

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

WRIT PETITION No.20021 OF 2017

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, for 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 3rd Respondent as illegal and arbitrary in not registering a new Fishermen Cooperative Society in the name of Fishermen Cooperative Society, Thimmapur in spite of the proceedings being passed under the AP- .Cooperative Societies Act 1964 by following the due process of law and to direct the 3rd Regpondent to comply with the proceedings dated 02.02.2017 in R.Dis.Memo No.2726/E2/2016 of the 2nd Respondent, to call for records.”

2. Heard learned counsel for the petitioner and also the learned Government Pleader for Fisheries, representing the respondents and perused the prayer in the writ petition with supporting affidavit and the counter affidavit of District Fisheries Officer – 3rd respondent herein with enclosures.

3. It is the supporting affidavit averment of the petitioner that he along with 34 other fishermen made a representation on 30.10.2014 for formation of a separate Fishermen Cooperative Society for Thimmapur Village, by separation

from the Parent Society of Dharmapuri Mandal, within Jagtial Revenue District, for having the fishing rights in so far as the three water bodies within the Thimmapur Village by names Errakunta, Nallakunta and Linga Cheruvu and saying of the 35 fishermen including the writ petitioner are living by fishing as their source of avocation and livelihood. The affidavit further reads the Assistant Director of Fisheries, on 02.02.2016, deleted Thimmapur Village of Dharmapuri Mandal from the area of operation of Dharmapuri Fishermen Cooperative Society of Dharmapuri and amended the bye laws of Fishermen Cooperative Society under Section 16(5) of the APCS Act 7 of 1964 and issued proceedings for the separation of Thimmapur Village fishermen to form as a society for the entitlement to the fishing of the three tanks supra by deleting the three tanks from the area of operation of the parent society (Dharmapuri Fishermen Cooperative Society), after show-cause notice issued to the said parent society and for its failure to respond. It is pursuant to the proceedings dated 02.02.2016 of the Deputy Director of Fisheries, Karimnagar, submitted proposals for formation of the new Fishermen Cooperative Society Limited, Thimmapur Village, Dharmapuri Mandal, for the 35 Mudiraj Community fishermen including the petitioner, whose source of avocation is fishing, in respect of three water sources of Thimmapur village referred supra. A skill test was also conducted by a committee on 08.10.2016 at Errakunta tank of Thimmapur

Village and qualified 32 fishermen among the 35, which includes the petitioner and pursuant to which the Deputy Director of Fisheries sent the proposals to the Commissioner of Fisheries, who is the Ex-Officio Registrar of Cooperative Societies, for the State of Telangana, for according permission for the formation of the new Fishermen Cooperative Society of said fishermen of Thimmapur Village. The 3rd respondent herein was directed by the 2nd respondent for said registration as per the APCS Act 7 of 1964, by granting permission. It is while so, as per the writ petition averments, Commissioner of Fisheries, issued proceedings on 02.02.2017, according permission for organization of new Fishermen Cooperative Society at Thimmapur village of Dharmapuri Mandal and District Fisheries Officer was instructed for registration of the new society at Thimmapur. It is there from the writ petitioner by complaining the inaction of the respondents, sought for direction to the District Fisheries Officer to comply with the proceedings dated 02.02.2017 supra.

4. Counter affidavit filed by the 3rd respondent – District Fisheries Officer is while not in dispute of the proceedings states that after accorded said permission in R.Dis.Memo No.2726/E2/2016, dated 02.02.2017, supra by the Commissioner of Fisheries, a representation is received from the parent society (Dharmapuri Fisherment Cooperative Society), dated 13.03.2017, stating without their consent

Ooracheruvu@Nallakunta of Thimmapur Village deleted from the society area of operation of Dharmapuri and to retain the tank in the Dharmapuri Society. Thereby, the District Fisheries Officer, addressed letter to the Commissioner of Fisheries to issue necessary instructions vide letter dated 24.03.2017 and the Commissioner of Fisheries directed to place the issue before the District Fisheries Cooperative Committee as per G.O.Rt.No.58, AHDD&F (V&F) Department, dated 05.05.2017, for settlement of the dispute at the District Level, due to administrative reasons, the same could not be brought to the notice of the District Fisheries Cooperative Committee and thereby steps are going to take place before the Committee for appropriate orders.

5. From the said reply affidavit of the 3rd respondent, it is the contention of the counsel for petitioner with reference to Section 16(5) of APCS Act 7 of 1964, if in the opinion of the Registrar, an amendment to the bye-laws of society are necessary or desirable in the interest of society or of the Co-operative movement, the Registrar may in the manner prescribed, call upon the society to make any amendment within such time and if such society fails to make such an amendment without said specified time, the Registrar after giving the society an opportunity of making representation, register such amendment and forward the society by registered post and copy of the amendment together with a

certificate signed by him and such certificate shall be conclusive evidence that the amendment has been duly registered and such an amendment shall have the same effect as an amendment of any bye-law made by the society.

6. It is the further submission that if at all for any person aggrieved by any order under Section 16 of the APCS Act, there is appeal remedy under Section 66(1) of the Act and without which the parent society cannot raise any objection much less to say there is no consent of them. No doubt, the counter affidavit Para 3 averments with supporting material including the notice given to the parent society and parent society also pursuant to the direction convened a General Body meeting covered by resolution dated 25.11.2014, however, rejecting the proposal by bifurcation of the 35 persons of Thimmapur Village, who are members of the parent society, who formed a new society.

7. As per Section 16(5) of the Act referred supra, if the parent society fails to make such amendment within the stipulated time, the Registrar may after giving society an opportunity of making its representation, register such amendment, it is in compliance with several proposals for amendment.

8. Having regard to the above, the submission in the counter affidavit at Para 7 saying from the representation of

the parent society again on 13.03.2017 of without their consent, the Nallakunta @ Ooracheruvu to be retained with the parent society and not to be deleted is untenable, much less to consider, much less to refer the same to the District Level Committee, leave about in another W.P.No.19439 of 2017, in relation to another Fishermen Society of Yadadri Bhongir District, the G.O.Rt.No.58, dated 05.05.2017 is impugned and the same is subject matter of interim suspension against enforcement including the consequential memo of the Commissioner of Fisheries dated 31.05.2017.

9. Without going into the correctness of the G.O.Rt.No.58 in this matter, even pursuant to that interim order in W.P.No.19439 of 2017, dated 16.06.2017, once there is a notification duly complying with the requirement of Section 16(5) of the Act, once there is an appeal remedy, the question of making a further representation by the parent society or its consideration, much less, referred to the Committee does not arise and the same is not even impugned of the proposal for permission to the formation of the new society, in any appropriate forum by the said parent society.

10. Having regard to the above, the respondents cannot take this as a ruse much less by wash of their hands referring to a District Level Committee, but for to accept the said proposal for formation of the new society to be registered in relation to Thimmapur Village for the three tanks in question.

11. Accordingly and with the above observations, this writ petition is disposed of, directing the respondents to comply with the same within four weeks from the date of receipt of a copy of this order. But, any observation in this writ petition no way interdict any pursuing of legal remedy of the Dharmapuri society since not parties before this Court.

12. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

12.07.2017
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DR.B.SIVA SANKARA RAO, J

