

(2005) 08 AP CK 0093

Andhra Pradesh High Court

Case No: Writ Appeal No. 1321 of 2005

Singam Satyanarayana and
Others

APPELLANT

Vs

Election Officer and Deputy Chief
Executive Officer, Zilla Parishad
and Others

RESPONDENT

Date of Decision: Aug. 22, 2005

Acts Referred:

- Andhra Pradesh Panchayat Raj (Amendment) Act, 1995 - Section 153
- Andhra Pradesh Panchayat Raj (Conduct of Election of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad) Rules, 1994 - Rule 13, 5
- Andhra Pradesh Panchayat Raj Act, 1994 - Section 10A, 148, 149, 149(1), 150
- Conduct of Elections Rules, 1961 - Rule 4
- Constitution of India, 1950 - Article 102, 188, 191, 191(1), 191(2)
- Election Symbols (Reservation and Allotment) Order, 1968 - Para 13
- Representation of the People (Amendment) Act, 1966 - Section 33
- Representation of the People (Amendment) Act, 1989 - Section 29A
- Representation of the People Act, 1951 - Section 10A, 169, 2, 29A, 30

Citation: (2005) 6 ALT 1

Hon'ble Judges: M. Venkateswara Reddy, J; J. Chelameswar, J

Bench: Division Bench

Advocate: M. Surender Rao, V.L.N.G.K. Murthy and J.R. Manohar Rao, for the Appellant; G.P., for Panchayat Raj and Rural Dev. for Respondent Nos. 1 and 2, K.G.K. Prasad, (State Election Commission), V. Rajagopal Reddy and R. Premasagar, for Respondent Election Officer, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

J. Chelameswar, J.

These four writ appeals arise out of a common order dated 7-7-2005 of a learned Judge of this Court in W.P.Nos.18357 of 2004,407,426 and 2471 of 2005. The parties are the same in the last three of the above mentioned four writ petitions whereas in the 1st writ petition only five of the said parties are parties.

2. The facts leading to this litigation are as follows:

The petitioner (hereinafter referred to as "the petitioner") in the last of the above three writ petitions i.e., Palle Sitaramulu Goud and the respondents 4 to 8 in the above mentioned three writ petitions (hereinafter referred to as "the respondents") were elected as members of the Mandal Parishad Territorial Constituencies of Shameerpet Mandal on 3-7-2001. Under the Andhra Pradesh Panchayat Raj Act, 1994 (for short "the Act"), Panchayats a defined expression under Article 243(d) at various levels as contemplated under Article 243B are created. One of them being Mandal Parishad defined under sub-section (2) of Section 3 as a body constituted u/s 148 of the Act. u/s 149 of the Act, the composition of the Mandal Parishad is provided. It consists of five classes of members. The relevant portion of Section 149 reads as follows:

Section 149. Composition of Mandal Parishad : (1) Every Parishad shall consist of the following members, namely,-

(i) persons elected u/s 151;

(ii) the Member of the Legislative Assembly of the State representing a constituency which comprises either wholly or partly the Mandal concerned;

(iii) the Member of the House of the People representing a constituency which comprises either wholly or partly the Mandal concerned;

(iv) any Member of the Council of States who is a registered voter in the Mandal concerned.

(v) One person belonging to minorities to be co-opted in the prescribed manner by the members specified in clause (i) from among members who are registered voters in the Mandal and who are not less than 21 years of age.

Under Section 150 of the Act, the Mandal Parishad area is required to be divided into as many territorial constituencies as may be notified by the Commissioner. Of course, the Commissioner is mandated to follow certain guidelines provided in Section 150 itself in deciding and notifying the territorial constituencies. u/s 151, one member is required to be elected to the Mandal Parishad from each one of those territorial constituencies. The petitioner and the respondents are such elected members falling u/s 149 (1)(i) of the Shameerpet Mandal. It appears that the petitioner subsequently got elected to be the President of the said Mandal Parishad (contemplated u/s 153 of the Act). However, on ,15-7-2004, a requisition was given

by some of the members of the said Mandal Praja Parishad seeking to move a "no Confidence Motion" against the petitioner. Eventually, the "no confidence motion" was carried on 3-8-2004. Consequentially, petitioner ceased to be the President of the Mandal Parishad and admittedly the appropriate procedure declaring him to have ceased to be the Mandal Praja Parishad President was followed and an order to that effect in G.O.Ms. No. 228, Panchayat Raj and Rural Development (MDL.II(A)) Department, dated 19-8-2004 was issued by the government.

3. Consequent upon the vacancy, a fresh election to the Mandal Praja Parishad was held on 21-9-2004 and Sri Singam Satyanarayana, one of the above mentioned respondents (the petitioner in W.P. No. 18357 of 2004 and the appellant in Writ Appeal No. 1321 of 2005) got elected. It is pertinent to mention here that the petitioner also contested the said election.

4. Having lost the election, the petitioner moved an application before the Election Officer praying that action be taken against Satyanarayana and the other respondents under the provisions of the Act on the ground that the respondents belonged to the Telangana Rashtra Samithi (for short "TRS") a political party and elected as members of the Shameerpet Mandal Praja Parishad representing the various territorial constituencies as candidates set up by the said party and for the election in question the said political party issued a WHIP directing the said six respondents to vote in favour of the petitioner and as they violated the WHIP, action is required to be taken against them. It is the understanding of the petitioner that these six respondents are disqualified to continue as members of the Mandal Praja Parishad.

5. Upon the receipt of the said complaint, the Election Officer issued a show-cause notice dated 23-9-2004 to the above mentioned six respondents. On receipt of the said notice, all six of them replied stating that they had resigned the Membership of the TRS political party and therefore they were not bound by the WHIP alleged to have been issued by the petitioner.

6. On receipt of their replies, the Election Officer made a declaration on 1 -10-2004 that each of the respondents ceased to be the members of the Mandal Praja Parishad representing the relevant territorial constituency. Six different orders were passed on the same date which are identical in all respects except the change in the name of the person and the corresponding territorial constituency. The relevant portion of one of them reads as follows:

"The Government in G.O.Ms. No. 138, PR, RD and Relief (Elec-III) Department, dated 15-3-1995 have issued the orders that:

"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".

In view of the orders of the Government above the explanation submitted by Smt. Gunda Alivelu, Member, MPTC, cannot be considerable.

As such the Election of Smt. Gunda Alivelu, for the post of Member MPTC Lalgadi Malakpet has been ceased under Rule 13, Sub-rule (7) as detailed below :

FORM NO. V-C

Smt. Gunda Alivelu, has been elected as Member Lalgadi Malakpet MPTC on the Party Ticket issued by TRS, Party. The Whip of the above party in his letter No. nil, dt. 21-9-2004 has reported that Smt. Gunda Alivelu, has disobeyed the Party Whip in connection with the election for the Post of President, Mandal Parishad Shameerpet, Ranga Reddy District held on 21 -9-2004 and is therefore, liable for disqualification u/s 153/181 of the Act.

In the light of the above report Smt. Gunda Alivelu, is hereby declared to have ceased to be a Member of the Lalgadi Malakpet MPTC."

7. Aggrieved by the same, one of the said six respondents Sri Singam Satyanarayana approached this Court in W.P. No. 18357 of 2004 challenging the said order on various grounds, while the other five approached the Government of Andhra Pradesh by way of a revision invoking Section 264 of the Act. The petitioner filed W.P. No. 407 of 2005 seeking a declaration that all the respondents incurred a disqualification as per Article 243-F(1)(a) read with Article 191(2) and para 2 of Tenth Schedule to the Constitution of India and Section 153(1) of the Act. In the meanwhile, the revision filed before the Government came to be allowed by an order dated 27-12-2004 setting aside the orders of the Election Officer dated 1 -10-2004. Challenging the decision of the Government dated 27-12-2004, W.P. No. 426 of 2005 came to be filed by the petitioner.

8. All the matters were clubbed together and disposed of by a common order.

9. By the order impugned in these appeals (16. Since Government admittedly did not give notice of hearing of the Revision (Review) petition filed by respondents 4 to 7 to the petitioner, before it thought it fit to dispose of the same when such notice to the other side i.e., petitioner is mandatory, memo of the Government allowing the revision of respondents 4 to 7 impugned in W.P. No. 426 of 2005 is liable to be set aside. 17. In fact by virtue of the Memo impugned in W.P. No. 426 of 2005 W.P. No. 18357 of 2004 filed by the third respondent can be said to have become in fruituous. 18. In the result, the W.P. Nos.407, 426 and 2471 of 2005 are allowed holding that respondents 3 to 8 (in W.P. No. 2471 of 2005) ceased to be the M PTCs of Shameerpet Mandal, Rangareddy District and W.P. No. 18357 of 2004 is dismissed. Parties are directed to bear their own costs.) the learned Judge was pleased to allow W.P. Nos.407, 426 and 2471 of 2005 declaring that the respondents have ceased to be the members of the Mandal Praja Parishad of Shameerpet Mandal and consequentially dismissed W.P. No. 18357 of 2004 filed by Singam

Satyanarayana who got elected as the President of the Mandal Praja Parishad and hence the present writ appeals.

10. It is argued before the learned single Judge on behalf of the petitioner that the respondents were elected as members of the various Mandal Parishad territorial constituencies of Shameerpeta Mandal as candidates sponsored by the TRS party and on their own admission (as evidenced by the replies given by them to the notice of the Election Officer dated 23-9-2004), they resigned their membership of the said political party and joined other political parties and therefore they acquired a disqualification for continuing as members of the Mandal Parishad territorial constituencies in view of Articles 243-F(1)(a) read with Article 191(2) and para 2 of Tenth Schedule to the Constitution of India and Section 153 (1) of the Act.

11. In the alternative, it was submitted that since the respondents were elected as members of the Mandal Parishad territorial constituencies on behalf of the TRS party they are bound to obey the Whip issued by the party in the election to the office of the President of the Mandal Parishad. As they disobeyed the Whip they are disqualified to continue as members of the Mandal Praja Parishad. According to the petitioner such a Whip was issued on 20-9-2004. His pleading in this regard is as follows:

"... in that election I was appointed as whip by the President of the Party viz., K. Chandrasekhar Rao. Accordingly, I issued a "Whip" to the TRS party members i.e., respondents 6 to 9 herein that they should vote for the candidate of the TRS party in the elections to be held on 21-9-2004. The respondents 6 to 9 were duly served the Whip issued by me. The service of the whip was made by three modes of service as held by the Hon'ble High Court in the case of [S. Jyothi Vs. Presiding Officer/Election Officer, Thottambedu Mandal, Chittoor Dist. and Others](#), . It was also read in the meeting before the election took place. Thus, the respondents 6 to 9 herein had the knowledge of whip issued by me. There is no doubt about the service of whip as the respondents 6 to 9 herein who were the members of the party. In spite of the same, they have voted for candidate belonging to Telugu Desam Party."

It was therefore argued that as the respondents violated the Whip they incurred a disqualification, (once again) under Article 243-F(1)(a) read with Article 191(2) and para 2 of Tenth Schedule to the Constitution of India and Section 153 (1) of the Act.

12. The respondents on the other hand took a stand that TRS political party was not a recognized political party on the date of their election as members of the territorial constituencies at the Shameerpeta Mandal and therefore they were not bound by the Whip. In the alternative, they submitted that irrespective of the fact whether TRS is a recognized political party or not, they severed their relationship with the said party by resigning their membership of the party long before the election in question took place and therefore they were not bound by the Whip and consequentially they argued that they cannot be disqualified from continuing to be

the members of the Mandal Praja Parishad representing the various territorial constituencies.

13. The learned Judge by the judgment under appeal came to the conclusion that the respondents incurred a disqualification as alleged in view of the admitted fact that the respondents had voluntarily given up their membership of the TRS party. However, the learned Judge declined to go into the question whether they are also required to be held to have been disqualified on the ground that they had violated the Whip alleged to have had been issued by Sitaramulu Goud. The learned Judge also declined to examine the question whether the revisionary power u/s 264 takes within its sweep the power to examine the decision such as the one taken by the Election Officer holding the respondents to have been disqualified to continue as members of the Mandal Praja Parishad.

14. A few undisputed facts are required to be noticed here. The elections to the Mandal Praja Parishad took place on 3-7-2001. TRS was a newly formed party by then. It had applied on 12-6-2001 to the Election Commission of India seeking the registration of a political party contemplated u/s 29A of the Representation of the People Act, 1951. The Election Commission of India by its proceedings dated 21-8-2001 registered TRS as a political party. Eventually after the general election to the Andhra Pradesh Legislative Assembly in the month of April, 2004, in which TRS participated, TRS became a "recognized political party" which fact was communicated by the Election Commission of India to the said party by a letter dated 21-5-2004. The relevant portion of the letter reads:

"I am directed to refer to your letter dated 17-5-2004 on the subject cited and to state that the Commission has recognized Telangana Rashtra Samithi" as a State Party in the State of Andhra Pradesh on the basis of its poll performance in the general election to the Legislative Assembly of Andhra Pradesh held in 2004, under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968.

2. You may intimate your preference of the symbol to be allotted as the reserved symbol of the party in Andhra Pradesh. You may indicate three symbols in the order of preference and also submit design/drawing of the symbols, at the earliest."

15. What are the legal implications of the registration of a political party and the acquisition of the status of being a recognised political party will be examined later.

16. Another set of undisputed facts are that one of the six respondents Sri Singam Satyanarayana resigned the membership of TRS party on 8-10-2003. The four of the respondents Smt. Alivelu, Sri D. Veera Swamy, Sri V. Krishna Murthy and Sri T. Babu resigned on 10-7-2004 and the 6th of the respondents Sri T. Ramu was expelled from the TRS party admittedly sometime before the date of the issuance of the alleged Whip.

17. It is in the background of the above mentioned undisputed facts, the controversy is required to be examined.

18. By a catena of decisions of the Supreme Court starting with [N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others](#), it is a well settled principle that all the rights and obligations pertaining to elections to the various bodies contemplated under the Constitution are creations of Statutes and there is no common law right or obligation involved in the election process.

19. The local self-government is an ideal enshrined under Article 40 of the Constitution of India occurring in the Chapter of the Directive Principles. The legislative field of local government is assigned exclusively to the State Legislatures under Entry 5 List II of the Schedule 7 to the Constitution of India. Various States including the State of Andhra Pradesh made enactments from time to time dealing with local government including the Gram Panchayats and other bodies of the District Level like the erstwhile Zilla Parishads and Panchayat Samithis. Having regard to not a very wholesome history of these local bodies in the country, it was thought fit that some permanent arrangement is required to be made in regard to the local self-government, culminating in an amendment to the Constitution. By Constitution 73rd Amendment Act, 1992, Part IX of the Constitution was substituted. It deals with the local bodies like Panchayats and Municipalities and various matters incidental thereto. Pursuant to the said constitutional amendment, the State of Andhra Pradesh made a new enactment called the "Andhra Pradesh Panchayat Raj Act, 1994" by which enactment three of the earlier enactments i.e., Andhra Pradesh Gram Panchayats Act, 1964, the Andhra Pradesh Mandala Praja Parishads, Zilla Praja Parishads and Zilla Pranalika and Abhivrudhi Sameeksha Mandals Act, 1986 and the Andhra Pradesh Local Bodies Electoral Reforms Act, 1989 were repealed to bring the law in consonance with the provisions of the Constitution as introduced by the 73rd Constitution Amendment Act.

20. We are not concerned with the entire scheme of the Act for the purpose of the present case. We are only concerned with those provisions dealing with the elections to the Mandal Praja Parishad either of its members or of the President. The relevant provisions occur in Part III of the said Act commencing from Section 148.

21. Section 148 mandates that the State Government by a notification shall constitute a Mandal Parishad for each mandal. The expression "Mandal" itself is defined u/s 2 (22) of the Act. The composition of the Mandal Parishad is prescribed in Section 149. Section 150 contemplates the division of a mandal into various territorial constituencies which are required to be represented by elected members in the Mandal Parishad u/s 151. Section 152 contemplates reservation of seats in the Mandal Praja Parishad and Section 153 mandates that there shall be a President for each Mandal Praja Parishad and prescribes the method and manner by which such a President is required to be elected and various incidental matters.

22. u/s 153 (1)(Section 153. Election, reservation and term of office of President and Vice-President : (1) 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 duly obeying the party whip given by such functionary of the recognized 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 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 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 forthwith and the vacancy caused by such cessation shall be filled as a casual vacancy. 13(1). A candidate for the office of the President/ Vice-President of a Mandal Parishad shall be proposed by one member and seconded by another. The names of all the candidates validly proposed and also seconded shall be read out by the Presiding Officer at such meeting. A candidate for the Office of President/Vice-President of a Mandal Parishad shall be proposed by one member and seconded by another. If any candidate claims to be contesting on behalf of a political party, he shall produce an authorization from the President of the recognized political party of the State or a person duly authorized by the State President under his office seal and such authorization shall be produced before the Presiding Officer on or before 10.00 a.m. on the day of the election for the election of the Office of President/Vice-President of Mandal Parishad. The names of all candidates validly proposed and seconded shall be read out along with the name of the Political Party which has set him up by the Presiding Officer in such a meeting. (2) If only one candidate is duly proposed, there shall be no election and he shall be declared to have been elected. (3) If there are two or more candidates, election shall be held by show of hands and votes taken of the members present at the meeting. (4) The Presiding Officer shall thereafter record the number of votes polled, for each such candidate ascertained by show of hands. He shall announce the number of votes secured by each candidate and shall declare the candidate who secures the highest number of votes, as elected. (5) In the event of there being an equality of votes between the two candidates, the Presiding Officer shall draw lots in the presence of the members and the candidates whose name is first drawn shall be declared to have been duly elected. (6) Every recognized political party may appoint on behalf of that political party a whip and intimation of such appointment shall be issued by the State President or a person authorized by him under his seal and such intimation shall be sent to the Presiding Officer to reach him on or before 11.00 a.m. on the day preceding the day of election to the Office of the President/Vice-President of the Mandal Parishad. Explanation : Recognised political party means a political party recognized by

Election Commission of India, New Delhi. (7) (i) 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 directions of the Party Whip so issued. (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.) be elected from among the Members of the Mandal Parishad territorial constituencies. Section 153 underwent an amendment by Act 5 of 1995 stipulating that such an election shall be by a show of hands "duly obeying the party whip given by such functionary of the recognised political party as may be prescribed

23. The expression "recognised political party" is not defined under the Act. However, Rules are prescribed in G.O.Ms. No. 756, PR, RD and R Department, dated 30-11-1994 titled as The Andhra Pradesh Conduct of Election of Member (Co-opted) and President/ Vice-President of Mandal Parishad and Member (Co-opted) and Chairperson/Vice-Chairperson of Zilla Parishad Rules, 1994". Part 4 of the Rules deals with the election of the President and Vice-President of Mandal Parishad. Rule 13, inter alia, prescribes that at any such election of Mandal Parishad President, any candidate who claims to be contesting on behalf of a political party, shall produce an authorization from the President of the recognized political party of the State or a person duly authorized by the State President under his office seal. Sub-rule (6) contemplates the appointment on behalf of a political party a whip. It also contemplates that such an appointment shall be intimated to the Presiding Officer of the election either by the President of such political party or by any other person authorized by him under the seal of the President. Sub-rule (7), stipulates that any Member of the Mandal Parishad elected on behalf of a recognized political party shall cease to be a Member of a Mandal Parishad for disobeying the directions of the Party Whip.

24. Therefore, under these Rules the Whip contemplated u/s 153 of the Act, can only be issued by a recognized political party and the expression "recognized political party" for the purpose of these Rules, is given under the Explanation to Sub-rule (6), to mean; "a political party recognized by the Election Commission of India, New Delhi".

25. It can be seen from the Sub-rule (7) that it imposes a disqualification on a Member of the Mandal Parishad, who disobeys the directions of the Party Whip. However, Sub-rule (7) also makes it clear that such a disqualification is applicable to any Member of the Mandal Parishad, elected on behalf of a recognized political party.

26. Neither the Panchayat Raj Act nor the Rules" (Rules are framed under the Panchayat Raj Act, dealing with the conduct of the election of the Members of the Mandal Parishad, by G.O.Ms. No. 755, P.R., R.D. and Relief (MDL-I) Dept., dated 30-11

-1994, amended subsequently by G.O.Ms. No. 80, P.R., R.D., dated 7-2-1995. They are called The Andhra Pradesh Panchayat Raj (Conduct of Elections of Members and Sarpanch of Gram Panchayat, Members of Mandal Parishad and Members of Zilla Parishad) Rules, 1994.) framed thereunder dealing with the elections of the Members of the Mandal Parishad contemplate or recognize election of Members of the Mandal Parishad on the basis of the sponsorship of an unrecognized political party. Rule 5 of the abovementioned Rules recognizes only the setting up of a candidate at an election to the membership of the Mandal Parishad by a recognized political party. (Provided that the symbols allotted to the political parties recognized by the Election Commission of India shall be allotted to the candidates who are authorized by such political party to contest as its candidate for election to the office of the Member of Mandal Parishad and Zilla Parishad).

27. Therefore, on a combined reading of the abovementioned Rules, the requirement of the Rules is that for an elected member of a Mandal Parishad to incur a disqualification on the ground that he violated the whip issued at an election to the President ship of the Mandal Parishad, such a member must have been a member elected as such having been set up by a recognized political party. In other words it must be a political party recognized by the Election Commission of India, New Delhi.

28. The expression "recognised political party" is not defined under any enactment either of the Parliament or of the State of Andhra Pradesh. No such statutory definition is brought to our notice. We find that expression only in the Election Symbols (Reservation and Allotment) Order, 1968, which was an order made by the Election Commission of India in exercise of the powers under Article 324 of the Constitution r/w Section 29A of the Representation of the People Act, 1951. It is a settled legal position that the said order has statutory force. The broad scheme of the said order is that it deals with elections to the Parliament and Legislative Assemblies. Under Clause 4 (4. Allotment of symbols.- In every contested election a symbol shall be allotted to a contesting candidate in accordance with the provisions of this Order and different symbols shall be allotted to different candidates at an election in the same constituency.) it is mandated that in every contested election to any of the abovementioned bodies, a symbol is required to be allotted to every contesting candidate in accordance with the provisions of the said Order. Under Clause 5, symbols are classified either as "reserved" or "free". Under Clause 5 the expression "recognised political party" appears for the first time.

29. Sub-clause (2) of Clause 5 reads as follows:

5. Classification of symbols :

(1)xxxx

(2) Save as otherwise provided in this Order, a reserved symbol is a symbol which is reserved for a recognized political party for exclusive allotment to contesting

candidates set up by that party."

30. Anything other than a reserved symbol is said to be a free symbol. Under Clause 6, (6. Classification of political parties.- ((1) For the purposes of this Order and for such other purposes as the Commission may specify as and when necessity therefore arises, political parties are either recognized political parties or unrecognized political parties. (2) A political party shall be treated as a recognized political party in a State, if and only if either the conditions specified in Clause (A) are, or the condition specified in Clause (B) is, fulfilled by that party and not otherwise, that is to say- (A) that such party- (a) has been engaged in political activity for a continuous period of five years; and (b) has, at the general election in that State to the House of the People, or, as the case may be, to the Legislative Assembly, for the time being in existence and functioning returned- either (i) at least one member to the House of the People for every twenty-five members of that House or any fraction of that number from that State; or (ii) at least one member to the Legislative Assembly of that State for every thirty members of that Assembly or any fraction of that number; (B) that the total number of valid votes by all the contesting candidates set up by such party at the general election in the State to the House of the People, or as the case may be, to the Legislative Assembly for the time being in existence and functioning (excluding the valid votes of each such contesting candidate in a constituency as has not been elected and has not polled at least one-twelfth of the total number of valid votes polled by all the contesting candidates in that constituency) is not less than four percent of the total number of valid votes polled by all the contesting candidates at such general election in the State (including the valid votes of those contesting candidates who have forfeited their deposits). (3) For the removal of doubts it is hereby declared that the condition in Clause (A) or (B) of sub-paragraph (2) shall not be deemed to have been fulfilled by a political party if a member of the House of the People or the Legislative Assembly of the State becomes a member of that political party after his election to that House or, as the case may be, that Assembly.) political parties are also identified either as recognized political parties or unrecognized political parties for the purpose of the said order. The method and manner of identifying a particular political party as recognized party is provided under the subsequent Sub-clause to Clause 6 and any party, which is not so identified as a recognized political party is an "unrecognised political party". Under Clause 7, recognized political parties are once again divided into two categories viz., National and State Parties. Various subsequent clauses deal with the matters incidental and consequent upon the identification of a recognized political party (the details of which are not necessary for the present purpose). For the purpose of the Rules framed under the Panchayat Raj Act by G.O.Ms. No. 756, PR, RD and R Department, dated 30-11 -1994 the expression "recognised political party", is required to be understood [by the very express stipulation in the Rules under Rule 13 (6)], to mean; those parties, which are recognized political parties obviously under Clause 6 of the 1968 Order, referred to supra.

31. That being the position, the respondents could not have been elected as Members of the Mandal Parishad as candidates set up by a recognized political party. TRS was not a recognized political party on the date of their" election i.e., 3-7-2001. Assuming for the sake of argument that as a matter of fact the respondents (admittedly they did have) had an affiliation with the TRS party on the date of their election, TRS party was not a recognized political party on that date, (contemplated under Rule 13(7) of the Rules framed under G.O.Ms. No. 756, PR, RD and R Department, dated 30-11-1994), the respondents were not elected as Members of the Mandal Praja Parishad on behalf of a recognized political party.

32. However, the learned single Judge declared that the respondents ceased to be members of the Mandal Praja Parishad, Shameerpeta Mandal not on the ground that they violated the whip but on the ground that on their own admission the respondents ceased to be the members of the T.R.S. political party, thereby attracting a disqualification to continue to be members of the Mandal Praja Parishad in view of para 2 (1)(b) of the Tenth Schedule to the Constitution read with Article 243-F(1)(a) of the Constitution. The learned Judge held at para 13 as follows:

"... Therefore, they would automatically incur disqualification for holding that post by virtue of paragraph 2 (1)(a) of the Tenth Schedule read with Article 243F of the Constitution, irrespective of the fact that TRS party was not a "recognized" political party by the Election Commission of India by the date of their election."

33. We proceed to examine the conclusion:

The Tenth Schedule to the Constitution was added by the Constitution (Fifty-second Amendment) Act, 1985. Para 2(1) (a) (2. Disqualification on ground of defection.- (1) Subject to the provisions of paragraphs 3, 4 and 5, a member of a House belonging to any political party shall be disqualified for being a member of the House-(a)if he has voluntarily given up his membership of such political party; or if he votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs or by any person or authority authorized by it in this behalf, without obtaining, in either case, the prior permission of such political party, person or authority, and such voting or abstention has not been condoned by such political party, person or authority within fifteen days from the date of such voting or abstention. Explanation : For the purposes of this sub-paragraph.- (a) an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member; (b) a nominated member of a House shall,-(i) where he is a member of any political party on the date of his nomination as such member, be deemed to belong to such political party; (ii) in any other case, be deemed to belong to the political party for which he becomes, or, as the case may be, first becomes, a member before the expiry of six months from the date of which he takes his seat after complying with the requirements of Article 99 or, as the case may be, Article 188. (2) An elected member of a House who has been elected as such otherwise than as a candidate set up by any political party shall be

disqualified for being a member of the House if he joins any political party after such election. (3) A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of Article 99 or, as the case may be, Article 188. (4) Notwithstanding anything contained in the foregoing provisions of this paragraph, a person who, on the commencement of the Constitution (Fifty Second Amendment) Act, 1985, is a member of a House (whether elected or nominated as such) shall (i) where he was a member of a political party immediately before such commencement, be deemed, for the purposes of sub-paragraph (1) of this paragraph, to have been elected as a member of such House as a candidate set up by such political party; (ii) in any other case, be deemed to be an elected member of the House who has been elected as such otherwise than as a candidate set up by any political party for the purposes of sub-paragraph (2) of the paragraph or, as the case may be, be deemed to be a nominated member of the House for the purposes of sub-paragraph (3) of this paragraph) of the Schedule mandates that a member of a "House" a defined expression under para 1 (a) (1 Interpretation:- In this Schedule, unless the context otherwise requires.-(a) "House" means either House of Parliament or the Legislative Assembly or, as the case may be, either House of the Legislature of a State;) belonging to a political party shall be disqualified for being a member of the house in two contingencies: (1) that such a member voluntarily gives up his membership of such political party; (2) that such a member votes or abstains from voting in such House contrary to any direction issued by the political party to which he belongs, without the prior permission of the political party. There are exceptions to the operation of the provisions of para 2, recognized under paras 3, 4 and 5. Para 6 of the Schedule provides a machinery for adjudicating the question whether a member of a House has become subject to any disqualification contemplated under para 2 by stipulating that such a question shall be referred to the decision of the Chairman or Speaker of such House. The expression "House" is defined under para 1 (a) of the Schedule to mean either House of Parliament or the Legislative Assembly or either House of the Legislature of a State. The various sub-paragraphs recognize the possibility of there being 3 kinds of members in a "House", (i) elected members set up by a political party (ii) elected members not set up by a political party (iii) nominated members. Sub-paragraphs (1), (2) and (3) deal with them respectively. Insofar as the question as to whether an elected member of a "House", belongs to a political party, it is stipulated in the Explanation to para 2 (1)(a) that "an elected member of a House shall be deemed to belong to the political party, if any, by which he was set up as a candidate for election as such member". The expression "political party" itself is not defined under the Tenth Schedule nor does the Tenth Schedule describe or explain as to what is meant by -a candidate being set up by a political party at an election. In the absence of any express explanation and having regard to the settled principle of law that all the rights and obligations in connection with any election to a "House" emanate from the relevant statutes, necessarily we have to

examine as to what is the statutory position regarding the elections to a "House".

34. The law in this regard is primarily contained in two enactments viz., the Representation of the People Act, 1950 and the Representation of the People Act, 1951. The earlier of the two enactments deals with the composition of each of the House and the delimitation of Constituencies for the purpose of the election and other incidental matters to the Parliament and the Legislative Assemblies of the State. The rights and obligations of the persons seeking election to any one of the above mentioned bodies and the method and manner of conducting elections to those bodies are dealt under the latter enactment. Part 5 of the 1951 Act deals with nominations at the elections. Though the Representation of the People Act, 1951 does not expressly provide for setting up of a candidate at an election by a political party, by necessary implication from the language, the first Proviso to Section 33, recognizes the possibility of a candidate at an election being set up by political party. Section 33 ("33. Presentation of nomination paper and requirements for a valid nomination,- (1) On or before the date appointed under Clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of eleven O'clock in the forenoon and three O'clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued u/s 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer: Provided that a candidate not set up by a recognized political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency. Provided further that no nomination paper shall be delivered to the returning officer on a day which is a public holiday: Provided also that in the case of a local authorities" constituency, graduates" constituency or teachers" constituency, the reference to "an elector of the constituency as proposer" shall be construed as a reference to ten percent of the electors of the constituency or ten such electors, whichever is less, as proposers.) deals with the presentation of nomination papers and requirement of a valid nomination. Sub-section (1) contemplates the presentation of a nomination in the prescribed form either by the candidate in person, or by his proposer, signed by the candidate and an elector of the constituency as proposer. First Proviso thereto reads as follows:
"Provided that a candidate not set up by a recognized political party , shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency.

(emphasis supplied)

From the Language of this Proviso, it is clear that the law recognizes a candidate being set up by a recognized political party only. The expression "Political Party" itself is defined u/s 2(f) - "political party" means an association or a body of individual citizens of India registered with the Election Commission as a political party u/s 29A;) of the R.P. Act as an association of or a body of individual citizens of

India registered with the Election Commission as a political party u/s 29A of the Act but the expression "recognized political party" is not defined. In view of the fact that the expression "political party" itself is defined under the Act, the expression "recognized political party" must necessarily mean something distinct from a "political party". It is worthwhile remembering that the proviso to Section 33 of the R.P. Act was added by Act 47 of 1966 and later substituted by Act 21 of 1996 whereas Section 29A was introduced by Act 1 of 1989 with effect from 15-6-1989. Prior to the introduction of the proviso, the R.P. Act, 1951 did not employ the expression "recognized political party" anywhere. It is for the first time that expression was introduced in the R.P. Act in 1966. We have already examined the meaning of the expression "recognised political party". For the same reasons even under the proviso to Section 33(1) of the Representation of the People Act, 1951 (R.P. Act), the expression must convey the same meaning as a political party recognized by the Election Commission of India, in accordance with the procedure under the Allotment of Symbols Order, 1968.

35. In the absence of any law recognizing the setting up of a candidate at an election to a "House" by an unrecognized political party (emphasis supplied), extending the application of the Tenth Schedule to a member who is alleged to have been set up by an unrecognized political party would be contrary to the settled principles of Election Law and results in a vagrant deprivation of valuable rights created under the R.P. Act, 1951 without a clear legislative mandate.

36. The law prior to the amendment in 1966 of the R.P. Act never recognized the setting up of a candidate at any election governed by the Act by a political party either recognized or unrecognized. Rules are framed by the Government of India in exercise of the power u/s 169 of the Representation of the People Act, 1951 known as The Conduct of Elections Rules, 1961". Rule 4 thereof reads as follows:

"4. Nomination paper : Every nomination paper presented under Sub-section (1) of Section 33 shall be completed in such one of the Forms 2-A to 2-E as may be appropriate;"

Forms 2-A to 2-E are the various prescribed nomination forms to be filed by the candidates. The nomination forms contemplated under Rule 4 are prescribed under Schedule II of the Conduct of Election Rules. Till 1966 the forms did not require to indicate whether a candidate is set up by any political party. Whereas after the amendment of 1966, Form 2-A recognizes the distinction between a candidate set up by a recognized political party and candidate not set up by a recognized political party and Part III of the said form requires a candidate to make a declaration whether the candidate is set up by a recognized political party or a registered-unrecognized political party. The relevant portion of the form reads as follows:

"Part III -1, the candidate mentioned in Part I/Part II (Strike out which is not applicable) assent to this nomination and thereby declare,-

(a) that I have completed ... years of age.

[Strike out (b) (i) whichever is not applicable]

(b)(i) that I am set up at this election by the... party, which is recognized National Party/ State Party in this State and that the symbol reserved for the above party be allotted to me.

OR

(b)(ii) that I am set up at this election by the Party, which is a registered-unrecognized political party/that I am contesting this election as an independent candidate. [Strike out which is not applicable] and that the symbols I have chosen, in order of preference, are :

(i) ...

(ii) ...

(iii) ..."

(emphasis supplied)

37. Similarly, Form 2-B is the form that is required to be signed by the proposer at an election. Under the proviso to Section 33(1), a candidate not set up by a recognized political party is required to be proposed by ten persons who are the electors of the constituency. Form 2-B(#) is in two parts. Part I dealing with the candidate set up by a recognized political party and Part II dealing with those who are not set up by a recognized political party. Neither the R.P. Act nor the rules specify as to who should sign the Form 2-B in the case of either a candidate set up by a recognized political party or other candidates.

Form 2-B (see rule 4) NOMINATION PAPER

Election to the House of the People

Strike off Part I or Part II below whichever is not applicable

PART I

(To be used by candidate set up by recognized political party)

I nominate as a candidate for election to the House of the People from the Parliamentary Constituency.

Candidate's name Father's/mother's/husband's name

His postal address.....

His name is entered at S. No.

Part No. of the electoral roll for..... Assembly constituency.
name is and it is entered at S. No. In Part No. of
electoral rolls for.... Assembly constituency.

Date

(Signature of proposer)

PART II

We hereby nominate as a candidate for election to the Legislative Assembly
from the.....Assembly Constituency.
Candidate's name.....
Father's/mother's/husband's name.....
His postal address.....
His name is entered at S. No.
Part No. of the electoral roll for.....Assembly constituency.

We declare that we are electors of the above assembly constituency and our names
are entered in the electoral roll for that Assembly Constituency as indicated below
and we append our signatures below in token of subscribing to this nomination :

Particulars of the proposers and their signatures.

Electoral Roll No. of proposer					
Sl. No.	Name of Component Assembly Constituency	Sl. No. in that part	Full name	Signature	Date
1	2	3	4	5	6
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					
10.					

N.B. There should be ten electors of the constituency as proposers.

38. However, Para 13 of the Election Symbols (Reservation and Allotment) Order, 1968 reads as follows :

"13. When a candidate shall be deemed to be set up by a political party : For the purpose of this Order a candidate shall be deemed to be set up by a political party if, and only if,-

(a) the candidate has made a declaration to that effect in his nomination paper;

(b) a notice in writing to that effect has, not later than 3 p.m. on the last day of withdrawal of cfandidatures, been delivered to the returning officer of the constituency;

(c) the said notice is signed by the President, the Secretary or any other office bearer of the party and the President, Secretary or such other office bearer is authorized by the party to send such notice; and

(d) the name and specimen signature of such authorized person are communicated to the returning officer of the constituency and to the Chief Electoral Officer of the State not later than, 3.00 p.m. on the last date for the withdrawal of candidature."

A combined reading of Rule 4 of the Conduct of the Election Rules and the Election Symbols (Reservation) and Allotment Order, 1968 leads to the inevitable conclusion that Form 2-B is required to be signed in the case of a candidate set up by a recognized political party by one of the persons mentioned in para 3 (c) of the Election Symbols (Reservation and Allotment) Order, 1968.

39. The expression "political party" occurring in para 3 is a defined expression under para 2 (4) of the Order and the same is identical with the definition of the same expression given under the R.P. Act, 1951. The language of Part III of Form 2-A can lead to a conclusion that a candidate can be set up at an election governed by the R.P. Act, 1951 not only by a recognized political party, but also by a registered unrecognized political party. We do not propose to examine the legality of the Form 2-A Part III recognizing the setting up of a candidate by a Registered-Unrecognised party except stating that it is doubtful whether the form would be a valid form, in the absence of any provision in the R.P. Act, 1951 recognising a candidate being set up at an election by a registered-unrecognized political party. Therefore, when the provisions of para 2 (1) of the Tenth Schedule of the Constitution declare that a member of the House shall be disqualified for being a member of such a House in either of the contingencies prescribed under para 2 (1)(a), the reference is definitely to a member who is set up by a recognized political party at the election to the House and at best to an elected member set up at an election by a registered-unrecognized political party.

40. To place any other construction on the clause "a member of a House belonging to any political party" occurring in para 2 of the Tenth Schedule of the Constitution would lead to interminable disputes on facts such as those facts as can never be ascertained with reference to any public record. Such a situation, in our view, would be subversive of an orderly and meaningful functioning of the "House" referred to in the Tenth Schedule.

41. In the present case, as already seen, TRS was admittedly not even a registered political party by the date of the election of the respondents as members of the Mandal Praja Parishad, Shameerpet. Even assuming the provisions of the Tenth Schedule apply to the members of the Mandal Parishad, the respondents in our view

cannot be treated as members set up by a political party (TRS) at the election for the Mandal Parishad membership. At the cost of repetition, we must state that TRS admittedly was not even registered political party on the date of the election of the respondents as members of Mandal Parishad, Therefore, the respondents, cannot incur any disqualification on either of the grounds mentioned in Para 2 (1) of the Tenth Schedule.

42. The Tenth Schedule of the Constitution only deals with disqualifications for the continued membership of one of the Houses referred to therein on grounds specified therein. It does not lay down any general standard or ethical code of electoral morality for every election in this country or the members of every elected body other than those to whom Tenth Schedule applies.

43. However, the submission of the petitioner, which was accepted by the learned Judge that the provisions of Tenth Schedule apply even to the members of the various local bodies created under the A.P. Panchayat Raj Act in view of the language of Article 243F of the Constitution is an aspect that requires an examination. Article 243F reads as follows:

"243-F Disqualification for membership : (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 purpose of elections to the Legislature of the State concerned:

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

44. Sub-Article (1) makes a declaration that a person shall be disqualified either for being chosen or for being a member of a "Panchayat ("PART IX - THE PANCHAYATS - 243, Definitions.- (a) xxxx (b) xxxx (c) xxxx (d) "Panchayat" means an institution (by whatever name called) of self-government constituted under 243-B, for the rural areas; (e) "Panchayat area" means the territorial area of a Panchayat. 243-B. Constitution of Panchayats.- (1) There shall be constituted in every State, Panchayats at the village, intermediate and district levels in accordance with the provisions of this Part.") which undisputedly includes a Mandal Praja Parishad in the context of the present case. The above mentioned expressions are not introduced in the Constitution for the first time by 73rd Amendment. In fact, those expressions existed in the Constitution in Article 102 and 191 from the inception of the Constitution. While 102 deals with the disqualification for the membership of either House of the Parliament, Article 191 deals with the membership of the Legislative Assembly or Legislative Council wherever such Council exists. The opening Clauses of the Articles 102, 191 and 243F are identical and they read as follows:

"A person shall be disqualified for being chosen as and for being a member of...."

The distinction between those two expressions "for being chosen" and "for being" was recognised way-back in 1953 in [Election Commission, India Vs. Saka Venkata](#)

[Subba Rao and,](#) . The facts of the said case are as follows:

Venkata Rao was convicted by the Sessions Judge for a term of seven years rigorous imprisonment in the year 1942. He was released from the prison on 15th August 1947 on the occasion of the Independence of India. In the month of June 1952 there was an election to the Kakinada Legislative Assembly Constituency of the erstwhile Madras Legislative Assembly. u/s 7(b) of the Representation of the People Act, 1951 (as it then stood), Venkata Rao was disqualified from contesting the election for a period of five years from the date of his release, but Venkata Rao contested the election. His opponents did not raise the issue either at the time of scrutiny of the nomination papers or subsequently in an Election Petition. However, on a communication from the Election Commission of India (the background of which is not necessary for the present purpose), the Speaker of the Assembly brought it to the notice of the Assembly that Venkata Rao was in fact, disqualified from contesting the election. In the background of the abovementioned facts, the Speaker of the Assembly referred the question to the Governor of the State under Article 192 of the Constitution. The Governor there upon sought the opinion of the Election Commission, as contemplated under Article 192(2) of the Constitution. Venkata Rao challenged the competence of the Governor, to exercise the power under Article 192, on the ground that the power of the Governor under Article 192, could only be exercised in those cases, where any Member of the Legislative Assembly acquires a disqualification subsequent to his election, but not in cases of the disqualifications acquired by the Member by the date of the election.

45. Dealing with the submissions, that Article 191, "lays down the same set of disqualifications for election as well as for continuing as a member", which were categorized as pre-existing and supervening disqualifications; the Supreme Court at Paragraph No. 14, held:

"... Article 191, which lays down the same set of disqualifications for election as well as for continuing as a member and Article 193 which prescribes the penalty for sitting and voting when disqualified, are naturally phrased in terms wide enough to cover both pre-existing and supervening disqualifications;...."

(emphasis supplied)

46. If that be the interpretation placed on the expression "for being chosen" and "for being", in the context of Article 191, in our view the same interpretation shall be placed on those words, when they occur even under Article 243F of the Constitution.

47. Article 191(1). Disqualifications 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 holder; (b) if he is of unsound mind and stands so declared by a

competent court; (c) if he is 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 acknowledgment of allegiance or adherence to a foreign State; (e) if he is so disqualified by or under any law made by Parliament.) prescribes disqualifications both for being chosen as (for being elected) and for being (for continuing) as a Member of a Legislative Assembly or Legislative Council of a State. Clauses (a) to (d) prescribe various disqualifications which render a person disqualified either for getting elected if such a person incurs any one of those disqualifications mentioned in the said clauses by the date of his election or for continuing as a member if such a person incurs any one of those disqualifications subsequent to his election to one of the legislative bodies referred to earlier. On the other hand, Clause (e) enables the Parliament by law to create a disqualification for either of the purposes i.e., either for being chosen or for being a member of either of the legislative bodies.

48. Whether a particular disqualification prescribed by the Parliament is a disqualification both for the purpose of election as well as continuing as a member after having been validly elected depends on the language of the law made by the Parliament. For example, the disqualification prescribed u/s 10A. Disqualification for failure to lodge account of election expenses.- If the Election Commission is satisfied that a person - (a) has failed to lodge an account of election expenses, within the time and in the manner required by or under this Act, and (b) has no good reason or justification for the failure, the Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of three years from the date of the order.) of the Representation of the People Act, 1951. Normally, it is a disqualification only for continuance as a Legislator for a period of three years, because it is a disqualification visiting a person consequent upon his failing to lodge the account of the election expenses within the prescribed time. Therefore, it is not a disqualification by the date of the election. Once a person is disqualified on that count by an order of the Election Commission such disqualification endures only for a period of three years. Given that the normal tenure of a legislative body is five years, unless it is dissolved sooner, a person who suffers the disqualification u/s 10A of the R.P. Act, 1951, is not disentitled to contest the next general election which normally takes place after five years from the earlier election. Of course, it is possible in a given case that a Legislature is dissolved sooner than five years, and in such a situation the disqualification subsists even for contesting the subsequent election.

49. Article 243F also mandates disqualifications, both for the purpose of being chosen as Member of the Panchayat and continuing as a Member of the Panchayat. Those disqualifications are dealt under Clauses (a) and (b) of Article 243F. Clause (a) declares that a person is disqualified for being chosen as and for being a Member of the Panchayat, if he is so disqualified by or under any law for the time being in force, for the purpose of elections to the Legislature of the State concerned. In our view,

this clause means, if a person is disqualified to contest the election to the Legislature, such a person is equally disqualified either for contesting the election as a Member of the Panchayat or for continuing as a Member of the Panchayat. Under Clause (b) if, by or under any law made by the Legislature of the State, a person is disqualified, for being chosen as or for being a member of the Panchayat.

50. The distinction between Clauses (a) and (b) is that the law contemplated under Clause (a) is a law made by the Parliament stipulating disqualifications which render a person seeking to contest an election to the State Legislature disqualified. Whereas under Clause (b) the requirement is that the disqualification must be prescribed by a law made by the Legislature of the State stipulating disqualifications which render a person seeking to contest an election to a "panchayat".

51. To demonstrate the above, There are disqualifications prescribed under the Representation of the People Act, 1951.

52. Sections 8 to 10-A of the Act, enumerates the various disqualifications, which disable a person both from contesting and continuing as a member of a House if such disqualification is acquired after the election to the Parliament or to the Legislature of the State on the various grounds enumerated in these Sections.

53. On the other hand Sections 18 to 20-B of the A.P. Panchayat Raj Act, 1994, prescribe various disqualifications either to contest the elections to a Panchayat or for continuing as a Member of the Panchayat (if such a disqualification is acquired subsequent to the election) as an elected Member.

54. Some of the disqualifications either prescribed by the Parliament under the R.P. Act, or by the State Legislature like the prescriptions under the Panchayat Raj Act, may be identical, but the scope of the application of such disqualifications vary.

While the disqualifications mentioned under the Panchayat Raj Act are applicable only to the Membership of the Panchayat, the disqualifications specified under the R.P. Act are applicable for the Membership of the Legislatures (Parliament or State Legislature) and they are also disqualifications (in view of the declaration under Article 243F) for the Membership of a Panchayat. Some of the disqualifications prescribed under the Panchayat Raj Act are exclusive for the Membership of a Panchayat; for example, Section 19(3) of the Panchayat Raj Act, disqualifies a person having more than two children either for getting elected or for continuing as a member, which reads as follows:

"Section 19(3). A person having more than two children shall be disqualified for election or for continuing as member."

Such a disqualification is not prescribed under the Representation of the People Act, 1951.

55. The next question that is required to be examined is whether the clause "disqualified by or under any law for the time being in force for the purposes of elections to the Legislature of the State" takes within its sweep the disqualification prescribed (if any) under the Constitution?

56. No doubt, the expression "any law" necessarily takes within its sweep, the Constitution. But, that does not solve the problem in the present case. Such a law must be a law dealing with the elections to the Legislature of the State. The question, therefore, is whether the provisions of the Tenth Schedule are "law for the time being in force for the purpose of elections to the Legislature of the State."

57. The broad scheme of the Tenth Schedule is already examined earlier. It does not, in our view, prescribe any disqualifications for being chosen (in other words for election) as a Member of the House. Language of the Clause (1) of Paragraph No. 2 of the Tenth Schedule is clear;

"... shall be disqualified for being a member of the House."

58. In contradistinction to the language of Articles 102, 191 and 243F of the Constitution, which deal with the disqualifications both for being chosen as and for being, the provisions of the Tenth Schedule of the Constitution, only prescribe a disqualification for continuing as a member of a House if a member indulges in any one of the activities prohibited by the Tenth Schedule. The Tenth Schedule does not, however, stipulate that a Member of a House who is disqualified for being a Member of the House is prohibited from seeking a fresh election to the same House either in the consequential election, resulting from his vacation of the seat or any subsequent election.

59. In the judgment under appeal, the learned single Judge placed reliance on a judgment of this Court [Chavva Reddy Saraswatamma Vs. Presiding Officer-cum-Election Officer/Nodal Officer, Mandala Praja Parishad and Another](#), for coming to the conclusion that the provisions of the Tenth Schedule of the Constitution are law for the time being in force for the purpose of the elections to the Legislature. The said judgment in turn relied upon a Division Bench judgment of this Court in [Madhava Rao Desai Vs. Union of India and Others](#), . The Division Bench came to the conclusion that in view of Clause (2) of Article 191, the provisions of the Tenth Schedule are law for the time being in force for the purpose of elections to the Legislature.

"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 disqualification referred to in Article 191 are also referable to Clause (1)(a) of Art. 243-F. 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."

The Division Bench, in our respectful view, was only dealing with the case of disobedience of a whip and did not notice the language of Article 191(2), 191. Disqualification for membership.- (1) xxx (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.) which declares that a person shall be disqualified only "for being" a member of the Legislative Assembly. We have already discussed and noticed the construction placed by the Supreme Court on the expression - "for being". While Article 191(1) declares that the disqualifications enumerated thereunder are disqualifications both "for being chosen" and "for being", Article 191(2) declares that a member of a House who is adjudged disqualified in accordance with the provisions of the Tenth Schedule, is disqualified only for continuing as such.

60. Therefore, Article 191(2) is not a law for the time being in force for the purpose of the elections to the Legislature of the State contemplated under Article 243F of the Constitution of India.

61. For the above mentioned reasons, we are of the opinion that the learned single Judge erred in treating the Division Bench decision in Madhava Rao Desai's case (3 supra) as a binding precedent in the context of a disqualification resulting from the voluntary giving up of the membership. The distinction between a pre-existing disqualification which renders a person ineligible both for getting elected to a House and also continuing as a Member of the House and a supervening disqualification which renders a Member of the House ineligible only for continuing as a Member of the House, such as the disqualification provided under the Tenth Schedule does not appear to have been brought to the notice of the Division Bench. The Panchayat Raj

Act and the Rules thereunder do not stipulate that an elected member of a Panchayat who was elected as such having been set up by a political party should stand disqualified if such a member voluntarily gives up his membership of such political party.

62. Therefore, the judgment under appeal must be held unsustainable.

63. Writ Petition No. 2471 of 2005 was filed by the petitioner challenging the decision of the Government notifying the removal of the petitioner from the O/o the Mandal Parishad. The learned Judge in view of his conclusion that the respondents ceased to be the members of the Mandal Parishad as they voluntarily gave up the Membership of the TRS party came to the conclusion that the No Confidence Motion and the consequential notification of the Government referred to earlier are illegal. In view of our conclusion that the Tenth Schedule of the Constitution does not apply to the respondents, they never cease to be the members of the Mandal Parishad and therefore, the conclusion of the learned Judge that G.O.Ms. No. 228 is illegal is not unsustainable (sic. sustainable). Therefore, Writ Appeal No. 1337 of 2005 is allowed and W.P. No. 2471 of 2005 must stand dismissed.

64. Insofar as Writ Petition No. 426 of 2005 is concerned, the learned Judge came to the conclusion that as the Government did not issue a notice before deciding the revision petitions filed by some of the respondents, the revisionary order of the Government in setting aside the order of the 2nd respondent dated 1-10-2004 disqualifying the respondents is illegal. In view of our finding that the order dated 1-10-2004 of the 2nd respondent is itself unsustainable, the revision filed by the respondents is inconsequential and the result of the revision with or without notice to the petitioner makes no difference and therefore the Writ Petition No. 426 of 2005 must stand dismissed. Therefore, Writ Appeal No. 1323 of 2005 is allowed.

65. No other issue is raised or argued in these writ appeals.

66. Consequently all the writ appeals are allowed and the proceedings of the 2nd respondent dated 1-10-2004 declaring that the respondents had ceased to be the members of the Shameerpet Mandal Praja Parishad is illegal.