

## Madhava Rao Desai Vs Union of India and Others

**Court:** Andhra Pradesh High Court

**Date of Decision:** Oct. 4, 2001

**Acts Referred:** Andhra Pradesh Conduct of Election of Member (Co-opted) and President/Vice-President of Mandal Parishad and Member (Co-opted) and Chairman/Vice-Chairman of Zilla Parishad Rules, 1994 " Rule 13(7)(i), 13(7)(ii), 26

Andhra Pradesh Panchayat Raj Act, 1994 " Section 149(1), 153, 153(1), 153(6), 177(3)  
Constitution of India, 1950 " Article 102, 191, 243F

**Citation:** (2002) 1 ALD 398 : (2002) 4 ALT 661 : (2001) 93 DLT 321

**Hon'ble Judges:** S.B. Sinha, C.J; V.V.S. Rao, J

**Bench:** Division Bench

**Advocate:** K.R. Prabhakar and B. Nalin Kumar, for the Appellant; Advocate General, V.V. Prabhakar Rao, SC for State Election Commission, Y. Ravinder Rao, C.V. Ramulu and A. Sudershan Reddy, for the Respondent

**Final Decision:** Partly Allowed

### Judgement

S.B. Sinha, C.J.

While passing an order disqualifying an elected member of Mandal Parishad Territorial Constituency or President of a

Mandal Parishad in terms of Section 153 of A.P. Panchayat Raj Act, the principles of natural justice are required to be complied with is the

question involved in these two Writ Petitions.

2. Briefly noted, the facts are: The petitioner in W.P. No. 15631 is the President of Mudhole Mandal Telugu Desam Party. He was elected as

member of M.P.T.C Mudhole 6 to 12, Adilabad District and a declaration to that effect was issued by the Election Officer - 4th respondent on

17.7.2001. In the election conducted for the post of President of Mandal Parishad, Mudhole, the petitioner and one Jadav Subhash Rao - 5th

respondent obtained equal votes and the petitioner was elected as President on application of toss by the 4th respondent and he was accordingly

declared to have been elected as President of Mudhole Mandal.

3. While things stood thus, the 4th respondent issued notice on 23.7.2000 stating that 5th respondent was issued B form by Telugu Desam Party

for contesting the post of President and a whip had been issued to vote in favour of the 5th respondent but the petitioner has disobeyed the same

and voted against the party whip and got himself elected as President in support of other party members. He was, therefore, asked to show cause

as to why he should not be declared to have ceased the Office of the M.P.T.C. Mudhole 6-12 and consequently the post of President of Mandal

Parishad Mudhole for disobedience of the party whip issued by the Telugu Desam Party, as per the provisions of Section 153(1) of the A.P.

Panchayat Raj Act (for short "the Act") and the rules issued in G.O.Ms.No.756 P.R.R.D. & Relief (Election III) Department dated 30.11.1994

within three days from the date of receipt of the notice. The petitioner submitted his explanation explaining that at no point of time he was informed

about the issuance of the whip and appointing 5th respondent as the whip of the party. Thereafter, 4th respondent issued proceedings dated

26.7.2001 declaring the petitioner as ceased to hold the office of MPTC Mudhole 6 to 12 and the Office of President of Mandal Parishad

Mudhole and Form No.V-C as required under the Rules was issued on 26.7.2001.

4. In W.P. No. 15341, the petitioner was elected as member of Jayyaram Mandal Parishad Territorial Constituency of Ramagundam mandal on

the ticket of Indian National Congress (INC). His case is that he resigned from the party on 18.7.2001 and contested as an independent candidate

for the post of President of Ramagundam Mandal Parishad held on 22.7.2001. The official candidate of the INC and the petitioner secured five

votes each and on application of draw of toss, the petitioner was declared elected as President. On the basis of the letter of the whip of 5th

respondent dated 22.7.2001 that the petitioner disobeyed the party whip in connection with the election to the post of President, the 4th

respondent issued the declaration in Form No.VC under Sub-rule 7(i) and 7(ii) of Rule 13 and Rule 26 of the Andhra Pradesh Conduct of

Election of Member (Co-opted) and President/Vice President of Mandal Parishad and Member (Co-opted) and Chairman/Vice Chairman of Zilla

Parishad Rules, 1994 (for short "the Rules") declaring the petitioner to have ceased to be a member of M.P.T.C Jayyaram.

5. The learned counsel appearing for the petitioner in W.P.No. 15341 of 2001 would submit that before issuing the above order no notice was

issued nor any opportunity of being heard was afforded and, therefore, the order is violative of the principles of natural justice. He would further

urge that the petitioner was ceased to be a member of INC on 18.7.2001 and that he has not received any whip and as such the question of

disobeying the same does not arise. Even Section 153 of the Act does not provide that a person who disobeyed the party whip should be

disqualified. Sub-rules 7(i) and 7(ii) of Rule 13 of the rules are ultra vires Section 153(1) of the Act.

6. The learned counsel appearing for the petitioner in W.P.No. 15631 of 2001 would submit that at no point of time the authorities have informed

the petitioner about the issuance of the whip and appointing the 5th respondent as whip for the election and copy of the whip was not served on

him. He would further urge that the disqualification as provided under Articles 102 and 191 of the Constitution of India was not extended to local

self-Government under the Panchayat raj bodies and the procedure laid down under Tenth Schedule of the Constitution, therefore, has no

application in relation to panchayat raj institutions. He would also submit that though the petitioner was issued a show cause notice, no opportunity

was afforded to him to establish that he was not served with copy of the whip nor the authorities have been able to establish that a copy of the

whip was served on him.

7. The learned counsel appearing for the respondents would submit that since the petitioners have disobeyed the whip issued by the respective

parties, by operation of Section 153(1) and Sub-rules 7(i) and 7(ii) of the Rules they are ceased to hold the office of M.P.T.C and also the Office

of President of Mandal Parishad. Before the commencement of the process of election, they were informed about the whip issued by the

respective parties. He would urge that the provisions of Section 153(1) are in consonance with Article 191 of the Constitution of India and as such

no constitutional vires can be attributed, consequently, Sub-rules 7(i) and 7(ii) of the Rules made in exercise of the power u/s 153(1) of the Act are

legal and valid.

8. Section 153(1) of the Act reads thus:

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 by show of hands duty obeying the party whip given by such functionary of the recognised

political -party as may be prescribed, 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 :

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 a Member of the Legislative Assembly

of the State or of either House of Parliament by resignation or otherwise;

Provided further 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.

9. The State in exercise of the powers conferred by Section (1) of Section 268 read with Clause (V) of Sub-section (1) of Section 149, Sub-

sections (1) and (6) of Section 153 Clause (V) of Sub-section (3) of Section 177 and Sub-sections (1) and (7) of Section 181 of the Act issued

the aforementioned Rules in a O.Ms.No.756 dated 30.11.1994. Part IV of the said Rules deals with election of President/Vice President of

Mandal Parishad etc. Sub-rules 7(i) and 7(ii) of Rule 13 thereof provides thus:

7(i): Any member of the Mandal Parishad elected on behalf of a recognised political party shall cease to be a Member of the Mandal Parishad for

disobeying the directions of the Party Whip so issued.

7(ii) 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, forthwith declare in Form V-C that the Member has ceased to hold Office and

the decision of the presiding Officer shall be final.

10. The impugned order issued in Form No. V-C in respect of the petitioner in W.P.No. 15341 of 2001 reads as follows:

FORM No. V-C

(See Rule 13, Sub-rule 7(i) and Rule 26, Sub-rule 7(ii))

Sri Durgam Lingaiah, M.P.T.C. Jayyaram has been elected as Member of Ramagundam Mandal Parishad Territorial Constituency on the party

ticket issued by Congress party. The WHIP of the above party in his letter No. Nil dated 22.7.2001 has reported that Durgam Lingaiah,

M.P.T.C. Jayyaram has disobeyed the party whip in connection with the election President (Post) held on 22.7.2001 and is, therefore, liable for

disqualification u/s 153 of the Act.

In the light of the above report Sri Durgam Lingaiah, M.P.T.C. Jayyaram is hereby declared to have ceased to be member of Jayyaram Mandal

Parishad Territorial Constituency.

11. Prior to passing of the impugned order in Form V-C, a notice-dated 23.7.2001 was issued upon the petitioner in W.P.No. 15631 of 2001

directing him to show cause as to why he should not declared to have ceased to be the Member of M.P.T.C. Mudhole and after obtaining

explanation of the petitioner a final order was passed on 26.7.2001 and thereafter a declaration was issued in Form V-C. But, in the case of the

petitioner in W.P.No.15341 of 2001, no show cause notice was issued and straightaway a declaration under Form V-C was issued.

12. The main contention of the petitioners is that no copy of the whip was served on them at any point of time prior to the conduct of the election

and they had no knowledge of the whip issued by the respective party whips. Admittedly, no proceeding was initiated against the petitioners nor

any material has been brought on record to show that any whip had been issued or served on them and in spite of the same they voted against the

party whip. The respondents have also not produced any material to show that before the impugned declarations were issued in Form V-C the

authority authorised to issue the whip had been examined to satisfy themselves that the whip issued by the concerned party had been served on the

member who alleged to have disobeyed it.

13. There cannot be any dispute that before any order prejudicial to the interest of any person is passed; the fundamental principle of audi alteram

pattern should be complied with in W.P.No. 15631 of 2001, no doubt, as indicated hereinbefore, a show cause notice had been issued before the

declaration in Form V-C was issued by the Presiding Officer. But, in his explanation dated 23.7.2001 submitted to the Election Officer, the

petitioner stated:

I was not at all aware of the issuance of the so called whip. I was also not given any intimation and notice regarding the directions and instructions

of the whip. In fact no copy of the proceedings of the whip have been given to me nor served on me. Neither any notice nor instructions given to

me either in written or oral. On the day of the elections, I entered the election hall 12.50 p.m. Even after I entered in the election hall also I was not

given any information and instructions regarding directions of whip.

14. In the final orders dated 26.7.2001 while referring to the contention of the petitioner, it was stated:

The petition of Sri Madhav Rao Desai is adjudged and contended that he is unaware about the issue of whip from Telugu Desam party is baseless,

as the undersigned has also declared in the special meeting held on 22.7.2001 before starting to the process of election for President and Vice

President 34-M.P. Mudhole therefore denying of whip having not known is baseless and held proved that knowing the whip Sri Madhav Rao

Desai has voted against to the party whip issued by the authorisation M.P.T.C. from Telugu Desam Party.

Keeping in view of the above facts Sri Madhav Rao Desai is hereby ceased to hold as M.P.T.C. Mudhole 6 to 12 and subsequent post thereto.

Form No. V-C is hereby issued accordingly as per rules issued under Sub-section (1) of Section 153 of P.R. Act, 1994 rules issued in

G.O.Ms.No-756 P.R. R.D. & Relief (Election-111) Dept. dated 30.11.1994.

15. Though the Election Officer is alleged to have declared about the whip before the starting of the process of election, whether the written whip

of the party has been served on the petitioner or not is not indicated in the order. In our view, independent of the declaration made by the Election

Officer about the whip issued by the party, the petitioner is entitled to be served with the same through his party prior to the commencement of the

election process. There is no indication from the order of the Election Officer that such a whip had been served on him. Even the petitioner had not

been given any opportunity to substantiate his claim that the same was not served on him. In this view of the matter, we are of the view that the

impugned declaration of the Election Officer in Form V-C cannot be sustained.

16. As already noticed hereinbefore, in respect of the petitioner in W.P.No. 15341 of 2001 no show-cause notice had been issued to submit his

explanation and straightaway an order under Form V-C was issued. As such, the same being in violation of the principles of natural justice, cannot

also be sustained.

17. This aspect of the matter is also covered by a decision of this Court in M.Mohan Rao and others Vs. Revenue Divisional officer and others, ,

wherein it was held that declaration of cessation of membership without issuing a notice to the member is illegal.

18. Mr. Ravinder Rao, learned counsel appearing on behalf of the Respondent No.5 in W.P.No. 15631 of 2001 would urge that Section 153(1)

of the Act is ultra vires the Constitution. Learned counsel would contend that having regard to the provisions of Articles 102 and 191 of the

Constitution and as the procedure laid down under Tenth Schedule of the Constitution of India is not required to be followed while initiating the

proceedings u/s 153 of the Act, the same must be held to be ultra vires.

Articles 102 and 191 of the Constitution of India reads thus:

102: Disqualification for membership: (1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament

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(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by

law not to disqualify its holder,

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is not an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or

adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation:--For the purpose of this clause a person shall not be deemed to hold an office of profit under the Government of India or the

Government of any State by reason only that he is a Minister either for the Union or for such State,

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

191. Disqualification for membership: (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly

or Legislative Council of a State

(a) if he holds any office of profit under the Government of India or the Government of any State specified in the First Schedule, other than an

office declared by the Legislature of the State by law not to disqualify its holders;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is not an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or

adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

Explanation:--For the purpose of this clause a person shall not be deemed to hold an office of profit under the Government of India or the

Government of any State specified in the First Schedule by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of the Legislative Assembly or Legislative Council of a State if he is so disqualified under the

Tenth Schedule.

Article 243-F which deals with disqualifications of a member of a Panchayat reads as follows:

(1) A person shall be disqualified for being chosen as, and for being, a member of a Panchayat--

(a) if he is so disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State concerned :

Provided that no person shall be disqualified on the ground that he is less than twenty five years of age, if he has attained the age of twenty one

years;

(b) if he is so disqualified by or under any law made by the Legislature of the State.

(2) If any question arises as to whether a member of a Panchayat has become subject to any of the disqualifications mentioned in Clause (1), the

question shall be referred for the decision of such authority and in such manner as the Legislature of a State may, by law, provide.

19. A comparison of the provisions contained in Articles 102, 191 vis-a-vis Article 243F would clearly show that the latter is of wide amplitude.

The procedure laid down under Tenth Schedule is required to be complied with only in terms of Clause (2) of Article 102 and 191 of the

Constitution of India. Under Clause (1) of Article 243F, a member of a Panchayat may be disqualified if he is so disqualified by or under any law

for the time being in force for the purposes of elections to the Legislature of the State concerned or so disqualified by or under any law made by

the Legislature of the State. Therefore, a person is liable to be disqualified to be a member of a Panchayat if he is disqualified as provided for under

Article 191 or under any law made by the Legislature of the State. Evidently, as indicated hereinbefore, a provision has been made by the State

Legislature in terms of Section 153(1) of the Act as regards disqualification of a member of Panchayat.

20. Section 153(1) has been incorporated in the statute keeping in view Article 243F. The contention of the petitioners that 73rd Constitutional

Amendment does not contain any provision to disqualify the elected representatives of the local self Government on the grounds similar to those

contained in Article 191 read with X Schedule has no merit. Clause (1)(a) of Article 243F clearly refers to Article 191 which relates to the

disqualification of membership of legislative Assembly or Legislative Council of a State. The disqualifications referred to in 191 are also referable to

Clause (1)(a) of Article 243F. Under Clause (1)(b) of Article 243F further disqualification is made by operation of any law made by the

Legislature of the State. Such law has been made by the State by providing Clause (1) of Section 153. In our view, Section 153(1) clearly comes

within the ambit of Article 243F of the Constitution of India and as such the same cannot be said to be unconstitutional.

21. The proviso to Section 153(1) says that if any member of Mandal Parishad votes in disobedience of the party whip he shall cease to hold

office forthwith. Sub-rule 7(1) of Rule 13 of the Rules also provide that if any member of the Mandal Parishad elected on behalf of a recognised

political party disobeys the directions of the party whip he shall cease to be a member of the Mandal Parishad. Sub-rule 7(ii) empowers the

Presiding Officer to declare a member who disobeyed the whip of the party as ceased to hold the office of Mandal Parishad on receipt of a written

report from the party whip within three days of the election. We are of the view that these rules are in consonance with the provisions of Section

153(1) of the Act and we do not find any inconsistency so that they can be declared as ultra vires 153(1).

22. However, in the view we have taken earlier, the writ petitions are liable to be allowed as no materials have been brought on record to show

that the petitioners are guilty of disobedience of the whip issued by the respective parties, wherefor it was necessary to arrive at a finding of fact

that such a whip had been issued and served upon them, but they had acted contrary to the whip. No finding of fact to the effect that in spite of a



whip having been served on the petitioners they disobeyed the same and voted against the party candidate had been arrived at by the Presiding

Officer. Unless such a finding of fact had been arrived at by the Presiding Officer, if necessary by examining the person who had issued the whip

and the material connected therewith, the petitioners ought not to have been declared as disqualified to hold the office of member of Mandal

Parishad. The petitioners have been deprived of a reasonable opportunity of being heard before the impugned declarations under Form V-C are

issued. The orders are clearly in violation of the principles of natural justice.

23. For the reasons aforesaid, the Writ Petitions are partly allowed to the extent above and the respective declarations issued by the Presiding

Officers/Election Officers concerned are set aside. No costs.