

*** THE HON'BLE SRI JUSTICE R. KANTHA RAO**

WP NO.10649 OF 2015

Date: 20-4-2015

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% Date: 20.4.2015

WRIT PETITION NO.10649 OF 2015

Between:

Rabi Umamaheswara Rao
S/o SUBba Rao,
Rachavaripalem village, Maddipadu Mandal,
Prakasham District.

...Petitioner

And

The State of Andhra Pradesh rep by its Principal
Secretary, Agriculture and Cooperation Dept.,
Hyderabad and others

...Respondents

! Counsel for the Petitioner : Sri I Koti Redy

^ Counsel for respondents : G.P. for Cooperation

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? Cases cited:

THE HON'BLE SRI JUSTICE R. KANTHA RAO

W P No.10649 of 2015

Oral Order :

Heard the learned counsel for the petitioner, learned Government Pleader for Co-operation (A.P), and the learned counsel appearing for the Caveators.

The petitioner is an agriculturist and he is one of the members of the Nandipadu Primary Agriculture Cooperative Society, Nandipadu, Maddipadu Mandal, Prakasham District (hereinafter referred to as "the Society"). The petitioner is said to be a prospective candidate to contest for the post of President of the said Society in the ensuing elections after being elected as a member of the Society. The period of the Managing Committee expired in the month of February, 2015. Thereafter, the 2nd respondent commenced the process of conducting elections to the Managing Committee. Accordingly on 21.3.2015, the 2nd respondent issued proceedings by appointing one Sri P.Rama

Rao, Assistant Registrar, office of the District Cooperative Office, Ongole as Election Officer and election schedule was also issued. On 25.3.2015, the Election Officer issued proceedings directing the 6th respondent to produce the records and also voters list. The 6th respondent prepared voters list and published the same on 31.3.2015 inviting the objections on or before 6.4.2015. In pursuance of the same, the petitioner made a representation dated 6.4.2015 to the 6th respondent to enquire into the voters list by furnishing the details about the eligibility of the voters belonging to several villages whose lands were acquired by the Government and were submerged under the project.

It is submitted by the petitioner that for the reasons best known to him, the 6th respondent prepared the voters list and handedover the same to the 5th respondent, without verifying the eligibility of the voters. Thereafter, the petitioner made complaint to the 5th respondent bringing to his notice that the 6th respondent without considering his objections simply prepared the voters list. According to the petitioner to become member of

the society as per Rule 14(2) of the A.P. Co-operative Society Rules, 1964 (hereinafter called "Rules"), one shall hold agricultural land in the area of operation of the Society, either as a owner or as a tenant. Further, there are certain disqualifications for the members which disentitle them to become the voters of the society. Under Rule 18 of the Rules, one of the conditions to become eligible to vote in the election is that the member should not be a defaulter. Alleging that the 6th respondent prepared the voters list with ineligible members, the petitioner submitted another representation dated 9.4.2015 to the 5th respondent who is the competent authority under Rule 22(vi) of the Rules to consider his objections. It is said that for extraneous considerations and being influenced by the members of a political party, the 5th respondent did not consider the objections made by the petitioner.

The version of the petitioner is that three villages - Gadepudi, Garlapadu and Burepalli - were completely declared as submerged villages including the agricultural lands under Gundlakamma Reservoir and that compensation was also paid to

the owners. According to the petitioner, as the lands were submerged, the owners became landless poor persons and thereby they became ineligible to be the members of the Society as per Rule 14 of the Rules. It is further submitted that the 6th respondent did not verify the records to find out as to who are the defaulters and also failed to identify the persons who are utilizing the services of the society. It is the contention of the petitioner that about 200 members belonging to the above three villages are not eligible to be the members of the Society and they were wrongly included in the voters list. This apart, it is submitted by the petitioner that there are about 50 to 70 persons who have not utilized the services of the Society. The contention of the petitioner is that though there are 250 ineligible members, who are defaulters, their names were included in the voters list. Therefore, it is submitted by the petitioner that if all such members are allowed to vote in the ensuing election, the very purpose of conducting the elections would be defeated. Under the above circumstances, the petitioner filed the present writ petition seeking appropriate order or direction more

particularly one in the nature of Writ of Mandamus declaring the in-action of the 4th respondent in not considering the objections dated 6.4.2015 and 9.4.2015 filed by the petitioner for deletion of ineligible members from the voters list pertaining to Nandipadu Primary Agriculture Cooperative Society as arbitrary and illegal and violative of principles of natural justice and consequently direct the respondent no.4 to consider the objections of the petitioner before conducting elections.

WPMP No.14088 of 2015 has been filed seeking direction to the 4th respondent to consider objections of the petitioner dated 6.4.2015 and 9.4.2015 before conducting the elections of the society.

This Court with the consent of the parties took up the matter for final hearing at the stage of admission.

Learned counsel for the petitioner invited the attention of this Court to Rule 22(vi) of the Rules which lays down that -

“22(vi) After receipt of the final list of members eligible to vote from the society, the Election Officer shall verify the cases and

satisfy himself that the list conforms to the criteria for eligibility to vote as laid down under the Act and Rules. [If there are any omissions or commissions noticed while scrutinizing the list, the Election Officer shall refer the same to the Chief Executive Officer or the President of the Society for rectification. After such rectification, the Election Officer shall publish the final list of the voters along with the schedule as prescribed in Form I]”

Basing on the aforementioned Rule, the learned counsel for the petitioner submitted that the said Rule mandates the Election Officer to consider his objections but the Election Officer without considering his objections proceeded to finalise the voters list, and therefore, this Court can interfere with the same in exercise of its jurisdiction under Article 226 of the Constitution of India by issuing the appropriate directions.

On the other hand, it is submitted by the learned Government Pleader for Cooperation that the Election Officer on receiving the objections submitted by the petitioner, rejected the same on the ground that it is lacking in details as to the names of even ineligible voters and therefore it is

not open for the petitioner to seek direction from this Court to the Election Officer to conduct detailed enquiry into the issue. As per the election schedule, scrutiny and verification of the voters list by the Election Officer should be done by 15.4.2015 and according to the learned Government Pleader, the same is over in view of the rejection of objections made by the petitioner.

Obviously, the objections filed by the petitioner do not contain even the names of the ineligible voters. Except stating that the ineligible members names were found in the list, no details have been furnished in the objections. In this context to arrive at an appropriate decision it is necessary to refer the judgment of this Court reported in **KONDAVEETI SRINIVASA RAO v. GOVERNMENT OF ANDHRA PRADESH** [\[1\]](#), wherein this Court held as follows :

“ ...Thus, under the schedule of the rules, the Chief Executive Officer or President of the Society alone has the power to prepare the Voters' List and the limited power conferred on the Election Officer is confined only to pointing out the omissions or commissions noticed

while scrutinizing the list finalised by the Chief Executive Officer or President of the Society. Except to the extent of the power conferred on the Election Officer, no other functionary, including the District Collector or District Co-operative Officer or Divisional Co-operative Officer has any power whatsoever to interfere with the preparation and finalization of the voters' list. ”

In the instant case, the Election Officer verified the representation, and as the representation lacks the details, he rejected the same in the process of scrutinizing the voters list. In the opinion of this Court the Election Officer is not supposed to make an elaborate enquiry into the eligibility or ineligibility of the voters while acting according to Rule 22(vi) of the Rules. Further to arrive at an appropriate decision as to the scope of power of judicial review under Article 226 of the Constitution of India regarding preparation of electoral rolls, it is necessary to refer to the decision of the Supreme Court, relied on by the learned Government Pleader, reported in **SHRI SANT SADGURU JANARDAN SWAMI (MOINGIRI MAHARAJ) SAHAKARI DUGDHA UTPADAK SANSTHA AND**

**ANOTHER v. STATE OF MAHARASHTRA AND
OTHERS [\[2\]](#)**

The Supreme Court in **STATE OF MAHARASHTRA**'s case (2 supra) dealing with the similar situation, under similar enactment, took the view that preparation of 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, 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 was further held that when there is a dispute regarding the preparation of voters list, breach of non-compliance with the mandatory provisions of the Rules during the preparation of electoral roll, it can be challenged in election petition after declaration of the result but where the election process has already been commenced the High Court rightly declined to entertain the Writ Petition seeking to set aside the election; and hence the writ petition filed once election process had started in cooperative society election was rightly dismissed by the High Court.

In the instant case, the election schedule was issued by appointing an Election Officer on 23.3.2015 proposing to hold elections on 7.5.2015. In view of the ratio laid down by the Supreme Court in **STATE OF MAHARASHTRA's** case (2 supra), this Court is not supposed to stop the election process by interrupting the election schedule despite the allegation that there is some illegality or breach of rules while preparing the voters list.

In view of what is stated above, this Court is of the considered view that the writ petition is not maintainable and the same is accordingly dismissed at the admission stage itself. Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE R. KANTHA RAO

Dated: 20.4.2015

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THE HON'BLE SRI JUSTICE R. KANTHA RAO

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[\[1\]](#) 2013(6) ALD 12

[\[2\]](#) (2001) 8 Supreme Court Cases 509