

HONOURABLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.12815 and 13889 of 2019

COMMON ORDER:

Since the issues involved in both these Writ Petition are inter connected and the parties are same, both the Writ Petitions are being heard and disposed of together.

Writ Petition No.12815 of 2019 is filed seeking to issue a Writ of *Mandamus* declaring the inaction of respondent No.4-Presiding officer in taking further action in pursuance of the petitioner's complaint dated 10.6.2019 for disobeying the whip, even though a statutory duty is cast on him under Rule 11(5) of the Telangana Panchayat Raj (Conduct of Election of Member (Co-opted), President and Vice-President of Mandal Praja Parishad and Members (Co-opted), Chairperson and Vice-Chairperson of Zilla Praja Parishad) Rules, 2018 (for brevity 'the Rules'), as illegal and arbitrary.

Writ Petition No.13889 of 2019 is filed seeking to declare the action of respondent No.3-Presiding Officer in issuing show cause notice, dated 03.7.2019, as illegal, without jurisdiction and arbitrary and consequently, to set aside the same.

For convenience, hereinafter the parties will be referred to as arrayed in Writ Petition No.13889 of 2019.

In the affidavit, filed in support of Writ Petition No.13889 of 2019, the petitioners averred that they are elected as the Members of the Mandal Parishad Territorial Constituencies ('MPTCs') of Kodair Mandal, Nagar Kurnool District; that the total number of MPTCs for

Kodair Mandal is 13; that respondent No.4, who was appointed as whip for the elections of President/Vice President of Mandal Praja Parishad ('MPP'), *vide* letter bearing No.85/TRS/KLP/2019, dated 06.6.2019, issued party whip to all the TRS party MPTCs directing them to vote in favour of one Smt. Ramanujamma for the MPP election in the special meeting which is to be held on 07.6.2019; that during the election, TRS party issued Form-B in favour of Smt. Ramanujamma for election to the post of President; that when the process of nominations began, her name was proposed by one independent MPTC member, but no one seconded her proposal as President of MPP of Kodair Mandal; that therefore, the said Ramanujamma was not a candidate in the election for the post of President of MPP of Kodair Mandal; that one Saritha's name (INC party) was proposed by one MPTC member and seconded by another MPTC member; that the name of petitioner No.1 was proposed by petitioner No.3 and seconded by another MPTC member; that respondent No.3 accepting the nominations of the said two candidates, who met the pre-requisites as mandated under Rule-10 of the Rules, conducted the voting process for petitioner No.1 and Smt Saritha (INC party) for election to the post of the President of MPP of Kodair Mandal; and that in the said special meeting held on 07.6.2019, petitioner No.1 was elected as President of MPP of Kodair Mandal by securing majority votes, *i.e.*, 8 out of 13.

The petitioners further averred that respondent No.2 addressed a letter to the Principal Secretary, Panchayat Raj & Rural Development, Government of Telangana, bearing No.C6/990/2019, dated 13.6.2019, stating that on completion of the election and declaration of results, Smt. Ramanujamma lodged a complaint against the petitioners herein contending that they disobeyed the party whip and voted against the party interests; that the complaint was lodged by an unauthorised person who is not the party whip; that respondent No.3-Presiding Officer has requested to clarify whether a complaint given by an unauthorised person, instead of the person appointed as party whip, according to Rule-11(5) of the Rules, can be treated as valid.

It is further averred that as no complaint has been lodged by the party whip within three days from the date of election as specified under Rule 11(5) of the Rules, respondent No.3 sent notices dated 26.6.2019 to all the elected members of the MPTCs for taking oath as per Section 143 of the Act and that in the first meeting conducted on 04.7.2019, petitioner No.1 had taken oath as the President of MPP of Kodair Mandal. While so, respondent No.3 issued a show-cause notice dated 03.7.2019 to petitioner No.1 calling upon her to explain as to why she should not be removed from the membership. Aggrieved by the said show cause notice, Writ Petition No.13889 of 2019 is filed.

In the counter-affidavit filed by respondent No.3 in Writ Petition No.13889 of 2019, it is *inter alia* stated that he was appointed as Presiding Officer for the election of MPPs, President and Vice President of Kodair Mandal; that respondent No.4 was appointed as a whip; that though respondent No.4 issued a whip to all TRS party MPTCs directing them to vote in favour of one N.Ramanujamma, as no member seconded her, her candidature was not accepted; that since petitioner No.1 contested for the post of President and secured highest votes, she was declared as the President after following the procedure in the meeting held on 07.6.2019; that on the complaint received from the said N.Ramanujamma, he addressed letter dated 12.6.2019 to respondent No.2-The Collector & District Election Authority, Nagar Kurnool District, explaining the circumstances and guidance for further action is awaited; that thereafter, respondent No.4-party whip filed Writ Petition No.12815 of 2019 alleging inaction on the part of respondent No.3-Presiding Officer in taking further action on the report of violation of party whip; and that in pursuance of the interim order dated 01.7.2019, granted by this Court, respondent No.3 issued the impugned show cause notice to the petitioners and also received their explanations on 11.7.2019.

In the counter-affidavit, respondent No.3 has denied the allegation that when respondent No.4 contacted him on phone, he instructed respondent No.4 to give the complaint to the MPDO.

In Writ Petition No.13889 of 2019, respondent No.4 has also filed counter-affidavit reiterating the contents in the counter-affidavit of respondent No.3 to some extent. As such, the same are not narrated to avoid repetition. Respondent No.4 further stated that he gave a report/complaint to respondent No.3 on 10.6.2019, which was duly acknowledged by the latter on the same day; and that the Writ Petition is pre-mature as it is filed challenging a show cause notice.

In the affidavit, filed in support of Writ Petition No.12815 of 2019, the petitioner therein averred that in pursuance of the whip issued in his favour, he went to the houses of four MPTC members and having found the doors of their houses locked, affixed copies of the whip on the main doors of their respective houses; that he submitted a copy of the whip and also copies of the notices served along with photographs to respondent No.3-Presiding Officer on the date of election i.e., on 07.6.2019; that respondent No.3 read over the contents of the whip to all the members present for electing the President and Vice President of MPP of Kodair Mandal; that as respondent No.3 was not available in the office, he called him over phone, who instructed him to submit a complaint/report against the persons who disobeyed the whip to the MPDO; and that accordingly, he did so.

Learned counsel for the petitioners in Writ Petition No.13889 of 2019 submits that issuance of the show cause notice by respondent No.3 is without jurisdiction as the same is based on the

complaint of the candidate of political party who sought to contest but not by the whip, as such, the same is in violation of Sub-rule-(5) of Rule-11 of the Rules. He also submits that respondent No.4 made a complaint to MPDO and even according to respondent No.2, it reached on 12.6.2019 which is beyond three days from the date of election. He also submits that respondent No.4 filed Writ Petition No.12815 of 2019 stating that since respondent No.3 was not available in the office, a complaint was made to MPDO. However, the same is denied by respondent No.3 i.e., Presiding Officer in his counter-affidavit. Respondent No.4 in his counter-affidavit filed in Writ Petition No.13889 of 2019 stated that he made a complaint to respondent No.3 which is inconsistent with the plea taken by him in Writ Petition No.12815 of 2019 that he gave a complaint to the MPDO. This shows the conduct of respondent No.4-whip. Learned counsel further submits that respondent No.3 can assume jurisdiction only when jurisdictional facts as per Rule-11(5) of the Rules exist and in the present case, there exists none because respondent No.3 addressed letter to respondent No.2 asking for clarification and in the counter-affidavit, respondent No.3 stated that basing on the interim orders passed by this Court in Writ Petition No.12815 of 2019, the impugned show cause notice, dated 03.7.2019, is issued.

In support of his contentions, the learned counsel for the petitioners relied on the judgment of the Hon'ble Apex Court reported in *Whirlpool Corporation Vs. Registrar of Trade*

*Marks, Mumbai and others*<sup>1</sup> and the judgment of a learned single Judge of the erstwhile Common High Court for the States of Telangana and Andhra Pradesh in Writ Petition No.26368 of 2014, dated 30.10.2014.

On the other hand, learned counsel for respondent No.3 in Writ Petition No.13889 of 2019 submits that the complaint of respondent No.4 through the MPDO was received by respondent No.3 on 12.6.2019.

Learned counsel for respondent No.4 in Writ Petition No.13889 of 2019 submits that the Writ Petition is not maintainable against a show cause notice and the petitioners can submit their explanation to the show cause notice and the petitioners have an alternative remedy against the said action of respondent no.3. He also submits that these disputed questions of fact cannot be decided in the Writ Petition. He also relies on the judgment of this Court in *Muchu Siva Kumari and Others Vs. State Election Commission, Secunderabad and Others*<sup>2</sup>.

Sub-rule (5) of Rule 11 of the Rules reads as under:

“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/her party has disobeyed the whip issued in connection with the election, give a show-cause notice to the member concerned as to why he/she should not be declared to have ceased to hold office and that he/she should make any representation within seven days from the date of the notice. The Presiding Officer shall consider any explanation given within seven days and pass a speaking order in the matter of cessation for disobedience of the whip within two days of receipt of explanation. If no

---

<sup>1</sup> (1998) 8 SCC 1

<sup>2</sup> 2015 (1) ALD 492

explanation is received, within seven days, the Presiding Officer shall pass an order on the basis of the material available with him within two days after expiry of seven days period.”

A reading of the said rule clearly goes to show that the report has to be submitted by the party whip within three days of the election regarding alleged disobedience of whip.

Admittedly, in the present case, the election was held on 07.6.2019 and the complaint/report reached respondent No.3- Presiding Officer through MPDO on 12.6.2019 i.e., beyond three days from the date of election which is not in accordance with Rule-11(5) of the Rules.

The assertion of respondent No.4-whip that as respondent No.3 was not available in the office and as per his instructions on phone, he gave complaint to MPDO was clearly denied by respondent No.3. The Presiding officer having received complaint from the candidate in whose favour whip was issued categorically reported to respondent No.2 for a clarification.

The complaint made by person other than whip cannot be basis for issuance of a show cause notice as per Rule-11(5) of the Rules. In the counter-affidavit of respondent No.3 he clearly mentioned that only after this Court granted interim orders in Writ Petition No.12815 of 2019, a show cause notice was issued which goes to show that no jurisdictional facts exist for issuance of the impugned show cause notice and therefore, issuance of the said notice is without any application of mind. This Court in Writ Petition No.12815 of 2019 only directed respondent No.3 to take action as

per law. Admittedly, even all the learned counsel stated that it is only Rule-11(5) of the Rules which empowers respondent No.3 for issuance of a show cause notice and for taking action for disqualification for disobeying the whip. This Court is of the opinion that the jurisdictional facts are lacking for issuance of the impugned show-cause notice by respondent No.3 as the said notice was issued against the provisions of the Act and therefore, the same is without jurisdiction.

The Apex Court in *Whirlpool Corporation* (1 supra) observed as follows;

“The law as to the jurisdiction of the High Court in entertaining a Writ Petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.”

A learned single Judge of this Court in similar circumstances, in Writ Petition No.26368 of 2014 observed and held as under:

“In my opinion the said decision has no application to the facts of the present case in as much as violation of principles of natural justice is not the only ground for entertaining a Writ Petition when there is an alternative remedy available to the petitioner. The decision in *Guwahati Carbon Limited* (7 supra) indicates that there can be other circumstances where Writ Petition can be entertained notwithstanding the existence of an alternative remedy. In *Harbanslal Sahnia v. Indian Oil Corpn. Ltd.*, the Supreme Court has indicated other situations where Writ Petition can be entertained even though there is an alternative remedy by declaring:

“7. ... In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: (i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is

challenged. (See *Whirlpool Corpn. v. Registrar of Trade Marks...*(1998(8) SCC 1)

Therefore, I reject the contention raised by the respondents that the petitioners ought to be relegated to the remedy of approaching the District Court and challenging the impugned orders invoking Section 153-A of the Act.”

The judgment in *Muchu Siva Kumari* (2 supra), which is relied on by learned counsel for respondent No.4, arose in different set of facts where disputed questions of facts were involved and hence, the same is not applicable to the present case.

Even in the decision cited by respondent No.4 in *Koppu Ramesh and Others Vs. A.P. Social Welfare Residential Educational Institutions Society and Others*<sup>3</sup>, this Court held that a Writ Petition can be maintained even when the show cause notice is issued contrary to any specific provision of law. However, it is to be noted that the said judgment was rendered in different set of facts where there are disputed questions of fact. In the present case, there is no dispute regarding the facts for which the impugned show cause notice was issued. As such, this Court is inclined to entertain the Writ Petition.

In the light of the aforesaid discussion and the foregoing reasons and in view of the facts and circumstances of the case, since the show cause notice, dated 03.7.2019, issued by respondent No.3 is in violation of Rule-11(5) of the Rules, the same is set aside and Writ Petition No.13889 of 2019 is accordingly allowed.

---

<sup>3</sup> 2008 (5) ALT 751 (S.B.)

The conduct of respondent No.4 in taking inconsistent stands in the two Writ Petitions goes to show his *mala fide* intention to see that the petitioners are disqualified. More so, *Mandamus* is sought in Writ Petition No.12815 of 2019. The Supreme Court in a catena of decisions viz., *Santosh Kumar Verma Vs. State of Bihar*<sup>4</sup>, *University of Allahabad Vs. Anand Prakash Misra*<sup>5</sup> held that no writ of *Mandamus* can be issued against a statutory provision or rule of law. Following the said settled principle of law, no *Mandamus* can be issued in Writ Petition No.12815 of 2019 as it will run contrary to statutory Rule-11(5) of the Rules and as such, Writ Petition No.12815 of 2019 is dismissed with exemplary costs of Rs.25,000/- (Rupees Twenty five thousand only) which shall be paid to the Telangana State Legal Services Authority, Hyderabad.

Pending Miscellaneous Petitions, if any, shall also stand closed.

02<sup>nd</sup> August, 2019  
dr

JUSTICE A. RAJASHEKER REDDY

---

<sup>4</sup> AIR 1997 SC 975

<sup>5</sup> (1997) 10 SCC 264