

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.20539 of 2015

ORDER:

This writ petition is filed under Article 226 of the Constitution of India seeking the following relief:

“to issue Writ of Mandamus declaring Cr.No.439/Coop/ 2014, dated 24-02-2015 of the 2nd respondent in directing the 3rd respondent to admit new members into the society as illegal, arbitrary, liable to set aside as without jurisdiction, contrary to law, and grant all consequential reliefs.”

Heard Sri Amarnath Goud Thodupunuri, learned counsel for the petitioner and learned Government Pleader for Co-operation for respondents.

The petitioner herein claims to have acted as President of Toddy Tappers Cooperative Society, Marepally, Marepally village, Kondapur mandal, Medak District. According to the petitioner, the toddy shop licence and the period of managing committee are valid up to 2017 and there are 16 members in the society and the members are poor tappers eking out their livelihood upon the occupation of the tapping profession. It is further stated that the 2nd respondent – the Prohibition and Excise Superintendent appointed the 3rd respondent as Person-in-charge Committee to manage the affairs of the society vide proceedings Cr.No.439/Coop/2014, dated 24-02-2015 and the members of the society are conducting its business as usual. The 2nd respondent herein issued

proceedings, dated 24-02-2015, directing the 3rd respondent herein to admit about 20 persons as new members of the association and the 3rd respondent accordingly has complied with the orders of the 2nd respondent.

Calling in question the validity and legal sustainability of the said order passed by the 2nd respondent directing the 3rd respondent to admit the new members the present writ petition has been filed.

It is contended by the learned counsel for the petitioner that the impugned order passed by the 2nd respondent herein directing the 3rd respondent to admit new members is highly arbitrary, illegal, unreasonable and violative of Article 14 of the Constitution of India and opposed the very spirit and object of the provisions of the A.P. Co-operative Societies Act, 1964 (for short, 'the Act') and the Rules made thereunder. It is further contended by the learned counsel for the petitioner that the impugned order passed by the 2nd respondent herein suffers from inherent lack of jurisdiction and he has no authority under the provisions of the Act and Rules to issue such a direction to admit new members.

The petitioner herein has brought to the notice of this Court the provisions of the Act and the notification, dealing with delegation of powers. It is further specifically contended by the learned counsel for the petitioner that there is no delegation of power under Section 19 of the Act to the 2nd respondent herein.

Learned counsel for the petitioner places reliance on a judgment in the case of ***KOLLIPARA TODDY TAPPERS CO-OPERATIVE SOCIETY LTD., KOLLIPARA VILLAGE REP. BY ITS PRESIDENT, PARISA SAMBAIAB V. PROHIBITION AND EXCISE SUPERINTENDENT, (FUNCTIONAL REGISTRAR), GUNTUR AND OTHERS***^[1].

Per contra, it is vehemently contended by the learned Government Pleader for Co-operation that the present writ petition is not maintainable and that there is no illegality nor any procedural infirmity in the impugned action. It is further submitted by the learned Government Pleader for Co-operation that the election authority i.e., the District Collector, Medak District, Sangareddy issued an election notification on 26-05-2015 and once the election process is set-in, the petition herein cannot maintain the writ petition and it is also submitted by the learned Government Pleader that the petitioner herein has effective alternative remedy under the provisions of Section 61 (3) of the Act.

The information available before this Court manifestly discloses that by virtue of the impugned proceedings, dated 24-02-2015, the 2nd respondent herein directed the 3rd respondent – Person-in-charge to admit new members in the Toddy Tappers Co-operative Society, Marepally village.

Admittedly, the election authority i.e., the District Collector, Medak District, Sangareddy issued an election notification, on 26-05-2015, proposing to conduct elections for the subject Toddy Tappers Co-operative Society. In this connection it would be appropriate to refer to the judgment of the Hon'ble Apex Court in case of **SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA AND ANOTHER V. STATE OF MAHARASTRA AND OTHERS**^[2], wherein the Hon'bel Apex Court at paragraph No.12 held as under:

"12. In view of our finding that preparation of the electoral roll being 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 or breach of rules while preparing the electoral roll. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal."

In the instant case also the election authority pursuant to the inclusion of the new members issued a notification on 26-05-2015 and the election process is also commences and according to the information furnished by the learned Government Pleader for Co-operation the election schedule to be held on 15-07-2015.

In these circumstances and in view of the principles and parameters laid down by the Hon'ble Apex Court in the above-referred judgment, this Court is not inclined to entertain the present writ petition. At the Bar it is requested by the learned

counsel for the petitioner that in the event of dropping further action pursuant to the election notification, dated 26-05-2015 the petitioner herein may be permitted to question the validity of the impugned order, dated 24-02-2015.

For the aforesaid reasons, the writ petition is dismissed. However, the petitioner herein is at liberty to question the impugned order, dated 24-02-2015 in the event of dropping further action by the respondent authorities pursuant to the election notification, dated 26-05-2015.

The Miscellaneous Petitions, if any, pending in this Writ Petition shall stand closed.

A.V. SETHA SAI, J

July 13, 2015
Note: Issue C.C.
today. B/o.Pn

THE HON'BLE SRI JUSTICE A.V. SETHA SAI

—

Note: Issue C.C.
today. B/o.Pn

[2] (2001) 8 Supreme Court Cases 509