

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

WRIT PETITION No.22838 of 2011

DATE: 16.07.2015

Between:

Nakka Ramana and others

...Petitioners

and

The Government of Andhra Pradesh and others

...Respondents

COUNSEL FOR THE PETITIONERS : SMT. BOBBA VIJAYA LAKSHMI

COUNSEL FOR RESPONDENTS 1 & 2 : AGP FOR COOPERATION

COUNSEL FOR RESPONDENTS 3 & 4 : GP FOR FISHERIES

COUNSEL FOR RESPONDENT No.5 : NONE APPEARED

COUNSEL FOR RESPONDENTS 6to12: SRI SRINIVAS BASAVA

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

WRIT PETITION No.22838 of 2011

ORDER:

This Writ Petition is filed for a mandamus to direct respondent Nos.2 and 3 to take necessary steps to conduct an enquiry on the General Body Meeting held on 19.06.2011 of respondent No.5 society and consequently, direct respondents 1 and 2 to conduct election to respondent No.5 society.

I have heard Smt. Bobba Vijayalaxmi, learned counsel for the petitioners, learned Assistant Government Pleader for Cooperation representing respondents 1 and 2, learned Government Pleader for Fisheries representing respondents 3 and 4 and Sri Srinivas Basava, learned counsel for respondents 6 to 12.

Respondent No.5 is a fishermen cooperative society. There is a serious dispute as to whether it is an aided society or not. Be that as it may, petitioner No.1 was the President and petitioners 2 to 5 were the members of the outgoing Managing Committee of respondent No.5 society. A General Body Meeting of respondent No.5 society was held on 19.06.2011. On this aspect also, there is some controversy as to the purpose for which the meeting was held. Petitioner No.1, who has sworn to the affidavit, averred that in the said meeting, after 196 members have signed the Minutes Book, respondents 6 to 12 have forcibly taken away the Minutes Book and made certain entries as if election was held on that day. That petitioner No.1 has given a report in Golugonda Police Station based on which Crime No.62 of 2011 under Sections 341 and 420 IPC was registered against one Pyala Tata Babu, Boddu Venkata Ramana, President of Mandal Praja Parishad, Golugonda, and A.Appala Naidu for forcibly taking away the Minutes Book. He has further averred that the purported resolution, dated 19.06.2011 showing respondents 6 to 12, as having been

elected, was not passed after following the procedure of proposals, nominations, withdrawals etc. He has also averred that a perusal of the record would clearly demonstrate that respondents 6 to 12 have incorporated the said resolution in the Minutes Book after signing of the Minutes Book by the members of respondent No.5 society.

That when petitioner No.1 has submitted a representation, respondent No.4 in his proceedings, dated 30.07.2011 has informed that photo copy of the minutes of the General Body Meeting held on 19.06.2011 contained at pages 219 and 220 with signature of Ch.Pentaiah denotes that election to respondent No.5 society was held during which respondents 6 to 12 were elected as members of the Managing Committee, as such, there is no scope for appointment of Person-In-Charge under Section 32(7)(a) of the Andhra Pradesh Co-operative Societies Act, 1964 (for short 'the Act'). The petitioners have emphasized upon the alleged non-following of the procedure under Rule 22-B of the Andhra Pradesh Co-operative Societies Rules, 1964 (for short 'the Rules').

Respondents 6 to 12 have filed a counter-affidavit and respondents 1 to 4 have also filed a separate counter-affidavit.

On the status of respondent No.5 society, respondent No.4 has averred in the counter-affidavit that the society has received an aid of Rs.22,500/- once and repaid the same with interest on 15.02.2006. Accordingly, a stand has been taken that Section 43 of the Act is not applicable to respondent No.5 society and that elections have to be conducted as per the provisions of Section 31(2)(c) of the Act before expiry of the term and not under Section 31(2)(b) of the Act. He has further averred that as per the proceedings recorded in the Minutes Book at pages 219 and 220, election to the society was held on 19.06.2011 and that respondent No.6 was elected as President and respondents 7 to 12 were elected as members of the Managing

Committee unanimously and a resolution to that effect was passed. He has also averred that the procedure for nominations, proposals and withdrawals was not adopted. He has, however, pleaded that as the dispute raised by the petitioners in this Writ Petition is in the nature of election dispute, they have to approach the Election Tribunal.

Undisputedly, the petitioners were the office bearers of the outgoing Managing Committee. Petitioner No.1, who has sworn to the affidavit, has pleaded that the members of respondent No.5 society have conducted a General Body Meeting on 19.06.2011. He is, however, silent as to who has convened the meeting and the purpose for which the General Body Meeting was convened on 19.06.2011. However, a perusal of the representation submitted by petitioner No.1 would lend clarity to this aspect. In the representation, dated 20.06.2011, submitted to various functionaries including the Functional Registrar, petitioner No.1 has clearly stated that in order to elect new Managing Committee, they have arranged a General Body Meeting on 19.06.2011 and that in the said meeting, he has participated as the President and in the midst of the meeting being held for electing Managing Committee for the next five years, one Pyala Tata Babu, Son of Donga Babu, an employee of Agricultural Cooperative Society, A.Appala Naidu @ Nani Babu, former TDP Mandal President, B.Venkata Ramana, President of Mandal Praja Parishad, Golugonda belonging to CPI party and P.Srinu, highhandedly attacked petitioner No.1 and forcibly snatched away the society's registers. He has further stated that he has given a police report based on the said incident and that he has read a news item in the news paper on the following day i.e. 20.06.2011 that respondent No.6 was elected as new President and some other persons were elected as members of the Managing Committee. He has therefore, requested for taking action to cancel the purported election, which was allegedly manipulated by the private respondents. Petitioner No.1 also appeared to have addressed

another letter for the same purpose. In reply to these letters, respondent No.4 has informed petitioner No.1 vide Roc.No.65/C/2011, dated 30.07.2011

inter *alia* as under:

“In this connection, I am to inform you that as per Rule 22(1)(a) of the APCS Rules, the incumbent Managing committee shall themselves conduct and hold elections to Society which are not in receipt of State Aid as specified under Section 43 of the APCS Act 1964 before the expiry of the term. Being the outgoing Committee, you have to conduct and hold elections before the expiry of the elected term by 01.06.2011 as reported by you. You have also intentionally failed to produce the Books and records of Golugonda IFCS for verification by the AIF/Thandava though she noticed you on 29.5.2011 for the reasons best known to you, and initiated elections on 19.6.2011. A criminal case has also been registered with the Golugonda Police in the matter vide reference 2nd cited and pending disposal. The Xerox signature of Ch.Pentaiah, denote that elections to the Society was held electing Sri Pokanati Srinu as President and 6 others as Managing Committee members. As such there is no provisions for appointment of PIC under Section 32(7)(a) of the APCS Act 1964. If you feel the said elections are dispute you are at liberty to approach the Coop. Tribunal, Visakhapatnam to settle the dispute within stipulated time.”

Smt. Bobba Vijaya Lakshmi, learned counsel for the petitioners submitted that for an aided society, an election officer is required to be appointed by the Registrar and the procedure as envisaged in Rule 22-B of the Rules needs to be followed for holding elections and that in the instant case, no such procedure was followed. It is not the pleaded case of the petitioners that being the outgoing President, petitioner No.1 has addressed any letter to the Functional Registrar to appoint an Election Officer. On the contrary, his representation, dated 20.06.2011, which was already referred supra, categorically shows that the outgoing Managing Committee headed by petitioner No.1 itself convened the General Body Meeting on 19.06.2011 for electing a new

Managing Committee. This itself demonstrates that the petitioners have come out with an incorrect plea that an Election Officer needs to be appointed for holding election to respondent No.5 society. From the contents of the said representation, it is clearly evident that the substance of the dispute raised by the petitioners pertains to the alleged procedural violation in holding election for the Managing Committee of respondent No.5 society on 19.06.2011. Respondent No.4 has clearly replied to petitioner No.1's representation that the Minutes Book clearly shows that election was held on 19.06.2011 and a new Managing Committee was elected. Thus, entire endeavour of the petitioners before the Functional Registrar is to seek nullification of election allegedly held on 19.06.2011.

Under Section 61(3) of the Act, every dispute relating to, or in connection with, any election to a committee of a society shall be referred for decision to the Tribunal having jurisdiction over the place where the main office of the society is situated, and his decision thereon shall be final. Under this provision, the petitioners were entitled to approach the Tribunal conferred with the jurisdiction to decide an election dispute. Instead of availing such remedy, the petitioners have filed this Writ Petition, which, in my opinion, is not an appropriate remedy for adjudicating the dispute raised by them. Once it is admitted that a meeting was convened on 19.06.2011 for holding fresh election, the question whether such election has been held properly or not requires to be decided based on the evidence adduced by both the parties. Such a dispute cannot be adjudicated in the Writ Petition. It is precisely for this purpose that the legislature has created a forum for deciding election disputes. Therefore, in my opinion, this Writ Petition is wholly misconceived and the same is accordingly dismissed as such.

As a sequel to dismissal of writ petition, interim order, dated 12.08.2011 shall stand vacated and WVMP.Nos.3615 of 2011 and 508

of 2012 and WPMP.No.27929 of 2011 are disposed of as infructuous.

C.V.NAGARJUNA REDDY, J

16th JULY, 2015.

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