

THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Civil Revision Petition No.4222 of 2015

ORDER:

This civil revision petition under Article 227 of the Constitution of India by the Mandal Parishad Development Officer, Kothagudem/4th respondent is directed against the orders dated 31.08.2015 in IA.No.1783 of 2014 in EOP.No.913 of 2014 passed by the learned Judge, Family Court-cum-Additional District Judge, Khammam while the said learned judge was holding full additional charge of the post of Principal District Judge, Khammam.

2. I have heard the submissions of the learned counsel for the revision petitioner and the learned counsel for the 1st respondent. I have perused the material record.

3. The parties in this revision petition shall hereinafter be referred to as they are arraigned in the application before the trial Court, for convenience and clarity.

4. The facts, which are necessary for consideration, in brief, are as follows:

In the 4th general elections held in the year 2014, the petitioner was duly elected as a member, Seethampeta Mandal Parishad Primary Constituency of Kothagudem Mandal having contested as a candidate of the National Congress Party. Elections were directed to be held on 13.08.2014 to the posts of President and Vice-President of Mandal Praja Parishad, Kothagudem as per the directions of the State Election Commission. One P.D. Benerjee, the Assistant Director, Animal Husbandry Department, Kothagudem was appointed as Presiding Officer for the election for the said posts as per the orders issued by the District Collector-cum-District Election Authority, Khammam. One Seelamsetti Veerabhadram was conferred with a 'Whip' power by the President Telangana Pradesh Congress and a copy of

the proceedings in that regard were sent on 12.08.2014 to the office of the said Presiding Officer. Exercising the powers, the said Seelam Veerabhadram issued a Whip to vote for Bhukya Rukmini as President and Padmakollu as Vice President contesting for the said respective posts on the symbol of National Congress. A copy of the same was submitted to the office of the Presiding Officer on 13.08.2014. In the said elections for the said posts of President and Vice President held on 13.08.2014 at 03:00 PM, the petitioner, having violated the said Whip, had exercised his franchise in favour of Banotu Kesli, who is a candidate of Communist Party. In view of the said violation of the Whip by the petitioner, a request was made to the Presiding Officer by a letter dated 14.08.2014 to declare that the petitioner has become disqualified/unfit for holding the post of Member, Seethampeta Mandal Parishad Primary Constituency of Kothagudem Mandal. On such a request made to the Presiding Officer, he had issued a notice dated 25.08.2014 to the petitioner directing to show cause within seven days as to why the petitioner should not be declared to have ceased to hold the Post of Member, Seethampeta Mandal Parishad Primary Constituency of Kothagudem Mandal. The petitioner sent an explanation dated 01.09.2014 to the said show cause notice. The Presiding Officer had finally passed the orders dated 12.09.2014 in RC.N-B/ Elections/ 720/2014 ordering that the petitioner is unfit/dissqualified to hold the post of Member, Mandal Parishad Primary Constituency, Seethampeta and that the said orders would come into force from 12.09.2014. Aggrieved of the said orders, the petitioner had filed WP.No.28766 of 2014 on the file of this Court praying to suspend the aforementioned order of the Presiding Officer/3rd respondent. This court by orders dated 13.10.2014 held that the order impugned in the writ petition can be questioned under Section 153-A of the A.P. Panchayat Raj Act, 1994 before the District Court having jurisdiction over the area in which the office of the Zilla Parishad is situated. Hence, the petitioner had filed EOP before the trial Court and also IA.No.1783 of 2014 praying to suspend the said order impugned in the election petition pending final disposal of the election petition.

5. The 3rd respondent had filed a counter in the aforementioned IA and the same was adopted by the respondents 1, 2 and 4. The case of the 3rd respondent is that the contention of the petitioner that the Whip was not served upon him is false; and that as per the written complaint given by Seelam Veerabhadram, the Whip was duly served upon the petitioner; and that as per the version of the said Veerabhadram, when the Whip was sought to be served on the petitioner at his house, his wife who was present in the house at that time and that she had refused to receive the Whip; and that, therefore, the Whip notice was affixed on the door of the house of the petitioner's residence in the presence of two witnesses; and that the photographs of the same were also taken; and that the 3rd respondent had examined the witnesses who were present at the time of affixture of the Whip notice on the door of the residence of the petitioner; and that the 3rd respondent had carefully and with due diligence had gone through the explanation of the petitioner; and that the 3rd respondent had then passed the orders impugned in the EOP disqualifying the petitioner to hold the post of Member, Seethampeta Mandal Parishad Primary Constituency of Kothagudem Mandal in accordance with the provisions of law; and that the contentions of the petitioner are all false. It is *inter alia* contended in the counter that the complaint submitted to the 3rd respondent discloses that inspite of service of the Whip notice on the petitioner he had violated the Whip while exercising his franchise contrary to the Whip; and as such he is declared disqualified to continue as a member of Seethampeta Mandal Parishad Primary Constituency in accordance with the procedure established by law.

6. At the hearing before the trial Court, no oral evidence was adduced on either side. However, exhibits P1 to P5 and R1 to R6 were respectively marked on the side of the petitioner and the respondents.

7. On merits, the trial Court had allowed the interlocutory application. However, instead of observing in the operative portion of the order that suspension was granted as prayed for, the Trial Court had erroneously

observed that the order impugned dated 12.09.2014 passed by the 3rd respondent is set aside accordingly.

8. Feeling aggrieved, the 4th respondent filed this revision petition *inter alia* contending that the Court below had passed the order without considering the material placed before it and also the fact that the 3rd respondent/Presiding Officer had categorically stated in his order that the contents of the Whip were read over to all the candidates before the election for the MPP President post and that the Court below ought to have seen that one Seelam Veerabhadram, Co-ordination Committee member had also got served the notice on the petitioner by having the same affixed on the door of the residence of the petitioner; and that the said service is sufficient service; and that in the facts and circumstances of the case, the Court below erred in setting aside the order issued by the 3rd respondent/Presiding Officer.

9. The learned counsel for the petitioner while supporting the orders of the Court below had stated that as rightly pointed out in the order of the court below, two versions emerged from the material record in regard to service of Whip on the petitioner; and that the trial court had rightly held that the two versions, which are self contradictory, cannot be correct; and that in view of the contradiction in the two versions, service of Whip notice by affixture on the door of the residence of the petitioner cannot be held to be substantial compliance as rightly held by the Court below; and that the petitioner had consciously exercised his franchise in public interest in order to see that a good candidate gets elected; and that he did so only because of lack of knowledge of the Whip due to the absence of service of the Whip notice on the petitioner and also in view of the internal politics and disputes among the members of the local Congress Party and also the physical attacks on the petitioner by some of the members of the opposite internal group.

10. I have given earnest consideration to the facts and the submissions. Apart from the undisputed and admitted facts, the show cause notice dated 25.08.2014, which was issued by the Presiding Officer to the petitioner, which is one of the material documents, on a perusal would reveal that according to

the information furnished to the said Presiding Officer, the petitioner had refused to receive the Whip notice and that, therefore, the Whip notice was affixed to his house wall in the presence of two witnesses and that evidencing the said fact, photographs were taken and that, therefore, the Presiding Officer was requested to take action against the petitioner and declare him disqualified for holding the post of Member, Seethampeta Mandal Parishad Primary Constituency of Kothagudem Mandal. The show cause notice was issued by the Presiding Officer pursuant to the complaint dated 14.08.2014 submitted to him by Seelam Veerabhadram who had issued the Whip. The said copy of the complaint on a perusal would show that at a special meeting attended by party members it was decided to elect the party candidates as President and Vice President and that a Whip was also issued to cast votes in their favour and that out of the members who had attended the special meeting 13 members having received the notices of Whip had issued acknowledgments. However, the petitioner had refused to receive the same and, therefore, the notice of Whip was affixed on his house wall in the presence of two witnesses and a photograph of the same was taken and the same was submitted on 13.08.2014 to the Presiding Officer while making a request to declare the petitioner as disqualified to hold his post as he had violated the Whip and voted for a candidate of the Communist party as President and a candidate of Telugu Desam Party as Vice President. However, the order of the 3rd respondent, which is questioned in the EOP on a perusal would show that when he made an enquiry with one Nagarjuna, he had stated that he was entrusted with Whip copies for serving on the petitioner and that accordingly, he went to Seethampeta village and that at that time the petitioner was not available in his residence and that, therefore, he made a request to his wife to receive the Whip copy but, she had refused to receive the same and that, therefore, in the presence of two witnesses K. Naresh and D. Ramesh he had affixed the Whip notice copy on the door of the house of the petitioner and had obtained their signatures and submitted the same to the President. Thus, in the complaint made to the 3rd respondent by the person, who had issued the Whip, it was stated that though

13 members have acknowledged receipt of the copies of Whip, the petitioner had refused to receive the said copy of Whip and that, therefore, a copy of the Whip was served by affixture on the door of the house of the petitioner. Further, the other version is that one Nagarjuna was entrusted with a copy of the Whip for service on the petitioner at his house and that when the said person went to the house of the petitioner at his village, he was not available and that his wife had refused to receive the same and that, therefore, the mode of affixture was adopted. It is pertinent to note that only the 3rd respondent, who is the Presiding Officer for the election, alone, had filed a counter. When the petitioner had denied the service of Whip and also the knowledge of the Whip, none of the other respondents including the 4th respondent have filed counters much less counter affidavit asserting their version. They had simply adopted the counter filed by the 3rd respondent by filing a memo. Admittedly, the 3rd respondent has no personal knowledge of the aspects in regard to the refusal to receive the Whip or service of copy of the Whip. Therefore, his knowledge on the said aspect is based on hearsay information furnished by the 4th respondent. Therefore, the principle of non traverse also assumes importance in this matter. Further, in the light of the two versions which had emerged from the contents of the material documents exhibited before the trial court, the trial court did not accept the version of refusal on the part of the petitioner to accept the Whip and further held that the service of Whip copy by affixture on the house wall of the petitioner, in the facts and circumstances of the case, cannot be held to be a substantial compliance. Since the proceeding of the 4th respondent is under challenge in the main OP and the crucial aspects have to be adjudged in the main election OP after full fledged enquiry, it is just and fair to suspend the order impugned in the election petition during the pendency of the election petition as disqualification of the petitioner, a democratically elected person, is a serious matter having serious ramifications. Therefore, till the issue stands finally resolved after the parties entering trial, the disqualification needs to be suspended.

11. Having gone through the contents of the material record and analysed the facts, this Court finds that the order impugned brooks no interference. However, the error in the operative portion of the impugned order is rectified by modifying the words 'set aside' as 'suspended' to meet the ends of justice.

12. In the result, the Civil Revision Petition is dismissed accordingly. There shall be no order as to costs.

Miscellaneous petitions pending, if any, in this civil revision petition shall stand closed.

M. SEETHARAMA MURTI, J

9th March 2016
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