

(2014) 12 AP CK 0030

Andhra Pradesh High Court**Case No:** Writ Appeal Nos. 1149 and 1150 of 2014

Thota Venkiateswara Rao

APPELLANT

Vs

The State Election Commission

RESPONDENT

Date of Decision: Dec. 11, 2014**Citation:** (2015) 2 ALT 591**Hon'ble Judges:** Kalyan Jyoti Sengupta, C.J; P.V. Sanjay Kumar, J**Bench:** Division Bench**Advocate:** S. Ravi, Senior Counsel, Advocate for the Appellant; V.V. Prabhaker Rao,
Advocate for the Respondent

Judgement

Kalyan Jyoti Sengupta, C.J.

These appeals have been filed against the judgment and order of the learned Single Judge dated 21.08.2014, whereby His Lordship was pleased to dismiss the writ petitions at the threshold holding that the statute provides for an alternative remedy under Section 23(A) of the A.P. Municipalities Act, 1965 (for short, the Act) to challenge the order impugned in the writ petitions.

2. The short fact leading to filing of these appeals is that the appellants writ petitioners were elected as Members of the Kavali Municipality. The appellants admittedly belong to a political party. The appellants claim that the said political party is not a recognized one. However, when the time came for selection of the Chairperson and Vice-Chairperson of the concerned municipality, leadership of this party appointed a whip for its Members including the appellants writ petitioners, who are said to have defied the whip. Accordingly, a complaint was made to the Presiding Officer under the statute to decide whether he has invited any disqualification for defying whip. The Presiding Officer found that the writ petitioners - appellants had defied, hence incurred disqualification and accordingly he passed the order of disqualification. The above order was challenged before the learned Single Judge.

3. Mr. Ravi, learned Senior counsel appearing for the appellants, submits that his clients took up the fundamental point before the Presiding Officer that the political party to which his clients belong, is not a recognized political party, so the mischief of the whip does not apply under the law. On this legal concept two Division Benches of this Court in two cases in S. Jyothi and others vs. Presiding Officer/Election Officer, Thottambedu Mandal, Chittoor District and others and Singam Satyanarayana and others vs. Election Officer and Deputy Chief Executive Officer, Zilla Parishad, Ranga Reddy District and others consistently accepted the aforesaid legal position. He drew our attention to the order impugned before the learned Single Judge and contends that the Presiding Officer has not decided the aforesaid fundamental issue though urged. We find that the officer concerned has recorded the contention of the appellants. According to him, it is a rare case where an alternative remedy will not be available at all, since no decision is rendered, it is absolutely failure of exercise of jurisdiction of power by the Presiding Officer.

4. Learned counsel appearing for the whip, 4th respondent, supports the orders of disqualification and contends that the appellants have an alternative remedy. Therefore, there is no need for the intervention of this Court, as the learned Single Judge has correctly passed the order asking the appellants writ petitioners to avail alternative remedy.

5. We have considered the contention and rival contention of both the learned counsels. We have carefully read the order of the Presiding Officer and it appears to us that he, though recorded the submission, as correctly pointed out by Mr. Ravi, has not decided core issue at all. We are of the view that just and right questions and issues involved in the matters are as follows:

1. Whether the writ petitioners appellants belong to any recognized political party or not;

2. If not, whether the aforesaid mischief of law will be applicable;

3. Whether the ratio decided by this Court in the aforesaid judgments is applicable to these cases or not.

6. We are sorry to say that the Presiding Officer did not pose these questions to decide the issues. According to us, this is failure of exercise of jurisdiction on part of decision maker in rendering decision. Alternative remedy will be efficacious, if the forum concerned is not equipped with the power to intervene to remedy the serious flaw in decision making. If there is no decision what is to be examined? Now we examine the scope of the power of the forum, which is said to be an alternative one. Section 23(A) of the A.P. Municipalities Act, 1965 is set out hereunder:

23-A. Resolution of disputes relating to cessation for disobedience of party whip:- Where a member ceased to hold office for disobedience of the party whip, he may apply to the District Court having jurisdiction over the area in which the office of

municipality is situated for a decision.

7. The aforesaid provision itself is not very exhaustive. This forum can entertain such complaint when the decision has been taken on all issues. But if no decision is taken, then he has no power to do anything else. Unlike civil appellate Court it has no power for remand nor it has power to decide anything independently of the decision taken by the first authority. This forum, in our view, does not act as an appellate authority and it is a forum of the first instance to examine correctness of decision making process and decision.

8. In the absence of the exhaustive procedure for taking care of all problems arising out of the matter, we do not think in this case it is an alternative remedy. We are therefore unable to accept the judgment of the learned Single Judge in this particular case in exercise of our plenary jurisdiction. We remand the matter to the file of the Presiding Officer concerned and at the same time we keep the orders of disqualification in abeyance till the matter is decided afresh taking note of the aforesaid point, we have formulated. According to us, in order to arrive at a correct decision the aforesaid issues are to be answered with reasons. The Presiding Officer shall re-do the matter without being influenced by his earlier decision within a period of 15 days from the date of receipt of a copy of this order. We make it clear that just because we are keeping the impugned orders of disqualification in abeyance, it does not mean the writ petitioners appellants will enjoy the facilities of memberships and their memberships, so to say, will be under suspended animation and, obviously their present status will abide by the fresh decision to be taken by the Presiding Officer. All points are kept open.

9. The appeals are accordingly allowed.

10. Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.