

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.32491 of 2014

% 01-4-2015

P.Kotya

and 8 others

... Petitioners

Vs.

\$ State of Telangana,

Rep. by its Prl. Secretary, Dept. of Fisheries,

Secretariat, Hyderabad; and 15 others

... Respondents

! Counsel for the Petitioners: Sri Kowturu Vinaya Kumar

Counsel for Respondents 1 to 3: Government Pleader for

Irrigation & CAD

Counsel for Respondents 4 & 5: Government Pleader for

Fisheries

Counsel for Respondents 6 to 16: Ms. M.Vidyavathi

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> Head Note:

? Cases referred:

1. AIR 2001 SC 3982

2. AIR 1994 DELHI 69

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.32491 of 2014

Date: 01-4-2015

Between

P.Kotya

and 8 others

... Petitioners

and

State of Telangana,

Rep. by its Prl. Secretary,

Dept. of Fisheries,

Secretariat, Hyderabad;

and 15 others

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.32491 of 2014

Order:

This writ petition is filed seeking a Writ of *mandamus* declaring the order dated 18-10-2014 issued by the

2nd respondent as arbitrary, illegal and violative of principles of natural justice, to set aside the same and to further direct the respondents 2 to 5 to include the names of the petitioners in the Voters' List in respect of the

4th respondent-Fishermen Cooperative Society before conducting elections.

2. The petitioners are tribals and fishermen by profession. They are the members of the Fishermen Cooperative Society, Cheruvumadaram in Khammam district. The 4th respondent herein issued proceedings dated 29-11-2012 deleting the names of the petitioners from the Voters' List while issuing a Notification to conduct elections to the 4th respondent-Society on the ground that they have not remitted the enhanced share capital amount of Rs.50/- as required under Rule 18 of the Andhra Pradesh Cooperative Societies Rules, 1964 (the APCS Rules, for short) and also as per the orders issued by the Commissioner of Cooperation and Registrar of Cooperative Societies, Andhra Pradesh, Hyderabad, dated 04-8-2003. Aggrieved by the deletion of the names from the Voters' List published by the 4th respondent-Society, the petitioners and some others filed Writ Petition No.37509 of 2012 and learned single Judge of this Court stayed the election by order dated 05-12-2012. Ultimately, the said writ petition was dismissed on the ground that the petitioners have not paid the enhanced share capital amount of Rs.50/- per member and therefore, they are not eligible to vote in the election. The learned single Judge while dismissing the writ petition observed that however, subsequent to the Election Notification, the petitioners paid the enhanced share capital on 30-3-2013.

3. Thereafter, the impugned order dated 18-10-2014 was passed by the 2nd respondent directing the 5th respondent to complete the process of election in accordance with the procedure as contemplated under Rule 22 of the APCS Rules. The said order indicated that the elections have to be recommenced from the stage at which they were stopped and the election was to be held on 30-10-2014 on the basis of the earlier Voters' List dated 29-10-2012 whereunder the names of the petitioners were deleted on the ground of non-payment of additional share capital amount of

Rs.50/-. It is submitted by the petitioners that this Court while dismissing the earlier writ petition had not issued any direction to the authorities to conduct election from the stage where it was stopped and recorded the factum of payment of additional share capital amount on 30-3-2013 by the members. Therefore, the version of the petitioners is that the 2nd respondent ought to have issued fresh Election Notification after preparing the Voters' List by including the names of the petitioners since they have complied with the objection by paying the balance share capital amount on 30-3-2013. The contention of the petitioners is that the earlier Voters' List was published on 29-11-2014, the writ petition was dismissed on 20-11-2013 and after the lapse of nearly one year and 11 months, if the elections are held basing on the old Voters' List, their right to participate in the election is affected and therefore, the impugned order is illegal, which is liable to be set aside in the present writ petition. It is further contended that the respondents after dismissing the writ petition on 20-11-2013 did not take any steps for so many months and issued the impugned order proposing to conduct election basing on the old Voters' List which is impermissible in law. Thus, they filed the present writ petition to set aside the impugned order dated 18-10-2014 and to conduct election to the Society only after including the names of the petitioners in the Voters' List.

4. It is contended by the respondents in the Counter Affidavit filed by the 3rd respondent that as per Clause (b) of sub-rule (1) of Rule 22-C of the APCS Rules, after postponement of election it should be recommenced when the conditions become conducive for recommencing of election, by issuing an order by the Authority that has postponed the elections. Therefore, the election was stopped on account of the orders passed by this Court and it has to be recommenced after W.P.Nos.37509 of 2012 and 37384 of 2012 were dismissed. It is further contended that the High Court has not struck down the Election Notification issued on 30-11-2012 in both the writ petitions and there were no orders to issue Election Notification

afresh. Therefore, according to the respondents, the question of issuing fresh Election Notification is not permissible.

5. Next, it is submitted that the term of the previous Managing Committee expired in 2010, since then it was managed by the official three-men Committee till April, 2014, the term of the Committee was extended up to 3 years periodically, the Government is empowered under Section 32(7) of the Andhra Pradesh Cooperative Societies Act, 1964 (the APCS Act, for short) to appoint a person or persons to manage the affairs of the Society, however, the aggregate period shall not exceed 3 years and therefore, the Government have not extended the term beyond 3 years.

6. Lastly, it is submitted that the Society has strength of 388 members, it has a very large tank in its area of operation named Shahajada Tank and there is no fishing since 2012 as there was no elected Managing Committee. Therefore, it is said that there is dire necessity to conduct elections immediately and to put the affairs of the Society in order. It is further submitted that the High Court has not declared the Election Notification dated 29-11-2012 as *ultra vires* or illegal. It is also contended that under Section 61 of the APCS Act, after commencement of the election process if there are any irregularities in the Voters' List, it can be resolved only by filing a petition under Section 63 of the APCS Act before the Tribunal after declaration of result of the election and not before by filing a petition before the Tribunal having jurisdiction. Contending as above, the respondents sought to dismiss the writ petition.

7. I have heard Sri Kowturu Vinaya Kumar, learned counsel appearing for the petitioners, the learned Government Pleader for Irrigation and Command Area Development appearing for the respondents 1 to 3, the learned Government Pleader for Fisheries

appearing for the respondents 4 and 5, and Ms. M.Vidyavathi, learned counsel appearing for the respondents 6 to 16.

8. In W.P.No.37509 of 2012, the learned single Judge of this Court specifically held that since the petitioners paid the enhanced share capital only on 30-3-2013 which is subsequent to the date of Election Notification, there is no infirmity or illegality in the Election Notification warranting interference under Article 226 of the Constitution of India. Holding as such, the learned single Judge dismissed the writ petition and vacated the interim order dated 05-12-2012 whereby the election process was stopped. Thus, the learned single Judge upheld the contention of the respondents that as the petitioners failed to pay the enhanced share capital as on the date of Election Notification, they are not entitled to participate in the election. The said finding became final. The learned counsel appearing for the petitioners submits that the writ petition was disposed of on 20-11-2013, so far no election has been held and in such an event, it is unfair to proceed with the election from the stage at which it was stopped without including the names of the petitioners in the Voters' List as they admittedly paid the enhanced share capital on 30-3-2013.

9. On the other hand, the learned Government Pleader for Irrigation and Command Area Development would contend that any election, which is stopped by an order of the Court, has to be recommenced from the stage at which it was stopped and issuing a fresh Election Notification is contrary to the Rules governing the conduct of elections under the APCS Rules and therefore, the writ petition is liable to be dismissed.

10. For appreciating the contentions urged by both the learned counsel, the following provisions have to be referred:

Rule 18 of the APCS Rules lays down that no member of a society, shall have the right to stand as a candidate or to vote in any election to the society, unless he subscribes a minimum share capital of Rs.300/- and is not in default of any amount due in cash or kind to the society for a period exceeding three months.

The proviso states that a list of eligible members with right to vote and those without right to vote shall be prepared and displayed on the Notice Board of the society and branches prior to holding of any General Body meeting or holding of elections in the manner as laid down in the bye-laws.

11. Rule 22-C of the APCS Rules lays down as follows:

“22-C. (1) Notwithstanding anything contained in these rules, the Government or the Election authority may direct the postponement of elections under one or more of the following circumstances:--

- i. Break down of law and order affecting the peaceful and lawful conduct of elections.
- ii. Any natural calamity that prevents the conduct of elections particularly, voters from participation in the election.
- iii. Where there is reasonable apprehension that voters will not be allowed to vote frankly and freely.

(b) The postponement shall be done only by issue of an order which shall specify the grounds of postponement. After such postponement the election process shall be recommenced when the conditions become conducive for recommencing of election, by issue of an order by the Authority that has postponed the elections. The process will re-commence from the stage at which it was obstructed or interrupted.”

12. By virtue of Rule 18 of the APCS Rules, since the

petitioners have not paid the enhanced share capital as on the date of Election Notification, they are not eligible to contest or vote in the election. It was held so by the learned single Judge in the aforesaid writ petition and the said decision became final. Since the petitioners paid the enhanced share capital on 30-3-2013, they are eligible to participate in the election only if a fresh Election Notification is issued.

13. The question, therefore, requires for consideration in the present writ petition is, having regard to the facts and circumstances of the present case whether the elections have to be renotified by issuing a fresh Notification to enable the petitioners to participate in the election.

14. Rule 22 of the APCS Rules says that if the elections are postponed, the elections shall be recommenced by issue of an order by the authority which postponed the elections and the process will recommence from the stage at which it was obstructed or interrupted.

15. In the instant case, the election was not stopped on account of any situations mentioned in Rule 22-C of the APCS Rules. The process was stopped on account of an interim direction issued by this Court stopping elections. The learned single Judge while dismissing the writ petition had not issued any direction for issuing a fresh Election Notification. In the opinion of this Court, the condition mentioned in Rule 22-C of the APCS Rules that the election process will recommence from the stage at which it was obstructed or interrupted equally applies to the situation where the election was stopped on account of an order of the Court, more so in the absence of any specific direction by the Court to issue a fresh Election Notification.

16. As regards the delay in conducting the election,

it is not on account of any act of the respondents but it is on account of the petitioners who filed the writ petition seeking to set aside the Election Notification besides obtaining stay of election. Because of the orders passed by this Court and due to other administrative exigencies, the elections could not be held by the respondents so far. Therefore, for the delay the respondents cannot be found fault with and it is not open for the petitioners to contend that since there is delay in conducting the elections, a fresh Election Notification has to be issued.

17. In this context, it would be necessary to refer to a judgment of the apex Court in **SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA v. STATE OF MAHARASHTRA**, wherein the Supreme Court held that since preparation of the electoral roll is an intermediate stage in the process of election of the Managing Committee of a specified Society and the election process having been set in motion, it is well settled that the High Court should not stay the continuation of the election process even though there may be some alleged illegality of breach of rules while preparing the electoral roll.

18. In the present case also, the election of the Society was challenged at an intermediate stage just two days before the polling day. In view of the ratio laid down by the apex Court in **SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAKA SANSTHA** (1 *supra*), the petitioners could have challenged the election only after declaration of the results by filing an election petition but ought not to have resorted to stall the election process by filing a writ petition. Therefore, the delay in conducting of elections cannot be attributed to the respondents and the petitioners cannot take the delay to their advantage.

19. The learned counsel appearing for the petitioners would submit that since the petitioners paid the enhanced share capital on 30-3-2013 and the elections could not be held for a long time, a fresh Voters' List has to be prepared and after including the names of the petitioners in the Voters' List, a fresh Election Notification has to be issued. The learned counsel appearing for the petitioners would further submit that the petitioners are not intending to contest in the elections and they can at least be permitted to vote in the election proposed to be held.

20. In support of his contention, the learned counsel appearing for the petitioners relied on **A. S. GAHLOUT v. LT. GOVERNOR OF DELHI**, wherein the Full Bench of Delhi High Court took the view that the elections to the managing committee of a co-operative society are normally held in the Annual General meeting of the society, no formal procedures as applicable to elections held under the Representation of the People Act are prescribed or envisaged.

21. In **A. S. GAHLOUT** (2 *supra*), the Full Bench of the Delhi High Court was dealing with the powers of the Lieutenant Governor under sub-section (7) of Section 31 of the Delhi Co-operative Societies Act, 1972, wherein there is a provision to refer the dispute regarding the election of members of the committee to the Lieutenant Governor and the Lieutenant Governor has been endowed with final authority to ensure that free and fair elections are held in co-operative societies falling in the class covered under Section 31 of the Delhi Co-operative Societies Act, 1972.

22. Therefore, the Full Bench of Delhi High Court was dealing with a different situation concerning the powers of the Lieutenant Governor in the matter of election of the members of the committee of the society. The Full Bench noticed that the provisions of the Delhi Co-operative Societies Act, 1972 are totally different and independent

of the provisions of the Representation of the People Act, 1951.

23. But, in the instant case, there is a specific provision under Rule 22-C of the APCS Rules which lays down that the election if stopped shall be commenced from the stage where it was stopped. Therefore, the provisions under the APCS Act regarding the conduct of elections cannot be said to be altogether independent and different to that of the provisions of the Representation of the People Act. Even under Rule 22-C of the APCS Rules, the election has to be recommenced from the stage where it was stopped. Thus, the decision relied on by the learned counsel appearing for the petitioners is not applicable to the facts of the present case.

24. The provisions of either APCS Act or APCS Rules do not empower the Authority concerned to issue a fresh Notification after the election was stopped, more so Rule 22-C of the APCS Rules lays down that the election shall be recommenced from the stage when it was stopped.

25. The learned single Judge while disposing of W.P.No.37509 of 2012 also did not issue any direction to the respondents to issue a fresh Election Notification. Moreover, the learned single Judge specifically held that since the petitioners have not paid the enhanced share capital on the date of Election Notification, they are not entitled to vote in the election. The said finding has attained finality. The issue which the petitioners raised in W.P.No.37509 of 2012 before the learned single Judge earlier is identical to the issue involved in the present case. The issue had already been decided against them in the earlier writ petition. Therefore, in the considered view of this Court, they cannot reagitate the issue in the present writ petition on the mere ground that there was delay in conducting the elections.

26. As already observed, the delay in conducting the elections is attributable to the petitioners but not to the respondents. Having rushed to the Court and stalled the election, the petitioners cannot take advantage of the situation. Therefore, I see no substance in the contention that a fresh Election Notification after including the names of the petitioners in the Voters' List has to be issued before conducting elections to the 4th respondent-Society.

27. For the foregoing reasons, the writ petition fails and the same is dismissed. The respondents are directed to recommence the election from the stage where it was stopped and to complete the entire process within a period of 2 (two) months from the date of receipt of a copy of this order. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

01st April, 2015.

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Note:-

L.R. Copy to be marked.

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.32491 of 2014

01st April, 2015.

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