

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 8043 OF 2015

ORDER:

The writ petition is filed challenging the communication dated 16.02.2015 of the 2nd respondent.

It is the case of the petitioner that pursuant to the election conducted for the Executive Committee of the petitioner's association, which is a registered society under the Andhra Pradesh (Telangana Area) Public Societies Registration Act, 1350 (for short, "the Act") Fasli, vide Reg. No.5801/99 on 18.08.1999, certain office bearers were elected and in terms of Section 9 of the Act, the list of the elected members of the Executive Committee was submitted to the 2nd respondent-Registrar of the Societies. It is stated that it is the duty of the 2nd respondent to take the same on file and keep on record. However, by the impugned letter, the 2nd respondent-Registrar has entered into an arena which is not authorized and permitted, to return the communication with an advise to approach the Court of law. The returning of the communication/intimation submitted by the petitioner, at the instance of the Mahaboobnagar District Cricket Association is totally unwarranted, unsustainable and without jurisdiction.

Sri G. Vidyasagar, learned senior counsel for the petitioner, by making a reference to Section 9 of the Act, submits that a reading of a Section 9 of the Act does not permit any discretion on the part of the Registrar to entertain or consider as to who are the Members/persons that have been elected to the Managing Committee. He further emphasizes on the words used in the Section that after conducting elections to the General Body, there is a duty cast on the Society to furnish a list to the Registrar of the Societies containing the names and addresses of the Members of the Managing Committee and the Officers entrusted with the management of the affairs of the society and

the same cannot be read as a duty cast on the Registrar to enter into and enquire as to whether the Members were duly elected and elections were conducted properly or not. If there is any such dispute the same is required to be resolved by the District Court or by an Arbitrator. It is for the party who raises the dispute to seek such remedy by taking recourse to Section 28 of the Act. He further submits that by virtue of the interim orders passed by this Court, the Registrar has taken the list furnished by the petitioner, and hence, no further orders need be passed in the writ petition.

Respondents 4 to 11 were impleaded as per the order dated 23.09.2015 passed by this Court in W.P.M.P.No.28784 of 2015 and they are the members of the petitioner's society. According to the impleaded respondents, the elections said to have been conducted on 06.02.2015 are sham elections and the Election Officer Sri Rajendra Kumar is a self-appointed person and he has no authority whatsoever to conduct the elections. It is also further stated that the various events and litigations have been decided and the O.P.No.1 of 2015 is pending on the file of the District Court, Mahaboobnagar.

The sum and substance of the arguments of the learned counsel for the impleaded respondents is that there was no election conducted and particularly in the facts of the present case, the self-appointed Election Officer, Sri C. Rajendra Kumar is not the one to conduct elections and he had no authority whatsoever and it is only by misinterpreting and misrepresenting in the name of conducting sham elections, a list of persons as Executive Committee Members was submitted to the Registrar. The Registrar is duty bound to verify and refuse to take on file especially only duly elected members list and when there is any objection raised with regard to the validity of the elections conducted. In particular and in peculiar facts of the present case and also on account of the previous litigation, the rejection which has been made by the Registrar refusing to take on file the list

furnished by the petitioner is justified and cannot be found fault.

Learned counsel appearing for the impleaded respondents further submit that there is an inherent power and duty in the Registrar to see as to whether the genuine list has been furnished to him and in the event of the Registrar entertaining a doubt by exercising such inherent, incidental and ancillary power, he is duty-bound to direct the party to approach the adjudicating Forum to settle the dispute. In the facts of the present case, the Registrar has taken recourse to the same and the order of the Registrar cannot be found fault. It is also the specific case of the learned counsel for the impleaded respondents that the appointment of Sri C. Rajendra Kumar, Advocate as an Election Officer to conduct the elections by the 2nd respondent itself is totally illegal and impermissible and they had no business whatsoever to interfere with the affairs of the petitioner's society merely because petitioner's society happens to be a Member of the 2nd respondent association.

By making a reference to paras 11 and 12 of the implead application, the learned counsel for the respondents contended that the election conducted by Sri C. Rajendra Kumar, at the instance of the 2nd respondent, is totally illegal and *malafide*. It is the specific case of the impleaded respondents 4 to 11 that Sri C. Rajendra Kumar, who is incidentally a practicing advocate representing the individuals numbering up to 30 in Supreme Court in previous litigation, strangely had shown only 18 members in the process of conducting election dated 16.2.2015.

On the other hand, Sri Dharmesh D.K. Jaiswal, Advocate, representing Sri V. Ramchander Goud, learned counsel for the 2nd respondent submits that the 2nd respondent, by issuing a letter dated 23.01.2015, directed Sri C. Rajendra Kumar, Advocate to conduct the elections to the Mahaboobnagar District Association and

Sri M. Narender Goud was also nominated as Observer and the elections were conducted pursuant to the authority given to

Sri C. Rajendra Kumar by the 3rd respondent-Association and after conducting the elections, the Election Officer, by letter dated 06.02.2015, has intimated about the election of five members. The list of which was filed by the petitioner before the Registrar under Section 2 of the Act to be taken on record.

In para No.5 of the counter-affidavit filed by the 2nd respondent, the Registrar had stated as under:

“It is submitted that after conducting a meeting of office bearers on 9.2.2015, the petitioner society communicated the list of office bearers dated 12.2.2015 to this respondent.

In the meanwhile, one Sri. A.Venkateshwar Reddy, member of the petitioner association submitted a representation dt.12.2.2015 to this respondent stating that the elections were conducted without following guidelines and directions of the court and a Contempt Petition (Civil) D 4102\5 was filed against Sri Arshad Ayub, President of the 3rd respondent Association before the Hon'ble Supreme Court and another S.R.O.P is also filed before the Hon'ble Supreme Court and another S.R.O.P is also filed before the District Judge, Mahabubnagar and requested not to accept any changes in the record pertaining to the petitioner association till disposal of the cases.

It is submitted that since the election to the petitioner association was held after lapse of 19 months which is contrary to the orders of the Hon'ble Courts and as there are disputes among the members of the petitioner society, vide Note File No. Societies/308/2015 dt. 16.2.2015 this respondent returned the communication sent by the petitioner association advising them to approach the court of law for any grievance/ disputes among the society and further stated that no further amendments will be taken on record unless and until directed by the court. It is submitted that any acceptance of list of office bearers as per Section 9 of Societies Act by the Registrar of Societies is contrary to the orders of the Hon'ble courts and against the provisions of law.”

Learned counsel for the impleaded respondents had placed

reliance on the following judgments:

1. Khargram Panchyat Samiti and another vs. State of West Bengal and others ^[1]
2. Union of India and another vs. Paras Laminates (P) Limited ^[2]
3. Chief Executive Officer & Vice-Chairman, Gujarat Maritime Board vs. Hajidaud Haji Harun Abu and others ^[3]

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Having perused the record and having considered the rival submissions, the question which falls for consideration is that under Section 9 of the Act in a given case, whether the Registrar has power, authority or discretion not to accept the list submitted by a party to register the same and take on record.

Section 9 of the Act reads as under:

“Every year the society shall, within fifteen days from the date on which the General Body meeting was held furnish a list to the Registrar of societies which shall contain the names and addresses of the members of the Managing Committee and officers entrusted with the management of the affairs of the society.”

A plain reading of Section 9 of the Act in isolation does not provide any scope for the Registrar except to take on record the information that can be furnished by a party as there is no specific provision delineating any specific duty on the Registrar. Further, there is no indication in the Act about the functions that are required to be discharged by the Registrar as even the dispute resolution is also entrusted to other authorities. However, to answer query raised in the present writ petition, reference may be made to Section 4 of the Act which reads as under:

(4) (1) for the purposes of registration of a society there shall be filed with the Registrar of the district in which the registered office of the society is to be situated :-

- (a) a memorandum of association of the society which shall state:-
- (i) the name of the society;
 - (ii) the aims and objects of the society;
 - (iii) the names, and occupations of the members of the committee; and
- (b) the bye-laws of the society.

In Section 4 of the Act, a duty has been cast on the Registrar to register the society when the Registrar is satisfied that the conditions laid down in Section 4 of the Act are fulfilled. Section 4(1)(a) and (a)(iii) of the Act require a memorandum of the society to state the names, addresses and occupations of the members of the committee and Section 4(2) of the Act requires such memorandum of association shall be signed by at least seven members who are majors and who shall add their addresses, description and occupation if any, in the presence of at least two witnesses who shall also be majors and shall attest with their signatures and add their addresses, description, occupation, etc. The duty is cast on the Registrar of the Society to satisfy himself that the ingredients stated in Section 4 of the Act are contained at the time of registration. In other words, when the society is registered, the information furnished at the time of registration is required to be maintained at the Registrar's office and being a public servant he is required to furnish the copies of the same to any one who applies for the certified copies of the same.

As and when there are changes with respect to the members of the committee from time to time, the Registrar is obliged to keep on record the changes which are again open for the public scrutiny. Conducting of meetings and election of the members to the board would depend on the byelaws of the society which are required to be framed in terms of Section 4 of the Act and the meetings are required to be conducted in terms of the byelaws which are mandatory in terms of Section 20 of the Act. All these are the pointers to the effect that there is a duty cast on the Registrar to *prima facie* examine when there

is a dispute raised about the genuineness or otherwise of the material placed before him in subsequent orders of the Registrar of the Society in terms of Section 4 read with Section 9 of the Act. This duty is to be read into the provisions of the Act and in particular into Section 9 of the Act as the Registrar is required to maintain record of the true members of the society and the details of the Managing Committee etc. The said duty is a continuing duty after initial registration of the society under Section 4 of the Act as otherwise filing of the details mandated with the Registrar under Section 9 of the Act would be a futile and meaningless exercise.

In that view of the matter and in the facts of the present case, the Registrar having come to a specific conclusion that there exists a dispute with respect to conduct of election and the list of members furnished had returned with a direction to the party to get the dispute resolved in terms of Section 23 of the Act, the communication of the Registrar refusing to take on file cannot be said to be illegal or unauthorized. Hence, I see no merits in the writ petition.

The argument of the learned counsel for the impleaded respondents that H.C.A had no authority to nominate Sri C. Rajender Kumar as an Election Officer need not be gone into in this writ petition as the validity or otherwise of the election is required to be adjudicated and decided in O.P.No.1 of 2015 pending on the file of the District Court, Mahaboobnagar.

Accordingly, the writ petition is dismissed. No order as to costs.

Miscellaneous petitions, if any pending in this writ petition, shall stand closed.

CHALLA KODANDA RAM, J

Date:09.02.2016.

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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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[\[1\]](#) (1987) 3 Supreme Court Cases 82
[\[2\]](#) (1990) 4 Supreme Court Cases 453
[\[3\]](#) (1996) 11 Supreme Court Cases 23