

HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.37651 of 2014

ORDER:

This Writ Petition is filed seeking a Writ of Certiorari to call for the records pertaining to Order dt.25-11-2014 in I.A.No.208 of 2014 in O.P.No.572 of 2014 on the file of the V Additional District Judge, Bhongir and to quash the same while suspending the proceedings No.B/170/2014/MPP, Choutuppal dt.17-09-2014 of 3rd respondent disqualifying the petitioner as MPTC of Choutuppal-V Constituency, Nalgonda District.

2. The petitioner contested for the post of Mandal Parishad Territorial Constituency (for short 'MPTC') from Choutuppal Constituency in the election which was held on 11-04-2014 and was declared as elected candidate. The State Election Commission had issued election schedule for conduct of elections to the offices of Members (Co-opt), President and Vice President of Mandal Praja Parishads. A special meeting was convened and in the meeting of the Mandal Praja Parishad, Choutuppal conducted on 04-07-2014, 4th respondent was elected as President of the Mandal Praja Parishad, Choutuppal.

3. On 05-07-2014, 4th respondent lodged a complaint with 3rd respondent that the petitioner had

violated the whip issued by the Indian National Congress Party with regard to voting in the election held on 04-07-2014 and that she incurred disqualification under Section 153 of AP Panchayat Raj Act, 1994 (for short 'the Act, 1994').

4. On the basis of the said complaint, a notice dt.10-07-2014 was issued to the petitioner to show cause why she should not be disqualified from being an MPTC member for having violated the whip issued by the said party in the election held on 04-07-2014.

5. The said notice was received by the petitioner on 13-07-2014. She submitted an explanation dt.18-07-2014 stating that she did not get any information from 4th respondent about the whip issued by the said party or name of the candidate proposed by said party. She further alleged that although in the show cause notice, it was stated that on 03-07-2014 the whip was sent to the petitioner through registered post and it was returned by her, the said allegation is false since neither she nor her family members were present in her house and she was undergoing treatment at Royal Hospital, Balanagar, Hyderabad. She prayed that 3rd respondent drop all further proceedings against her by rejecting the complaint given by 4th respondent.

6. After receiving the said explanation, 3rd respondent passed orders in proceedings No.B/170/2014/MPP, Choutuppall dt.17-09-2014 holding that the whip was issued on 03-07-2014 by 4th respondent to vote in favour of 4th respondent as a President of the Mandal Praja Parishad, Choutuppall; that on 03-07-2014, the whip was sent by registered post to petitioner but she returned it; that the postal department had given in writing that the cover enclosing the whip sent by registered post was returned; that on 04-07-2014 at 9.30 a.m., 4th respondent had informed this fact to 3rd respondent; and that in the meeting held on 04-07-2014 at 3 p.m., petitioner did not vote in support of 4th respondent. He held that petitioner was aware about the issuance of the party whip, but she did not vote as directed by the said whip and so she incurred the disqualification under Section 153 (1) of the Act. He therefore declared that the petitioner ceased to hold office of the Mandal Praja Parishad, Choutuppall-V.

7. The petitioner questioned the same by filing O.P.No.572 of 2014 before the V Additional District Judge, Bhongir (for short 'the Court') under Section 153-A of the Act, 1994. She also filed I.A.No.208 of 2014 to stay/suspend the operation of the order dt.17-09-2014 in proceedings Dis. No.B/170/2014/MPP, Choutuppall passed by 3rd respondent.

8. The said I.A. was dismissed on 25-11-2014. The Court held that endorsement on returned postal cover is to the effect that the petitioner has refused to receive it; that although petitioner claimed to have gone to Royal Hospital, Balanagar, Hyderabad for treatment and filed Ex.P-4 in support thereof, the said exhibit did not reveal that the petitioner was admitted as an in-patient therein; that since petitioner claimed that she was of the view that the Indian National Congress Party wanted to propose her name to the post of the Mandal Praja Parishad President, she cannot claim that none of the other MPTC Members including 4th respondent had not informed her about issuance of the whip, and at least some of her supporters would have informed her about it. It also observed that the petitioner did not cast a vote in the election held on 02-07-2014 and Ex.P-7 proceedings shows that she had remained neutral by not casting her vote at all and thus, she has violated the whip issued by the said party under Ex.P-2. It therefore held that the petitioner is not entitled for stay/suspension of the order dt.17-09-2014 passed by 1st respondent.

9. The learned counsel for the petitioner submits that the said order cannot be sustained; that petitioner had not at all received the whip allegedly issued by 4th respondent; there is no EMI Speed Post facility at

Choutuppal, where the petitioner resides; and therefore 4th respondent's argument that he had sent it by Speed post cannot be accepted. Learned counsel for the petitioner has also filed a list of places where Speed post facility is available in the State of Andhra Pradesh, which did not include Choutuppal. He also contended that the petitioner cannot be said to have refused the whip sent to her since she was at Royal Hospital, Balanagar, Hyderabad. It is his further contention that even if a cover containing the whip issued by 4th respondent with regard to voting in the election on 04-07-2014 was sent by Speed Post on 03-07-2014, on the same day i.e. 03-07-2014, it is impossible that the said cover would be returned back on the ground that the petitioner had refused to receive it; and that this clearly indicates that the postal endorsement was stage managed and fabricated. He also further contended that in the notice dt.10-07-2014 issued to the petitioner, it was mentioned that the whip issued by 4th respondent was sent to the petitioner by registered post, but a new case is set up before the District Court in the O.P. by 4th respondent in the oral arguments that it was sent by Speed Post and that the petitioner had refused to receive it, and such a plea cannot be entertained. He also contended that the disqualification under Section 153 of the Act would be incurred only if the petitioner had participated in voting in disobedience of the party whip

and not if she had remained neutral and had not voted in favour or against any candidate. Learned counsel for the petitioner contended that in the present case, the allegation against the petitioner was that she had remained neutral in the proceedings held on 04-07-2014 and she had not voted in favor of 4th respondent, who is candidate for the Indian National Congress Party, or in favour of the candidate set up by another political party; and therefore, the order impugned suffers from error apparent on the face of record warranting interference by this Court under Article 226 of the Constitution of India.

10. Counter affidavit is filed by 4th respondent admitting that the petitioner *refused to participate* and vote in favour of the Congress party candidate in the election held on 04-07-2014 and that she avoided the party whip. It is also contended that in Sec.153-A (wrongly mentioned as Sec.181-A), there is no specific provision empowering the District Court to suspend the impugned order. It is also averred that the postal cover containing intimation of the whip sent by registered post on 03-07-2014 was returned and the postal department had also endorsed to the said effect.

11. I have noted the submissions of both sides.

12. The allegation against the petitioner is that in the election held on 04-07-2014, she had remained

neutral and had not voted in favour of any candidate. This can be seen from the complaint made by 4th respondent to 3rd respondent on 05-07-2014 which is marked as Ex.R-6 in the I.A.No.208 of 2014. Under Section 153 of the Act, only if a member 'votes' in disobedience of the party whip, he incurs a disqualification under that section. Thus there must be a positive act of voting contrary to the whip. Admittedly petitioner remained passive and did not vote in favor of anybody. Therefore *prima facie* it cannot be alleged that the petitioner had violated the whip issued by 4th respondent on behalf of the Indian National Congress Party to vote in his favour in the election held on 04-07-2014 to the office of the President by the Mandal Praja Parishad, Choutuppal.

13. Also both in the counter affidavit filed in this Court and also before the trial Court, the stand of 4th respondent was that the whip issued by him was despatched from 03-07-2014 by *registered post* and the same was returned as refused by the petitioner. Even in the notice dt.10-07-2014 which is filed as Ex.P-10 in this Court, it is alleged that the whip was sent on 03-07-2014 by *registered post* to the petitioner for the election to be held on 04-07-2014. Strangely, giving a go-by to this plea, an argument was advanced by 4th respondent before the Court below that the whip was sent to the petitioner by *Speed Post*. Ex.R-3, a Speed Post cover

dt.03-07-2014 was filed by respondent no.4 in the Court below, which contained a postal endorsement on the same day that the petitioner had refused to receive it. In my opinion, the Court below could not have considered such a new plea or the evidence (the Speed post cover Ex.R3) .

14. Even assuming that it was sent by Speed post, there is no material on record to indicate that there was a Speed post service by the Indian Postal service to Choutuppal, where the petitioner resides. So the Speed post cover dt.03-07-2014 appears to be a fabrication.

15. Assuming that the said postal cover was sent by Speed post or Registered post on 03-07-2014, it is highly unlikely that the returned cover would be received by the next day i.e. 04-07-2014 before 9.30 a.m. Therefore, on 04-07-2014, 4th respondent could not have informed 3rd respondent at 9.30 a.m. that the petitioner had refused to receive the postal cover containing the whip sent the previous day.

16. Without examining the matter in this perspective and without referring to the discrepancy between pleading of 4th respondent (that the postal cover was sent to the petitioner by registered post) and arguments advanced and evidence adduced (that it was sent by Speed post), the Court below perversely believed

the alleged postal endorsement on the returned cover that petitioner had refused to receive it. Having noticed that as per Ex.P-7, the petitioner had remained neutral by not casting her vote at all, the Court below erred in law in holding that petitioner had acted contrary to the whip issued by the said party under Ex.P-2. In my opinion, such a finding could not have been given unless the petitioner had actually voted contrary to the said whip and not if she had remained neutral and not casted her vote at all.

17. I also reject the contention of the learned counsel for 4th respondent that the District Court, while hearing a dispute under Section 153A of the Act, had no authority to suspend or stay of operation of the impugned order. In my opinion, such a power is vested with the District Court having regard to the provisions contained in Section 141 CPC, which makes the provisions of the Civil Procedure Code in regard to the suits applicable in all proceedings in any Court of civil jurisdiction such as the District Court.

18. In this view of the matter, the Writ Petition is allowed, the order dt.25-11-2014 in I.A.No.208 of 2014 in O.P.No.572 of 2014 of the V Additional District Judge, Bhongir is quashed; and proceedings No.B/170/2014/MPP, Choutuppal dt.17-09-2014 of 3rd respondent are suspended pending disposal of the said O.P. The said Court is directed to dispose of the O.P. as

expeditiously as possible without being influenced by its earlier order dt.25-11-2014 as well as the order passed in this Writ Petition. It is made clear that the observations made in this order by this Court are only tentative and the District Court shall decide the O.P. in accordance with law. No costs.

19. As a sequel, miscellaneous petitions pending, if any, shall stand disposed of.

JUSTICE M.S.RAMACHANDRA RAO

Date: 20-01-2015

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