

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 20950 of 2015

Date :13 -07-2015

Between :

Edara Haribabu S/o Chenchaiiah

R/o D No. 5-79, NGOs Colony,

Opp Power Office, Ongole, Prakasam district

Petitioner

And

The State of A P,

Rep by its Principal Secretary,

Panchayat Raj and Rural Development

Secretariat buildings, Hyderabad and other s

Respondents

The Court made the following:

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ORAL ORDER:

Petitioner was elected as Member, Zilla Parishad Territorial Constituency (ZPTC) of Ponnalur Mandal, Prakasam District. He successfully contested for the post of Chairperson of Zilla Praja Parishad Prakasam. Against the election of the petitioner as Chairperson of ZPP, complaint was made to the District Collector and acting on the said complaint, petitioner was disqualified as Chairperson and as ZPTC member on the ground that petitioner violated the whip given by the party represented by him. Challenging the same, petitioner filed EOP Nos.8 and 9 of 2014 in the District Court/Election Tribunal. Petitioner also filed I.A.Nos.1967 and 1984 of 2014 in the said EOPs respectively seeking interlocutory order. The said I.As were dismissed. Aggrieved thereby, petitioner filed W.P.Nos.30790 and 30791 of 2014. These two writ petitions along with another writ petition were considered and disposed of by common order dated 7.11.2014. Writ petitions filed by the petitioner were allowed and the orders passed by the Election Tribunal are quashed. As a consequence, the orders passed disqualifying the petitioner as ZPTC member and as Chairperson of ZPP, Prakasham District were suspended pending disposal of EOPs. Orders of learned single Judge were challenged in Writ Appeal Nos.1386 and 1388 of 2014. This court directed the Vice-Chairperson, to discharge the functions of the Chairperson until further orders by order dated 10.12.2014. Aggrieved thereby, S.L.P.No.3664 of 2014 is filed and the Supreme Court by order dated 09.01.2015 granted interim stay of the order of the High Court. On 27.02.2015, petitioner was directed not to pursue the contempt case No. 164 of 2015 pending before the High Court.

2. In the meanwhile, Election Commission of India initiated steps to conduct Biennial elections to A.P. Legislative Council for various constituencies including Prakasam Local Authorities Constituency. In the electoral list published on 18.5.2011 name of the petitioner was not included. Challenging non inclusion of his name and not considering the objections filed by him, petitioner filed W P No. 15765 of 2015. During the pendency of the writ petition, objections filed by the petitioner were considered and

rejected by order dated 6.6.2015. Aggrieved thereby, petitioner filed W P No. 16354 of 2015. The said writ petition was dismissed since petitioner had remedy of appeal against the decision of the Electoral Registration officer. Accordingly, appeal was preferred and the same was rejected by order dated 15.6.2015. Challenging the same,

W.P.No. 17364 of 2015 is filed. This Court by order dated 16.6.2015 directed the Electoral Registration officer, Prakasam to include the name of the petitioner in the electoral list of Kandukur division. It appears the name of the petitioner was included and petitioner was permitted to cast his vote in the elections. Challenging the orders passed by this Court in WPMP No. 22482 of 2015 in W.P. 17364 of 2015, W A No. 555 of 2015 is preferred and the said appeal was dismissed as infructuous by order dated 9.7.2015.

3. While so, this writ petition is filed praying to issue a writ of mandamus declaring the action of the respondents 2 and 3 in keeping the office of the Chair Person Zilla Praja Parishad, Prakasam in lock and key and preventing the petitioner from discharging his duties and functions of Zilla Parishad Territorial Constituency Member as well as Chairperson as contrary to the judgment of this Court in W.P. Nos. 30790 and 30791 of 2014 dated 9.1.2015. A consequential direction is sought to respondents to forthwith open the office of the Chairperson, Zilla Praja Parishad, Prakasam district and permit the petitioner to discharge his duties as Zilla Parishad Territorial Constituency Member as well as Chair Person.

4. As noticed above, the orders dated 11.8.2014 disqualifying petitioner as Zilla Parishad Territorial Constituency member and Chair Person of Zilla Parishad were suspended by this Court, pending disposal of the Election O.Ps, in W P No. 30790 and 30791 of 2014. In W.A. Nos. 1386 and 1388 of 2014 it was argued on behalf of appellants that once disqualification order came into force, question of suspension of such disqualification does not arise and that person who is disqualified cannot discharge the functions of Chair Person. It was further contended that in terms of provision contained in Section 193 of the Panchayat Raj Act, 1994 whenever there is a vacancy in the office of Chair Person, the Vice Chair Person of the Zilla Praja Parishad shall discharge the functions of Chair Person until new Chair Person is elected. It was thus, contended that when statute makes a specific provision dealing with particular contingency, the

question of permitting the person disqualified to discharge the functions of the Chair Person even before the Election Petition is decided, was illegal.

5. On behalf of the petitioner, it was forcibly contended that the moment an order of disqualification is suspended, the disqualification disappears and therefore, petitioner is deemed to be Chair Person for all purposes and entitled to discharge the functions as such and therefore Section 193 of the Act, 1994 is not attracted. The said contention is rejected by the Division Bench. The relevant portion of the order of the Division Bench dated 10.12.2014 reads as under;

“ We are unable to accept the submission of Mr C.V.Mohan Reddy, learned senior counsel for the writ petitioner, that the moment the order of suspension is passed, the disqualification disappears. We are of the opinion that until and unless the order of disqualification is set aside, it remains operative. Unlike the Court, the Collector has no power to grant an order of injunction. In our view, of course, prima facie, the order of suspension of the learned Trial Judge in the above legal and factual scenario, is futile and cannot even be implemented.”

6. Having regard to the said findings, the Division Bench directed to give effect to provision in Section 193 (3) of the Act, 1994.

7. On assailing the said order, the Supreme Court granted interim stay of the orders of the Division Bench. Alleging non compliance of the orders passed by the learned single Judge, in view of the order of suspension granted by Supreme Court, petitioner filed C.C. No. 164 of 2015 and the same is pending consideration before this Court. When the same was brought to the notice of the Supreme Court, the Supreme Court directed the petitioner not to prosecute the contempt case pending before the High court till further orders.

8. The claim of petitioner that he is entitled to discharge his functions as Chairperson of Zilla Praja Parishad and Zilla Parishad Territorial Constituency Member flows out from the judgment of this Court in W.P.Nos. 30790 and 30791 of 2014. The said decision of learned single Judge and entitlement of petitioner to discharge the functions as Chair Person and as Zilla Parishad Territorial Constituency Member is the subject matter of W.A Nos. 1386 and 1388 of 2014 and SLP No 36764 and 36773 of 2014. In the instant writ petition, the petitioner is in effect seeking enforcement of the orders passed by the learned single Judge in W P Nos. 30790 and 30791 of

2014. As petitioner is a party to pending Writ Appeals and Special Leave Petitions, he can seek appropriate directions regarding his entitlement to discharge the functions as Chair-person of Zilla Praja Parishad and as Zilla Parishad Territorial Constituency Member, in those cases, if he is so advised.

On the same subject matter present writ petition is not maintainable. Though petitioner filed C.C. No. 164 of 2015 alleging non compliance of the orders passed by the learned single Judge, but when S.L.P. No. 36764 of 2014 was taken up for consideration, petitioner stated before the Supreme Court that he would not prosecute contempt case before High Court. Having given such an undertaking, petitioner can not file another writ petition seeking implementation of orders of learned single Judge. It amounts to abusing the process of the Court.

9. Thus petitioner is not entitled to the reliefs sought by him and writ petition is liable to be dismissed and it is accordingly dismissed. No costs. Having regard to the same, miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE:13 -07-2015
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HONOURABLE SRI JUSTICE P. NAVEEN RAO

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