

the labour force are in majority pro-worker legislations. The Indian Government should be able to balance the labour legislations with proper amendments on one side and also maintain the trend of growing corporate sector with foreign investments in India on the other side for a better and effective economic growth of the Nation as a whole.

The Competition Act 2002 is yet to come into operation with all its force. It is a fact that Competition Commission of India is established with its office at New Delhi by the Government for monitoring and proper implementation of the said Competition Act 2002. The effective implementation of this Act will have far reaching impact in the development and control of market in India in the 21st Century and it can be practically understood that this new Competition Act 2002 paved its way giving an end to the operation of the earlier MRTP Act 1969. The Competition Act 2002 is likely to prove as a valuable Jewel in the crown of the Indian corporate laws.

The Newly born Companies Act 2013 has on careful study proved that it has inherent limitations and that there are situations requiring interpretations with the provisos not clear and specific requiring better modifications to meet the challenges of the 21st Century.

New era has begun in India. The now Central Government in power has come up with new Foreign Trade Policy 2015 and with slogan like "Make in India" is proving that our Nation is not just

interested in encouraging its corporate sector globally but is equally interested in projecting its corporate sector's vision for a developed, self sustained balanced economy and welfare state. The main challenge to Indian corporate laws for the 21st Century among various aspects is to achieve and encourage more foreign investments in our Nation.

The present topic is worth to write a big voluminous book. My endeavor through the present article is to highlight broadly the challenges which the corporate laws have to face in the 21st Century. The present article is a humble attempt and is not a complete or comprehensive presentation on the given subject.

The challenges to corporate laws are both from the Domestic business market and also from International market. The corporate laws have to balance in such manner that foreign investments in our Nation are on the rise and at the same time are to play safe that our Nation plays pivotal role in the global business market to achieve its target to be reckoned as a developed economy. The corporate laws as existing appears to require modification and amendments to meet the challenges of 21st Century and to add further are to be vigil always to meet the needs of hour. There is no doubt that India will be a frontrunner in the corporate sector and will become leader with balanced growth and development in the near course of time in the global business market with recognition as a developed economy.

**REMEDY - DISOBEDIENCE OF PARTY WHIP – CESSATION OF
MEMBERSHIP – SCOPE OF SECTIONS 153-A AND 181-A OF A.P.
PANCHAYAT RAJ ACT 1994 – WHETHER A WRIT IS MAINTAINABLE ?
AND BURDEN OF PROOF**

By

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This article perhaps, the rarest of the rare, deals mainly to resolve disputes relating to

cessation of membership for disobedience of party whip arising under Sections 153-A

and 181-A of A.P. Panchayat Raj Act, 1994 conferring jurisdiction on the District Court which a common man is intimately connected.

There appears to be some amount of over lapping of the constitutional and statutory provisions. Hence it is proposed to state in a nut shall the combined effect of all the legal provisions so as to make the various aspects of election law touching on Sections 153-A and 181-A of A.P. Panchayat Raj Act 1994 and for the facility of reference the relevant sections and rules are reproduced in order to get a hang over the matter so as to make everyone concerned with law cannot be oblivious with the well settled principles.

*Section 153-A : Resolution of disputes relating to cessation for disobedience of party whip :—*Where a member against whom a proceeding that he ceased to hold office as a consequence of the disobedience of the party whip is issued in pursuance of the second provision to sub-section (1) of Section 153 and the affected member disputes the correctness of the proceedings, he may apply to the District Court having jurisdiction over the area in which the office of the Mandal Parishad is situated for a decision.

*181-A :—Resolution of disputes relating to cessation for disobedience of party whip :—*Where a member against whom a proceeding that he ceased to hold office as a consequence of the disobedience of the party whip is issued in pursuance of the second provision to sub-section (1) of Section 181 and the affected member disputes the correctness of the proceedings, he may apply to the District Court having jurisdiction over the area in which the office of the Zilla Parishad is situated for a decision).

Rule 11 :—Disqualification for disobedience of party whip (Mandal Parishad)

1. Every recognized political party may appoint on behalf of that political party a

whip and intimation of such appointment shall be sent by the State President or a person authorised by him under his signature and seal and such intimation shall be sent to the Presiding Officer, so as to reach him on or before 11.00 a.m., on the day preceding the day of election to the office of the President and Vice-President of the Mandal Parishad.

2. The person appointed as whip by the recognized political party shall furnish a copy of the contents of the whip issued by him to the Presiding Officer at least an hour before the commencement of special meeting.

3. The person appointed as whip by a recognized political party shall, in addition to a copy of the whip issued by him, also furnish a copy of the acknowledgment obtained from the members belonging to the party on the service of the whip to them, to the presiding officer before the commencement of the meeting. If any member elected on behalf of the recognized political party refuses to receive the whip issued by him, he shall record the same and furnish a copy of it to the president officer.

4. 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, in the manner hereinafter provided.

5. The presiding officer shall, on receipt of a written report from the party whip within three days of the election that a member belonging to his party has disobeyed the whip issued in connection with the election, give a show-cause notice to the member concerned as to why he should not be declared to have ceased to hold office and that he should make any representation within seven days from the date of the notice. The presiding officer

shall consider any explanation given and pass a speaking order in the matter of cessation for disobedience of the whip. If no explanation is received the presiding officer shall pass an order on the basis of the material available with him.

Rule 22 :—Disqualification for disobedience of party whip (Zilla Parishad)

1. Every recognized political party may appoint on behalf of that political party a whip and intimation of such appointment shall be sent by the State President or a person authorised by him under his signature and seal and such intimation shall be sent to the presiding officer so as to reach him on or before 11.00 a.m. on the day preceding the day of election to the office of the Chairperson and Vice-Chairperson of the Zilla Parishad.

2. The person appointed as whip by the recognized political party shall furnish a copy of the contents of the whip issued by him to the presiding officer at least an hour before the commencement of special meeting.

3. The person appointed as whip by a recognized political party shall in addition to a copy of the contents of the whip issued by him, also furnish a copy of the acknowledgement obtained from the members belonging to the party on the service of the whip to them, to the presiding officer before the commencement of the meeting. If any member elected on behalf of the recognized political party refuses to receive the whip issued by him, he shall record the same and furnish a copy of it to the presiding officer.

4. Any member of the Zilla Parishad elected, on behalf of a recognized political party shall cease to be a Member of the Zilla Parishad for disobeying the directions of the party whip so issued, in the manner hereinafter provided.

5. The presiding officer shall, on receipt of a written report from the party whip within three days of the election that a member belonging to his party has disobeyed the whip issued in connection with the election, give a show-cause notice to the member concerned as to why he should not be declared to have ceased to hold office and that he should make any representation within seven days from the date of the notice. The presiding officer shall consider any explanation given and pass a speaking order in the matter of cessation for disobedience of the whip. If no explanation is received, the presiding officer shall pass an order on the basis of the material available with him.

Note : service or non-service of notice in peculiar facts of the cases is more a factual controversy even a cursory reading of sub-rule (11)(1) referred supra intimation of appointment as a whip of the political party shall be sent by the State president or a person authorised by him under signature and seal and such intimation shall be sent to the presiding officer, so as to reach him on or order 11.00 a.m., on the day preceding the day of election to the office of the president and vice-president of the Mandal Parishad. In the instant case the election of the vice-presidents was held on 4.8.2014 and there is no evidence of compliance of this statutory mandatory requirement.

It is thus evident from the backdrop of this legal scenario an effective statutory alternative remedy is available under Section 153-A. For entertaining a complaint touching on the disobedience of party whip, leading to cessation holding office and as a concomitance thereof, the writ is not maintainable.

The latest authority on the subject is laid down in 2015 (1) ALD 492 where in and where by His Lordship Justice *M.S. Ramachandra Rao* after considering several

authorities on the subject laid down “the writ is not maintainable and the only remedy is to avail the alternative remedy under Section 153-A of the Panchayat Raj Act 1994.

Be this, as it may

Whether the District Court is competent to issue interim *ex parte* order or otherwise in appropriate case, in the absence of specific provision.

When the District Court is conferred with power and jurisdiction relating to cessation for disobedience of party whip, the District Court has all the power to grant interim orders in appropriate cases and such power is to be inferred by implication though the statutory provision is silent in that regard (please see 2007 (2) ALD 65 = 2007 (5) ALD (NOC) 60)

Burden of Proof

Whatever might be the procedural aspect as indicated supra the further question of considerable importance is with regard to burden of proof regarding the service of whip notice as laid down 2002 (4) ALD 650 (DB), subsequently followed in 2004 (2) ALD 261 at 272 (DB) Paragraph 35. “In *S. Jyothi v. Presiding Officer/Election Officer, Thottambebu Mandal*, 2002 (4) ALD 660 (DB), a Division Bench of this Court while construing the provisions of sub-rule (6) of Rule 13 of the A.P. Conduct of Elections of Member (Co-opted), President/Vice-President of Mandal Parishad and Member (Co-opted), Chairman/Vice-Chairman of Zilla Parishad Rules, 1994 observed that the provisions of sub-rule (6) of Rule 13 are mandatory in nature. In that case, the notice of the whips issued were received by the presiding officer only on 22.7.2001 at 9.15 a.m., and at 9.30 a.m., respectively and not before 11.00 a.m. on 21.7.2001 as required under sub-rule (6) of Rule 13 of the Rules. The Division Bench took the view that the practice to authorise the District Units Heads of the party to

issue whip cannot be said to be in conformity with the provisions of Rule 13(6) of the Rule. In the instant case also the whip has been nominated by the District Unit Head and not by the State President or any other person authorised by him under his seal. In the said decision it is further held :

“It is trite, the burden of proof that the whip was properly served on the petitioners and despite the service of the whip there by incurring a liability to be disqualified from membership under Rule 13(7) of the President/Vice-President Election Rules is on the respondents is not discharged merely on preponderance of probabilities; the of proving the criminal or quasi-criminal charge. Clear-cut evidence, wholly credible and reliable is needed to prove the disobedience of the whip despite service of intimation of the whip. Such a standard of proof should be insisted because it is basic to the law of elections that in a democracy, the mandate of the people as expressed at the hustings must pre-empt and be respected by the Courts and the elected candidate as a member of Mandal Parishad cannot be disqualified for the alleged disobedience of the whip lightly and in the absence of clear-cut and satisfactory substantive evidence to show that he has disobeyed the whip.” (Emphasis is of ours)

Paragraph 32 at Page 272 :

In a given case, even without serving the directive the party whip in whimsical manner may file an application before the presiding officer against the chosen members alleging disqualification on the ground of defying the whip issued by the party. Procedural reasonableness has to be read into the provisions of the Act and the Rules referred to hereinabove so as to avoid any such unchecked power with the party whip. Therefore, in every case it must be clearly established that party whip has been served upon the member directing him to vote in a particular manner.

Paragraph 33 :

That another Division Bench of this Court in *Madhava Rao Desai v. Union of India*, 2002 (1) ALD 398 (DB), while upholding the constitutional validity of Section 153 of the A.P. Panchayat Raj Act 1994 observed :

“... 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.”

Scope of the order of the authority under Rule 11(4 and 5)

1996 (4) ALD 1122 (DB)

It is well settled the order should contain the validity of the appointment of the whip and in the absence of such a finding the order is infirm 1996 (4) ALT 112 (DB)

Order of Election Authority declaring petitioner to have ceased to be a member of Mandal Parishad Territorial constituency on the ground of disobeying whip issued by congress party challenged petitioner denying issue of alleged whip to him – no finding as regards valid appointment of party whip and its intimation to presiding officer within prescribed time – No personal hearing afforded to petitioner before passing such order in spite of direction by High Court in earlier writ petition filed by petitioner challenging the earlier order impugned order illegal and unsustainable.

Paragraph 45 “at Page 1125” :

The impugned order merely states the whip of the above party in his letter dated 18.3.1995 has reported that the petitioner has disobeyed the party whip in connection with the election to the president and vice-president of the Mandal Parishad held on 18.3.1995 and he is, therefore liable for disqualification under Section 153 of the Act.

There is no consideration and there is also no finding on the question as to whether there was any valid appointment of party whip by the congress party and whether the same was intimated to the presiding officer within the time prescribed by law. The impugned order does not also show that any personal hearing was afforded to the petitioner.

2015 (1) ALD 595 at Page 610 and 611
Paragraph 70

“Since the mandatory provisions of Rule 21(1) and Rule 22(1) of the Rule have not been complied with, *prima facie*, the appointment of 3rd respondent as a whip and the intimation of such appointment to the 1st respondent or the candidature of Sri Manne Ravindra as the candidate proposed by the TDP party for the Office of Chairperson and Smt. P. Koteswaramma for the Office of Vice-Chairperson of ZPP Prakasam District, are invalid. Consequently, in the absence of a valid appointment of a whip by the said party, and valid communication of such appointment to 1st respondent, there is *prima facie* no question of violation of whip by the petitioner.

“In the absence of valid appointment and valid communication of such appointment R1 there is no *prima facie* no question of violation of whip by the petitioner.”

AIR 2000 SC 388

The election of a successful candidate cannot be lightly interfered. It is basic law of election petition the mandate of the people as expressed as the hustings must prevail and be respected by the Courts and it is why the election of a successful candidate is not to be set aside lightly.

Followed in 2015 (2) ALD at 609 Para 63

2014 (3) ALD 1 (SC)

The statutory requirements relating to election have to be strictly adhered to all the technicalities prescribed mandated in

election law have been provided to safeguard the purity of election process and the Courts have a duty to enforce the same with all rigours and not to minimize their operation.

Followed in 2015 (1) ALD page 603 Para 32

It is thus suggested hand on – heart that the mandatory provisions delineated supra are to be complied with in order to set at rest the controversy and let me conclude by an appeal to the Bench and Bar it is time the enlightened sections of the Bar and the public ponder over the matter.

LAW PROHIBITING AUTOMATIC ARRESTS - RIGHT TO BAIL - MISCONCEPTIONS CLEARED

By

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1. During the last one week there has been considerable debate especially on the Telugu television channels on the subject of the power of the police to arrest and the right of the citizen to secure bail. In this article an attempt is made to remove the misconceptions in the minds of lawyers, judges, police officials and the general public touching such an important aspect of administration of justice.

2. Prior to the year 2010 the general impression was that the police had an automatic right to arrest a person whenever a case is registered against him. Though the Honourable Supreme Court laid down the law in the year 1994 (AIR 1994 SC 1349) that the police should not arrest a person just because it would be lawful to do so unless the police officer is satisfied that arrest is necessary for proper investigation to be carried out, there was no practical impact of the said decision. The legal profession also did not show any inclination to carry out the norms indicated in it. In fact, the said decision was given while dealing with the case of illegal arrest and detention of an advocate in the police station, even without informing his family or friends about the whereabouts of the arrested advocate. When

the family members of the advocate filed a *habeas corpus* petition the police released the advocate and falsely contended that he was assisting the police in the investigation of some other case.

3. The Code of Criminal Procedure (Amendment) Act, 2008 and The Code of Criminal Procedure (Amendment) Act 2010 were passed to amend Section 41 of the Criminal Procedure Code and incorporate Sections 41-A, B, C and D.

4. *Section 41-A* is the most important provision which mandates that the police should not automatically arrest a person when a complaint is received against him. It provides that the police officer should only issue a notice to such a person calling upon him to be present before the police officer for questioning. This is very similar to the summons issued by a Court of law directing a person to be present before the Court either as an accused in a criminal case or as a defendant in a civil matter or as a witness in any case. After receiving the notice, if the said person complies with it by appearing before the police officer, the latter may question him and if he concludes that he has committed the offence, still he should