

(2014) 10 AP CK 0050
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 1243 of 2014

Seemala Babu Bhuvana Mohana Rao	APPELLANT
Vs	
Datti Kameswari	RESPONDENT

Date of Decision : 07-10-2014

Acts Referred:

Andhra Pradesh Panchayat Raj Act, 1994 — Section 153, 153A, 153A

Citation : (2015) 1 ALD 78 : (2014) 6 ALT 806 : (2015) 144 FLR 256 : (2014) 4 LLN 341

Hon'ble Judges : Sanjay Kumar, J; Kalyan Jyoti Sengupta, J

Bench : Division Bench

Advocate : V. Venkata Ramana, Sr. Counsel for Bharadwaj Associates, Advocate for the Appellant; A. Satya Prasad, Sr. Counsel for Prakash Buddarapu, G.P., V.V. Prabhakara Rao and G. Elisha, SCs, Advocate for the Respondent

Judgement

Kalyan Jyoti Sengupta, J.—With the consent of learned counsel appearing for the parties, at the stage of admission the appeal itself is heard out and is being disposed of.

2. Sri A. Satya Prasad, learned Senior Advocate, takes notice for the writ petitioner-respondent.

3. This appeal has been preferred against an interim order dated 20th September, 2014 in the above Writ Petition. By the Writ Petition an order of disqualification of the writ petitioner is challenged. By the impugned order the writ petitioner ceases to be President of Mandal Praja Parishad, Jiyyammavalasa Mandal, Vizianagaram District.

4. The learned trial Judge by the order under appeal has been pleased to suspend the order of disqualification of the writ petitioner-respondent, dt. 20.8.2014. The impugned order of disqualification was passed by the Presiding Officer under Section 153 of the Andhra Pradesh Panchayat Raj Act (hereinafter referred to as "the said Act") after having found on fact that the writ petitioner-

respondent has defied the Whip and the necessary materials were placed before him to reach such finding. Before the impugned order of disqualification was passed in reply to the application for declaring disqualification, writ petitioner-respondent made a detailed representation alleging that the Whip had no authority to act as, Sri Seemala Babu Bhuvana Mohana Rao, appellant herein, was never appointed Whip, nor could be appointed by reason of the fact that he was not member of T.D.P. We noticed from the impugned order of disqualification itself that this contention was dealt with rightly or wrongly by the Presiding Officer. The learned trial Judge, as it appears from the order under appeal, has entertained the writ petition, despite having alternative remedy being available under the Act, namely, vide Section 153-A thereof on the ground that there has been violation of the principles of natural justice.

5. Now, the question has been raised in this appeal whether the aforesaid writ petition should have been entertained despite alternative remedy being available and further more, whether the interim order of suspension, which is a mandatory in nature and has the effect of final disposal of the writ petition at the interim stage, should have been passed.

6. Sri V. Venkata Ramana, learned Senior Advocate, appearing for the appellant, submits that the learned trial Judge, should not have ignored the alternative remedy when Presiding Officer on fact finding concluded that the writ petitioner has incurred disqualification and this involves question of fact and law which can effectively be decided by the forum created under the said Act. He also submits that the writ petitioner has virtually been reinstated in the office of the President of the Mandal Praja Parishad, which she lost at the time of filing of the writ petition and at the ad interim stage final relief was granted and this should not have been done in a matter of this nature. He also argues that the observation of the learned trial Judge regarding violation of principles of natural justice is wholly incorrect, as it will appear from the impugned order that those contentions raised by the writ petitioner as to incompetence of the appellant has been dealt with rightly or wrongly by the Presiding Officer and such finding was not upset by the learned trial Judge by granting interim order.

7. Sri A. Satya Prasad, learned Senior Advocate, appearing for the writ petitioner-respondent submits that the learned trial Judge in exercise of discretion entertained the writ petition observing violation of principles of natural justice. The appeal Court ought not to interfere with discretion more so writ petition is still pending for hearing. He further argued that had there been no interim protection, there would have been administrative chaos, if not vacuum, as it is the question of functioning of office of the President of the Mandal Praja Parishad. Under these circumstances, he says that instead of interfering with the impugned order this Court would take measure for expeditious disposal of the writ petition.

8. We have heard the contentions of the learned Senior Counsels and we have checked up the records.

9. It is not disputed that Section 153A of the Act provides for an effective and alternative remedy. We therefore reproduce the same for the sake of convenience:

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.

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 allegation 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. 25.9.2014 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 25.9.2014 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.

14. The writ appeal is accordingly disposed of. In view of this order nothing remains to decide in the writ petition. Hence, parties will take steps for disposal finally in above terms.

Pending miscellaneous petitions, if any, in the appeal as well as in the writ petition, shall stand closed. There will be no order as to costs.