

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

CIVIL REVISION PETITION Nos.2501 and 2502 of 2019

COMMON ORDER:

Since the facts of the case, parties and the issue involved in both these Civil Revisions Petitions are similar, both these revisions are being disposed of by this common order.

2) These two Civil Revision Petitions are filed under Article 227 of the Constitution of India, by the petitioner/respondent No.3 challenging the common order dated 27.09.2019 passed in I.A.Nos.1056 and 1145 of 2019 in E.O.P.No.26 of 2019 by the Principal District Judge, Khammam, wherein the subject applications i.e, I.A.No.1056 of 2019 filed by the respondent No.1 herein/petitioner under Order XXXIX Rules 1 and 2 of CPC read with Section 148 of the Telangana Panchayat Raj Act, 2018 (for short "the Act") read with Section 151 of CPC seeking to direct the official respondents 2 to 4 herein, to invite the respondent No.1 herein/petitioner to administer the swear-in-ceremony proposed to be held on 06.08.2019 or to fix a separate schedule for swear-in-ceremony as a member of Mandal Parishad Territorial Constituency (MPTC), Thimminenipalem and consequently, allow the respondent No.1/petitioner to act as a President of Mandal Praja Parishad (MPP), Chintakani Mandal, pending disposal of election petition, and I.A.No.1145 of 2019 filed by the respondent No.1 herein/petitioner under Order XXXIX Rules 1 and 2 read with Section 151 of CPC seeking to suspend the operation of

disqualification orders passed by respondent No.2/respondent No.1 in R.C.No.A1/Elections/2019 dated 13.06.2019, pending disposal of election petition, were allowed.

3) Heard Sri Vedula Venkata Ramana, learned Senior Counsel, representing Sri P.Pratap, learned counsel for the revision petitioner, Sri Kowturu Pavan Kumar, learned counsel representing Sri G.L.Narasimha Rao, learned counsel for respondent No.1, learned Government Pleader appearing for official respondent Nos.2 to 4 and perused the record.

4) Sri Vedula Venkata Ramana, learned Senior Counsel appearing for the revision petitioner/respondent No.3, would contend that the respondent No.1/petitioner violated the whip issued by the petitioner on behalf of TRS party and contested the election to the post of Mandal Praja Parishad (MPP), Chintakani Mandal and got elected to the said post erroneously. The Court below completely failed to observe that respondent No.1 erroneously stated that he was not aware of the issuance of whip under Ex.R.3 by the TRS party. Though there is valid service of whip in terms of second proviso to Section 147 of the Act and 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 short "Election Rules"), the respondent No.1 contesting the election to the post of President, MPP, Chintakani village and getting elected to the said post is in total violation of the Rules and regulations.

The respondent No.2 had rightly disqualified the respondent No.1 from the membership of MPTC, Thimminenipalem, on a complaint lodged by the revision petitioner for violating the whip. Consequently, the revision petitioner became disqualified to sworn-in as President of MPP, Chintakani Mandal. Though there is a whip to vote for Smt.Munukunta Nagaratnamma, the respondent No.1, in violation of the said whip, contested the election to the post of President, MPP, Chintakani Mandal and got elected. The stand taken by the respondent No.1 with regard to non-service of whip is totally false. Moreover, it is a question of fact, which requires to be examined in the course of trial of the election O.P. The official respondents have also clearly stated in their reply that there was violation of the whip issued by the petitioner. The respondent No.1/petitioner ought not have contested the election independently to the post of President, MPP, Chintakani Mandal, in violation of the whip issued by the TRS party. The proceedings, dated 13.06.2019, issued by the 2nd respondent/The Presiding Officer, Mandal Praja Parishad, Chintakani Mandal, Khammam District, disqualifying the respondent No.1/petitioner from the membership of MPTC, Thimminenipalem, are sustainable. The respondent No.1/petitioner elected as a member of MPTC, Thimminenipalem, from TRS party ticket. The Court below exceeded its jurisdiction in allowing the subject Interlocutory Applications and ultimately prayed to set aside the impugned orders by allowing the revision petitions as prayed for. In support of his contentions, the learned Senior Counsel relied upon the decision reported in

*Nallavelli Ashok vs. State of Telangana, rep. by its Principal Secretary to Panchayatraj Department and others*¹

5) Learned Government Pleader appearing for official respondent Nos.2 to 4 supported the submissions made by the learned Senior Counsel appearing for the revision petitioner/respondent No.1 and contended that there is no illegality in the order, dated 13.06.2019, passed by the respondent No.2 herein/respondent No.1 vide proceedings in R.C.No.A1/elections/ 2019 and ultimately prayed to set aside the impugned orders.

6) On the other hand, Sri Kowturu Pavan Kumar, learned counsel appearing for respondent No.1/petitioner would contend that there is no valid service of the whip on the respondent No.1/petitioner in accordance with the procedure established under law. The respondent No.1/ petitioner was not aware of the whip. The Court below had elaborately dealt with the contentions raised by both sides and ultimately negated the same. A copy of the whip was neither sent on 07.06.2019 or any other date to the respondent No.1. Further, it has been contended that subject whip was issued to support a candidate of a different political party, which has no legal sanctity. Disqualification contemplated under second proviso to Section 147 of the Act and Rule 11(5) of the Election Rules, is not applicable. On this ground also, the disqualification order issued by the Presiding Officer dated

¹ 2016 (6) ALT 225 (DB)

13.06.2019 is unsustainable. It is further contended that since the election of the 1st respondent/petitioner is in accordance with the governing rules, he ought to have been sworn in as President, MPP, Chintakani Mandal. There is no legal infirmity in the impugned orders and ultimately prayed to sustain the same.

7) In view of the submissions made by both sides, the following points have come up for determination:

- i) *Whether there was any service of whip on respondent No.1/petitioner?*
- ii) *Whether the respondent No.1/petitioner violated the whip and got elected to the post of President, MPP, Chintakani Mandal?*

8) POINTS: The material placed on record reveals that the respondent No.1/petitioner was elected as a President of Mandal Praja Parishad, Chintakani Mandal, in an election held on 07.06.2019. The specific case of the revision petitioner is that the authorized member of the TRS political party had issued a whip to the elected members of MPTC including the respondent No.1/petitioner to be present in the special meeting scheduled on 07.06.2019 and vote in favour of Smt.Munukunta Nagarathnamma, through the proceedings dated 07.06.2019 (Ex.R.3-party whip). An attempt was made to serve Ex.R.3-party whip on the respondent No.1/petitioner but there is no delivery of copy of party whip to the respondent No.1/petitioner. It is the case of the revision petitioner that respondent No.1/petitioner refused to receive the party whip and efforts were made to serve a copy of the whip at his house were also unsuccessful as the house of the respondent No.1 was locked. The Presiding Officer

was given copies of authorization (Exs.R.1 and R.2) one day prior to the date of elections. After completion of election, the petitioner submitted a complaint to the Presiding Officer to disqualify the respondent No.1/petitioner for disobedience of whip. The application, dated 08.06.2019, was filed before the Presiding Officer. Basing on the said application, the Presiding Officer issued show cause notice (Ex.R.6) to the respondent No.1/petitioner calling for the explanation. The respondent No.1/petitioner submitted his explanation dated 10.06.2019 under Ex.R.7. Having considered the said explanation (Ex.R.7), the Presiding Officer disqualified the respondent No.1/petitioner vide proceedings in R.C.No.A1/ elections/2019 dated 13.06.2019 holding that there was service of party whip on the respondent No.1/petitioner before the elections. The specific case of the respondent No.1/ petitioner is that there was no valid service of party whip and so, he contested to the post of President in the elections held on 07.06.2019 as an independent candidate, without B-form from TRS party and secured seven votes out of fourteen votes and the opponent has also secured seven votes. On account of tie, in the lottery, the respondent No.1/petitioner was elected as a President of Chintakani Mandal. The petitioner submitted Ex.R.3-whip to the Presiding Officer in terms of Rule 11(3) of Election Rules. The endorsement of the Presiding Officer shows that he received the party whip without acknowledgment of the respondent No.1/petitioner showing its receipt, and the documents submitted to him under Ex.R.3A shows there is a recording “not received”, a line is drawn beneath it, which reads

“door locked”. It has been contended on behalf of the petitioner that respondent No.1/ petitioner refused to receive the whip issued by the TRS party. Except an endorsement on the copy of the whip as ‘refused’, there is no signature of the person in whose presence refusal was made. So also, though it is mentioned as ‘door locked’, there are no details of the persons witnessing the door locked and the particulars of the persons who took the whip for service. Moreover, the date and time of taking the whip to the respondent No.1/petitioner are not given and so also with regard to the “door locked”. Further, the applications dated 07.06.2019 and 08.06.2019 filed by the petitioner/respondent No.3 seeking to initiate disqualification proceedings against the respondent No.1/petitioner, also do not refer the date, time and in whose presence such attempt was made to serve the whip on respondent No.1. The Court below while dealing with the subject Interlocutory Applications, made an observation that the order dated 13.06.2019 shows that the authority concerned has not recorded the finding with regard to satisfaction of service of whip. There is also omission with regard to non-mentioning of details of service by the petitioner/respondent No.3 in his two applications dated 07.06.2019 and 08.06.2019. Furthermore, there are no details in the show cause notice with regard to the efforts made by the petitioner to serve the whip at the house of the respondent No.1. Admittedly, the whip was not sent through registered post. Further, in Ex.R.3 there is no specific mention that a copy of the notice is affixed to the residential house of the respondent No.1/

petitioner. Making a simple endorsement as “refused” or “door locked”, do not make out *prima facie* case to establish that there is service of whip on the respondent No.1/petitioner, which is essential for disqualifying him to be the President of MPP, Chintakani Mandal.

Here, it is apt and appropriate to refer Rule 11 of the Election Rules, which reads as follows:

“11. Disqualification for disobedience of party whip (Mandal Praja 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 authorized by him/her under his/her 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 Praja 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/her 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/her, also furnish a copy of the acknowledgement 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/her, he/she shall record the same and furnish a copy of it to the Presiding Officer.

(4) Any member of the Mandal Praja Parishad elected, on behalf of a recognized political party shall cease to be a Member of the Mandal Praja Parishad for disobeying the directions 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/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 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."

9) It is pointed out by the learned counsel for the respondent No.1/petitioner that the candidate i.e, Smt.Munukunta Nagaratnamma, in whose favour the whip was given, is a member of CPIM party and elected as MPTC on CPM ticket. Whether a whip can be issued by a political party to elect a member of different political party to the post of President, MPP, Chintakani Mandal, is left open for determination by the Court below. Moreover, it is not appropriate to give any finding in these revision petitions with regard to the validity of the whip also. The dispute with regard to the service of whip is a question of fact, which requires answer after due trial. Having examined the whole issue, the Court below is justified in stating that there is a *prima facie* case and balance of convenience in favour of the respondent No.1/petitioner to grant the relief as prayed for.

10) It is apt to state that the supervisory jurisdiction conferred on the High Court under Article 227 of the Constitution of India is limited to see that a Court or Tribunal subordinate to it functions "within the bounds of their authority" and to ensure

that law is followed by such Court or Tribunal by exercising jurisdiction vested in them and not declining to exercise the jurisdiction which is vested in them. Apart from the above, High Court can interfere in exercise of its power of superintendence, when there has been a patent perversity in the orders of the Courts or Tribunal subordinate to it or where there has been a gross and manifest failure of justice or the basic principles of natural justice have been flouted. In the instant case, neither there is patent perversity in the orders under challenge nor the Court below travelled beyond its jurisdiction in passing the impugned orders. The Court below had discussed the material on record at length and allowed the subject Interlocutory Applications, assigning number of reasons. There is nothing to take a different view and there is no legal infirmity. The decisions relied upon by the learned Senior Counsel for the revision petitioner are distinguishable from the facts and circumstances of the case on hand. The Civil Revision Petitions are devoid of merit and are liable to be dismissed.

11) Accordingly, both the Civil Revision Petitions are dismissed.
No order as to costs.

Miscellaneous petitions, if any, pending in these two revision petitions are closed.

Dr. SHAMEEM AKTHER, J

Date: 27th January, 2020.

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