

THE HON'BLE SRI JUSTICE SURESH KUMAR KAIT

CIVIL REVISION PETITION Nos.3524 & 3846 OF 2017

COMMON ORDER:

As the issue involved in these Petitions is one and the same and has arisen from the common order, therefore, both the petitions are heard together and being disposed of by this common order.

2. Vide the present petitions, the petitioners have challenged the common order dated 21.06.2017 passed in I.A.No.517 of 2017 and 527 of 2017 in SOP No.633 of 2017 on the file of I Additional District Judge, Guntur.

3. Both I.A.Nos.517 of 2017 and 527 of 2017 have been filed by the 1st respondent under Order 39 Rules 1 and 2 of CPC and under Section 151 of CPC to grant ad-interim injunction restraining the petitioners herein from participating in any meetings including the ensuing elections of the 5th respondent Society herein, till the disposal of the main SOP.

4. The case of the respondents before the Court below was that 4th respondent herein was aware that he is not having the support of majority members, accordingly, by adopting delaying tactics for conducting the election of Society by encouraging frivolous litigation and wants to induct the petitioners herein (respondent Nos.1 to 3 before the Court below) as members into the Society, who are supporting the candidate as Secretary in ensuing election.

5. It is not in dispute that Sri Pathuri Sadasiva Rao, who is the father of 1st petitioner in CRP No.3524 of 2017, Sri Immadisetty Kishtaiah, who is the father of 2nd petitioner in CRP No..3524 of 2017, and Sri Srimannarayana, who is the father of 1st petitioner in CRP No.3846 of 2017, were the patron members of the Society and they passed away on different dates.

6. The case of the petitioners is that the 3rd respondent in CRP No.3846 of 2017 and 4th respondent in CRP No.3524 of 2017, has convened so many meetings after their death, however he never placed the applications of the petitioners before any of the previous meetings, except meeting dated 10.03.2017.

7. The case of the respondents herein is that on 18.02.2017, the 4th respondent has convened the General Body meeting at Women's Engineering College, Bapatla, and in the said meeting, the applications of the petitioners herein for membership were placed for consideration and approval. As per Article 6(h) of bye-law, the governing body shall have right to admit or refuse admission to any person to become member of the Society without assigning any reasons. Accordingly, the 4th respondent has convened the governing body meeting on 10.03.2017 at 4.00 p.m. in the Engineering College as mentioned above, with same agenda with some minor modifications. At first instance, the members of the Society have only passed a condolence resolution of late Pathuri Sadasiva Rao, the father of the petitioner in CRP No.3524 of 2017 and the same was recorded by the President in minutes book. When the members of the Society discussing regarding the other agenda mentioned in the meeting notice, the group lead by 4th

respondent, namely (1) Peddi Subba Rao (2) Doddapaneni Venkaiah (3) Nullamothu Hari Babu (4) Inaganti Sridhar (5) Panguluri Bhavanarayana Chowdary (6) Paladugu Papa Rao (7) Kommineni Hari Padma Prasad, and (8) Kolla Veeraiah Chowadary, started shouting and abused the President of the Society in un-parliamentary language and one Doddapaneni Venkaiah Chowdary forcibly snatched the minutes book from the 5th respondent, consequently the 5th respondent could not write the rest of minutes. Accordingly, the 5th respondent Society announced that the meeting was adjourned as not being returned the minutes book. Subsequently, all the members left the meeting hall. However, some members have signed in the attendance register at the beginning and some of the members though present could not sign as meeting was adjourned and the attendance register was also taken away by them. Accordingly, the President of the Society made a complaint to the Station House Officer, Bapatla Town Police Station, for the above said acts of the 4th respondent the Secretary of Society and his followers. Accordingly, the police had registered a case in Crime No.32 of 2017 for the offences punishable under Sections 352, 506 read with 34 IPC.

8. It is pertinent to mention here that as per the directions of the Court below, the 4th respondent has convened the meeting on 23.04.2017 at Bapatla Engineering College, Bapatla, by serving the agenda on all the members of the Society. But with the said agenda, the 4th respondent has not served the resolution copy passed in the meeting held on 10.03.2017, and subsequently, the

4th respondent sent the resolution copy of the meeting held on 10.03.2017 only to some of the members.

9. Further case of the respondents before the Court below was that the alleged resolution dated 10.03.2017 giving membership to the petitioners herein and accepting the accounts and auditor's report etc., are not valid in the eye of law. The Secretary of the Society (4th respondent) dishonestly tampered the minutes book by inserting a false resolution. The respondents on coming to know about the alleged resolution said to have been passed on 10.03.2017 just one day before the meeting held on 23.04.2017, issued a notice to the Secretary on 22.04.2017 with a copy served on the Deputy Superintendent of Police, Bapatla, for taking necessary action.

10. Further case of the respondents was that, as per bye-law, in the absence of the President, one of the Vice-Presidents can preside over the meeting. In the absence of the Vice-President, the meeting has to be adjourned and the members present there have no right to elect any individual as President to preside over the meeting. Accordingly, the meeting held on 10.03.2017 was the governing body meeting, convened by the Secretary, but not the requisition meeting as contemplated under Article 17 (b) of bye-law.

11. The case of the petitioners herein before the Court below was that the petitioners are sons of erstwhile patron members of the Society, who died on 04.12.2016, 14.04.2016 and 13.06.2016 respectively. As per bye-law 4(a) of the Society, those who pay Rs.10,000/- or more shall be patron member of the Society with

hereditary rights under the law of primogeniture motive. Accordingly, there is no discretion for governing body to deny the patron membership to the petitioners herein being sons of the deceased patron members. The 5th respondent allowed the petitioners to exercise their franchise on the controversial subject of election. Once the President acquiesced the admissions of the petitioners under resolution dated 10.03.2017 and allowed the petitioners to participate in subsequent meetings, to which, the petitioners are also parties thereto on all occasions, therefore, the question for declaration of the resolution void does not arise.

12. After considering the rival contentions of both parties, the learned Court below framed the point for consideration is *“whether the respondents in both the petitions are entitled for the relief of interim injunction as prayed for?”*

13. This Court has noted that the learned Court below after hearing both parties, observed in para-17 that, it appears from the record and submissions made by all the parties that there is a dispute between the members of the society, especially between the President and Secretary which lead to formation of two different groups. It also could be seen that the said disputes are leading to the detrimental to the Society and which would have also an impact on the very purpose of formation of the Society and its Educational Institutions. Accordingly, in view of commencement of next academic year and in the interest of the Society so as to avoid any further complications and to avoid any multiplicity of proceedings and to have a fair and proper administration of Society, it is felt that the resolution passed on 10.03.2017 shall be kept in abeyance

until the disposal of main SOP. Accordingly, the said resolution shall not be acted upon. Thus, the petitioners are barred from participating in any proceedings and in Election which is to be held on 18.08.2017.

14. I have heard learned counsel for the parties in length and perused the material on record.

15. As per Articles of Memorandum of Association, the membership of the Society shall consist of (a) Patrons (b) Donars (c) Life-members, and so on;

16. Regarding patron members as mentioned above is the issue before this Court. The said members are those who have paid Rs.10,000/- or more and become patrons of the Society with hereditary rights under the law of primogeniture.

17. It is not in dispute that the fathers of the petitioners herein were patron members of the Society and died on different dates i.e., 04.12.2016, 14.04.2016 and 13.06.2016. As per the said provision, the next male in the family of the deceased is to be inducted as a member. However, the governing body shall have a right to admit or refuse the admission to any person to become a member of the Society without assigning any reasons. As per 6(h) of the Articles of Association, qualification of the members is under Article 12 and Article 13 is the disqualification to become member of the Society, which reads as under:

“ 13. Disqualification to become members of the Society:

The following persons are disqualified to become members of the Society:

- i) *A lunatic*
- ii) *Born idiot*
- iii) *The person who applies to be adjudged insolvent*
- iv) *An un-discharged insolvent*
- v) *A person convicted of an offence involving moral turpitude*
- vi) *An employee of the society or any institution run or managed by it*
- vii) *Any person who has subsisting interest in any contract with the Society*
- viii) *Any person whose interests are adverse or who works adversely to the interests of the society.*

18. As per agenda of the Society dated March 2, 2017, which is at page 144 of the paper book, was to express condolence for the demise of Sri Pathuri Sadasiva Rao, the father of the petitioner in CRP No.3524 of 2017 and also to consider the application of petitioner in CRP No.3846 of 2017 for patron membership in the place of his deceased father, under Article 4(a) of the bye-laws. The said Agenda was issued by the Secretary of the 5th respondent Society.

19. On 10.03.2017, the meeting of the governing body of the Society was held at 4.00 p.m. in the conference hall of the said Engineering College under Presidentship of Sri Muppalaneni Seshagiri Rao and the agendas amongst others, on the said date, was to express condolence for the said demise of Pathuri Sadasiva Rao as noted above. The said agenda is at page 94 onwards.

20. On a perusal of the said agenda, it seems after giving condolence to the deceased patron members mentioned above, some disputes had taken place to consider the application of the petitioner in CRP No.3524 of 2017. Accordingly, the President and

Vice-President left the governing body meeting. Thereafter, meeting was continued as per the attendant sheet of the members, which is at page No.97 onwards, and well attended by the members required for the quorum of the governing body. The dispute between the two groups of the Society are also evident as per the agenda dated 10.03.2017, as the minutes of the said meeting are by two hand writings.

21. The point for consideration before this Court is **Whether the petitioners are to be treated as members of the Society pursuant to agenda dated 10.03.2017 ?**

22. It is not in dispute that the fathers of the petitioners were patron members of the Society, and on their death, their sons, one each shall be inducted as members in their place as per bye-laws 4(a) of the Society. The induction is automatic, however, to approve by the Governing Body. There is no explanation from the respondents that why after the death of the fathers of the petitioners, the petitioners were not inducted as members.

23. It is not the case of the respondents that the petitioners are not qualified members as per Article 13 of the Articles of Association of the Society Act. Accordingly, it seems that one group of the governing body of the Society is favouring the President and another group of the governing body of the Society is favouring the Secretary. The learned trial Court has directed to keep in abeyance of the Agenda meeting dated 10.3.2017. By passing the said order, the trial Court has made the hand strong of one group which does not want the petitioners to become members specially before the

election now to be held on 18.08.2017 by the direction of this Court.

24. At this juncture, when the elections are to be held on 18.08.2017, it is on record that pursuant to meeting agenda dated 10.3.2017, the petitioners have also attended the meetings dated 12.05.2017, 13.05.2017 and 23.04.2017 respectively.

25. The allegation of the respondents herein is that in the governing body meeting dated 10.03.2017, some untoward incident had taken place and accordingly the President of the Society made a complaint to the police. Consequently, Crime No.32 of 2017 was registered at Station House Officer, Bapatla Town Police Station under Sections 352, 506 and read with 34 of IPC. It is not in dispute that the said case is not registered against the petitioners herein. Therefore, if any person has committed offence, he shall face the consequences. But the petitioners cannot be made to suffer.

26. In view of the above, there was no occasion before the Court below to keep resolution dated 10.03.2017 in abeyance. This Court has perused the meetings held after 10.03.2017, wherein the petitioners have participated and their attendance was also marked. On a perusal of the said meeting, the members of the governing body had attended the meeting. Thus the said attendance register cannot be doubted only on the submission of the respondents that the petitioners were inducted as members on 10.03.2017, after President and Vice-President left the meeting.

27. If this Court take the contention of the respondents to be true that the President, Vice-President left the Governing Body meeting, one member shall be elected by the members of the governing body to preside over the meeting, and accordingly, any resolution can be passed, which is permissible under the bye-laws.

28. From the submissions of learned counsel for the respondents, it is proved that the President and the Vice-President were left the meeting on 10.03.2017, and thereafter, the meeting continued with other governing members, and they have passed the resolution by inducting the petitioners as patron members of the Society.

29. I have no hesitation to say that there was a malafide against the petitioners in not making the members of the Society despite their fathers died long back. The Society consists only 150 plus members, and on 10.03.2017, meeting agenda was for due condolence in favour of the deceased patron members of the Society and induct the petitioners. However, in the mid of the meeting, the President and the Vice-President along with some members were left the meeting without concluding the same.

30. In such a situation, the President and Cive-Presidents including the Secretary are not having the absolute control over the society, however, in their absence, one member shall be elected as President for the said meeting and can preside over the meeting accordingly. This is what had happened on 10.03.2017 and made petitioners as members of the Society. Moreover, thereafter on 23.04.2017, 12.05.2017 and 13.05.2017 respectively, meetings of

the Society were held, wherein the petitioners were also participated. Had the respondents any dispute regarding the membership of the petitioners, the respondents should have approached the court below immediately after 10.03.2017, when as alleged incident had taken place in the meeting. However, they kept mum, and thereafter, approached the Court by filing aforesaid I.As with the ulterior motive in the month of June 2017, wherein they have succeeded by getting the order in their favour from the trial court.

31. It is not out of place to mention here that in majority of the cases, elected Executive Body of any Society or Organization does not want election in time if the term is expiring. They always try their best to create some problem which ultimately reach to the Court at the 11th Hours. In such situation, with the paucity of time, the Courts allowed the election to be conducted keeping the issue alive which comes before it. The case in hand is example of that. The petitioners may not be favourable to one group, therefore, the said group do not wants to induct them before the election to be held on 18.08.2017

32. In view of the above discussion and facts and circumstances of the case, I hereby set aside the order dated 21.06.2017 passed in I.A.Nos.517 and 527 of 2017 in SOP No.633 of 2017 on the file of I Additional District Judge, Guntur. Consequently, the petitioners shall be allowed to participate in the Election to be held on 18.08.2017.

33. Accordingly, these two Civil Revision Petitions are allowed. There shall be no order as to costs.

Miscellaneous Petitions, if any pending, shall stand closed.

JUSTICE SURESH KUMAR KAIT.

Date: 11 - 08 -2017

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