

HON'BLE SRI JUSTICE C.PRAVEEN KUMAR

CIVIL REVISION PETITION No. 2479 of 2015

ORDER:

This present Civil Revision Petition is filed under Article 227 of the Constitution of India, questioning the order dated 27.10.2014 passed in I.A. No.732 of 2014 in Election O.P.No.478 of 2014 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge at Karimnagar, wherein and whereunder the Court directed the respondents not to conduct fresh elections for the 4th ward member of Nagarapanchayat, Husnabad pending disposal of main O.P., pursuant to a petition filed by the petitioner herein praying the Court to suspend the order of Presiding Officer, Nagarapanchayat, Husnabad, in cancelling her membership.

The facts which led to filing of the present Civil Revision Petition are as under :

The petitioner herein was elected as a Member of 4th Ward, Husnabad, Nagarapanchayat from TRS party. The Election Officer and Commissioner Nagarapanchayat also issued a certificate to that effect. While things stood thus, the 2nd respondent/Election Officer issued a showcase notice to the petitioner stating that Srinivas Reddy Dodla of T.R.S. party, who is having powers to notify, in the capacity of Whip, for conducting elections to

the post of Chairperson and Vice Chairperson of Nagarapanchayat, requests to take action against the petitioner on the ground that she has disregarded the Whip. It is said that on 03.07.2014 the Election Officer of Nagarapanchayat, Husnabad informed to all the elected ward members to raise their hands for electing the Chair person and Vice Chair Person of the panchayat. But, the petitioner is alleged to have violated the Whip issued by Srinivas Reddy Dodla by lifting her hand to an independent candidate by name Dandi Laxmi, in total disregard to the Whip, which was recorded in the minutes and also videographed. Then the Election Officer, Nagarapanchayat, Husnabad directed the petitioner to offer her explanation. The petitioner offered her explanation stating that she does not know who the said Srinivas Reddy Dodla is and she is also not aware about the issuance of Whip. It is specifically stated that no proceedings of issuance of Whip was served on her and that she is also not aware as to the persons who are contesting for the post of Chair Person and Vice Chair Person on behalf of TRS party. It is stated that due to political rivalry, the said Srinivas Reddy Dodla created a bogus notice and mislead the Election Officer. It is further stated that the said acknowledgment of the notice was signed in Telugu, which is totally false as the petitioner never signs in Telugu. Basing on the information furnished by Srinivas Reddy the Presiding Officer issued

suspension proceedings vide order No.G1/125/2014 dated 25.08.2014 cancelling the membership of the petitioner. Challenging the same, the petitioner filed E.O.P. No.478 of 2014 seeking to declare the proceedings of the Presiding Officer Nagarapanchayat, Husnabad in cancelling the membership of the Petitioner as a member of 4th ward, Nagarapanchayat, Husnabad, as null and void and not binding on the petitioner. Pending the said proceedings she filed I.A. No.732 of 2014 in E.O.P.No.478 of 2014 under Section 151 read with Order 41 Rule 5 of C.P.C., seeking suspension of the order of Presiding Officer till the disposal of the main Election O.P. During the course of enquiry in the said I.A., the petitioner got marked Exs.P-1 to P-5, whereas respondents/defendants got marked Exs.R-1 to R-12. After considering the material available on record, the trial Court though did not suspend the order of cancellation, but however, disposed of the I.A., directing the respondents not to conduct fresh elections to 4th ward of Nagarapanchayat, Husnabad, pending disposal of the main O.P. Challenging the same, the present Revision is filed.

The main ground urged by the learned counsel for the petitioner is that the alleged act of cancelling the membership of the petitioner on the ground that she has violated the Whip issued by one Srinivas Reddy Dodla is illegal and improper. According to him, the said notice

was neither served on the petitioner nor on her husband. It is further contended that the power of issuance of Whip given to one Srinivasa Reddy Dodla, is illegal. It is stated that the said Srinivasa Reddy has nothing to do with the office of T.R.S. and he is neither the State President nor Secretary of the organization.

On the other hand, the learned counsel for the respondents while reiterating the grounds taken in the lower court, submits that the notice was served on the petitioner through her husband. It is stated that when Srinivasa Reddy Dodla went to the house of the petitioner on 03.07.2014 between 7.30 and 8.00 a.m., the husband of the petitioner was present in front room and when enquired about the petitioner, he stated that she was in kitchen. He explained the importance of his visit and directed the husband of the petitioner by name Goola Raju to handover the Whip to the petitioner. Later, it was presumed that the said Whip must have been handedover to the petitioner by her husband. It is stated that Srinivasa Reddy Dodla submitted photographs and C.D., in token of delivery of party Whip to her husband. It is further contended by the learned counsel for the respondents that service of notice on husband amounts to constructive service on the petitioner. It is also urged by the learned counsel that the argument of the learned counsel for the petitioner that Srinivasa Reddy Dodla is not competent to issue Whip is incorrect.

As seen from the affidavit and counter filed by both the parties, two issues that arise for consideration are; 1) Whether there was proper service of notice on the petitioner with regard to issuance of Whip by Srinivasa Reddy Dodla? and 2) Whether Srinivasas Reddy Dodla is competent to issue the said Whip?

It may be true that the points which are now raised in the C.R.P., are not raised in the I.A., filed by the petitioner, but that by itself cannot be a ground to throw out the C.R.P. Since the issues which are raised here are pure questions of law, the same can be dealt with by this Court.

In **Chittoori Subbanna v. Kudappa Subbanna and others**^[1] the Apex Court held that, pure question of law - not depending on facts - can be allowed for the first time in the grounds of appeal or even as an additional ground at later stage.

Similarly in **Yeshwant Deorao Deshmukh v. Walchand Ramchand Kothari**^[2] the Apex Court held as under :

“This Court allowed a question of law to be raised at the hearing of the appeal even though no reference to it had been made in the Courts below or in the grounds of appeal to this Court.”

The observations of **Lord Watson** in

Connecticut Fire Insurance Co. v. Kavanagh^[3] are as under :-

“When a question of law is raised for the first time in a Court of last resort upon the construction of a document or upon facts either admitted or proved beyond controversy, it is not only competent but expedient in the interests of justice to entertain the plea. The expediency of adopting that course may be doubted when the plea cannot be disposed of without deciding nice questions of fact in considering which the Court of ultimate review is placed in a much less advantageous position than the Courts below.”

Therefore, the argument of the counsel for the respondent that the petitioner is debarred from raising the said pleas cannot be accepted.

In **Edara Haribabu v. The District Collector cum Presiding Officer**^[4], this Court had an occasion to consider competency of the person to issue the Whip and also as to service of notice on the member. In the said case the District President, Prakasam District appointed the 3rd respondent as Whip for the said elections and intimated the same to the 1st respondent vide Annexure-II (Ex.B-2 dated 12.07.2014). He also issued Form-B for proposing the name of Sri Manne Ravindra for the post of Chairperson of ZPP, Prakasam District (Ex.B-1 dated

13.07.2014) and also issued another Form-B proposing the name of Smt. P.Koteswaramma for the office of Vice Chairperson which was communicated to the 1st respondent vide (Ex.B-4 dated 13.07.2014). Annexures I and II referred to above as well as the Forms-B bears only the signature of the District President, Prakasam District of the TDP party and the seal. It does not contain the seal and signature of the State President or his authorized representative Sri Bonda Uma Maheswara Rao. It was also held that under Rule 22(1) of the Rules, the appointment of the Whip must be by the political party and intimation of such appointment shall be sent by the State President or a person authorized by him under his signature and seal. As the said rule was not complied with, since the appointment of 3rd respondent as Whip was by the District President and the intimation of such appointment was not by the State President or the State General Secretary authorized by him, the Court negatived the plea.

Further, since the mandatory provisions of Rule 21(1) and Rule 22(1) of the Rules have not been complied, the appointment of 3rd respondent as a Whip and the intimation of such appointment to the 1st respondent or the candidature of Sri Manne Ravindra as the candidate proposed by the TDP party for the office of Chairperson and Smt. P.Koteswaramma for the office of

Vice Chairperson of ZPP Prakasam District, were declared invalid. Consequently, in the absence of a valid candidate having been set up for the said posts by the TDP party; in the absence of a valid appointment of a Whip by the said party; and valid communication of such appointment to 1st respondent, the Court held that there is no violation of the Whip by the petitioner.

In the instant case, no material is placed before this Court to show that the said Srinivasa Reddy Dodla was authorized by the President of the party to issue the Whip. In the absence of any such material and in the absence of any valid appointment of the Whip by the party, it cannot be said that the petitioner has violated the Whip.

Insofar as the second aspect namely the plea of the non-service of notice, it has been contended by the respondent that the husband of the petitioner by name Goola Raju informed them that he will handover the papers to his wife. From the above admission of the respondents it is clear that there was no effective service of notice on the petitioner. It was presumed that notice was served on the petitioner since the husband promised to handover the same to his wife. There is no material to show that husband served papers on his wife. The signature of the petitioner on the notice acknowledging the receipt of notice was strongly denied by the petitioner.

It is her case that she never signs in Telugu and also filed documents in proof of the same. Therefore, the presumption of service relied upon may not lead to an inference that notice was actually served on the petitioner.

A Division Bench of this Court in **S.Jyothi v. Presiding Officer/Election Officer, Thottambedu Mandal**^[5] held as under :

“It is trite, the burden of proof that the Whip was properly served on the petitioners and despite the service of the Whip, the petitioner 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. It has been held that the burden of proof placed on the respondents is not discharged merely on preponderance of probabilities and 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. Since *prima facie* burden is not discharged by the respondents, balance of convenience clearly lies in favour of the petitioner and irreparable loss would be caused to her if the orders of first respondent are not suspended pending election. Further, when the petitioner had disputed his signatures on the acknowledgments of

Whips and contended that they are forged and the Whips are fabricated, by wrongly placing the burden of proof on the petitioner to prove that he did not sign the Whips, the District Court appears to have come to a wrong conclusion.

From the judgments referred to above, it is clear that the burden of proving that the Whip was served on the petitioner is on the respondent. Since the burden is not discharged and as balance of convenience is in favour of the petitioner, she would be put to irreparable loss if she is suspended.

From the aforesaid discussion, it is clear that the District Court has erred in coming to such a conclusion. Hence, the order canceling the membership of the petitioner to the 4th ward of Husnabad Nagarapanchayat has to be set-aside.

Accordingly, the C.R.P. is allowed by setting aside the order dated 27.10.2014 passed in I.A. No.732 of 2014 in Election O.P.No.478 of 2014 on the file of the Judge, Family Court-cum-Additional District and Sessions Judge at Karimnagar. No order as to costs. Miscellaneous Petitions pending if any in this C.R.P. shall stand closed.

JUSTICE C. PRAVEEN KUMAR

Date: 27.08.2015

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[\[1\]](#) AIR 1965 Supreme Court 1325

[\[2\]](#) 1950 SCR 852

[\[3\]](#) 1892 AC 473

[\[4\]](#) 2005(1) ALD 595

[\[5\]](#) 2002(4) ALD 660(DB)