

HONOURABLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.39601 of 2017

Date: 24.11.2017

Between :

Nagidi Venkateshwar Rao s/o. Basaweshwar Rao,
Aged about 33 years, occu: Fisherman,
R/o. Penumudi Village, Repalle Mandal,
Guntur District.

..... Petitioner

And

The Penumudi Fishermen Cooperative Society,
Penumudi village, Repalle Mandal, Guntur District,
rep.by its person in-charge and others.

..... Respondents



This Court made the following:-

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ORDER:

Petitioner claims to be a member of Penumudi Fishermen Cooperative Society, Penumudi village in Guntur district. Petitioner is aggrieved by the notification issued to conduct elections by the Election Officer to the said society. By this notification, the Election Officer has prescribed various stages of election process. As per notification, election is scheduled to be held on 28.11.2017. Petitioner seeks to issue a writ of mandamus and direction to the Election Officer to conduct elections to the society by way of secret ballot instead of raising hands to ensure more transparency in the election process.

2. Heard learned counsel for petitioner and learned Assistant Government Pleader for Fisheries for respondents.

3. Learned counsel for petitioner submits that election of executive committee members by raising hands should be only to a smaller society and for the society of the strength of 350 and above, like respondent society, elections should be by way of secret ballot. In support of her contention, she sought to rely on the provision of Rule 22-B of the A.P.Co-operative Societies Rules, 1964 (Rules 1964) and the observations made by the learned single Judge of this Court in **Guggilla Raja Narsimulu v District Collector, Karimnagar District-cum-Election Authority, Karimnagar and others**¹. She further submits that in the democratic process election held in secret ballot is more

¹ 2015 (2) ALD 1

appropriate and members of the society can express their choice to elect a member of executive committee without fear and favour and an open election by raising of hands can lead to several complications.

4. On the contrary, learned Assistant Government Pleader submits that there is no requirement to conduct secret ballot and, therefore, the prayer sought in the writ petition is not maintainable. At any rate, learned Assistant Government Pleader submits that as held by the Division Bench of this Court in **MJ.Veeramani and others v. Government of A.P. and others**², once election process is set in motion in respect of cooperative societies, writ petition is not maintainable and, therefore, writ petition is liable to be dismissed on this ground alone.

5. The basic facts, as noted above, are not in dispute. The election process is already set in motion and the date of election is 28.11.2017. No request was made by the outgoing managing committee to hold elections by secret ballot. On completion of term of the existing managing committee, person in-charge was appointed and thereafter election process was set in motion. It appears from the instructions furnished to the learned Assistant Government Pleader meeting of the General Body was held on 21.08.2017 and passed resolution authorizing the concerned to appoint Election Officer and to conduct elections to the managing committee of the society. According to the instructions, no request was made by the General Body to conduct election by adopting secret ballot system.

² 2002 (1) ALD 621 (DB)

6. Rule 22-B of the Rules, 1964 does not prescribe specifically, to conduct election to societies in a particular manner if the strength of the society is larger, as claimed by the petitioner. A reading of Rule 22-B would show that ordinarily election should be conducted by raising hands. However, discretion is vested in the outgoing managing committee to request to conduct election by secret ballot; however, such request should be made sixty days before the expiry of the term of managing committee and in such a case, Election Officer should conduct elections by way of secret ballot.

7. 'Smaller society' is not defined in the Rules. There is no clarity when the membership of the society can be described as small. On a plain reading of the Rule 22-B of the Rules, ordinarily election is required to be conducted only by raising hands, unless the outgoing managing committee requested specifically, 60 days before their term was over, to conduct election by secret ballot. No doubt if the strength of the members of society runs into thousands, it may not be possible to conduct election by adopting system of raising hands. But, that is for the rule making authority to consider and make appropriate provision. Further, it is a moot question, in the absence of statutory prescription, whether this society with 350 members can be classified as small society.

8. In **Guggilla Raja Narsimulu**, it appears request was made to conduct elections to the society by secret ballot. This Court observed that though no specific provision is made in Rule 22-B of the Rules, since membership of the society is more i.e., 250, the

expression of opinion by raising of hands have an adverse consequence and, therefore, secret ballot method is preferable. The Court observed that in case, membership of the society exceeds 50, by raising of hands, it may be difficult to count the number of members voted to a particular person and therefore, it is desirable to have a secret ballot method. As noticed from the order, in the peculiar facts of that case, said observations were made and directions were issued.

9. Furthermore, once notification is issued setting in motion the election process, ordinarily Court should not interfere. A Division Bench of this Court has held so in **MJ Veeramani** (supra). Further as election process was already set in motion and election date is fixed as 28.11.2017, any interruption in conducting elections and electing a committee, is not in the best interest of the society.

10. Writ petition is liable to be dismissed and is accordingly dismissed.

Miscellaneous petitions if any pending shall stand closed.

There shall be no order as to costs.

JUSTICE P.NAVEEN RAO

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