

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

WRIT PETITION No.6912 of 2017

ORDER:

This writ petition filed under Article 226 of the Constitution of India challenges the order passed by the District Collector, Hyderabad, third respondent, *vide* proceedings in Rc.No.10/2017-Elec, dated 03.02.2017 notifying the date of election to the seventh respondent society and appointing the Assistant Registrar as Election Officer to conduct elections to the Managing Committee of the seventh respondent society.

Heard Sri N. Jayasurya, learned counsel for the petitioner, learned Government Pleader for official respondents 1 to 5 and party-in-person, A. Radhakrishna, Chairman of Person-In-charge Committee of the seventh respondent society.

Having regard to the issue involved in the present writ petition, the facts of the case need not be adverted to elaborately.

The term of the Managing Committee of the seventh respondent society expired on 10.07.2016 and right now, the Person-In-charge Committee is looking after the affairs of the society. On 27.10.2016, the Person-In-charge Committee conducted a general body meeting and it was resolved to request the authorities to conduct elections to the society. In furtherance

of the same, the third respondent passed the impugned order notifying the elections to the seventh respondent society by appointing the Assistant Registrar as Election Officer.

According to the learned counsel for the petitioner, the questioned order passed by the third respondent notifying the elections to the seventh respondent society is totally one without jurisdiction and contrary to the provisions of the Andhra Pradesh Cooperative Societies Act, 1964 and the amendments made recently, as notified in G.O.Ms.No.53, Agriculture & Cooperation (COOP.II) Department, dated 20.05.2016. According to the learned counsel for the petitioner, the District Collector has no jurisdiction to conduct elections and it is only the State Cooperative Election Authority, which is competent to hold elections, as per Section 31-B of the Andhra Pradesh Cooperative Societies Act, 1964 (Telangana Adaptation) Order, 2016 (for short 'the Act').

On the contrary, it is the submission made by the learned Government Pleader that there is absolutely no illegality nor procedural irregularity and in the absence of the same, the questioned action is not amenable to the writ jurisdiction under Article 226 of the Constitution of India. It is further submitted that the impugned action does not cause any prejudice to the petitioner and on the other hand, the same is in the direction of

complying with the mandatory requirement as contemplated under the proviso to Section 31-B(c) of the Act. It is further submitted that though the impugned notification was issued as long back as on 03.02.2017, the present Writ Petition came to be filed on 27.02.2017 and there is no explanation for the said delay in approaching this Court. It is also submitted by the learned Government Pleader that the present Writ Petition is in the nature of Public Interest Litigation.

It is submitted by Sri A. Radhakrishna, party-in-person, who is the Chairman of the Person-In-charge Committee that the general body meeting was convened and the Committee passed a resolution, resolving to request the authorities to hold elections and the petitioner never participated in the meeting and that the impugned action would not cause any prejudice to the seventh respondent society.

In the above backdrop, now the issues that emerge for consideration of this Court are –

- 1) Whether the third respondent has jurisdiction to pass the impugned order proposing to hold elections to the seventh respondent society and whether the same has legal sanctity?
- 2) Whether the petitioner is entitled to any relief from this Court under Article 226 of the Constitution of India?

There is absolutely no controversy with regard to the fact that the term of the Managing Committee of the seventh respondent society came to an end on 10.07.2016. The third respondent by virtue of the order under challenge initiated the election process by appointing the Assistant Registrar as the Election Officer. In this context, it would be necessary and essential to refer to the relevant provisions of the Act for adjudication of the issue. The State of Telangana brought in certain amendments to the Andhra Pradesh Cooperative Societies Act, 1964. By virtue of the said amendments, the State of Telangana inserted Section 31-B after Section 31-A of the Act.

The said inserted Section 31-B of the Act reads as under:

31-B (a) Notwithstanding anything contained in this Act, Rules and Bye-laws of the society, the Government shall constitute a State Cooperative Election Authority;

The State Cooperative Election Authority shall be headed by an officer not below the rank of Additional Registrar of Cooperative Societies. The said Authority is to be assisted by not more than two Additional Cooperative Electoral Officers who are not below the rank of Joint Registrar of Cooperative Societies. The service conditions of the State Cooperative Election Authority and the Additional Cooperative Electoral shall be prescribed.

(b) The superintendence, direction and control of the preparation of electoral rolls and conduct of all elections shall vest with the State Cooperative Election Authority which shall conduct all elections in the manner prescribed, for all types of Cooperative Societies registered under this Act;

Provided that the State Co-operative Election Authority referred to under sub-section (a) above may issue

guidelines otherwise laying down the procedure for conduct of elections from time to time.

- (c) The Registrar of Cooperative Societies shall deploy the supporting staff to the State Cooperative Election Authority as may be prescribed to assist in conduct of Elections.
- (d) Provided that the election of a Board shall be conducted before expiry of the term of the Board so as to ensure that the newly elected members of the Board assume office immediately on the expiry of the office of the outgoing Board.

It is very much evident from a reading of the above provision of law that the State Government shall constitute a State Cooperative Election Authority. It is also evident from the above provision that the power to conduct elections to the societies is conferred on the said Election Authority. There is no dispute as regards the fact that the said amendment brought into the Act was notified by the State Government vide G.O.Ms.No.53, dated 20.05.2016. It is required to be noted that as per sub-clause (ii) of Section 1 of the Act, the said amendment shall come into force with immediate effect.

In the instant case, admittedly, the impugned order, notifying the elections to the seventh respondent society has been issued by the District Collector but not the State Cooperative Election Authority as stipulated under Section 31-B (b) of the Act.

During the course of arguments, it is brought to the notice of this Court by the learned Government Pleader that the State Government *vide* G.O.Rt.No.53, Agriculture and Cooperation Department, dated 07.03.2017, constituted the State Cooperative Election Authority under Section 31-B of the Act, consisting of Additional Registrar as State Cooperative Election Authority and two Joint Registrars as Additional Cooperative Electoral Officers.

It is a settled and well established principle of law that when the statute mandates a particular act to be performed in a particular manner, the same should be performed in such a manner only, not otherwise.

The said principle is not followed in the instant case. The contention of the learned Government Pleader that the petitioner has no locus to question the impugned order and there is no evidence to show that he will suffer prejudice, in the considered opinion of this Court, cannot be sustained as admittedly, the petitioner is a member of the seventh respondent society and is obviously interested in the affairs of the society. The submission of the party-in-person that even if the elections are conducted as per the impugned notification, the seventh respondent society is not going to suffer any prejudice cannot be countenanced and sustained in view of the above reasons. Therefore, this Court has absolutely no shadow of doubt to hold that the impugned order

passed by the third respondent cannot be sustained in the eye of law.

Accordingly, the Writ Petition is allowed, setting aside the proceedings in Rc.No.10/2017-Elec, dated 03.02.2017. However, it is open for the respondents to proceed in accordance with law, keeping in view the observations made supra.

Consequently, Miscellaneous Petitions, if any pending in this Writ Petition, shall stand closed. No order as to costs.

21st MARCH, 2017.

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A.V.SESHA SAI, J

