

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.2911 of 2017

ORDER:

1) With the consent of both the parties, the main writ petition itself is taken up for hearing.

2) The present writ petition came to be filed seeking issuance of writ of mandamus declaring the proceedings/ notice/ order Rc.No.315/ 2016-B, dated 20.01.2017 on the file of the second respondent as null, void, without jurisdiction, illegal, contrary to Section 29 (5) of the Mutually Aided Co-operative Societies Act, 1995 and also violative of principles of natural justice.

3) The petitioner society was said to have been registered on 11.06.2015 before the District Cooperative Officer, Khammam. At the time of registration, the jurisdiction of the said society was under Khammam District. Due to re-organisation of the Districts, Kondapur Village fell within the jurisdiction of Jayashankar Bhupalpally District. For the first time, elections to the society were held on 10.08.2015. The directors of the petitioner's society, namely Kondapuram Mahila Tribal Sand Quarry Labour Contract Mutually Cooperative Society Limited, Kondapuram Village, were said to have been elected unanimously. While so, the District

Cooperative Officer, Jayashankar Bhupalpally District, issued the impugned proceedings proposing to conduct general body meeting to elect an ad-hoc committee to the petitioner's society on 31.01.2017. The said notice was pasted at the office of Kondapur Gram Panchayat. Challenging the same, the present writ petition came to be filed.

4) The main ground urged by the learned counsel for the petitioner is that the procedure adopted by the second respondent, in serving the notice, is illegal and improper. It is said that no notice was issued before conducting the alleged enquiry and no enquiry was conducted in the presence of the existing directors of the society. It is said that the enquiry report dated 08.01.2017, was never furnished to the Directors of the petitioner's society and that any action taken under the provisions of the Mutually Aided Cooperative Societies Act, 1995 (for short "the Act") is illegal and improper.

5) By an order dated 27.01.2017, this Court, while admitting the writ petition, granted interim suspension as prayed for.

6) Counter and vacate stay petition came to be filed by the un-official respondents, who got themselves impleaded vide order dated 03.04.2017 passed in W.P.M.P.No.7960 of 2017. It is their case that the present writ petition came to

be filed suppressing the material facts. It is said that the petitioner society is under an obligation to conduct elections to the posts of Directors of the society before the expiry of the term of the office of outgoing Directors, in the manner specified in the bye-laws. In case of any failure, the Registrar, shall, at the request of not less than twenty five members or five percent of the total members of the Society, whichever is less, may suo moto convene, a general body meeting, for appointing an ad-hoc Board for holding the elections. It is said that 181 members of the petitioner society submitted an application dated 19.12.2016, informing that no general body meeting was conducted since the date of registration and also failed to intimate the resolutions passed. The action of the committee in taking unilateral decisions and also not conducting elections for the managing committee, in spite of expiry of the period is illegal and improper. It is said that pursuant to an application made, an Enquiry Officer was appointed, who after conducting enquiry, submitted a report dated 08.01.2017 stating that as per bye-law No.14.14 and Section 23 (1) of the Act, it is the responsibility of the committee to conduct elections within 60 days from its registration and that the existing ad-hoc body failed to do so. Exercising the powers under Section 23 (3) of the Act, the impugned proceedings came to be issued, which according to

the un-official respondents warrants no interference. In the vacate stay application, it has been stated that the elections were never conducted on 10.08.2015 and that the elections so conducted on 10.08.2015 was for the purpose of constituting an ad-hoc committee so as to get the society registered and that the ad-hoc committee is under obligation to conduct elections within 60 days.

7) Respondent No.2 also filed counter along with the vacate stay petition, disputing the averments made in the affidavit filed in support of the writ petition. It is stated that the petitioner society failed to produce recorded proof of holding elections to the post of Directors ie. Minutes Register, as such the second respondent presumed that there was no elected Board of Directors and accordingly issued notice dated 20.01.2017, for conducting General Body meeting on 31.01.2017. In reply to para No.6 of the affidavit, it is stated that when the second respondent visited the Gram Panchayat Office on 20.01.2017, the Board of Directors of the society, who were present at Gram Panchayat Office, refused to take the notice and as such the same was affixed at the office of Gram Panchayat. In view of the above, it is urged that the allegation that there is no valid service of notice is incorrect.

8) As seen from the record, what is challenged in the writ petition is the show-cause notice dated 20.01.2017. A reading

of the said show-cause notice shows that though the petitioner society was registered a year prior, till date general body meeting is not convened. The resolutions of the committee were not communicated to the members of the society. Financial transactions were being carried on unilaterally without the approval of the general body. Though the committee got elected for a period of 60 days, till date no elections are held for the purpose of electing the managing committee. Hence, it is felt that a new committee has to be constituted, for which, the District Registrar, directed Sri E.Krishna Murthy, Assistant Registrar, to submit a report. The Assistant Registrar is said to have conducted an enquiry and then proposed to convene a meeting on 31.01.2017, to elect an ad-hoc committee to the petitioner's society, so as to conduct elections to the managing committee, within 60 days therefrom.

9) In order to appreciate the same, it would be useful to extract Sections 23 (3) and 24 (3) of the Act.

"Section 23 Elections:

- 1) xxxxxxxx
- 2) xxxxxxxx
- 3) Where a Board does not take necessary steps to conduct elections as specified in the bye-laws before the expiry of the term of the Directors. Where there are no Directors remaining on the

Board, the Registrar shall at the request of not less than twenty five members or five percent of the total members of the Co-operative Society, whichever, is less or may suo moto convene within 30 days a general meeting for appointing an ad-hoc Board for the specific purpose of conducting elections.

Section 24: Meetings:

- 1) xxxxxx
- 2) xxxxxx
- 3) Where the Board fails to convene the annual or requisitioned general meeting within due time, it shall be competent for the Registrar to convene the requisitioned or annual general meeting, as the case may be.

10) As seen from the record, the main ground urged by the petitioner is that though the petitioner society is continuing in office, the second respondent issued the impugned order only with a view to expel the existing members without following the basic principles of law. It is also stated that the elections held on 10.08.2015 were general elections, electing the office bearers of the society and not for the constitution of an ad-hoc committee for getting registration of the society.

11) The counter filed by the Government Pleader refers to various documents showing the manner in which the petitioner society is managing the affairs of the society. The impugned order, which is subject matter of challenge in this writ petition, is with regard to the notice issued, basing on enquiry

report said to have been submitted by the Assistant Registrar for holding an ad-hoc committee meeting on a particular date. Certain factual issues came to be raised in this writ petition stating that the elections which were held on 10.08.2015 were the elections held for the first time to the society and the Directors were elected unanimously on the said day. The said fact is totally disputed by the learned counsel appearing for the official and un-official respondents, stating that no such election was conducted on the said date. It is stated that on the said date only an ad-hoc committee was constituted for getting the society registered and the said ad-hoc committee has to conduct elections within 60 days from that date. Further, respondent Nos.3 and 4 are said to have given a representation complaining about the acts done by the petitioner society, which lead to appointment of an Enquiry Officer, who submitted a report on 08.01.2017, stating that the society was registered on 11.06.2015 with an ad-hoc committee and that the ad-hoc committee failed to comply with Section 23 (3) of the Act. However, the same is disputed by the learned counsel appearing for the petitioner.

12) The service of notice is also in dispute. Though the respondents claimed that the said notice was affixed at a conspicuous place in the Gram Panchayat, but the same is disputed by the writ petitioner stating that notice dated

20.01.2017 was affixed on 24.01.2017. It is also stated that no individual notices were given to all the members including the members of the ad-hoc committee of the petitioner society and the report of the enquiry officer was also not furnished to them so as to raise their claim.

13) The factual aspects to be decided would be whether there was any election held on 10.08.2015 or whether the Election held on the said date was only for constituting an ad-hoc committee for the purpose of registration of the society?

14) Further, the issue as to whether there was compliance of Sections 23 (3) and 24 (3) of the Act and also as to whether there was any violation of the bye-laws of the society, can be considered basing on certain factual aspects which will be revealed only by looking into the records maintained by the society. Section 37 of the Act deals with the manner in which settlement of disputes between the cooperative societies and the Registrars are to be decided. It reads as under:

“Section 37: Settlement of disputes:

(1) If any dispute arise touching the constitution, management or business of a cooperative society, and matters connected therewith or incidental thereto,

(a) among members, past members or persons claiming through members, past members and deceased members; or

(b) between a member, past member or a person claiming through a member, past member or deceased member and the cooperative society, its Board, Director, office-bearer or liquidator, past or present; or

(c) between the co-operative society or its Board and any past Board, Director, office-bearer or the nominee, heirs, or legal representatives of any deceased Director, deceased Officer, of the cooperative society; or

(d) between the Cooperative society and any other cooperative society; or

(e) between the promoters of a cooperative society and the Registrar, or a cooperative society and Registrar; or

(f) between a cooperative society and liquidator of another cooperative society, or between the liquidators of two or more cooperative societies;

such disputes may be referred to the Cooperative Tribunal for decision.

Provided that no dispute shall be referred under this section to the Cooperative Tribunal unless the disputing parties exhausted all remedies that may be available in the bye-laws for the settlement of disputes.

(2) any dispute relating to elections held to a cooperative society may be referred to the Cooperative Tribunal for decision.”

15) Though the learned counsel for the petitioner relied upon a judgment of this Court in *Velivela Sivanand and*

*others v. Deputy Registrar of Co-operative Societies, Government of Andhra Pradesh, Machilipatnam, Krishna District and others*¹ to show that super session of an elected Managing Committee and appointing a person-in-charge in its place results in serious adverse consequences of dislodging the electing managing committee, such an order is not expected to be passed in a light hearted manner based on unilateral conclusions.

16) But in the instant case, there is a dispute as to the existence of a Managing Committee. There is also a dispute as to whether there was an election on 10.08.2015 and also as to whether the committee which got elected on the said date was an ad-hoc committee or a regular Managing Committee. In fact, the counters filed by the respondents, state that truth will come out only if the minutes of the meeting and other documents are produced before this Court. Section 37 (2) of the Act prescribes that any dispute relating to the elections held to the co-operative societies, be referred to Co-operative Tribunal for a decision. Though the word used there is “may”, but having regard to the fact that number of factual aspects are involved, which can be determined only after seeing the original record maintained by the society, it will be just and proper if the petitioner approaches the Co-operative Tribunal.

¹ (2015) 3 ALD 76

Hence, the interim order, dated 27.01.2017, granting suspension of the impugned proceedings shall be in force for a period of three weeks from today and in the meanwhile the petitioner shall approach the Co-operative Tribunal, seeking appropriate relief, in which event the Co-operative Tribunal shall deal with the same in accordance with law, at the earliest.

17) With the above direction, the writ petition is disposed of. There shall be no order as to costs. Consequently, miscellaneous petitions, if any, pending shall stand closed.

Dt:06.06.2017
gkv

JUSTICE C. PRAVEEN KUMAR

