

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CC.No.1857 of 2015

ORDER :

This Contempt Case is filed alleging willful and deliberate disobedience of the order dt.19.11.2014 in WP.No.31679 of 2014 by this Court.

2. The Dharur Mandal Praja Parishad consists of thirteen Mandal Parishad Territorial Constituencies (**for short, 'MPTCs'**) and the State Election Commission issued a notification to conduct election of Member (Co-opted) and President/Vice President for the said Mandal Praja Parishad vide letter 26.06.2014 fixing 04.07.2014 as the date on which the special meeting of the MPTCs would be held to elect the President and Vice-President of the Mandal Praja Parishad, Dharur. Prior thereto, on 06.04.2014, the 3rd respondent had conducted election to the thirteen MPTCs in the Dharur Mandal Praja Parishad.

3. The petitioner herein was appointed as a party Whip on behalf of Indian National Congress (I) Party for the above election. He alleged that his appointment was intimated by the President of Telangana Pradesh Congress Committee by 1st respondent on 01.07.2014; that he served the party Whip on 02.07.2014 directing all the MPTC members including Smt. Begari Sunitha, Smt. Muneera Begum and Smt. Kurva Laxmamma, who had

got elected representing the said political party to cast their vote in favour of one Sri V.Man Singh, MPTC member from Tharigoppula Constituency for the Office of President and Sri Golla Balappa, MPTC Member from Naga Samundar Constituency for the Office of Vice-President in the election to be held on 04.07.2014. The petitioner alleged that he, along with other Congress party workers, went to the house of above individuals, but they refused to receive the Whip and copies of the Whip were then affixed on the main door of the houses of the above persons in the presence of witnesses, and photographs were taken evidencing the same. He alleged that messages were also sent to the cell phones of the above persons about the Whip, and newspaper statements were also issued in Sakshi and Andhra Jyothi Telugu Dailies on 04.07.2014 directing the above individuals to follow the Whip party.

4. Alleging that in the election which actually took place to the post of President and Vice-President of Tharigoppula Mandal on 04.07.2014, the above individuals violated the Whip and incurred dis-qualification from holding the posts of MPTCs under Section 153 of the Andhra Pradesh Panchayat Raj Act, 1994 (**for short, ‘the Act’**), the petitioner filed a complaint on 05.07.2014 with the Presiding Officer of 4th Ordinary Indirect Elections to Mandal Praja Parishads and Zilla Praja Parishads, Office

of the Mandal Praja Parishad, Dharur Mandal, Ranga Reddy District, to declare that the above individuals ceased to hold the Office of MPTCs.

5. Show-cause notices dt.19.07.2014 were issued to the above individuals calling for their explanation and on 28.07.2014 they submitted an explanation denying that they had incurred any disqualification as alleged.

6. Thereafter, the Presiding Officer passed an order on 14.08.2014 holding that the above individuals did not violate the Whip issued by petitioner and did not cease to hold the Office of Mandal Parishad Territorial Constituencies. While passing the said order, the Presiding Officer relied upon the legal opinion dt.10.08.2014 of the Standing Counsel for Zilla Parishads, Mandal Parishads and Gram Panchayats (Telangana Region), High Court of Andhra Pradesh.

7. This order of the Presiding Officer was challenged in WP.No.31679 of 2014 by petitioner herein on the ground that the Presiding Officer did not act independently, did not apply his mind and that he based his decision solely on the opinion expressed by the Standing Counsel for Zilla Parishads referred to above.

8. In the said Writ Petition, the above individuals were impleaded as respondent nos.6 to 8.

9. After hearing the counsel for petitioner as well

counsel for the above persons, the Writ Petition was allowed on 19.11.2014 setting aside the order dt.14.08.2014 of the Presiding Officer and found fault with the Presiding Officer for abdicating his responsibility under the Rules relating to Conduct of Elections of Member (Co-opted) and President/Vice President of Mandal Parishad and Member (Co-opted) and Chairperson and Vice Chairperson of Zilla Praja Parishad issued under G.O.Ms.No.173, Panchayat Raj and Rural Development (Elections) Department dt.10.05.2006. The Court felt that the said Presiding Officer cannot be again directed to consider the matter afresh in view of his abdication of responsibility, and therefore, directed the District Collector-cum-District Election Authority, Ranga Reddy District, at Lakdikapul, Hyderabad, the 4th respondent in the said Writ Petition and 2nd respondent herein to authorize any other responsible Gazetted Officer of the Government to decide the issue of alleged violation of Whip by respondent nos.6 to 8 in the Writ Petition in exercise of the power conferred on him under Sub-Rule (1) of Rule 3 of the above Rules within a period of four (04) weeks from that day; and further directed that the official so authorized by the District Collector should proceed to decide the matter after following principles of natural justice and the applicable principles of law within a period of eight (08) weeks after service of notice on the parties.

10. Alleging that this order has not been complied with by 1st respondent, who was appointed by 2nd respondent on 29.12.2014, the present Contempt Case has been filed.

11. In the contempt case it was alleged that a notice dt.30.01.2015 was issued by 1st respondent to respondent nos.6 to 8 in the Writ Petition requesting them to appear before her on 06.02.2015; that they appeared and also submitted explanations on 06.02.2015; and thereafter, the enquiry was concluded, but no order was passed by 1st respondent. The petitioner alleged that when he approached the Office of 1st respondent and also personally met the 1st respondent and requested implementation of the order passed by this Court, she informed him that she had already completed the enquiry and circulated the file to 2nd respondent for his instructions. He claimed that she told him that she would pass orders after receiving the instructions from 2nd respondent. He alleged that 2nd respondent cannot give any instructions to 1st respondent in the matter. He also issued a notice dt.22.04.2015 to 1st respondent pointing out that 1st respondent would be liable for proceedings for Contempt of Court for disobeying the order passed by this Court on 19.11.2014 in WP.No.31679 of 2014. The

petitioner alleged that 1st respondent had willfully and deliberately violated the orders passed by this Court in the above Writ Petition, and is liable to be punished under Section 215 of the Constitution of India as well as Sections 10 to 12 of the Contempt of Courts Act, 1971.

12. The Contempt Case was admitted on 30.10.2015 by this Court and Notice in Form-I was issued to 1st respondent.

13. Subsequently, the presence of 2nd respondent was dispensed with on 01.12.2015, and the matter was posted to to-day to enable the 1st respondent to file additional counter-affidavit.

14. The 2nd respondent having appointed the 1st respondent within the period specified by this Court in its order dt.19.11.2014 in the above Writ Petition cannot be said to have violated any order passed by this Court. Therefore, as against the 2nd respondent the Contempt Case is dismissed.

15. Coming to 1st respondent, in the first counter-affidavit filed by her dt.27.11.2015, she merely stated that she had issued notices to respondent nos.6 to 8 in the Writ Petition to appear before her on 06.02.2015 and they along with the petitioner appeared and submitted their explanations; and thereafter she became busy in

identification of beneficiaries for issuance of Food Security Cards and their linkage with the Aadhar Cards, and so there was a delay in passing orders. She also claimed that the Chief Executive Officer of the Zilla Praja Parishad, Ranga Reddy District informed her by a letter dt.04.04.2015 to issue notices to respondent nos.2 to 4 in the Writ Petition giving two (02) weeks' time instead of one (01) week she had granted earlier in the notices dt.30.01.2015 and proceed to decide the matter after following principles of natural justice; that she again issued a fresh notice on 04.04.2015 to petitioner as well as respondent nos.6 to 8 in the Writ Petition seeking their explanation. She claimed that she submitted a report to the Chief Executive Officer of the Zilla Praja Parishad, Ranga Reddy District on 08.05.2015, and that in the said report she had come to the conclusion that petitioner had not served Whip on respondent nos.6 to 8 in the Writ Petition and they are not liable to be disqualified.

16. In the additional counter-affidavit filed by 1st respondent on 07.12.2015 she stated that she received the order of 2nd respondent on 31.12.2014 and took up enquiry on 30.01.2015, and having issued notices to respondent nos.6 to 8 in the Writ Petition by 02.01.2015 she ought to have completed the enquiry by 30.03.2015, but since she was busy to issue a second notice to respondent nos.6 to 8 in the Writ Petition on 04.04.2015,

there was some delay. She further reiterated that she submitted a report to the Chief Executive Officer, Ranga Reddy District on 08.05.2015, and there was just delay of forty (40) days in complying with the Court order. She claimed that this delay occurred on account of her failure to understand the order passed by the Court, and that she was being guided by the Chief Executive Officer. She also tendered apology to the Court for the delay. She further claimed that she had not deliberately violated the order passed by this Court, and assured that she would go through the order of the Court properly in future and if she was unable to understand the essence of the order she would seek assistance from her superior officer or Government Pleader, and would not repeat the mistake.

17. The counsel for petitioner contended that the purport of the order passed by this Court in the Writ Petition was that not only should the 1st respondent decide the matter within eight (08) weeks after service of notice on the parties, but she should also communicate the said order to petitioner; that the inaction of 1st respondent in communicating the report/order passed by her pursuant to the direction given by the Court in its order dt.19.11.2014 in WP.No.31679 of 2014 clearly indicates willful and deliberate disobedience of the order passed by this Court.

18. Sri S. Sharath Kumar, Special Government

Pleader representing 1st respondent, however contended firstly that the 1st respondent did not properly understand the order passed by this Court; that she was under the impression that two weeks' notice to respondent nos.6 to 8 in the Writ Petition was required to be given as per the order passed by this Court since she was so instructed by the Chief Executive Officer, Ranga Reddy District to issue such notice; and that she was not aware that an order is required to be not only passed, but communicated to all the parties in a situation where she had come to the conclusion that respondent nos.6 to 8 in the Writ Petition did not suffer any disqualification on account of alleged violation of the Whip issued by petitioner. He sought to rely on Rule 11 (5) of the Rules framed under G.O.Ms.No.173 Panchayat Raj and Rural Development (Elections) Department dt.10.05.2006. He further sought to contend that a misunderstanding of the Rule cannot be termed as willful and deliberate disobedience of the order passed by this Court.

19. I have noted the submissions of the respective parties.

20. The operative portion of the order passed by this Court on 19.11.2014 in WP.No.31679 of 2014 states :

“20. Since the 1st respondent cannot be again directed to consider the matter afresh in view of his above conduct, the 4th respondent, in exercise of the power

conferred on him under sub-Rule (1) of Rule 3 referred to above, shall authorize any other responsible Gazetted Officer of the Government to decide the issue of alleged violation of whip by the respondent Nos.6 to 8 within four weeks from today, and the said Official shall then proceed to decide the matter after following principles of natural justice and the applicable principles of law within a period of eight weeks after service of notice on the parties.”

21. A reading of the above order makes it clear that the official appointed by 2nd respondent herein was directed to decide the matter within a period of eight (08) weeks after service of notice on the parties. Nowhere in this order has this Court directed that two weeks' notice should be given to respondent nos.6 to 8 in the Writ Petition. It is not known on what basis the Chief Executive Officer, Zilla Praja Parishad, Ranga Reddy District asked 1st respondent vide his letter dt.04.04.2015 to issue notice giving two weeks' time to respondent nos.6 to 8 in the Writ Petition. Admittedly, the 1st respondent had issued notice on 30.01.2014 asking respondent nos.6 to 8 in the Writ Petition to appear before her on 06.02.2015 at 11:00 a.m. and it is not disputed that they appeared before her on that day and even submitted their explanations. It is not the case of 1st respondent that they have sought any further time to submit further explanation. Therefore, there was no warrant for 1st respondent to again issue fresh notices to respondent nos.6 to 8 in the Writ Petition on 04.04.2015 basing on the unsolicited advice which she got from the Chief Executive Officer, Zilla Praja Parishad,

Ranga Reddy District vide his letter dt.04.04.2015.

22. In my considered opinion, the issuance of fresh notices dt.04.04.2015 by 1st respondent to respondent nos.6 to 8 in the Writ Petition to show-cause again in spite of the fact that they had submitted explanations on 06.02.2015 itself to the earlier show-cause issued on 30.01.2015 is nothing but a deliberate attempt on the part of 1st respondent to somehow prolong the enquiry to benefit respondent nos.6 to 8.

23. That apart, the direction of this Court in the order dt.19.11.2014 to 1st respondent, who was appointed by 2nd respondent to conduct the enquiry, was to decide the issue of disqualification on the basis of alleged violation of whip by respondent nos.6 to 8 in the Writ Petition.

24. A reading of the order passed by this Court in the Writ Petition clearly indicates that in the place of Presiding Officer who is supposed to pass such an order under Rule (5) of the Rules, the 1st respondent was to pass the order after conducting enquiry, as directed by this Court. The 1st respondent cannot, therefore, conduct enquiry and simply submit a report to the Chief Executive Officer, Zilla Praja Parishad, Ranga Reddy District without communicating the said report/order to petitioner as well as respondent nos.6 to 8 in the Writ Petition.

25. The argument of the Special Government Pleader that 1st respondent was of the view that if she comes to a finding that there is no disobedience of the Whip by respondent nos.6 to 8 in the Writ Petition, she need not pass a speaking order and communicate it to petitioner and respondent nos.6 to 8 cannot be countenanced. The Rule 11(5) clearly speaks of passing a speaking order “*in the matter of cessation for disobedience of the Whip*” by the Presiding Officer.

26. So whether or not there is a finding about disobedience of the Whip by respondent nos.6 to 8, the 1st respondent was bound to pass a speaking order and communicate it to the petitioner as well as respondent nos.6 to 8.

27. According to 1st respondent, the report/order passed by her was communicated to the Chief Executive Officer, Zilla Praja Parishad, Ranga Reddy District. There is no provision in the Act or Rules framed thereunder for communicating decision in matter of cessation for disobedience of the Whip to the Chief Executive Officer, Zilla Praja Parishad without communicating it to person who issued the whip and the persons who are alleged to have violated the Whip. There is no valid reason why till date the report/order dt.08.05.2015 had not been communicated to petitioner as well as respondent nos.6 to

8 by 1st respondent and why having passed an order she kept it with her instead of communicating it to them.

28. In my considered opinion, it was incumbent on 1st respondent to decide the matter within a period of eight (08) weeks after service of notice on the parties, and deciding the matter also includes communication of the decision of 1st respondent to petitioner as well as respondent nos.6 to 8 in the Writ Petition within the prescribed time. Since admittedly communication of the order of 1st respondent has not been done even though more than seven (07) months has elapsed since 1st respondent had prepared the order/report dt.08.05.2015 and gave to the Chief Executive Officer, Zilla Praja Parishad, Ranga Reddy District, I am of the opinion that 1st respondent has committed willful and deliberate violation of the order passed by this Court on 19.11.2014 in WP.No.31679 of 2014.

29. I am also of the opinion that the apology furnished by 1st respondent is not worthy of acceptance since the said apology does not appear to be sincere and appears to be made only to avoid any finding of contempt by this Court or to seek lenient punishment from this Court.

30. In this view of the matter, the 1st respondent is directed to forthwith communicate her report

dt.08.05.2015 to petitioner as well as respondent nos.6 to 8 in the Writ Petition; and secondly, the 1st respondent is sentenced to suffer two (02) months' simple imprisonment, and also fine of Rs.1,500/- for her above deliberate and willful inaction in complying with the order dt.19.11.2014 passed by this Court in the Writ Petition No.31679 of 2014. The sentence of imprisonment shall however stand suspended for a period of three (03) weeks from to-day.

31. The petitioner shall deposit subsistence allowance at the rate of Rs.250/- per day within three (03) weeks from today.

32. Accordingly, the Contempt Case is allowed in part with the above directions.

JUSTICE M.S.RAMACHANDRA RAO

Date: 09-12-2015

Ndr/*