

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.Nos.919 of 2015 and 926 of 2015

ORDER :

These two Revisions relate to the election of President of Mandal Parishad Territorial Constituencies (for short, 'MPTC') of Regatte Village of Kanagal Mandal, Nalgonda District, and since common issues arise for consideration herein, they are being disposed of by this common order.

The brief facts of the case :

2. Elections to the Office of President of Mandal Praja Parishad (for short, 'MPP') of Kanagal Mandal were scheduled to be held on 04.07.2014. The respective 1st respondents in both these Revisions had got elected on the Indian National Congress Party (for short, 'INCP') ticket as Members of the said MPP. Alleging that the petitioner had issued a Whip on behalf of the INCP to vote for one Goli Bharathamma for the post of the President in the said election, and the respective 1st respondents had casted their votes contrary to the said Whip in support of a candidate supported by the Telangana Rashtra Samithi (TRS) party, a complaint was made by the petitioner in these Revisions on 05.07.2014 to the 2nd respondent.

3. Thereupon, the 2nd respondent issued show-cause notice No.66/Elections/MPPK/2014, dt.08.07.2014

to respective 1st respondents in the Revisions asking them to show-cause within seven (07) days of the receipt of the said notice as to why they shall not be disqualified under the provisions of the Andhra Pradesh Panchayat Raj Act, 1994 (for short, 'the Act') [Section 181 (1)], and as per Rule 11 (4) and (5) of Government Order No.173, dt.10.05.2006.

4. Explanations were submitted by the respective 1st respondents to the said show-cause notice on 24.07.2014 contending that the allegations made in the complaint by the petitioner were false and that both the respective 1st respondents were not aware of the party Whip alleged to have been issued by the petitioner, and were also not aware of the contents of the said Whip. It was alleged that the Whip issued under Annexure – III bears the date 01.04.2013 but the same appears to have been corrected to show as if it was issued on 02.07.2014, and the petitioner, with a dishonest intention, appears to have manipulated the record. It was contended that the petitioner had not submitted his authorization appointing him as a Whip within the prescribed time before the election to the presiding officer of the election and Form – B dt.04.07.2014 issued by the President, TPCC (Telangana) reveals that the candidature of Smt. Goli Bharathamma, W/o.Lingaiah was approved for the post of President, MPP, Kanagal by INCP and

therefore there was no question of issuance of a Whip by the petitioner on 01.07.2014 intimating that she was approved candidate. They alleged that it is mandatory to serve a copy of the whip issued by petitioner before the commencement of election and the complaint dt.05.07.2014 does not disclose about the service of the copy of Whip on the respective 1st respondents or the date of service of the same. It was further alleged that no documentary evidence was filed by petitioner to show that the respective 1st respondents were aware of the contents of Whip even before the election, and the presiding officer to the election also did not inform them before the election on 04.07.2014 that a party Whip was issued to cast their vote in favour of the particular person to the post of MPP, Kanagal Mandal.

5. Reliance was placed on a Division Bench of this Court in **Pandranki Parvathi and others v. Akula Gangaraju and others**^[1] in support of the plea that service of copy of contents of the Whip to the election member by the recognized political party is mandatory.

6. After receiving the said explanations dt.24.07.2014 to the show-cause notice dt.08.07.2014 issued by him, the 2nd respondent passed two separate orders in Proc.No.C/66/2014 dt.22.08.2014 disqualifying the respective 1st respondents under Section 181 (1) read

with Rule 11 (4) and (5) of Government Order No.173, dt.10.05.2006 from the post of MPTC, Regatte village and MPTC, Pagidimarri Village respectively. In the said orders, he stated that on 04.07.2014, election to the post of President of MPP, Kanagal was held; that notice was given with regard to the said election to respective 1st respondents;

Sri P. Lakshmaiah, President, TPPC had appointed the petitioner as the President of the Mandal Congress Committee, Kanagal for the purpose of issuance of a Whip; that the petitioner had issued a Whip on 04.07.2014 directing all the INCP MPTCs to vote in favour of Smt. Goli Bharathamma, MPTC, Kurampally as the President of MPP and submitted at 09:30 a.m. in Annexure – III Form; since the respective 1st respondents were not available for service of the Whip, it was stated that copies of the Whip were affixed to the walls of the houses of respective 1st respondents and the same was also published in newspapers along with photographs; that at about 01:00 p.m. on 04.07.2014, thirteen MPTCs were present to vote in the election; members were sworn-in in the said meeting, and initially co-opted members were elected. The 2nd respondent stated that thereafter in the afternoon at 03:00 p.m., the election for the post of President of the Mandal was commenced; candidates who wanted to contest for the post of President submitted 'B-Forms' to

him; petitioner as well as representative of TRS party had been nominated to issue Whips on behalf of INCP and the TRS party; before the election commenced, the contents of the Whip issued by respective parties at the request of the members present was read over three times; thereafter, voting was conducted by show of hands; the candidate supported by the TRS party had seven votes, including that of the respective 1st respondents, while the candidate supported by Congress party had only six votes; and since the explanations submitted by respective 1st respondents to the show cause notices were found to be unrelated to the actual facts, it is declared that they have both violated the Whips issued on behalf of INCP by petitioner.

7. Challenging these orders, the respective 1st respondents filed Election O.P.Nos.549 of 2014 and 550 of 2014 before the Principal District Judge, Nalgonda.

8. They also filed I.A.No.905 of 2014 and I.A.No.903 of 2014 respectively, in the Election O.P.s seeking suspension of the proceedings No.C/66/2014 dt.22.08.2014 issued by 2nd respondent disqualifying them from the post of MPTC of Regatta Village and MPTC, Pagidimarri Village of Nalgonda District till the disposal of the main petition.

9. *Inter alia*, the respective 1st respondents

contended therein that the Whip issued was not properly served and there is no acknowledgment/proof of service of the Whip and without proper service of Whip they cannot be disqualified, and therefore, the impugned order was not sustainable. They also contended that the Newspaper publication in *Andhra Jyothi* daily on 03.07.2014 wherein the petitioner alleged that members of the INCP should vote in favour of the candidate approved by the said party is not relevant, since the said candidate Smt. Goli Bharathamma appears to have been selected only on 04.07.2014, on which date the election was held at Kanagal Mandal. It was contended that even if there was any Press Meet on 02.07.2014 in respect of which the publication was made on 03.07.2014, since the INCP had not decided till 04.07.2014 who its approved candidate was, and the said decision was taken only on 04.07.2014, the impugned order passed by the 2nd respondent is illegal, arbitrary, and therefore ought to be suspended.

10. Counter-affidavit was filed to these IAs by 2nd respondent denying the same and the said counter-affidavit was adopted by petitioner and the other respondent nos.3 and 4.

11. In the counter-affidavit it was alleged that 2nd respondent herein had passed orders against the

respective 1st respondents on the ground that they violated the Whip issued by the INCP to which they belong and thereby they sustained disqualification as MPTC members. It was also alleged that the respective 1st respondents had voted in favour of the candidates set up by the TRS party and therefore, the said candidate had been declared as President of MPP, Kangal. It was specifically alleged in the counter that the 2nd respondent, also informed them in the meeting which was convened for the election of the President and Vice-President to the MPP, Kanagal on 04.07.2014 about the consequences of violating the Whip (i.e., that a member would be declared disqualified to be a MPP) and having understood the same, the respective 1st respondents still voted in favour of the independent candidate supported by the TRS Party. It was stated that 2nd respondent had first of all verified whether the Whip was issued by the competent person nominated by the party head; that the Whip was issued in proper form and properly served on the INCP candidates; a paper clipping dt.02.07.2014 also shows that the respective 1st respondents were not available either in the village or in their houses to take the Whip notice; consequently, notices were affixed on the doors of their houses in the presence of witnesses; and therefore, it meant that notices were served on respective 1st respondents. He also stated that when he was informing

the contents of the Whip before the election to the President of MPP in the meeting, the respective 1st respondents had not informed that they were not served such a Whip notice earlier. He stated that after satisfying that Whip was served on all the members of the INCP, orders were passed by him on 22.08.2014 disqualifying the respective 1st respondents. It was also stated that a compact CD was filed in the Court which was taken at the time of the election on 04.07.2014 and it shows that the contents of the Whip and the consequences of the Whip, if any member violated the Whip, were explained by 2nd respondent before the election to the post of President of MPP took place.

12. By separate orders dt.28.11.2014, the Court below suspended the proceedings dt.22.08.2014 issued by 2nd respondent disqualifying the respective 1st respondents from the posts of MPTC of Regatte Village and Pagidimarri Village, till the disposal of the main petition.

13. After extracting the respective contentions of both parties, the Court below observed that the newspaper publication in *Andhra Jyothi* daily newspaper relied upon by petitioner is not in the form of a notice, but is in the form of a news item and there was an obvious failure on the part of the Whip in complying with the requirement of serving it. The Court below observed that the case

revolves around an intricate issue as to whether there was a proper service of Whip on respective 1st respondents or not, which can be decided after full-fledged enquiry in the main O.P.; and since there is *prima facie* case in respect of respective 1st respondents, the impugned orders are suspended till the disposal of the O.P.

14. Challenging the said orders dt.28.12.2014 in I.A.No.905 of 2014 in Election O.P.No.549 of 2014 and in I.A.No.903 of 2014 in Election O.P.No.550 of 2014 on the file of Principal District Judge, at Nalgonda, the present Revisions are filed.

15. The counsel for petitioner contended that the Court below has not focused on the crucial fact that before the actual election was held on 04.07.2014 in the meeting called to hold the said election, the 2nd respondent had announced not only about the contents of the Whip issued by petitioner to vote in favour of the candidate proposed by the INCP Smt. Goli Bharathamma in the said election, but also explained the consequences of violation of the Whip, and since it is not the plea of respective 1st respondents that they had any hearing problem (i.e., that they were deaf) they are presumed to have notice of not only the Whip issued by the INCP, but also about the candidate in whose favour they were supposed to vote by virtue of the said Whip.

16. The counsel for petitioner further contended that unfortunately, the Court below has not even referred to this fact in the narration of facts in the impugned order, and has only referred to the other contentions raised by the parties such as attempt to serve the Whip personally on respective 1st respondents or publication in the newspaper. The counsel therefore contended that once, *prima facie*, it is clear that 2nd respondent had announced in the meeting about the contents of Whip and the consequences of violation thereof before the actual election took place on 04.07.2014, and in spite of the same, the respective 1st respondents had voted in violation thereof, they cannot take the plea that they were not aware of either the Whip issued by the INCP or about the candidate set-up by the said party for the post of the MPP, Kanagal; and in that view of the matter, there is neither *prima facie* case in respect of 1st respondents nor any balance of convenience in their favour warranting suspension of the proceedings dt.22.08.2014 of 2nd respondent.

17. The counsel for the petitioner relied upon the decisions in **M. Anandamma and others v. Revenue Divisional Officer/Presiding Officer, Kurnool and others**^[2]; **Akula Ganga Raju and another v. Presiding Officer, Yeleswaram Mandal Praja Parishad**

and others^[3]; and **Chavva Reddy Saraswatamma v. Presiding Officer – cum – Election Officer/Nodal Officer, Mandal Praja Parishad, Kamalapuram, Cuddapah and others^[4]**, in support of her submissions and contended that there is no specific mode of service of contents of a party Whip, provided for in law.

18. On the other hand, the counsel for 1st respondents refuted the said contentions and supported the orders passed by the Court below. He sought to contend by placing reliance on the decision in **Madhava Rao Desai and another v. Union of India, Panchayat Raj Department and others^[5]** that service of contents of the Whip are mandatory, apart from service of the Whip on the Presiding Officer before the election, and since there is no evidence of service of the Whip on respective 1st respondents, the order passed by the Court below shall not be interfered with.

19. I have noted the submissions of both sides.

20. It is the defence of respective 1st respondents in both these Election O.P.s that there is no service of contents of the Whip issued by petitioner on behalf of INCP to vote in favour of Smt. Goli Bharathamma in the election to the post of the President of MPP, Kanagal

Village. It is the contention of petitioner however that several attempts were made to serve the Whip, but the respective 1st respondents had evaded the same. Reliance was made to a news meet held on 02.07.2014 which was published in *Andhra Jyothi* daily newspaper on 03.07.2014 about the attempts to serve the Whip on respective 1st respondents and the affixture of the notice of Whip on the doors of their houses.

21. More importantly, it is to be noticed that in the show-cause notice dt.08.07.2014 itself, the 2nd respondent had stated that on 04.07.2014 in the process of electing the President for the MPP of Kanagal Mandal, a Whip was issued to the election members on behalf of the Congress party to vote for Smt. Goli Bharathamma for the post of President of the MPP, Kanagal. This was reiterated in the order dt.22.08.2014 wherein it was specifically stated that before the election commenced on 04.07.2014 for the post of the President of MPP, Kanagal and at the request of all the MPTCs present in the meeting, the contents of the Whip were read over three times and only thereafter election was held. This stand is also reiterated in the counter-affidavit filed by 2nd respondent at para.5. It is also stated in the counter-affidavit that a compact CD taken at the time when the election was conducted on 04.07.2014 is annexed to the counter.

22. In spite of these specific averments, taken by petitioners as well as respondent nos.2 to 4 about the factum of contents of the Whip being announced in the meeting by the 2nd respondent just before the election to the post of President of the MPP of Kanagal Village being held, curiously the Court below does not advert to it in the impugned order.

23. If the crucial question to be decided is whether respective 1st respondents had notice about the Whip issued by the INCP through the petitioner to vote in favour of Smt. Goli Bharathamma for the post of President of MPP, Kanagal Village and the impugned order itself discloses about the announcement three times of the Whip prior to the election in the meeting held on the said day, *prima facie*, it has to be presumed that both respective 1st respondents had knowledge of contents of Whip as well as the candidate in whose favour they were supposed to vote in the said election, who was proposed by the INCP. It is not the pleading of the respective 1st respondents that they had any hearing problem i.e., either of them were deaf, which precluded them from taking note of the announcement made thrice in the said meeting about the contents of the Whip as well as the name of the candidate in whose favour they were supposed to vote pursuant to the said Whip.

24. Admittedly, the Andhra Pradesh Conduct of Election of Member (Co-opted), President and Vice-President of Mandal Praja Parishad and Member (Co-opted), Chair-person and Vice-Chairperson of Zilla Praja Parishad Rules, 1994 [read with the Andhra Pradesh Panchayat Raj Act, 1994] notified vide G.O.Ms.No.173 Panchayat Raj and Rural Development (Elections & Rules) dt.10.05.2006 does not mention any particular method of service of Whip on members of a recognized political party by a person appointed on behalf of the said political party.

25. This aspect was considered in **M. Anandamma** (2 supra), and it was observed that if an attempt to serve the copies of the Whip was made on persons who were not available at their residence and copies of the Whip were pasted on the respective houses and certain publications were also made in the local newspapers, it would be a case where service of notice is rendered impossible, and in such situation, the law will not demand the compliance of an impossible obligation. It was further held that to insist on an absolute form of publication as if it were a ritual is not proper where equally efficacious, if not better modes of publication, were available. The Bench held that what is required is to serve a copy of the contents of the Whip issued by the person authorized by the political party upon the members for which purpose no particular

procedure is prescribed, and this has to be examined from the stand point of substantial compliance. It observed that unless prejudice has been caused by non-service of the contents of the Whip on every individual member, action of publication of contents of the Whip in newspapers ought to be sustained. It also considered the decision in **Madhava Rao Desai** (5 supra) cited by the respondents' counsel and held that the said case was not an authority for the proposition that the notice must be served on every member in person by the Whip appointed by a recognized political party and that the latter was a case where no opportunity at all was given to substantiate the claim that contents of the Whip were not served upon the person who was disqualified, and that was why the proceedings disqualifying a person from the membership of the parishad, were quashed.

26. Even in **M. Anandamma** (2 supra) on facts, the presiding officer therein had read over and explained to all the members who attended the meeting held on 29.11.2003 about the B-Form issued by the INC Party in favour of one G. Naganna for the election of Mandal Vice-Presidency, and the Whip issued by 3rd respondent therein requiring the petitioners to vote in favour of the said G. Naganna. Having regard to the said factor also, apart from publication in newspapers, the Division Bench observed that the order impugned in the

Writ Petition filed before it, did not warrant any interference.

27. It is also the contention of the petitioner that even though in counter-affidavit filed by 2nd respondent, (which was adopted by respondent nos.3 and 4 as well as the petitioner), it was stated that the contents of the Whip and the consequences of non-compliance of the Whip were read over before the election to the post of MPP, Kanagal was held, the same was not rebutted by respective 1st respondents by filing any rejoinder; and therefore the unrebutted counter averments must be taken as the admitted facts.

28. In **Chavva Reddy Saraswatamma** (4 supra), a contention was raised that the notice issued by the party Whip was not issued by petitioner therein; that according to 1st respondent therein, the notice issued by the party Whip of the TDP was duly served on the petitioner and the 1st respondent had also announced before the issue was put to vote about the party Whip issued by the TDP as well as the INC Congress; and this was contained in a counter-affidavit filed by 1st respondent. The learned single Judge held that since no reply-affidavit was filed denying the counter averments, the counter averments must be taken as admitted facts. In my considered opinion, this judgment squarely applies to the present

case.

29. In **Akula Ganga Raju** (3 supra), a learned single Judge of this Court referred to a Division Bench judgment of this Court in **Madhava Rao Desai** (5 supra) wherein three modes of service of Whip were discussed and held that if a Whip was read in the meeting before the election has taken place, then knowledge of the Whip has to be presumed.

30. In the present case, since no reply-affidavit has been filed by the respective 1st respondents denying the averment in counter of 2nd respondent about announcement by 2nd respondent about the issuance of a Whip by petitioner on behalf of the INC Party to vote in favour of Smt. Goli Bharathamma in the election to the post of MPP, Kanagal, the said contention has to be accepted as having been admitted by the respective 1st respondents. Therefore, *prima facie*, they are presumed to have knowledge of the contents of the Whip issued by petitioner on behalf of INC Party before the said election took place. Therefore, their plea that they were not aware of the issuance of the Whip or the name of the candidate in whose favour they were supposed to vote before the election to the post of the President of MPP, Kanagal took place, is *prima facie* not acceptable. Once this is so, it cannot be said that they have any *prima facie* case

warranting suspension of the proceedings dt.22.08.2014 issued by the 2nd respondent.

31. Although it is contended by the counsel for petitioner that the very appointment of Whip and the selection of the candidate by INCP party to be voted for by the members of the MPP, Kanagal itself took place on 04.07.2014, I am not inclined to go into the said aspect in these Revisions for the reason that the critical question is “whether before the actual election to the post of President of MPP, Kanagal took place, the respective 1st respondents had knowledge of the Whip issued by petitioner on behalf of the INCP; and the name of the candidate in whose favour they were supposed to vote in the said election or not”. Merely because, communication of the name of candidate Smt. Goli Bharathamma was made by the petitioner to 2nd respondent on 04.07.2014, it may be difficult to presume that selection of candidate itself took place on the said date. However, this Court is not inclined to express any opinion either way on this issue.

32. Therefore, the Civil Revision Petitions are allowed and the orders dt.28.12.2014 in I.A.No.905 of 2014 in Election O.P.No.549 of 2014 and in I.A.No.903 of 2014 in Election O.P.No.550 of 2014 on the file of Principal District Judge, at Nalgonda are set aside; and the said applications are dismissed.

33. However, it is made clear that the observations made in this order are only for the purpose of deciding these Revisions, and the Principal District Judge, Nalgonda shall decide Election O.P.s uninfluenced by any observations made in this order or in the orders dt.28.12.2014 passed by him in I.A.No.905 of 2014 in Election O.P.No.549 of 2014 and in I.A.No.903 of 2014 in Election O.P.No.550 of 2014. No order as to costs.

34. As a sequel, miscellaneous petitions pending, if any, in these Revisions shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 19.08.2015
Ndr/*

[\[1\]](#) 2004 (1) ALT 617 (D.B.)

[\[2\]](#) 2005 (1) ALT 552

[\[3\]](#) 2003 (5) ALD 619

[\[4\]](#) 2005 (1) ALD 37

[\[5\]](#) 2002 (4) ALT 661 (D.B.)