

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition No. 16189 of 2016

Between

Fishermen Cooperative Society,
Chamanpalli village, Karimnagar Mandal and
District, rep. by its President, Bojja Tirupathi

..Petitioner

And

The Telangana Cooperative Tribunal at Warangal,
Rep. by its Presiding Officer and others

.. Respondents.

JUDGMENT PRONOUNCED ON

: 11.09.2017



THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : NO
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : NO

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition No.16189 of 2016

Order:

Heard learned counsel for the petitioner and learned counsel for the respondents 5 to 14.

The petitioner is a registered Fishermen Co-operative Society, having its area of operation in Chamanpalli village in Karimnagar Mandal and District. It had 30 members on its rolls in the year 2000, out of which three members left the village long back. Another member left for Dubai for livelihood. There are only 26 active members in the society. It appears that proceedings were initiated against the respondents 5 to 14 under Section 23 of the A.P. Cooperative Societies Act, 1964 for their removal. A resolution was passed in the General Body Meeting held on 20.12.2000 and was sent to the fourth respondent for approval. When the fourth respondent did not take any action for a long time, the petitioners filed W.P.No.4615 of 2001 and this Court, by order dated 31.03.2001, disposed of the said Writ Petition directing the third respondent herein to decide the issue relating to the approval of resolution passed in the General Body Meeting expelling the respondents 5 to 14 within a period of three months from the date of said order. Pursuant to the said order, the third respondent passed an order on 02.06.2001 holding that since the resolution was approved by only 16 members as against 20 members, the same was not in accordance with law and hence the removal of ten (10) members was held invalid. Challenging the same, the petitioner Society filed a Review Petition before the third respondent on the ground that the resolution was valid, as on the date of passing of the resolution, if 2/3rd members vote in favour of the resolution it would be sufficient. The third respondent having

accepted the same by proceedings dated 08.01.2002, held that the resolution passed by the General Body on 20.12.2000 expelling the respondents 5 to 14 was in accordance with law and directed the fourth respondent to take further steps. Challenging the said order, the respondents 5 to 14 filed W.P.No.2605 of 2002 before this Court and this Court by order dated 25.02.2004 set aside the said order dated 18.01.2002 passed by the third respondent and remanded the matter to him to pass fresh orders within a period of two months from the date of receipt of the said order. When a Review Petition was filed by the respondents to review the said order, the same was disposed of by this court directing that the dividend shall not be distributed to expelled members till the third respondent takes a decision. Thereafter, the third respondent passed an order on 27.08.2004 holding that the resolution passed on 20.12.2000 was in accordance with law that was prevailing as on the date of passing of the resolution. Challenging the same, the respondents 5 to 14 filed W.P.No.17155 of 2004 and this Court by order dated 13.12.2004 dismissed the said Writ Petition as withdrawn as there is an alternative remedy of appeal provided against the said order. Thereafter, the respondents filed C.T.A.No.39 of 2005 before the first respondent and the first respondent passed an order dated 08.03.2006 setting aside the order passed by the third respondent on the ground that the third respondent passed two diagonally opposite orders without following the law which was in force and also held that the resolution of the general body could not have been passed after the amendment to Section 23 came into force. Challenging the same, the petitioner filed W.P.No.8684 of 2006 and this Court by order dated 10.02.2009 set aside the said order and remanded the matter to the first respondent for fresh disposal. Against the said order dated 10.02.2009 passed in the Writ

Petition, the petitioner filed W.A.No.423 of 2009 and the Division Bench of this Court while confirming the order of the learned single Judge directed the first respondent to reconsider the issue by taking into consideration the law that was in force at the relevant time. Though, this Court directed to decide the said issue within a period of three months, the matter was not disposed of for several years and, ultimately, an order was passed on 11.03.2016 allowing the appeal and setting aside the order of the Commissioner of Fisheries dated 27.08.2004 with a direction to conduct fresh General Body Meeting duly following the prescribed rules and procedure by giving wide publicity and also in the presence of Government officials. Challenging the said order, the present Writ Petition is filed.

Learned counsel for the petitioner submitted that though nearly 55 documents were filed in the appeal in August 2009, none of the documents were considered while disposing of the appeal and if those documents were considered, the appeal would not have been allowed by the first respondent.

Learned counsel for the respondents 5 to 14 filed a counter stating that the resolution passed in the General Body meeting on 20.12.2000 was not valid under law as no proper notice was sent and the alleged notice sent through certificate of posting is not valid. They have also denied the receipt of any notice convening the General Body Meeting on 20.12.2000.

This Court, by order dated 30.06.2016 while issuing notice before admission, granted interim suspension of the order of the Tribunal and the same is being continued till today. However, it is stated that the respondents 5 to 14 are continuing by virtue of the earlier orders.

The only point involved in the 17 years litigation is with regard to validity of expulsion of respondents 5 to 14 in the General Body Meeting held on 20.12.2000.

In the impugned order, the first respondent, after noting the points emerged for consideration, observed as follows:

“11. Now all the questions raised have examined afresh and it is clear that though there are some differences of opinion regarding illegal fishing etc., the crux of the issue is that whether the expulsion of members is legal or not. As seen from the record it is clearly revealed that the General Body notices were not served to all the members and the officials were also informed very lately. The appellants were not given fair chance of explaining the things. Hence, this Tribunal comes to the conclusion that the General Body Meeting where the alleged resolution expelling the Appellants from the membership of the Society was not held in proper manner as per the prescribed procedure enshrined in the Act and the Bye-laws and the supposed resolution suffers from legal infirmity and cannot be sustainable under law.

In the result the Appeal is allowed and the impugned proceedings of the Commissioner of Fisheries, Hyderabad i.e., Respondent No.2 dated 27.08.2004 are set aside with a direction to get the General Body meeting conducted afresh duly following prescribed rules and procedures giving wide publicity and also in the presence of the Government Officials i.e., Asst. Director of Fisheries, Karimnagar etc. No costs.”

The Tribunal came to the conclusion that the general body notices were not served to all the members and the officials were informed very lately. It was also observed that the appellants were not given fair chance of explaining the things. No basis was given in the order of the Tribunal for such observations/findings. When the petitioner filed 55 documents in support of its case, the Tribunal should have adverted to those documents and recorded a finding on the basis of available evidence. No such effort was made, as a result of which, this Court is constrained to set aside the order passed by the first respondent once again.

The Writ Petition is, accordingly, allowed and the matter is remanded to the first respondent for considering the documents already filed and available on record and passing fresh order in accordance with

law after hearing the petitioner and respondents 5 to 14 within a period of three (3) months from the date of receipt of a copy of this order, as the dispute has been pending for the last 17 years. The *status quo* prevailing as on today with regard to status of the respondents 5 to 14 shall continue during the pendency of the proceedings before the first respondent. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

Date: 11th September 2017
Nsr

A. RAMALINGESWARA RAO, J

