

THE HONOURABLE Dr.JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.23838 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 action of the 3^d respondent with regard to initiating action in pursuant to communication of minutes dt.28.1.2017 sent by registered post with acknowledgement due on 9.2.2017 by declaring the inaction as illegal, arbitrary and violative of rights guaranteed under Article 14, 19(1)(c), 21 and 300-A of the Constitution of India and pass such other order or orders as this Hon’ble Court may deem think fit and proper in the circumstances of the case.”

Heard learned counsel for the petitioner, Government Pleader for Animal Husbandry appearing for respondents 1 to 4 and Sri N.Nageswar Rao, appearing for Respondent No.5 and perused the prayer in the writ petition with supporting affidavit and other material on record including written instructions dated 24.07.2017 received from the Assistant Director of Fisheries, Ongole, Prakasam District.

It is stated in the affidavit filed in support of the writ petition that the petitioner’s Managing Committee duly elected term was expired after expiry of 5 years commencing from 28.12.2012, it is a private Society and under Rule 22(1)) of the A.P.Cooperative Societies Rules, 1964, there is no requirement of making a request to the Registrar of

Cooperative Societies if at all the non-financial aided Society wants to conduct election internally for they can do so like the Society in question and thereby there was a meeting held on 28.01.2017 presided over by one Sk.Hussain Saheb, the erstwhile President of the Society of 5 years tenure from 25.12.2012 and 50 persons attended the meeting out of 113 members of the Fishermen Cooperative Society and the minutes were communicated to the 3rd respondent-Assistant Director of Fisheries and 2nd respondent-Commissioner of Fisheries about constitution of new Managing Committee by registered post with acknowledgement due on 07.02.2015 and one Sk.Hussain Saheb filed W.P.No.39821 of 2016 questioning non-remittal of amount of Rs.10,06,749/- in respect of Pamuru and C.S.Puram tanks, where authorized fishing was conducted and non-furnishing of proper accounts to account for the same. There are 8 tanks in question for the fishing rights within the area of operation of the Society known as Nutchupoda Fishermen Cooperative Society and the 5th respondent styling himself as elected President, pressurizing the officials to conduct fishing and pursuant to which, the petitioner, one of the members of the Society supra submitted a representation dated 14.06.2017 stating that the 5th respondent has no authority or right much less to pretend as elected President for no election held and earlier

even one Chand Basha, a non-member of the Society made a representation dated 29.04.2017 seeking information under the R.T.I. Act of if at all there was any election conducted to furnish and it was not furnished and the petitioner along with others filed W.P.No.14882 of 2017, wherein there was a direction dated 25.04.2017 for exercise of powers under Section 23 of the A.P.Cooperative Societies Act, 1964 and thereby, consequently to direct the 3rd respondent-Assistant Director of Fisheries not to authorize fishing operations till the aspect of Managing Committee dispute including of election of the 5th respondent pretended being decided pursuant to the minutes of the Society dated 28.01.2017 communicated to respondents 2 and 3 on 09.02.2017.

As per the written instructions received by learned Government Pleader, there was election held under Rule 22(1)(a) of the A.P.Cooperative Societies Rules, 1964, where the 5th respondent was elected as President along with other Managing Committee on 15.01.2017 and learned counsel for the 5th respondent also orally speaks the same from the instructions of the 5th respondent is acting as President of elections duly conducted by the Registrar of Society from the request made by the duly appointing Section Officer by the Election Authority-cum-Collector. There is no proceeding filed by the respondent Authorities herein, in support if it,

undoubtedly, as pointed out by the learned counsel for the petitioner. However, the fact that there was an election as mentioned by the respondent Authorities of 5th respondent is elected as President from the so called elections dated 15.01.2017. It is a matter to be decided in an election dispute before the Tribunal under Section 61(3), for which respondents 2 and 3 are directed to refer the *lis* to the Election Tribunal for its decision and giving a finding. Any interim order required therein, the Election Tribunal within its purview can pass, otherwise, the petitioner can work out his further remedies in this regard.

Accordingly, the Writ Petition is disposed of at the stage of admission. No costs.

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

Dr. B.SIVA SANKARA RAO J,

Date:26.07.2017
pab