

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No.6801 OF 2008

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ORDER:

This writ petition is filed challenging the inaction of the 2nd respondent in registering the amendment to Bye-law Nos.30 and 33 of the Bye laws relating to the 5th respondent-Society.

The brief facts of the case of the petitioner are that by communication dated 06.10.2005, the Assistant Registrar/Special Officer of the Society had approached the Deputy Registrar of Cooperative Societies-2nd respondent and placed on record the resolutions passed by the General Body meeting held on 28.09.2005 seeking certain amendments to bye-laws. Both the existing bye-law and the proposed bye-laws have been set out in the resolution said to have been passed. In the general body meeting presided over by the Assistant Registrar/Special Officer, 171 members had participated and the resolutions passed without any dissent. Required quorum for the meeting is only 120. The procedure for amendment of bye-laws is governed by Section 16 of the A.P. Cooperative Societies Act, 1964 (for short 'the Act') read with Rule 1- of the Rules made thereunder. As per Section 16 of the Act, once a resolution is passed by the general body, every proposal for such amendment shall be forwarded to the Registrar who shall, register the amendment within a period of thirty days from the date of receipt of such proposal subject to the fulfilment of conditions set out in Section 7(1) of the Act. Section 7 of the Act itself stands omitted by the Act 22 of 2001 with effect from 25.4.2001. In other words, the only requirement that is required to be complied with that there should be a resolution by the general body seeking to amend the bye-laws.

A counter-affidavit filed by the Divisional Cooperative Officer and Deputy Registrar of Cooperative Societies, Tirupati stating that in view of the fact that there was no elected body in terms of bye-laws 30 and 33, the resolution passed by the

General Body presided over by the Special Officer is invalid and as such the proposed amendment submitted by the 5th respondent cannot be taken into consideration.

It may be borne in mind that the special officer is required to be appointed in case where there is no committee and the powers of the special officer are set out in sub-section 7 of Section 32 of the Act. In other words, the special officer would be the *defacto* and *de jure* authority with respect to all the affairs of the society during his tenure. In the present case, on a requisition made by the members, amendment of bye-laws were sought to be made and necessary formalities in relation to passing of a resolution have been complied with. It is not the case where there is an objection having been raised by any of the members that the procedure as prescribed under the Act, Rules or bye-laws have not been adhered in passing the resolution seeking amendment of bye-laws. The Rules and bye-laws are purely internal matters of the Society and it is for the members to decide what kind of bye-laws they need for memorandum of a society achieving object which would serve best interests of their members. As long as the bye-laws are legal and not opposed to public policy, it is within the exclusive domain of the members to decide and what kind of bye-laws they desire to have in their memorandum and articles. In that view of the matter, the objection which has been raised by the Deputy Registrar for according the approval to the amended bye-laws is totally outside the purview of the Act and Rules made there under.

In that view of the matter, the writ petition is allowed setting aside the rejection order dated 06.10.2005 communicated to the petitioner and with a further direction to the Deputy Registrar, Cooperative Societies, to consider and take appropriate action in relation to the amendments to bye-laws as sought by the petitioner.

There shall be no order as to costs. Miscellaneous petitions, if any, pending in the writ petition, shall also stand closed.

JUSTICE CHALLA KODANDA RAM

Date:07.11.2015

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THE HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

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