

THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.24079 of 2012

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01.07.2015

Between:

Ranga Chandraiah

...Petitioner

And

The State of Andhra Pradesh,
Represented by its Principal Secretary,
Hyderabad and others

...Respondents

Counsel for the petitioner: Mr.D.Goverdhana Chary

Counsel for respondent Nos.1 to 3: Assistant Government
Pleader for Cooperation (TS)

Counsel for other respondents: None appeared

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The Court made the following:

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ORDER:

This writ petition is filed for a *mandamus* to declare the action of respondent Nos.2 to 4 in not constituting a committee under Section 31-A of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act') to decide the disqualification of respondent No.5 either to contest/continue as member of the managing committee of respondent No.4 society and failure of respondent Nos.6 and 7 in not furnishing information relating to the number of children that respondent No.5 has as illegal, arbitrary and violative of Article 14 of the Constitution of India and also the provisions of the Act and the Rules made thereunder.

The petitioner also sought for a consequential direction to respondent Nos.2 to 4 to constitute a committee under Section 31-A of the Act and take a decision on the disqualification of respondent No.5.

I have heard Mr.D.Goverdhana Chary, learned counsel for the petitioner and learned Assistant Government Pleader for Cooperation (TS) and perused the record.

In pursuance of the election notification, dated 15.12.2011, issued for constitution of managing committee of respondent No.4 society, the petitioner filed his nomination and has unsuccessfully contested the election for the office of member of the managing committee. Respondent No.5, however, was elected as one of the twelve managing committee members. The petitioner pleaded that under Section 21-A (1A) of the Act, a person having more than two children is disqualified for election or for continuing as a member of the committee and that having three children, respondent No.5

suppressed the said fact, while filling the column 13 of the nomination form, under which the contestant shall specify if he/she is having more than two children after 02.01.1996 i.e., whether he/she has third child born after 02.01.1996. That the petitioner has caused a legal notice issued on respondent Nos.2, 3 and 4, wherein he has brought to the latter's notice about the fact of respondent No.5 having three children by the time he has filed his nomination and the further fact of non-denial of said allegation made by the petitioner in his legal notice, dated 01.02.2012 got issued to respondent No.5. The petitioner has accordingly called upon the said respondents to constitute a committee under Section 31 of the Act for the purpose of deciding the disqualification of respondent No.5. As no action thereon has been taken, the petitioner has filed this writ petition.

On behalf of respondent Nos.1 to 3, a counter-affidavit has been filed by respondent No.2. The other respondents have not filed any counter-affidavit. In her counter-affidavit, respondent No.2 has, *inter alia*, stated that respondent No.4 is an unaided society to which incumbent committee has been holding the elections to the office of the members of the committee under Section 31(2)(c) of the Act, that the last elections were held on 01.01.2012, in which respondent No.5 was elected as one of the managing committee members. It is further averred that under Section 31 A (4) of the Act, managing committee shall recommend removal of any of the committee members disqualified under Sections 21A, 21A A and Section 21 B of the Act to the general body, which alone is competent to take a decision on such disqualification. Respondent No.2 has further stated that under the provisions of the Act, the official respondents have no authority or jurisdiction to constitute a committee for adjudication on disqualification of respondent No.5.

I have carefully considered the submissions of the learned counsel for the parties with reference to the pleadings.

Under Section 21-A (1A) of the Act, a person having more than two children is disqualified for election and for continuing as a member of the committee. Under Section 31-A (4) of the Act, the committee of the society, *inter alia*, shall exercise the power/function of recommending removal of any of the committee members disqualified under Sections 21-A, 21-AA and 21-B of the Act and place the reports before the general body. No provision is brought to the notice of this Court, under which any power is vested in respondent Nos.1 to 3 to constitute a committee for taking a decision on the disqualification of a member. Similarly, in the context of Section 21-A of the Act, no provision exists whereby the Registrar or Functional Registrar can direct society to place the subject of disqualification of any member of the committee before the general body. In the absence of such a statutory provision, no *mandamus* could be issued to the Registrar either to constitute a committee for adjudication of disqualification or to direct the society to place the subject before the managing committee. Perhaps, the petitioner could only raise a dispute under Section 61 of the Act before the Registrar, under which the latter is empowered to decide the disputes touching the constitution of the committee or the business of the society other than a dispute regarding disciplinary action taken by the society or its committee against paid employee of the society. However, this Court refrains from expressing any conclusive opinion on the application of said provision on the facts of this case. It is for the petitioner to work out his remedies under the provisions of the Act.

Subject to the liberty given to the petitioner for availing appropriate legal remedy, the Writ Petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.Nos.30762 and 30763 of 2012 filed by the petitioner for interim reliefs shall stand dismissed as infructuous.

01st July, 2015
GHN

C.V.NAGARJUNA REDDY, J