answer to this question, it becomes necessary for us to refer and consider the relevant provisions of the Act and the Rules framed thereunder.

18. Section 22 of the Act deals with the authority to decide the questions of disqualification of members. It reads as Follows:

Section 22. Authority to decide questions of disqualifications of members :--(1) Where an allegation is made that any person who is elected as a member of a Gram Panchayat is not qualified or has become disqualified u/s 17, Section 18, Section 19 or Section 20 by any voter or authority to the executive authority in writing and the executive authority has given intimation of such allegation to the member through the District Panchayat Officer and such member disputes the correctness of the allegation so made, or where any member himself entertains any doubt whether or not he has become disqualified under any of those sections, such member or any other member may, and the executive authority, at the direction of the Gram Panchayat or the Commissioner shall, within a period of two months from the date on which such intimation is given or doubt is entertained, as the case may be, applied to the District Munsif having jurisdiction over the area in which the office of the Gram Panchayat is situated for decision.

(2) Pending such decision, the member shall be entitled to act as if he is qualified or were not disqualified.

(3) Where a person ceases to be the Sarpanch or Upa-Sarpanch of a Gram Panchayat as a consequence of his ceasing to be a member of the Gram Panchayat under Clause (b) of Section 20 and is restored later to his membership of the Gram Panchayat under Sub-section (2) of Section 21, he shall, with effect from the date of such restoration, be deemed to have been restored also to the office of Sarpanch or Upa-Sarpanch, as the case may be."

19. Section 153 deals with election, reservation, term of office of President and Vice-President of Mandai Parishad. Sub-section (1) of Section 153 reads as follows :

"Section 153. Election, reservation and term of office of President and Vice-President :--(1) For every Mandai Parishad there shall be one President and Vice-President who shall be elected by and from among the elected members specified in Clause (i) of Subsection (1) of Section 149 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 published in the prescribed manner:

Provided that if a Member of the Legislative Assembly of the State or of either House of Parliament is elected to either of the said offices, he shall cease to hold such office unless within fifteen days from the date of election to such office, he ceases to be Member of the Legislative Assembly of the State or of either House of Parliament by resignation or otherwise;

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 causal vacancy."

Section 233 of the Act reads as follows :

"233. Election petitions :--No elections held under this Act shall be called in question except by an election petition presented to such authority and in accordance with such rules as may be made in this behalf."

As could be seen from the second proviso to Sub-section (1) of Section 153, a member voting under Sub-section (1) in disobedience of the Party Whip shall cease to hold office forthwith. The Governor of Andhra Pradesh in exercise of the powers conferred by certain provisions of the Act including subsections (1) and (6) of Section 153 has framed the President/Vice-President Election Rules and the same were gazetted vide G.O. Ms. No. 756, PR, RD & R Department, dated 30.11.1994. Part IV of the said rules exclusively deals with Election of President/Vice-President of Mandai Parishad. For our purpose, Rule 13 is relevant. It reads as follows :

"13. (1) A candidate for the office of the President/Vice-President of a Mandai Parishad shall be proposed by one member and seconded by another. The names of all the candidates validly proposed and also seconded shall be read out by the Presiding Officer at such meeting.

A candidate for the Office of President/Vice-President of a Mandai Parishad shall be proposed by one member and seconded by another. If any candidate claims to be contesting on behalf of a political party, he shall produce an authorization from the President of the recognized political party of the State or a person duly authorized by the State President under his office seal and such authorisation shall be produced before the Presiding Officer on or before 10 a.m. on the day of the election for the election of the Office of President/Vice-President of Mandai Parishad.

The names of all candidates validly proposed and seconded shall be read out along with the name of the Political Party which has set him up by the Presiding Officer in such a meeting.

(2) If only one candidate is duly proposed, there shall be no election and he shall be declared to have been elected.

(3) If there are two or more candidates, election shall be held by show of hands and votes taken of the members present at meeting.

(4) The Presiding Officer shall thereafter record the number of votes polled, for each such candidate ascertained by show of hands. He shall announce the number of votes secured by each candidate and shall declare the candidate who secures the highest number of votes, as elected.

(5) In the event of there being an equality of votes between the two candidates,

the Presiding Officer shall draw lots in the presence of the members and the candidates whose name is first drawn shall be declared to have been duly elected.

(6) Every recognized 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 authorized 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 to the Office of the President/Vice-President of the Mandai Parishad.

Explanation :--Recognised political party means a political party recognized by Election Commission of India, New Delhi.

(7) (i) Any member of the Mandai Parishad elected on behalf of a recognised political party shall cease to be a Member of the Mandai 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."

Clause (ii) of Sub-rule (7) of Rule 13 vests the power in the Presiding Officer (Election Officer) to declare that a member of the Mandai Parishad ceases to hold Office in the event of such Member disobeying the directions of the Party Whip, on receipt of a written report from the Party Whip within three days of the election. The same Sub-clause (ii) of Sub-rule (7) declares that the decision of the Presiding Officer shall be final. If the intention of the rule making authority is that a decision taken by the Presiding Officer disqualifying a member for disobeying the direction of the Party Whip can also be the subject-matter of an Election Petition u/s 233 of the Act, the decision of the Presiding Officer should not have been made final under Clause (ii) of Sub-rule (7). The very fact that the order of the Presiding Officer disqualifying a member of the Mandai Parishad is made final clearly indicates that the said decision of the Presiding Officer cannot be subject-matter of an Election Petition u/s 233 of the Act. Secondly, the disqualification of a member of the Mandai Parishad for disobeying the direction of the Party Whip cannot be regarded as an intermediate stage in the process of election. It is trite that disqualification orders were passed by the Presiding Officer in the present cases after the election process to elect the President and Vice-President was completed. In other words, the disqualification orders were passed after the election process was completed and the result declared. There is no controversy between the parties as regards this fact. Admittedly, being aggrieved by the election results, it is stated that Election Petition No. 72 of 2001 is filed before the Senior Civil Judge-cum-Election Tribunal, Kurnool by the 1st petitioner in WP No. 20346 of 2001. It is also relevant to notice that Section 22 does not refer to Section 153 at all. Section 22 speaks about disqualification

incurred under Sections 17, 18, 19 and 20 of the Act only, and not the disqualification incurred under the 2nd proviso to Sub-section (1) of Section 153 of the Act. Further, a specific provision is made in Sub-rule (7) of Rule 13 of the Rules governing the procedure to be followed by the Presiding Officer in disqualifying a member of the Mandai Parishad in disobeying the direction of the Party Whip. Therefore, the provisions of Rules 11 and 12 of the Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandai Parishads and Zilla Parishads) Rules, 1995 (for short "the Election Tribunal Rules") have no application. Those rules govern the grounds on which the election petition could be filed, the procedure to be followed by the Election Tribunal etc., and that those rules do not deal with the procedure governing the power of the Presiding Officer in disqualifying a member of the Mandai Parishad for disobeying the direction issued by the Party Whip. Therefore, the contention of Sri D. Sudershan Reddy that the disqualification of the writ petitioners under Rule 13(7)(ii) of the President/Vice-President Election Rules falls within Rule 12(d) (iv) of the Election Tribunal Rules and, therefore, an Election Petition can be filed u/s 233 of the Act is not well founded. It is true that Sub-clause (iv) of Clause (d) of Rule 12 speaks about a ground i.e., if the result of the election insofar as it concerns a Returned Candidate has been materially affected, among other grounds, on account of any non-compliance with the provisions of the Act or any Rules or Orders made under the Act, on such ground an Election Petition could be preferred u/s 233 of the Act. But, in the first place, as pointed out supra, disqualification is an event after the election process is completed and, therefore, it cannot be regarded as an intermediate stage of the election process. u/s 233, an election petition can be presented to call in question only the validity of an election, but not a disqualification. Further, Rule 12 of the Election Tribunal Rules specifies grounds on which basis an Election Petition can be filed u/s 233 of the Act and that Rule 12 or any other Election Tribunal Rules does not specify or deal with grounds on which a disqualification order passed by Presiding Officer under Rule 13(7)(ii) of the President/Vice-President Election Rules can be challenged. It may be that violation of Sub-rule (6) of Rule 13 of the President/Vice-President Election Rules could be comprehended within the ground stated in Rule 12(d)(iv) of Election Tribunal Rules, but on that basis, it cannot be said that even against an order of disqualification passed by the Presiding Officer under Rule 13(7)(ii) of the President/Vice President Election Rules, an Election Petition lies u/s 233 of the Act for the reasons already stated above. In conclusion, we hold that u/s 233 of the Act, an Election Petition against the order made by the Presiding Officer disqualifying a member of the Mandai Parishad under Rule 13(7)(ii) is not maintainable. Since the order made by a Presiding Officer under Rule 13(7)(ii) of the President/Vice President Election Rules disqualifying a member of the Mandal Parishad is made final and no other legal remedies are provided against such an order, a disqualified member of the Mandai Parishad can invoke the extraordinary jurisdiction of the High Court under Article 226 to call in question the legality and validity of the order. In other words, writ petitions are maintainable.

20. The contention of Sri C.V. Mohan Reddy, learned Counsel that the petitioners in WP No. 20346 of 2001 have not taken all the grounds now urged by Sri Ayyapu Reddy, learned senior Counsel except the ground that the intimation of the appointment of the 2nd respondent as Party Whip was not served on the petitioners and that the Presiding Officer was also not served with the said intimation of the Whip before 11 a.m., on 27th July, 2001, is not well founded. Para (6) of the affidavit filed in support of the WP No. 20346 of 2001 reads as follows :

"6. The 1st petitioner objected to accepted the nomination of the 3rd respondent as Congress Candidate. She also raised an objection regarding appointment of 2nd respondent as Party Whip. However 2nd respondent did not serve any authorisation or Whip on petitioners 1 to 7. She did not file any evidence to show that she had served the Whip on the petitioner".

From the above para, it could be seen that the 1st petitioner riot only objected to the acceptance of the nomination of the 3rd respondent as congress candidate, but also objected to the appointment of the 2nd respondent as Party Whip. In other words, the 1st petitioner called in question the appointment of the 2nd respondent as Party Whip. Further, the 1st petitioner has also raised the ground that the 2nd respondent did not serve any authorization or intimation of Whip on the petitioners 1 to 7. It is also specifically contended that no evidence is produced by the 2nd respondent to show that the intimation of the appointment of the 2nd respondent as Whip was duly served on the petitioners. Further, as rightly contended by Sri Ayyapu Reddy, learned senior Counsel, that if on the basis of documents produced by the 1st and 2nd respondents themselves before the Court, a ground could be raised de hors the pleadings of the parties, it is permissible in law to raise such ground on the basis of such documents.

21. There is also no merit in the contention of Sri C.V. Mohan Reddy, that the non-disclosure of the fact that the petitioners in their letter dated 27.7.2001 tendered their resignation to the membership of the Congress Party tantamounts to supersession of material fact and, therefore, only on that ground the writ petition is liable to be dismissed in famine without going into the merits of the case. It is well settled that only in a case where an applicant under Article 226 of the Constitution of India deliberately suppresses relevant facts or states falsehood to mislead the Court, the Court would be justified in not entertaining such writ application on that ground. The rule is: all relevant and material facts should be disclosed by the applicant in the affidavit. But, at the same time, it is well established that the Court cannot dismiss a writ petition in limine on the ground of non-disclosure of certain facts which cannot be regarded as either relevant or material to the decision-making. Therefore, in order to appreciate the contention of Sri C.V. Mohan Reddy, it becomes necessary whether nondisclosure of the fact that the writ petitioners in their letter dated 27-7-2001 stated that they resigned from Congress Party is relevant or material fact and whether that fact would have any bearing on the decision-mating leading to the

disqualification of the petitioners. In our considered opinion, the said fact is not at all relevant or material to the decision-making. Even assuming that the petitioners on 27-7-2001 out of frustration or disappointment submitted a letter to the Presiding Officer stating that they resigned from the Congress Party, that fact itself in no way tilt the decision to be taken by the Presiding Officer under Rule 13(7)(ii) of the President/Vice President Election Rules. Nothing is placed before us to show that the above letter of the petitioners dated 27-7-2001 without anything further caused severance of their relationship or membership with the Congress Party and that as on 28-7-2001, the petitioners ceased to be members of Congress Party.

22. The next question to be considered is whether the Whip issued in favour of Suit. S. Jyothi, the appellant and Sri Y. Madhavaiah, respondent No. 4 in Writ Appeal No. 1907 of 2001 and the Whip issued in favour of P. Vishwanatha Reddy, 2nd petitioner and Sri Mani Gandhi, the 3rd respondent in WP No. 20346 of 2001 is in conformity with the provisions of Sub-rule (6) of Rule 13 of the President/Vice-President Election Rules and valid. As could be seen from the provisions of Sub-rule (6) of Rule 13 of the President/Vice-President Election Rules, a Whip in order to be valid and legal, it should be issued by the Political Party and the State President or a person authorised by him under his seal should send such intimation to the Presiding Officer to reach him on or before 11 a.m., on the day preceding the day of election to the office of the President/Vice-President of the Mandai Parshad. The letter in Roc. No. 35/2000-B, dated 22-7-2001 of Sri V. Sivarama Murthy, Election Officer (Presiding Officer), Thottambedu addressed to the District Election Officer, Chittoor, makes it very clear that both the Whips issued in favour of Smt S. Jyoti and Sri Y. Madhavaiah, the appellant and 4th respondent in Writ Appeal No. 1907 of 2001 issued only on 22-7-2001. In the said letter, the Election Officer states:

"Kindly consider the matter with reference above cited. Today i.e., on 22.7.2001 morning 9.15 a.m., in the Whip form issued by the Telugu Desam Party District President it was informed that granting power to issue Whip was given to Smt. S. Jyothi W/o Seetharam, member of MPTC Thottambedu directing to elect Sri K. Chandraiah Naidu, member of MPTC (Telugu Desam) on Mandai President. Subsequently another Whip was issued at 9.30 a.m. to Sri Y. Madhavaiah, MPTC, Kasaram (Telugu Desam)..."

From the extracted portion of the letter, it is quite clear, that the Presiding Officer received the Whip issued in favour of Smt. S. Jyothi at 9.15 a.m. on 22-7-2001 and the Whip issued in favour of Sri Y. Madhavaiah at 9.30 a.m., on 22-7-2001. In other words, the Whips received in favour of both Smt. Jyothi and Sri Y. Madhavaiah were not served on the Presiding Officer before 11 a.m., on 21-7-2001 as required under Sub-rule (6) of Rule 13 of the President/Vice-President Election Rules.

23. The Presiding Officer/Election Officer, Thottambedu Mandai, Chittoor District, the 1st respondent in WA No. 1907 of 2001 and WA No. 1908 of 2001 has not

filed counter-affidavits in the Writ Petition Nos. 18953 and 18954 of 2000. However, at the time of hearing, the learned Standing Counsel for the State Election Commission made available to us the records. We have perused the original records. At page (33) of the records, we found the original notice appointing Smt. S. Jyothi as the Party Whip. It is signed by President, Telugu Desam Party, Chittoor and it is dated 22-7-2001.

The Presiding Officer has initialed and below his initial he has put the date as 22-7-2001. He has also noted the time as 9.15 a.m. At page (35), we found Form-B nominating Kori Chandraiah Naidu as the party candidate. This Form-B does not bear any date, but it is signed by the President, Telugu Desam Party, Chittoor District. On this Form-B also, the Presiding Officer has initialled and below the initial, he has put the date as 22-7-2001 and the time as 9.58 a.m. At page (37), we found the notice relating to the appointment of Y. Madhavaiah as the Party Whip. This notice is signed by the President, Telugu Desam Party, Chittoor and it is dated 21-7-2001. On this notice also, the Presiding Officer has put his initial and below the initial he has put the date 22-7-2001. (It appears that in writing the date, figure 3 is corrected as 2) At page 39, we found Form-B nominating Sri K. Dhananjayalu as the party candidate. This is also signed by the President, Telugu Desam Party, Chittoor District and is dated 22-7-2001. As per the endorsement made by the Presiding Officer on the said form, that Form-B notice was received by him at 9.30 a.m., on 22-7-2001. Therefore, even as reflected in the original records, the notice of the Whips issued in favour of Smt Jyoti as well as Sri Y. Madhavaiah 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 a.m., on 21-7-2001 as required under Sub-rule (6) of Rule 13 of the President/Vice-President Election Rules. The provisions of Sub-rule (6) of Rule 13 are mandatory in nature. Further, in Rule 13(6), Whips should be appointed by the political party only and intimation of that appointment may be communicated either by the State President or any other person authorised by him under his seal. No evidence is produced by the 1st respondent to show that the appointment of Smt. Jyothi and Sri Madhavaiah as Party Whips were made by the Political Party to which they belong. Therefore, that part of Rule 13(6) which requires that the Whip should be appointed only by political party is also violated. Although it is stated at the Bar that the normal practice is to authorise the District Units Heads of the Party to issue Whip, that practice cannot be said to be in conformity with the provisions of Rule 13(6) of the President/Vice-President Election Rules.

24. In WP No. 20346 of 2001 also, we find the violation of Rule 13(6). The 2nd respondent in the said writ petition has filed a set of material papers. At page No. (1), Form-? intimation dated 25-7-2001 issued by the President, Andhra Pradesh Congress Committee, authorising Sri M. Sikhamani, Mungalapadu Constituency issue B-forms to the candidate set up by the Congress Party is produced. At page No. (2), notice of appointment of Smt. N. Nirmala, the 2nd respondent as the Party Whip, dated 27-7-2001 is produced. Although that notice is addressed to the writ petitioners, admittedly the notice was not served

on any of the petitioners in person. At page No. (5), the letter of Sri M. Sikhamani, MLA dated 26/27-7-2001 appointing Smt N. Nirmala, the 2nd respondent, as the Party Whip is produced. The said letter cannot be equated to mere intimation of the appointment already made by the political party. The letter begins with the words : "I am t? inform that our party, hereby, appoint the following person as Whip for the elections mentioned above". Therefore, it is quite clear that M. Sikhamani himself appointed the 2nd respondent as the Party Whip. Although this intimation is dated 26/27-7-2001, there is absolutely no evidence to show that it was served on the Presiding Officer before 11 a.m., on 27-7-2001. However, in the records made available to us by the learned Standing Counsel for the State Election Commission, in the above letter of Sri Sikhamani dated 26/27-7-2001, on the top of the letter at the left hand column, an endorsement in green ink is made It reads :

"Received on 27-7-2001 at 9.50 a.m. " It is quite curious how only that part of the letter where the above endorsement is found is deleted in the Xerox copy of the same document produced by the 2nd respondent. Be that as it may, admittedly, the notice of intimation of the appointment of Smt. N. Nirmala as the Party Whip was not served on the writ petitioners. The 2nd respondent in the counter filed by her does not state that she attempted to serve notice of Whip on the writ petitioners, but they refused and under those circumstances, she had to publish the notice in a local daily newspaper. The 2nd respondent does not also say that the writ petitioners were aware of the notice published in the newspaper and despite such notice, they disobeyed the Whip. Therefore, it cannot be said that the Whip notice published in the newspaper should be regarded as sufficient notice on the writ petitioners.

25. A Division Bench of this Court in Madhava Rao Desai Vs. Union of India and Others, held that the petitioner therein was entitled to be served with the intimation of Whip prior to the commencement of the election process and since there was no indication from the order of the Election Officer that such a Whip had been served on him, the disqualification order passed against the petitioner could not be sustained. In that case, the petitioner in Writ Petition No. 15631 of 2001 was the President of Mudhole Mandai Telugu Desam Party. He was elected as member of M.P.T.C. Mudhole 6 to 12, Adilabad district and a declaration to that effect was issued by the Election Officer -4th respondent on 17-7-2001. In the election conducted for the post of President of Mandai Parishad, Mudhole, the petitioner and one Jadav Subhash Rao - 5th respondent obtained equal votes and the petitioner was elected as President on application of toss by the 4th respondent and he was accordingly declared to have been elected as President of Mudhole Mandal. The 4th respondent issued notice on 23-7-2000 stating that 5th respondent was issued ? form by Telugu Desam party for contesting the post of President and a Whip had been issued to vote in favour of the 5th respondent but the petitioner disobeyed the same and voted against the Party Whip and got himself elected as President in support of other party members. Therefore, the petitioner was asked to show-cause as to why he should not be declared to have

ceased the Office of the MPTC Mudhole 6-12 and consequently the post of President of Mandal Parishad Mudhole for disobedience of the Party Whip issued by the Telugu Desam Party, as per the provisions of Section 153(1) of the Act and the Rules issued in G.O. Ms. No. 756, P.R.R.D. & Relief (Election III) Department, dated 30-11-1994. The petitioner submitted his explanation contending that at no point of time he was informed about the issuance of the Whip and appointing 5th respondent as the Whip of the party. On consideration of the explanation, the 4th respondent issued proceedings dated 26-7-2001 declaring the petitioner as ceased to hold office of MPTC Mudhole 6 to 12 and the Office of President of Mandai Parishad Mudhole. Being aggrieved by the said action of the Presiding Officer, the 4th respondent, writ petition was filed. Opposing the writ petition, it was contended on behalf of the respondents, that since the petitioners disobeyed the Whip, by operation of Section 153(1) and Sub-Rule 7 of Rule 13 of the President/Vice President Election Rules, he ceased to hold the office and that before the commencement of the process of election, he was informed about the Whip issued by the party. The Division Bench in para (15) held :

"15. Though the Election Officer is alleged to have declared about the Whip before the starting of the process of election, whether the written Whip of the party has been served on the petitioner or not is not indicated in the order. In our view, 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. Even the petitioner had not been given any opportunity to substantiate his claim that the same was not served on him. In this view of the matter, we are of the view that the impugned declaration of the Election Officer in Form V-C cannot be sustained."

26. In this case also, firstly, admittedly no notice of intimation of appointment of the Whip was served on the writ petitioners. Secondly, there is no evidence to show that before the commencement of the election on 28-7-2001, the petitioners were aware of the notice of the Whip published in the newspaper. Thirdly, there is nothing on record to show that the 2nd respondent attempted to serve notice on the petitioners and they refused to receive the same. 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 Mandai 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. In taking this opinion, we derive support from the judgment of the Supreme Court in R.P. Moidutty Vs. P.T. Kunju Mohammad and Another, .

27. In conclusion, we find that the disqualification orders passed by the Presiding Officers disqualifying the petitioners in Writ Petition No. 18953 of 2001, Writ Petition No. 18954 of 2001 and Writ Petition No. 20346 of 2001 cannot be sustained for breach of the mandatory provisions of Sub-rule (6) of Rule 13 and also violation of principles of natural justice.

28. In the result and for the foregoing reasons, we allow Writ Appeal Nos. 1907 of 2001 and 1908 of 2001 and set aside the order of the learned single Judge and allow Writ Petition Nos.18953 of 2001 and 18954 of 2001 and quash the impugned proceedings of the Election Officer/Presiding Officer, Thottambedu Mandai, Chittoor District dated 6-9-2001 issued in Form V-C. We also allow WP No. 20346 of 2001 and quash the impugned proceedings in Rc. No. C/178/2001, dated 21-9-2001 of the 1st respondent. In the writ petition and the writ appeals, the parties are directed to bear their own costs.