

THE HON'BLE SRI JUSTICE SANJAY KUMAR

WRIT PETITION NO.36269 OF 2015

ORDER

The prayer of the petitioner in this case is as under:

‘For the reasons mentioned in the accompanying affidavit it is prayed that this Hon’ble Court may be pleased to issue a Writ, Order or Direction more particularly one in the nature of Writ of Mandamus declaring the Memo No: 15378/Prog-II/A1/2015, Industries & Commerce (Prog-II) Department dated 31.10.2015 issued by the 1st respondent/Government staying elections to the 4th respondent society as illegal, unjust, arbitrary, without jurisdiction and contrary to the provisions of APCS Act and the law laid down by this Court, set aside the same and consequently direct the respondents to continue and complete the election process from the stage where it is interrupted and pass such other order or order as may be just.’

By the Memo dated 31.10.2015, the Ex-Officio Secretary to Government, Industries and Commerce (Prog-II) Department, Government of Andhra Pradesh, informed the District Collector-cum-District Election Authority, Kurnool, that the election process commenced under the earlier proceedings dated 20.09.2015 stood stayed. Perusal of the Memo demonstrates that this stay was granted in view of the representation dated 28.10.2015 received from the M.L.A., Banganapalle, Kurnool District. The representation dated 28.10.2015 made by the peoples’ representative is placed on record. The said representation was addressed to the Hon’ble Minister for B.C. Welfare and Handlooms, Government of Andhra Pradesh, and reads as under:

‘Respected K.Ravindra Garu,

I would like to inform you that the elections to **THE NANDIVARGAM WEAVERS CO-OPERATIVE SOCIETY (P.NO: 894)** Nandivargam Village, Banaganapalle Mandal of my constituency was announced. The schedule for conduct of election is 04-11-2015. The strength of the voters is 143. Recently without any reason the outgoing president of the said society who

is from Y.S.R PARTY intentionally deleted 75 votes (exclusively T.D.P VOTES) without following the guidelines (**procedure for removal of member is shown in rule no 16**) and enrolled 75 new voters exclusively from Y.S.R PARTY activists (**procedure for enrollment of voters is shown in rule no5 & 6**).

Due to the alleged activity of the WEAVERS CO-OPERATIVE SOCIETY PRESIDENT NANDIVARGAM, our party is now in minority. Immediately the alleged activity of the president has been taken to the notice of the concerned Assistant Director, Kurnool and District Collector, Kurnool. But no action was initiated in this regard. Hence **I request to issue STAY ORDERS for stopping of elections and direct the concern to take necessary action for fresh enrollment of Voters.**

Acting upon the aforestated representation, the Government exercised powers under Section 22-C of the A.P. Co-operative Societies Rules, 1964 (for brevity, 'the Rules of 1964') and stayed the election. Rule 22-C of the Rules of 1964 reads as under:

'22-C. (1) Notwithstanding anything contained in these rules, the Government or the Election authority may direct the postponement of elections under one or more of the following circumstances:-

- (i) Break down of law and order affecting the peaceful and lawful conduct of elections.
- (ii) Any natural calamity that prevents the conduct of elections particularly, voters from participation in the election.
- (iii) Where there is reasonable apprehension that voters will not be allowed to vote frankly and freely.

(b) The postponement shall be done only by issue of an order which shall specify the grounds of postponement. After such postponement the election process shall be recommenced when the conditions become conducive for re-commencing of election, by issue of an order by the Authority that has postponed the elections. The process will re-commence from the stage at which it was obstructed or interrupted.'

It is significant to note that once a stay is granted under the aforestated rule, the process would have to recommence from the state at which it was obstructed or interrupted. It would therefore not be open to

the authorities to make any changes to the voters' list at that stage. Reference in this regard may also be made to the judgment of a Division Bench of this Court in **KATTA SIVAIAH V/s. GOVERNMENT OF A.P. REP. BY ITS SPECIAL CHIEF SECRETARY, AGRICULTURE AND CO-OPERATION DEPT.**^[1]

That being so, as this was the only complaint made by the peoples' representative, it is beyond the comprehension of this Court as to how the authorities took recourse to Rule 22-C of the Rules of 1964 to stay the election process. That apart, the aforestated rule does not permit staying of the election process on the ground on which it has been done in the present case as is clear from Rule 22-C (1) (i), (ii) and (iii) of the Rules of 1964.

Though a counter-affidavit was filed by the Commissioner and Ex-Officio Secretary to Government, Handlooms and Textiles, Andhra Pradesh, seeking to justify the action taken, it is clear from a perusal thereof that the said action was only based upon the representation made by the peoples' representative.

The aforestated facts demonstrate total non-application of mind by the authorities to the legal position. They had no right to stay the election process by exercising power under Rule 22-C of the Rules of 1964 given the facts obtaining.

As the action impugned in this writ petition is only attributable to the first respondent, this Court sees no purpose in ordering and awaiting service of notice on the other respondents.

The writ petition is accordingly allowed setting aside the Memo No.15378/Prog-II/A1/2015, Industries & Commerce (Prog-II) Department, dated 31.10.2015. The authorities shall forthwith continue the election process from the stage at which it was stayed and in any event, not later than two weeks from the date of receipt of a copy of this order. Pending miscellaneous petitions shall stand closed. No order as to costs.

SANJAY KUMAR, J

21st MARCH, 2016

Note: Issue C.C. in two days
B/o Svv

[\[1\]](#) 2013 (4) ALT 265 (D.B.