

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

WRIT PETITION Nos.4136 of 2013 and 13073 of 2015

COMMON ORDER:

Since the subject matter of both these Writ Petitions is inter-connected, with the consent of the counsel for both parties, these Writ Petitions are disposed of by this common order.

2. Heard Sri Kiran Palakurthi, learned counsel for petitioners in W.P.No.4136 of 2013, Mrs. M.Vidyavathi, learned counsel for respondent Nos.6 to 25, Sri Kollu Raja Sekhar, learned counsel for 4th respondent and the learned Government Pleader for Fisheries for respondent Nos.1 to 3. None appears for 5th respondent in W.P.No.4136 of 2013.

3. Heard Sri Amancharla Satish Babu, learned counsel for petitioners in W.P.No.13073 of 2013, learned Government Pleader for Fisheries for respondent Nos.1 to 3 and Sri Kolla Raja Sekhar, learned counsel for 5th respondent.

4. There is a fisherman Co-operative Society in Vemulakonda Village, Valigonda Mnadal, Nalgonda

District, which is

4th respondent in W.P.No.4136 of 2013 and is arrayed as 5th respondent in W.P.No.13073 of 2015. This was registered in the year 1953.

5. The following facts are not disputed. Originally, 85 members were admitted into the Society, of which 26 members were removed on 10-01-2001 and thereafter 10 new members were admitted. By 2003, the strength of membership was 65. All the members of the Society are fishermen by caste and profession eking out their livelihood by carrying out fishing operations.

6. A Commissioner was appointed in W.P.No.24967 of 1997 to weed out bogus members in the Society and as per the report of the Commissioner, 26 members were removed by the said Officer from the primary membership of the Society. Subsequently, on a representation made by some of the members, the District Collector constituted a Nodal Committee, which visited the village in 2001 and recommended the removal of 26 members.

7. Rule 20 of the A.P. Cooperative Societies Rules, 1964 provides for removal of a member of a Society, who is disqualified under Section 21 by the Registrar of the Cooperative Societies. By Act 22 of 2001, the A.P.

Cooperative Societies Act, 1964 (for short “the Act”) was amended and sub-Section (3) of Section 21 of the Act was substituted by a new sub-Section, which however conferred power of removal of a member on the General Body of the Society. This provision came into operation from 25-04-2001. Thus, after this provision was introduced, only the General Body could have disqualified a member and removed him from the rolls of the Society and not the Registrar.

8. The Assistant Director of Fisheries, Nalgonda issued a notice on 27-05-2003 to remove the 26 members identified by the Nodal Committee.

9. Pursuant to it, a General Body Meeting was held on 14-06-2003 and in that meeting, it was resolved that only 8 out of the 26 members have to be removed from the rolls of the Society as members and the other 18 persons' membership cannot be taken away since they are residents of the village and they have been members of the Society in the past also. These 18 persons are petitioners in W.P.No.13073 of 2015.

10. Notwithstanding the same, on 07-08-2003, the Assistant Director of Fisheries issued another notice alleging that these 18 members were not removed from

the rolls of the Society as members and he directed the Society to remove these 18 members also from the rolls of the members.

11. The Society questioned the same before this Court in W.P.No.18740 of 2003.

12. By order dt.13-12-2007, this Court referred to the provisions of the Act and the Rules and observed that sub-Section (3) of Section 21 of the Act introduced by the Amendment of 2001 prevails over Rule 20 and that it is only the General Body which is competent to remove the ineligible and disqualified members from the rolls of the members. It further held that general body, having decided on 14-06-2003, that only 8 persons are ineligible to continue as members of the Society and that the other 18 persons are eligible, the latter are not liable to be removed from the rolls of the Society. It held that the notice

dt.07-08-2003 issued by the Assistant Director of Fisheries cannot be allowed to stand and it quashed it. It gave liberty to respondents to take steps for removal of the ineligible members, if any, if the General Body is inclined to remove from the rolls of the Society.

13. After this order was passed, again the Dy.Director of

Fisheries, Nalgonda District directed the President of the Society to remove 18 members from the primary membership under Section 21 of the Act placing reliance on the decision of the Nodal Committee taken in 2001 that all these 18 members along with other 8 members had become ineligible members.

14. This was questioned by the Society in W.P.No.1132 of 2008.

15. The said Writ Petition was allowed on 14-07-2008 and it was again reiterated that the General Body of the Society cannot be compelled to remove these 18 members as members and that the earlier view expressed by this Court in W.P.No.18740 of 2003 that the General Body might have felt that the rest of the persons are not liable to be removed from the rolls of the Society has to be respected and followed.

16. A review of this order was sought by filing W.P.M.P.No.7254 of 2009. The Review petition was dismissed on 02-03-2010.

17. Thus in two rounds of litigation, this Court had held that the Society cannot be compelled to remove the 18 petitioners in W.P.No.13073 of 2015 from the rolls of the Society.

18. In spite of this, the 2nd respondent again issued proceedings No.471/E/2011 dt.31-05-2011 directing the President of the Society to remove them from the primary membership of the Society stating that they are disqualified by the Notified Committee in the year 2001.

19. The Society again questioned it in C.T.A.No.32 of 2011 before the Cooperative Tribunal, Hyderabad.

20. By the impugned order dt.19-02-2015, the said appeal was dismissed. The Tribunal, after referring to all the orders passed by this Court in seriatum, came to the conclusion that the order

dt.13-12-2007 in W.P.No.18740 of 2003 and the order dt.14-07-2008 in W.P.No.1132 of 2008 are not correct. It opined that this Court was not appraised while deciding those cases that the 26 persons including 18 petitioners in W.P.No.13073 of 2015 came to be disqualified on 05-11-2000 much prior to the amendment of the Act in 2001, that the amendment to the statute in 2001 has no application and that it was competent for the Assistant Director of Fisheries/Dy.Director of Fisheries to direct removal of ineligible members.

21. Challenging the same, W.P.No.13073 of 2015 is filed.

22. Sri A.Satish Babu, learned counsel for petitioners contended that it was not open to the Cooperative Tribunal to disregard the order dt.13-12-2007 in W.P.No.18740 of 2003 or order dt.14-07-2008 in W.P.No.1132 of 2008 and that the Tribunal is bound to follow the same. He contended that the Tribunal, while passing the impugned order, actually sat as an appellate Court over the said orders and pronounced these two orders to be wrong, which it was not competent to do. Therefore this order observes to be set aside.

23. Smt.M.Vidyavathi, who is appearing for respondent Nos.6 to 25 who are petitioner Nos.1 to 18 in W.P.No.13073 of 2015 supported the contentions of Sri A.Satish Babu, learned counsel.

24. Learned Government Pleader for Fisheries appearing for respondent Nos.1 to 3 in W.P.No.13073 of 2013 is also not able to sustain the impugned order since he does not dispute the fact that the Tribunal is bound by the above two orders passed by this Court. He also does not dispute the fact that even if the orders passed in these two Writ Petitions are incorrect, they can be set aside only in appeal and since respondent Nos.1 to 3 are parties to these orders, the principle of *res judicata* would apply and that these orders bind them.

25. The question whether the general body of the Society could be compelled to remove 18 petitioners in W.P.No.13073 of 2015/ respondent Nos.6 to 25 in W.P.No.4136 of 2013 has already been decided by this Court in order dt.13-12-2007 in W.P.No.18740 of 2003 and it was categorically held that only the general body of the Society is competent to remove the ineligible or disqualified members from the rolls of the Society and since it has only disqualified only 8 out of the 26 persons and has opined that the 18 petitioners are not liable to be removed from the rolls of the Society, it is not open to respondent Nos.1 to 3 to contend that they can remove the 18 members by invoking Section 20 and that the orders passed on

13-12-2007 in W.P.No.18740 of 2003 are not correct. The principle of *res judicata* would squarely operate and bind respondent Nos.1 to 3 in W.P.No.13073 of 2015 and they are precluded from raising such a plea. The Cooperative Tribunal is also bound by the above orders, since it is subordinate to this Court and it could not have expressed a view that the orders passed by this Court are not correct.

26. Therefore W.P.No.13073 of 2015 is allowed and the order

dt.31-05-2011 of the 2nd respondent therein as confirmed in the order dt.19-02-2015 in C.T.A.No.32 of 2011 of the 4th respondent therein are both set aside and it is declared that the 18 petitioners, having regard to the decision taken on 14-06-2003 by the general body of the Society, cannot be disqualified from the primary membership of the Society.

27. Respondent Nos.1 to 3 shall also pay costs of Rs.2,000/- to petitioners.

28. W.P.No.4136 of 2013 is filed by 2 members of the above Society challenging a notice issued by the Society on 21-01-2013 proposing to conduct elections to the Managing Committee of the Society on 15-02-2013.

29. On 13-02-2013, this Court had directed the respondents not to take any further steps pursuant to the notice dt.21-01-2013 pending further orders.

30. Learned counsel for petitioners herein now states that petitioners have no objection for conduct of elections to the Managing Committee of the Society.

31. Having regard to this submission, W.P.No.4136 of 2013 is disposed of directing that elections be conducted

to the Managing Committee of the above Society within two (02) months from the date of receipt of a copy of this order. It is made clear that petitioners in W.P.No.13073 of 2015 are also be entitled to participate and vote in the said election. No costs.

32. As a sequel, miscellaneous petitions pending if any, in these Writ Petitions shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 05-02-2016

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