

**IN THE HIGH COURT OF JUDICATURE AT HYDERBAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADERSH**

Writ Appeal No.1066 of 2015

Between:

Nallavelli Ashok

.....Appellant

And:

The State of Telangana, represented by its
Principal Secretary to Panchayat Raj
Department, Hyderabad and 3 others

..... Respondents

JUDGMENT PRONOUNCED ON : 23.08.2016

**HON'BLE SRI JUSTICE : V.
RAMASUBRAMANIAN**

AND

HON'BLE SMT. JUSTICE : ANIS

1. Whether Reporters of local
Newspapers may be allowed to see
the Judgments? : No
2. Whether the copies of judgment
may be marked to Law Reporters/
Journals? : Yes
3. Whether their Ladyship/Lordship
wish to see the fair copy of the
judgment? : Yes

*** HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN**

AND

HON'BLE SMT JUSTICE ANIS

+ Writ Appeal No.1066 of 2015

% 23-08-2016

Nallavelli Ashok

.... Appellant

AND

The State of Telangana, represented by
Its Principal Secretary to Panchayat Raj
Department, Secretariat, Hyderabad and 3 others

.... Respondents

! Counsel for petitioner : C. Hanumantha Rao

^ Counsel for respondents : G.P. for Panchayat & Rural
Development for R-1, R-3 &
R-4

Sri K. Ashok Reddy for R-2

< Gist:

> Head Note:

? Cases referred:

2004 (3) ALT 788

HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN

AND

HON'BLE SMT JUSTICE ANIS

Writ Appeal No.1066 of 2015

JUDGMENT: (per V. Ramasubramanian, J.)

Aggrieved by the dismissal of his writ petition challenging

an interim order granted by the I Additional District Judge, Nizamabad, the petitioner has come up with the above writ appeal.

2. We have heard Mr. C. Hanumantha Rao, learned counsel for the appellant, the learned Government Pleader for Panchayat Raj and Rural Development for the State of Telangana and Mr. G. Narender Reddy, learned counsel for the second respondent.

3. In the elections held in July, 2014 to the Mandal Praja Parishad of Biknur Mandal, the appellant as well as the second respondent were elected as members. At the time of the elections, both of them belonged to the Indian National Congress.

4. It is relevant to point out that the Mandal Praja Parishad of Biknur has 17 constituencies available for election through universal adult franchise. It so happened that in the elections held in July, 2014, 8 seats were won by persons belonging to the Indian National Congress, 8 seats were won by persons belonging to Telangana Rashtra Samithi (TRS) and one seat was won by an independent candidate.

5. It appears that in a meeting of the elected representatives belonging to the Indian National Congress, held on 10.07.2014, the appellant herein was appointed as the party whip. Claiming that the Indian National Congress decided to field one Smt. Bala Narsavva Pulluri, for the post of President of the Mandal Praja Parishad and a party whip to that effect was issued on 13.07.2014 and also claiming that the same was disobeyed by the second respondent herein, the appellant herein filed a complaint with the Presiding Officer (Divisional Assistant Director-Animal Husbandry Department, Nizamabad), seeking a declaration that the 2nd respondent herein got disqualified due to the violation of the party whip. On the basis of the said complaint given by the

appellant herein, the Presiding Officer initiated proceedings against the second respondent herein for disqualification and the same culminated in the order dated 4-2-2015, declaring the 2nd respondent to have ceased to be a member of the Mandal Parishad.

6. Challenging the said order dated 4-2-2015 passed by the Presiding Officer for Elections to the posts of President and Vice President of the Mandal Praja Parishad, the 2nd respondent herein filed O.P.No.36 of 2015 on the file of the District Court under Section 153-A of the Andhra Pradesh Panchayat Raj Act, 1994. Along with the main petition, the 2nd respondent also filed an application in I.A.No.162 of 2015 seeking an interim suspension of the proceedings dated 4-2-2015 of the Presiding Officer. By an order dated 14-08-2015, the District Court allowed the application for interim suspension.

7. Challenging the interim order granted by the District Court in favour of the 2nd respondent, the appellant filed a writ petition in W.P.No.27218 of 2015. The said writ petition was dismissed by the learned Judge, by an order dated 5-10-2015. Aggrieved by the said order, the appellant is before us.

8. The main contention raised by the appellant herein in his writ petition before the learned single Judge was that the Election Tribunal constituted in terms of Rule 2 (1) of the Andhra Pradesh Panchayat Raj (Election Tribunal in respect of Gram Panchayats, Mandal Praja Parishads and Zilla Parishads) Rules, 1995, (hereinafter referred to as the 1995 Rules) has limited powers specifically vested under Rule 7 (ii), which does not include any power to grant interim orders and that the disqualification contemplated under Section 153 (1) of the Act was automatic and imminent, without giving any scope for any interference through an

interim order.

9. But the learned Judge rejected the aforesaid contention on the basis of two decisions of this Court, one in **Tadi Laxmana Rao v. Challa Satyanarayana** (Writ Appeal No.1251 of 2008, dated 5.8.2009) and another in **Yarlagadda Venkateswararao v. Government of Andhra Pradesh** (2007 (2) ALT 65), decided by a single Judge and confirmed on appeal by a Division Bench. The learned Judge held that the powers vested upon the District Court under Section 153-A would include the power to make interlocutory orders and that such power was incidental to the exercise of jurisdiction to resolve such disputes. The learned Judge further held that the jurisdiction of this Court under Article 226 to interfere with the interim orders passed by an Election Tribunal, is extremely circumscribed. In that view of the matter, the learned Judge dismissed the writ petition. Hence this appeal.

10. The contentions of Mr. C. Hanumantha Rao, learned counsel for the appellant before us are three fold, viz:

- a) that once the powers conferred upon an Election Tribunal are clearly demarcated in Rule 7 of the 1995 Rules, the Tribunal cannot assume jurisdiction to pass any order beyond the limits prescribed in Rule 7;
- b) that the disqualification stipulated in Section 153 (1) of the Act, is automatic and hence the grant of any interim order would tantamount to the restoration of a person to an office which he ceased to hold by a statutory prescription;
- c) that in any case the Tribunal failed to appreciate whether the case on hand was a fit case for the grant of an interim order or not?

11. We have carefully considered the submissions of the learned counsel for the appellant. We shall now deal with each one

of the above three contentions.

Contention No.1:

12. As we have pointed out earlier, the first contention of the learned counsel for the appellant is that an Election Tribunal constituted in terms of Rule 2 of the 1995 Rules, has no power to grant any interim order, by invoking Section 151 of the Code of Civil Procedure. This is due to the fact that only certain provisions of the Code of Civil Procedure are made applicable to the Election Tribunals, under Rule 7 (ii) of the 1995 Rules.

13. In support of the above contention, the learned counsel for the appellant places heavy reliance upon a decision of the Division Bench of this Court in **Kummari Ramulu v. Gangaram Penta Reddi**^[1]. But unfortunately for the appellant, another Division Bench of this Court appears to have confirmed the decision of a learned Single Judge in **Yarlagadda Venkateswararao** (2007 (5) ALD (NOC) 60, wherein the learned Single Judge held that the power of the District Court under Section 153-A would include the power to grant interim orders in appropriate cases. Therefore, *prima facie*, it appears that there are conflicting views on the question of the power of the Election Tribunal to grant interim orders.

14. Be that as it may, we think that the parties as well as the District Court, have lost sight of one important aspect. We are not concerned in this case with the power of the Election Tribunal to grant interim orders. We are concerned here with the power of the District court to grant interim orders. This aspect has not been noted by the parties, resulting in the discussion being diverted to the question of the power of the Election Tribunal to grant interim orders.

15. It may be seen from the scheme of the Andhra Pradesh

Panchayat Raj Act, 1994 that the Act comprises of 278 Sections and 6 schedules. They are divided into 8 parts, with each part being sub-divided into separate Chapters. Part III of the Act contains provisions relating to the Constitution and Incorporation, Composition, Powers and Functions of Mandal Parishads. Sections 148 to 176 are included in Part-III. It is in this part that the provision relating to election, reservation and term of office of the President and Vice President are included in Section 153. The provision for resolution of disputes relating to cessation of office, for disobedience of the party whip is included in Section 153-A.

16. The provisions relating to “Miscellaneous Election Matters, vacation of seats and offices”, dealt with by the Sections 231 to 234 are included in Chapter-III of Part V of the Act. Section 233 which is included in Chapter III of Part V mandates that no election held under the Act shall be called in question except by an election petition presented to such authority and in accordance with such Rules as may be made in this behalf.

17. It is in exercise of the powers conferred by Section 233 read with Section 268 (1) of the Act that the Government had issued the Andhra Pradesh Panchayat Raj (Election Tribunals in respect of Gram Panchayats, Mandal Parishads and Zilla Parishads) Rules, 1995 (which we have and we shall refer to as the 1995 rules throughout).

18. Interestingly the constitution of the Election Tribunal is dealt with by Rule 2 (2) of the 1995 Rules which reads as follows:

“2. (2) The Election Tribunal shall be –

- (i) except in cases falling under clause (ii),
 - (a) the District Munsif, if there is more than one District Munsif, the Principal District Munsiff, having territorial jurisdiction over the place in which the office of Gram Panchayat is located in respect of the election of Members, Sarpanchas and Upa-Sarpanchas of Gram Panchayat.
 - (b) the Subordinate Judge or if there is more than one

Subordinate Judge at the head quarters, having territorial jurisdiction over the place in which the office of Mandal Parishad or Zilla Parishad, as the case may be, is located, in respect of the election disputes and matters pertaining to the election of President, Vice-President and members of Mandal Parishad Territorial Constituencies and Chairman, Vice-Chairman and Members of Zilla Parishad Territorial Constituencies.

Explanation: For purposes of these Rules, the expressions "Subordinate Judge" and "District Munsiff" shall in relation to the Scheduled Areas mean the Agency Divisional Officer.

(ii) Where the Government so direct, whether in respect of Gram Panchayats generally or in respect of any class of Gram Panchayats, Mandal Parishads and Zilla Parishads such officer or officers of the Government as may be designated by the Government in this behalf by name or by virtue of office."

19. The proviso to Rule 2 makes it clear that the District Judge is competent to transfer an election petition from one Subordinate Judge to another Subordinate Judge or from one District Munsif to another District Munsif and that as and when so transferred, the Court to which it is transferred will be deemed to be the Election Tribunal.

20. Sub-rule (3) of Rule 2 of the 1995 Rules makes it clear that an Election Tribunal shall be deemed to exercise such jurisdiction as a *persona designata* and not in his capacity as Judge or other officer of the Government as the case may be. Therefore, such Election Tribunals are not to be treated, as a matter of course, as civil Courts which have inherent powers. It is needless to point out that all Tribunals are not civil courts, though some of them may have the trappings of a civil court. Therefore, they would have no inherent power as is conferred upon civil courts by section 151 of the Code.

21. Keeping in mind the provisions of Section 233 of the Act and the provisions of Rule 2 of the 1995 Rules, let us now come back to Sections 153 and 153-A. The second proviso to

sub-section (1) of Section 153 declares that a member voting under sub-section (1) in disobedience of the party whip will cease to hold office in the manner prescribed and the vacancy caused by such cessation shall be filled as a casual vacancy. Sub-section (1) of Section 153 provides for the election of one President and one Vice- President for every Mandal Parishad and such election shall be by show of hands duly obeying the party whip given by such functionary of the recognized political party as may be prescribed.

22. It must be noted that the second proviso was incorporated for the first time by Amendment Act 5 of 1995 when sub-section (1) of section 153 was also amended. But, Section 153-A was inserted only by the Amendment Act 22 of 2006. Under Amendment Act 22 of 2006, the wordings of sub-section (1) of section 153 were also changed. We shall take note of the amendment made to sub-section (1) of section 153 later. Now we shall take note of section 153-A, which reads as follows:

“153A. Resolution of disputes relating to cessation for disobedience of party whip:- Where a member against whom a proceeding that he ceased to hold office as a consequence of the disobedience of the party whip is issued in pursuance of the second proviso to subsection (1) of section 153 and the affected member disputes the correctness of the proceedings, he may apply to the District Court having jurisdiction over the area in which the office of the Mandal Praja Parishad is situated, for a decision.”

23. It is seen that Section 233, deals with (1) **an election petition**, to be presented to (2) **such authority as may be prescribed** by the Rules, This is in contrast to **Section 153-A which refers neither to an election petition nor to an “authority” but refers only to the District Court having jurisdiction over the area in which the office of Mandal Parishad is situated.**

24. As can be seen from sub-rule (2) of Rule 2 of the 1995 Rules, there are 3 types of officers who could constitute an Election Tribunal. They are (1) the District Munsif/Principal District Munsif, (2) Subordinate Judge and (3) Such Officer or Officers of the Government as may be designated by the Government by name or by virtue of office. A district court is not named in Rule 2 (2) of the 1995 Rules as an office which could be named as an election Tribunal. By virtue of sub-rule (3) of Rule 2, the officer or authority named as the Election Tribunal, is a *persona designata*.

25. To be precise, Section 153-A does not use the expression “authority” as used in Section 233. On the contrary Section 153-A uses the expression “District Court”. Similarly, sub-rule (2) of Rule 2 of the 1995 Rules, does not make the District Court an Election Tribunal. On the contrary the proviso to sub-rule (2) of Rule 2 recognises the supervisory jurisdiction of the District Court (only administratively), enabling the District Court to transfer an election petition from one Subordinate Court to another or from one District Munsif to another.

26. Since Section 153-A was inserted by Amendment Act 22 of 2006 and since Section 233 was already in place from 1994, it must be deemed that the Legislature was conscious of the distinction between (i) the expression “authority” used in Section 233 for resolving election disputes and (ii) the expression “District Court” used in Section 153-A for resolving disputes of a special nature such as the disqualification of an elected member for violation of the party whip.

27. It may be interesting to note that there is yet another place in the Act, where a reference is made to the District Court. The same is to be found in Section 22-A. Section 22-A reads as follows:

“22-A. Bar of jurisdiction:-- No order passed or provisions of this Act, shall be called in question in any Court, in any suit, or application; and no injunction shall be granted by any Court except District Court in respect of any action taken or about to be taken in pursuance of any power conferred by or under this Act.”

28. While imposing a bar on the Courts to grant an injunction, Section 22-A specifically excludes the District Court from the Bar. This Section 22-A appears to have been inserted by the Amendment Act 22 of 2002. In other words, the bar of jurisdiction to grant an injunction, is imposed by Section 22-A upon all Courts except the District Court. Therefore, the reach of Section 153-A has to be understood in the context of Section 22-A and the composition of the Election Tribunal in terms of Rule 2 of 1995 Rules.

29. Once it is so understood, it will be clear that ***the disputes under Section 153-A do not go before an Election Tribunal viz., the District Munsif or Subordinate Judge or an Officer of the Government as constituted under sub-rule (2) of Rule 2 of 1995 Rules. On the contrary, the disputes under Section 153-A go before the District Court.*** The jurisdiction of the District Court to grant an injunction is specifically recognized in Section 22-A.

30. Therefore, the appellant has been under a total misconception that the petition filed by the 2nd respondent under Section 153-A was an election petition and that the District Court before which the petition was filed was an Election Tribunal. Neither the petition filed by the 2nd respondent was an election petition nor the District Court before which it was filed was an Election Tribunal. If a dispute relating to the disqualification of a member for disobedience of a whip is treated as an election dispute, the same would have been covered by section 233 and

there would have been no necessity to incorporate a special provision under section 153-A.

31. Actually one has to understand the scope of sections 153 and 153-A in the manner stated herein. ***If due to the disobedience of a whip by a member belonging to a political party, a candidate belonging to another political party gets elected and such an election is challenged on any ground, the said challenge will be an election dispute within the meaning of section 233 and it would go before the Election Tribunal. But if the member disobeying the whip is disqualified, the dispute relating to such disqualification will not be an election dispute within the meaning of section 233, but will be a disqualification dispute within the meaning of section 153-A, though the said dispute might have arisen out of and in connection with an election to the office of President or Vice President.*** Hence Rule 7 of the 1995 Rules circumscribing the application of the provisions of the Code of Civil Procedure to the Election Tribunals, has no application to a proceeding under Section 153-A before a District Court.

Contention No.2:

32. The second contention of the petitioner is that the disqualification prescribed in Section 153(1) of the Act is automatic and that therefore the grant of an interim order in such cases would tantamount to the restoration of a person to an office which he ceased to hold.

33. In order to understand and appreciate the scope of the above contention, it is necessary to have a look at Section 153(1) of the Andhra Pradesh Panchayat Raj Act, 1994, together with the second proviso thereto, as it now stands. It reads as follows:

153. Election, reservation and term of office of President and

Vice-President:

(1) For every Mandal Praja Parishad there shall be one President and one Vice-President who shall be [elected by and from among the elected members specified in clause (i) of sub-section (1) of Section 149 by show of hands duly obeying the party whip given by such functionary of the recognised political party as may be prescribed.] If at an election held for the purpose no President or Vice-President is elected, fresh election shall be held the names of the President or Vice-President so elected shall be published in the prescribed manner: Provided that if a Member of the Legislative Assembly of the State or of either House of Parliament is elected to either of the said offices, he shall cease to hold such office unless within fifteen days from the date of election to such office, he ceases to be member of the Legislative Assembly of the State or of either House of Parliament by resignation or otherwise.

Provided further that a member voting under this sub-section in disobedience of the party whip shall cease to hold office in the manner prescribed and the vacancy caused by such cessation shall be filled as a casual vacancy.

34. As can be seen from sub-section (1), the Statute contemplates the election of one President and one Vice-President for every Mandal Parishad, to be elected by show of hands duly obeying the party whip. What happens if a member votes in disobedience of the party whip, is provided in the second proviso to sub-section (1).

35. It may be of interest to note that the provisions relating to the requirement of the elected members to obey the party whip in the matter of election of President and Vice-President of Mandal Parishad and the disqualification of persons disobeying the whip, were actually inserted by Amendment Act No.5 of 1995 with effect from 30-12-1994. The words “elected by and from among the elected members specified in Clause (i) of sub-section (1) of Section 149 by show of hands duly obeying the party whip given by such functionary of the recognised political party as may be prescribed” were inserted into sub-section (1) of Section 153 by Andhra Pradesh Amendment Act No.5 of 1995.

36. Similarly ***the second proviso in entirety except the words “in the manner prescribed” but with the word “forthwith” was inserted by Andhra Pradesh Amendment Act No.5 of 1995.***

37. It was only by Andhra Pradesh Amendment Act No.22 of 2006 that the words “***in the manner prescribed***” were inserted and the word “***forthwith***” was deleted in the second proviso to sub-section (1) of Section 153.

38. The insertion of the words “in the manner prescribed” and the deletion of the word “forthwith” in the second proviso to sub-section (1) of Section 153 has added a new dimension to the whole issue. ***In the absence of the 2006 amendment, the second proviso will simply read, to the effect that a member voting in disobedience of the party whip shall cease to hold office forthwith.*** In such a scenario, the cessation of office is imminent, upon the disobedience of the party whip.

39. But by adding the words “in the manner prescribed”, into the second proviso, and by deleting the word “forthwith”, the Legislature has thought fit to make the cessation of office, dependent upon the manner prescribed by subordinate legislation, for such cessation. Thus ***the cessation of office under the second proviso which was originally contemplated to happen forthwith, is now contemplated to happen only in the manner prescribed.***

40. Section 153 (1) as it originally stood in 1994, the amendments made thereto under Amendment Act 5 of 1995 and under Amendment Act 22 of 2006 are presented in a tabular form as follows:

Section 153 (1) as it originally appeared	T h e amendment under Act 5 of 1995	T h e amendment under Act 22 of 2006
---	-------------------------------------	--------------------------------------

For every Mandal Parishad there shall be one President and one Vice-President who shall be elected by and from among the elected members specified in clause (i) of sub-section (1) of Section 149 in the prescribed manner. If at an election held for the purpose no President or Vice-President is elected, fresh election shall be held. The names of the President and the Vice-President so elected shall be published in the prescribed manner.	In Section 153 of the Principal Act,- (A) in sub-section (1),- (i) for the expression “elected by and from among the elected members specified in clause (i) of sub-section (1) of Section 149 in the prescribed manner,” the expression “elected by and from among the elected members specified in clause (i) of sub-section (1) of Section 149 by show of hands duly obeying the party whip given by such functionary of the recognised political party as may be prescribed”, shall be substituted: (ii) after the proviso, the following shall be added, namely:- “Provided further that a member voting under this sub-section in disobedience of the party whip shall cease to hold office forthwith and the vacancy caused by such cessation shall be filled as a casual vacancy.”	Amendment of Section 153:- In Section 153 of the principal Act, in sub-section (1), in the second proviso for the words, “shall cease to hold office forthwith”, the words “shall cease to hold office in the manner prescribed”, shall be substituted. Insertion of new Section 153 A:- After Section 153 of the principal Act, the following section shall be inserted, namely:- 153-A, “Resolution of disputes relating to cessation for disobedience of party whip:- Where a member against whom a proceeding that he ceased to hold office as a consequence of the disobedience of the party whip is issued in pursuance of the second proviso to sub-section (1) of Section 153 and the affected member disputes the correctness of the proceedings, he may apply to the District Court having jurisdiction over the area in which the office of the Mandal Parishad is situated, for a decision”.
---	---	---

41. It appears that for the conduct of election of Co-opted

members, President and Vice-President of Mandal Parishads, the Government of Andhra Pradesh has issued a set of rules known as The Andhra Pradesh Conduct of Election of Member (Co-opted), President and Vice-President of Mandal Parishad and Member (Co-opted), Chairperson and Vice-Chairperson of Zilla Parishad Rules, 2006. These Rules were issued in exercise of the powers conferred by Section 268 read with Section 149(1)(v) and Section 153 of the Act.

42. Rule 11 of these Rules, which we shall hereinafter refer to as the 2006 Rules, contains a detailed procedure for the appointment of the Whip, issuance of the whip, and the procedure to be followed before declaring a disobeying member to have ceased to hold office.

Rule 11 of the 2006 Rules is extracted as follows:

“11. Disqualification for disobedience of party whip (Mandal Parishad) :--(1) Every recognized political party may appoint on behalf of that political party a whip and intimation of such appointment shall be sent by the State President or a person authorised by him under his signature and seal and such intimation shall be sent to the Presiding Officer, so as to reach him on or before 11.00 A.M. on the day preceding the day of election to the office of the President and Vice-President of the Mandal Parishad.

(2) The person appointed as whip by the recognized political party shall furnish a copy of the contents of the whip issued by him to the Presiding Officer at least an hour before the commencement of special meeting.

(3) The person appointed as whip by a recognized political party shall, in addition to a copy of the contents of the whip issued by him, also furnish a copy of the acknowledgment obtained from the members belonging to the party on the service of the whip to them, to the Presiding Officer before the commencement of the meeting. If any member elected on behalf of the recognized political party refuses to receive the whip issued by him, he shall record the same and furnish a copy of it to the President Officer.

(4) Any member of the Mandal Parishad elected, on behalf of a recognized political party shall cease to be a Member of the Mandal Parishad for disobeying the direction of the party whip so issued, in the manner hereinafter provided.

(5) The Presiding Officer shall, on receipt of a written report from the party whip within three days of the election that a member belonging to his party has disobeyed the whip issued in

connection with the election, give a show-cause notice to the member concerned as to why he should not be declared to have ceased to hold office and that he should make any representation within seven days from the date of the notice. The Presiding Officer shall consider any explanation given and pass a speaking order in the matter of cessation for disobedience of the whip. If no explanation is received the Presiding Officer shall pass an order on the basis of the material available with him.”

43. *Rule 11 extracted above makes it crystal clear that what was once conceived to be an immediate and imminent disqualification (by the use of the word “forthwith”), was later modified to the effect that there must be a declaration by the Presiding Officer to the said effect, after following the procedure prescribed by sub-rule (5) of Rule 11 of the 2006 Rules.*

44. In the case on hand, the elections were held on 13-7-2014. The report of the Whip is stated to have been submitted to the Presiding Officer on 14-7-2014. A show-cause notice under Rule 11(5) was issued on 18-7-2014 and the order of the Presiding Officer under Rule 11(4) of the 2006 Rules, declaring the 2nd respondent to have ceased to hold office was passed on 04-02-2015.

45. Therefore it is clear that the cessation to hold office under the second proviso to Section 153(1), is not immediate. It is not forthwith. But it is to be declared under Rule 11(4) of the 2006 Rules, after following the procedure prescribed under Rule 11(5). In such circumstances, the contention that the cessation to hold office is imminent and automatic and that the grant of stay by the District Court would tantamount to restoration of a person to an office, which he ceased to hold, is legally incorrect. Hence the second contention of the learned counsel for the appellant is to be rejected.

Contention No.3:

46. The third contention of the learned counsel for the appellant is that in any event, the District Court did not analyse whether this case was a fit case on merits for the grant of an

interim order or not and that therefore the order should be set aside.

47. It is true that any prayer for the grant of an interim injunction or interim stay should pass the triple tests of (1) *prima facie* case, (2) balance of convenience and (3) hardship.

48. In the case on hand, the 2nd respondent has taken a stand that the whip issued by the appellant herein was never served on her. The requirement of service of the whip on all elected members belonging to the concerned political party, is a mandatory requirement as seen from Rule 11(3) of the 2006 Rules, which stipulates that the person appointed as the Whip should furnish the copy of the acknowledgment obtained from the members. Therefore the District Court appears to have thought that there was *prima facie* case in favour of the 2nd respondent. If no stay had been granted, the 2nd respondent would have ceased to be a member and would have continued to be a non-member during the entire period when the petition filed under Section 153-A was pending before the District Court. Therefore the District Court as well as the learned Single Judge thought that the balance of convenience was in favour of the 2nd respondent.

49. In any event, it is not open to a second appellate court (like us) to interfere with the grant of an interim discretionary order by the Court of first instance, especially after the same was confirmed by one appellate court (the learned Judge in the Writ Court).

50. There is also one more aspect, which is of a larger nature. The object of the law providing for a whip to be issued by political parties to the elected members belonging to their party, is to ensure discipline and prevent horse-trading. ***Leaders, who suffer on account of the disobedience of the whip, brand the***

requirement to comply with a whip as “matter of discipline and a curb on corrupt practices”. But, when they are benefitted by such disobedience, the very same persons brand such disobedience as “the call of the conscience”.

51. It is not known whether the political parties can go to such an extent, in the matter of issue of whip, so as to prevent one of the elected members belonging to their own party even from contesting to the post of President or Vice President. ***There are several instances, where the leader of the elected group of representatives belonging to a political party, is chosen, not from among the group of elected men, but transplanted from the headquarters. The question as to whether a whip can destroy the very democratic fabric of the system by preventing an elected representative from contesting for the post of President/Vice-President is of a larger nature.***

52. In the case on hand two possible scenarios could have emerged. If without contesting for the post of President, the 2nd respondent herein had disobeyed the whip and voted in favour of a candidate nominated by another political party, the same would tantamount certainly to a disobedience without any justifiable cause. But when a person disobeys the whip and seeks to contest for the post of President, such a disobedience, may not strictly fall within the purview of horse-trading. It is not known whether by issuing a whip asking all the elected representatives belonging to their political party, to vote in favour of the chosen one for the post of President, the rights of the other elected members to contest for the post of President could be taken away. In this case it would have been a different matter if the 2nd respondent had violated the whip, crossed floors and voted in favour of a person belonging to

the opposite party. Assuming that she was duly served with the whip and that she disobeyed the same, such disobedience was for the purpose of contesting in the election for the post of President. Therefore the question as to whether the second proviso to Section 153(1) could be invoked, looms large and requires consideration at the appropriate time.

53. In such circumstances, we are of the considered view that all the three contentions raised by the learned counsel for the appellant deserve to be rejected. Accordingly they are rejected and the writ appeal is dismissed. The miscellaneous petitions, if any, pending in this writ appeal shall stand closed. No costs.

V. RAMASUBRAMANIAN, J

ANIS, J

After we pronounced the orders, a request was made by Mr. C. Hanumantha Rao, learned counsel for the appellant, at least to direct the District Court to dispose of the O.P. within a time frame. Since the District Court is obliged to dispose of such petitions within a time frame, in any case, we direct the District Court to dispose of the O.P. within a period of two (2) months from the date of receipt of a copy of this order.

V. RAMASUBRAMANIAN, J

ANIS, J

Date: 23.08.2016

Note: L.R. Copy to be marked.

Issue C.C. tomorrow

Ksn/Ak

**HON'BLE SRI JUSTICE V.RAMASUBRAMANIAN
AND
HON'BLE SMT JUSTICE ANIS**

-

-

-

-

Writ Appeal No.1066 of 2015

**(JUDGMENT of the DB
prepared by VRS, J.)**

23rd August, 2016.
(Ksn/Ak)

[\[1\]](#) 2004 (3) ALT 788