

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

WRIT PETITION Nos.4665 & 10421 of 2017

COMMON ORDER:

The petitioner in both the writ petitions by name Sri P.Pal Reddy is the Ex-President of Madanapalle Cooperative House Building Society Limited of Madanapalle, Chittoor District (for short 'the Society'). The respondents are the Secretary, Cooperative Department, the District Collector, the District Cooperative Officer, the Divisional Cooperative Officer and the Assistant Registrar/Sub Divisional Cooperative Officer by name A.Praveen Kumar, all are of Chittoor District.

The prayer in W.P.No.10421 of 2017 is to declare the proceedings in Rc.No.15/2017-C dated 19.03.2017 issued by the District Cooperative Officer appointing said Praveen Kumar-5th respondent as person in-charge of the Society as illegal and consequently to direct for its withdrawal and to pass such other orders. Whereas the prayer in W.P.No.4665 of 2017 is questioning the action of respondent Nos.2 to 4 supra and respondent No.5-Divisional Cooperative Officer, Madanpalle, wherein in not conducting elections to the Managing Committee of the Society before expiry of its term of Office by 20.03.2015 as illegal and consequently to direct to commence the election process. W.P.No.4665 of 2017 was filed on 09.02.2017 as the term of Office of the earlier Executive Committee was expired on 20.03.2017, the subsequent W.P.No.10421 of 2017.

So far as impugment of the proceedings appointing the 5th respondent in W.P.No.10421 of 2017 as person in-charge concerned, there is nothing to impugn as it is only an internal

arrangement as expiry of the period of the earlier duly elected Executive Committee for nothing shown of bye-law permits continuation till next office holder duly elected even after expiry of the period of office. As per the submission of both sides the main grievance is not in the prayer covered by W.P.No.10421 of 2017, but in W.P.No.4665 of 2017. Having regard to the above and by recording the same, W.P.No.10421 of 2017 is disposed by treating the same is only an internal arrangement till next election of office holders being duly conducted and assumed charge.

So far as W.P.No.4665 of 2017 in support of the prayer with the supporting affidavit averments are that the Managing Committee before expiry of its term of office by 20.03.2017, by resolution dated 08.01.2017 requested the District Cooperative Officer, Chittoor, to conduct the elections to the next Managing Committee and same is communicated with a request on 10.01.2017 by supplying a copy of said resolution because as per Section 31 of the A.P. Cooperative Societies Act (for short 'the Act') read with Rule 22 of the Rules made thereunder since the conducting of election before expiry of the period of next office holders duly elected is mandatory and the respondents for postponing the conducting of elections by their inaction there is no justification much less any valid reason.

The counter affidavit filed by the 4th respondent on behalf of the respondents in W.P.No.4665 of 2017 mainly is that the resolution with letter of request applications received on 17.01.2017, however on examination of the election proposals it is noticed that those proposals were not in full shape as to number of members and among those who are eligible to vote and

financial status of Society etc. There are also allegation on issue of admission of membership, thereby there is a need to ascertain details of eligible members to vote and contest and the District Cooperative Officer requested the Assistant Registrar/Sub Divisional Cooperative Officer, Madanapalle, to visit the society and verify records and submit a report in relation to conducting of elections by letter dated 25.01.2017, submitted report on 01.02.2017 and he informed that he could not submit status report as he was not allowed to verify any society records by President of the Society. Subsequently the petition from some of the members of the Society received on 13.02.2017 by the District Cooperative Officer, Chittoor, alleging President is not discharging the duties properly and not accepting the applications of individuals for getting admission, thereby the Assistant Registrar supra was once again directed to visit and submit a report and the Sub Divisional Cooperative Officer in his reply on 18.02.2017 stated that the President of Society did not respond to produce the records. In view of the above, to conduct elections, the Society has to submit proposals with relevant information regarding total number of members existing and among them eligible and by its failure, the Chief Executive Officer has to prepare a list of defaulters and its publication to place before the General Body for approval, which in turn the Managing Committee will prepare eligible voters list and there is nothing to find fault with the action of the officials for above non-compliance to conduct elections and the writ petition questioning action of the respondents is unjust, untenable and is liable to be dismissed.

So far as counter affidavit filed in W.P.No.10421 of 2017 by selfsame deponent as 3rd respondent therein, these facts are repeated stating that the Society in question comes under category of State Aid Societies since obtained loan from A.P. Housing Federation Limited. The person in-charge is appointed after expiry of term of Office, who is competent to discharge the functions under Section 7 of the Act, however the petitioner President of the earlier Managing Committee withholding illegally the records and person in-charge is also incapable of taking action in the matter of finalization of the membership and eligible voters therein to ask for commencement of process to conduct the elections and respondent No.5-person in-charge of the Society requested the Ex-President to handover the minutes book and records by fresh notice dated 21.03.2017 to discharge the functions as person in-charge of the society, but not handed over. It is only after receiving records and after completion of membership drive and the memo proposals received in full shape from person in-charge, the election process can be commenced.

Heard both sides at length and perused the material on record with reference to the contentions referred supra in answering the issue covered by the W.P.No.4665 of 2017.

In deciding the same, 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 Sl.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.

Having regard to the above and from the above submissions by both sides, the provisions of the Act coupled with the Rules enabling the person in-charge to initiate action against the Ex-President even if he failed to handover the records including the membership and the eligible voters therefrom to ascertain and to finalize. It is the duty of the person in-charge, who is respondent No.5 in W.P.No.10421 of 2017 to commence the process, but he did not undisputedly taken up any process except asking only the Ex-Managing Committee to handover the records that is the response to the Court in not conducting the elections to the election of the fresh Managing Committee to the Society apart from as referred supra from Rule 22 the Election Authority once there is a request even the Society not received the Government aid apart from it is within the meaning of aid society under Section 43 of the Act, subject to payment or deposit of the election process fee, if not, now by person in-charge of the Society shall appoint an Election Officer even after appointment of election officer the process to finalize the election list of eligible voters among the members can be made in compliance with the Rule 18 referred supra and after finalization can seek for fixing of date for filing of nominations and its finalization and the conducting of election pole-date, counting and declaration of results as Section 34 read with Section 32 makes it abundantly clear of duty bound to do so, leave about the contest of any continuation of committee after expiry in state of suspended animation.

Having regard to the above, the respondents including the person in-charge of the Society are directed by disposal of the writ petitions to forthwith commence the process for appointment of Election Officer and secure all the records from the Ex-Managing Committee and finalize the eligible list of members entitled to vote and contest and therefrom after other formalities required seek for the dates for nominations and scrutiny and finalization in conducting of elections, counting and declaration and the process shall be conducted at any cost within four (04) weeks from the date of receipt of a copy of this order. In the meantime, the person in-charge shall continue.

Subject to the above observations, both the Writ Petitions are disposed of.

Consequently, miscellaneous petitions, if any, shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 21.06.2017

Note: Issue C.C. by tomorrow

(B/o)

ska