

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.18815 of 2017

ORDER :

This writ petition is filed under Article 226 of the Constitution of India, seeking the following relief:

“to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the impugned action of the respondents 3 and 5 in proceeding to conduct elections on the basis of voters list prepared by 5th respondent whereby included more than 7000 persons as members of the Society, who are all ineligible and without following procedure as highly illegal, arbitrary and violative of Article 14 of the Constitution of India and also contrary to the provisions of the A.P.Cooperative Societies Act and Rules made there under, consequently direct the respondents 3 and 4 to verify the eligibility of newly admitted members after 2012 and conduct election by deleting the ineligible members illegally shown as admitted by the 5th respondent in the interest of justice and pass such other order or orders as this Hon’ble Court deems fit just and proper in the circumstances of this case.”

Heard further arguments of learned counsel for the petitioners, in continuation of the arguments on 14.06.2017, learned Government Pleader for Cooperation for respondents 1 to 4 and Sri V.Venkata Ramana, learned Senior Counsel for 5th respondent-Adivivaram Cooperative Credit Society Limited and perused the material on record.

An interim order was passed on 14.06.2017 calling for the original records with reference to finalisation of the voters list, which is produced before this Court and the said interim order reads as follows:

“This Writ Petition is filed by Sri Logisa Suri Babu and Kolusu Varsha Narasimha, who are the Members of the 5th respondent Society by name Adivivaram Cooperative Credit Society Limited of Visakhapatnam district, with more than 4900 members even in the year 2012 when the last elections were held. The respondents viz; R.1-State of A.P. represented by its Principal Secretary, Cooperation Department, R.2 Commissioner for Cooperation and Registrar of Cooperative societies, of Andhra Pradesh, R.3-The District Collector, Visakhapatnam, R.4-The Joint registrar of Cooperative Societies/ District Cooperative Officer, Visakhapatnam district, and R.6-The Election Officer/ Assistant Registrar, all are of Visakhapatnam,

The grievance of the petitioners is that the previous Managing Committee, which was elected in 2012, under the Chairmanship of one K.Appala Swamy, resorted to admit several persons as Members not eligible and after end of the tenure of said Committee by the end of April, 2017, the person in charge is holding control over the 5th respondent society. On this Scenario, the District Collector-Election Authority invoking Rule 22 of the Rules framed in the year 1964 under the A.P.Cooperative Societies Rules, 1964(for short, ‘the Rules’) appointed the Asst. Registrar (R.6 by name R.Janaki Rao) as Election Officer to conduct elections to the Managing Committee of the 5th respondent Society, by fixing date on 20.06.2017 by proceedings dated 04.05.2017, in saying strictly to conduct the elections in accordance with the provisions contained in Rule 22 of the Rules supra. The Election schedule is appointment of the Election Officer done on 06.05.2017, requisition of Election Officer for production of records fixed on 07.05.2017. The preparation and publication of list of eligible Members is within 7 days after receipt of communication from Election officer thereby fixed on 12.05.2017, inviting objections by the Chief Executive Officer on the finalization of the list, a date fixed on 18.05.2017 handing over a voters’ list to the Election Officer by 24.05.2017 and issue of election notice by the Election Officer, date fixed on 05.06.2017. The process is stated completed as per the learned Govt. Pleader of till that. In fact, the Writ Petition averment is that there is no calling for objections in the finalization of the voters’ list, as contemplated by Rules 22 r/w Rule 18 of the Rules, in deciding eligibility and without which, by inclusion of several ineligible Members to vote or contest. It is the main issue of attack in the Writ Petition and the prayer in the Writ Petition is as follows:-

‘to issue a writ, order or direction more particularly one in the nature of writ of Mandamus declaring the impugned action of the respondents 3 and 5 in proceeding to conduct elections on the basis of voters list prepared by 5th respondent whereby included more than 7000 persons as Members of the Society, who are all ineligible and without following procedure as highly illegal, arbitrary and violative of Article 14 of the Constitution of India and also contrary to the provisions of the A.P. Cooperative Societies Act and Rules made thereunder, consequently direct the respondents 3 and 4 to verify the eligibility of newly admitted Members after 2012 and conduct election by deleting the ineligible Members illegally shown as admitted by the 5th respondent in the interest of justice and pass such order or orders”

It is to say from the above by reverting back to the facts that, as per the election schedule supra of the Collector, Cooperation, as the authority, the receipt of nominations date fixed on 12.06.2017, scrutiny on 13.06.2017, withdrawal on 14.06.2017 and date of pole on 20.06.2017, counting, declaration and result is on the same day after completion of counting.

The writ petition contest from the affidavit averments is, there is no finalization of the voters list which is a pre-condition for conducting election and there is a statutory violation in the process of conducting election to go on in receiving nominations and fixing pole date and the same cannot be entertained without voters' list finalization by following the procedure and there is no statutory provision under the Act, to vindicate the grievance of the petitioners much less as an effective alternative remedy but for to maintain the Writ Petition, leave about unlimited plenary power of the Court to exercise from the facts as exceptionally given requires interference including even in a matter in relation to election.

The written remarks of the respondents obtained by the learned Govt. Pleader and submitted vaguely speak as per the schedule fixed by appointing the Election Officer by the Election Cooperation, the voters' list is finalized and nominations to be entertained and finalized and polling as fixed being conducted for election as per the schedule and at this stage the grievance cannot be entertained in maintaining the Writ Petition but for remedy if at all is u/sec.61(3) and (4) of the A.P.Co-operative Societies Act, 1964 only after election result finalization, if at all by approaching Election Tribunal, including the grievance of non-eligibility of the voters of the voters' list. In support of the said contention the learned Govt. Pleader placed reliance of a Single Judge expression of this court in W.P.No.6681 of 2014 where it is observed in relation to the Cooperative Societies matter that once

election process commenced, normally Courts will not interfere in exercise of the writ jurisdiction to interdict the same and the petitioner wants postponement of the election date fixed by the proceedings by the Election authority and there are no valid grounds for interference with this election process and for that referred some earlier expressions including of this Court.

It is the settled law that each case depends upon own facts including in application of principle of law only with reference to the facts and even a little change in facts may tilt the result and application of law.

Here before coming to the facts, it is necessary to reproduce the Rules 18 and 22 which reads as follows:-

“ 18. Minimum business to be transacted or services or facilities to be utilized by a member of other societies:- No member of a society, shall have the right to stand as a candidate or to vote in any election to the society, unless he transacts the minimum value of business or utilizes the minimum value of services or facilities as prescribed in the bye-laws, during a co-operative year:

Provided that a member of a society shall be eligible to exercise the right to vote only if he, -

- (a) *subscribes a minimum share capital Rs. 300/-;*
- (b) *2[x x x]*

3[© is a member of the society for continuous period of 30(Thirty) days from the date of admission into the society till the date of election notification by the Election Authority]

- (d) *is not in default of any amount due in cash or kind to the society for a period exceeding three months; and*
- (e) *is not a delegate of a society which is under proceeding for de-registration or liquidation or classified as such in audit:*

Provided further that a list of eligible members with right to vote and those without right to vote shall be prepared and displayed on the notice Board of the society and branches prior to holding of any General Body meeting or holding of elections in the manner as laid down in the bye-laws.

Note:- Ineligibility to vote does not amount to ineligibility to amend and participate in the meeting.]

1[Provided further that the Registrar may exempt or fix a lower amount of minimum share capital and or a lower amount of minimum thrift for any Society or a class of Societies depending upon the economic and social status of the members of the Society] and

Rule 22, sub Rule 2(b) of the Rules, reads as follows:-

“The Election Authority, shall appoint the Election Officer at least forty five (45)days prior to the expiry of the term of the Managing

Committee for the purpose of conducting the elections[The Election Authority shall issue a notification fixing the Election Schedule and date of poll separately]. {the fixation of Election Schedule} shall be as prescribed below"

As per the above, the Election Authority, shall appoint the Election Officer at least forty five (45)days prior to the expiry of the term of the Managing Committee for the purpose of conducting the elections, shall issue a notification fixing election schedule and date of pole separately. Clauses 1 and 2 of the Sub Rule-2b of the Rule 22 of the Rules reads as:-

- i) *The Election Officer shall issue the communication of election and requisition for production of records and voters list[of the society stipulating a time schedule for fulfilling the requisition] to the society within three days from the date of receipt of his/her appointment orders.*
- ii) *The Chief Executive Officer or President of the Society where there is no Chief Executive Officer shall prepare and publish the list of members eligible to vote within seven(7) days after receipt of the communication from the election officer. It shall indicate the S.No.(General Number], Name of Member, Father's name, Village/ Locality, Age, Community, Sex(Male/ Female)].*

Clauses 1 and 2 of the Sub Rule-b reproduced above also speak that the Election Officer shall issue communication of election and requisition for production of records and voters' list of the Society, stipulating time schedule for fulfilling the requisition to the society within three days from the date of receipt of his/her appointment orders. The CEO or President of the Society in the absence of CEO shall prepare and publish the list of Members eligible to vote within 7 days on receipt of the communication from the Election Officer and it shall indicate Serial Number, Name of the Member, Father's Name, Village, Age, Community and sex. The proviso speaks list shall be prepared revenue village-wise and territory and constituency-wise. The CEO or President of the Society shall invite claims and objections of the Members within 7 days thereafter and on finalization, the C.E.O. or President of the Society shall communicate the list of Members eligible to vote to the Election Officer and by the date specified by the Election authority.

The above provision clearly speaks the election authority shall fix notification fixing the election schedule and date of pole separately. Unless the voters' list is finalized as statutorily required, the question of conducting elections by taking up the further proceedings of accepting the nominations and finalization and conducting pole does not arise, as it is a pre-requisite even for the Election Officer to be appointed, leave

about the process to continue and finalize anything remained. Even after Election Officer appointed thereby, a separate notification for that pole date shall be issued is the rule from what is referred supra. As referred supra, the election dispute raised after conducting of elections is different from the very lack of basis since impugned for going with nominations and finalizations and conducting poll without finalization of valid voters' list that does not arise when impugned of for no other alternative remedy, the Writ Petition is maintainable. The decision placed reliance has no application to the facts. Further the Apex Court in State of Madhra Pradesh and others Vs. Sanjay Nagayach 2013(7)SCC 25, no doubt, in relation to a duty to consult the financing bank concerned, the very lack of consultation in proceeding with the action suspending the Executive Committee held Writ Petition is maintainable even there is any appeal remedy for same is not a bar when the order passed in question of the Joint Registrar is arbitrary and in clear violation of the provisions. Further, the Division Bench of the Delhi High Court in Delhi Bar Association Vs. Delhi High Court Bar Association Laws(Delhi) 2013-12-9, by scanning the law including with reference to the earlier expressions of the Apex Court held that it is not a rule that under no circumstances election process to be interfered, once same is set in motion but as rule of caution to apply from facts on hand.

Having regard to the above and in view of the expressions supra, the Writ Petition is prima facie maintainable and the objection of the learned Govt.Pleader and Sri Krishnamurthy Devarakonda learned counsel for R.5 on caveat of the Writ Petition is liable to be rejected at the threshold is negated.

The learned Govt.Pleader for Cooperation representing respondents shall cause produce the original finalized list of eligible voters and the process adopted in compliance with Rules 18 and 22 supra in finalization of the list of eligible voters as to how far the procedure followed if not to follow, that too when the election authority is competent to give a separate notification pursuant to Rule 22(2) of the Rules are in appointing Election Officer and commencement of the process and later by a separate notification in relation to accepting of the nominations and its finalizations and of poll date. Thus even, pole date is postponed including accepting of nominations and finalization before which as the election list that to be made final by following the procedure, fresh notification can be issued to continue the same for accepting nominations and its finalization and with pole date and the proceedings undertaken so

far even therefrom no way be invalidated. In these circumstances for further hearing subject to production of the record, post on 19.06.2017. Meantime, not to undertake the further election process.”

The contention of the petitioners is that they made representation even to the Election Authority on 31.05.2017, running in three pages mentioning several ineligible persons were interdicted and the list is not properly finalised by proper consideration. It is also the further submission that part of the objections filed with regard to the appointment of Election Officer on 06.05.2017, the Election Officer requisitioned the Society, represented by its C.E.O for production of records and the voters list on 07.05.2017.

No doubt, as referred in the earlier interim order passed by this Court on 14.06.2017, even after appointment of Election Officer, if not finalised the voters list by the Society, represented by the Managing Committee or Special Officer, as the case may be, the voters list can be finalised and a notification afresh if necessary, can be given by the Election Authority for finalisation of nominations by its inviting and scrutiny and giving of the polling date and declaration of result from counting. It is, as part of the provisions of the A.P.Cooperative Societies Act, 1964 (for short ‘the Act’) with A.P.Cooperative Societies Rules 1964 (for short ‘the Rules’). Needless to reproduce or repeating

further, there is approved voters list published as per the records showing officer calling for objections on 12.5.2017 on or before 18.05.2017 and there from the voters list was finalised on 24.05.2017.

Coming to the petitioners' representation submitted to the Collector received on 31.05.2017, there is nothing to show any objections submitted by the petitioners pursuant to the said requirement on 12.05.2017 before submitting of objections on 18.05.2017 and finalisation of voters list on 24.05.2017. The voters list is finalised immediately and the writ petition also shows the same, but for, to say the finalized voters list contained several ineligible voters. What the petitioners mentioned is nine instances of three are the ineligible so called persons related to the erstwhile President of Managing Committee of the Society and six of them mentioned in the writ petition page No.10 supporting affidavit averments as dead. Though the writ petition is maintainable from the very prayer in saying from 7000 ineligible voters were included concerned, this Court cannot conduct a roving enquiry much less to permit within its limited arena, as observed already, even limited disputed questions of fact also, this Court, within its discretion to entertain and decide.

Having regard to the above, leave about any appeal remedy under Section 76 of the Act, this Court is not even chosen to direct by interdicting the election process, as so held earlier by this Court in W.P.No.37612 of 2014 dated 06.12.2014 (Kollam Veera Venkata Ganesh and 42 others v. State of Andhra Pradesh representing by Principal Secretary), in relation to a dispute as to finalisation of voters list of the Society, within the purview of the Cooperative Societies Act and the other subsequent to it though not referred to it, in Rabi Umamaheswara Rao v. State of Andhra Pradesh¹ saying the petitioner therein, who raises an objection with regard to finalisation of voters list containing several ineligible voters, can agitate the same in the election dispute to be raised as also held in Kondaveeti Srinivasa Rao v. Government of A.P.² and same is also held in W.P.No.6681 of 2014 dated 11.04.2014, referring to some earlier expressions of this Court and the Apex Court. The above expressions practically are by referring to the Apex Court's expression in Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha and another v. State of Maharastra and others³, where it is categorically observed that even dispute regarding preparation of electoral

¹ 2015(6) ALT 87

² 2013(6) ALD 12

³ 2001(8) SCC 509

roll and breach of or non-compliance with mandatory provisions of Rules during preparation of electoral roll can be challenged in an election petition under the Cooperative Societies Act in deciding a dispute in relation to the election of the Managing Committee of a Cooperative Society.

Having regard to the above expression of the Apex Court in Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) (supra) reiterated by the two expressions of this Court, this Court is not feeling to deviate the said analogy of law, but for, directing the petitioners to challenge their grievance if at all, by maintaining an election dispute after the election before the Tribunal concerned.

Accordingly, the Writ Petition is disposed of. No costs. It is needless to say, the election process interdict by the order of this Court ceases forthwith so that the election process further shall continue, without prejudice to the rights of the petitioners to raise election dispute as observed supra.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:20.06.2017
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Note:
L.R.Copy to be marked- yes

HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

*THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+WRIT PETITION No.18815 of 2017

%20.06.2017

#Between:

1. Logisa Suribabu and another ...Petitioners

AND

1. The State of Andhra Pradesh, Rep. by its Principal Secretary,
Cooperation Department, Secretariat Buildings, Velagapudi,
Amaravathi, Guntur District and five others ... Respondents

!Counsel for the petitioner : M/ S.G.V.Shivaji
Counsel for the respondents: Learned Government Pleader
for Cooperation

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>Head Note:

? Cases referred:

¹ 2015(6) ALT 87

² 2013(6) ALD 12

³ 2001(8) SCC 509



IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
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1. The State of Andhra Pradesh, Rep. by its Principal Secretary,
Cooperation Department, Secretariat Buildings, Velagapudi,
Amaravathi, Guntur District and five others ... Respondents

Counsel for the petitioner : M/ S.G.V.Shivaji
Counsel for the respondents: Learned Government Pleader
for Cooperation

DATE OF JUDGMENT PRONOUNCED: 20.06.2017

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/ No |
| 2 | Whether the copies of judgment may be marked to Law Reports/ Journals | Yes/ No |
| 3 | Whether Their Ladyship/ Lordship wish to see the fair copy of the Judgment? | Yes/ No |