

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELENGANA AND THE STATE OF ANDHARA PRADESH**

I.A.No.2 of 2018

IN/AND

WRIT PETITION No.1957 of 2018

W.P.No.1957 of 2018

Between:

Venugopala Primary Sheep Breeders Cooperative Society

.....Petitioner

and

The State of A.P. rep. by its Principal Secretary, Animal
Husbandry and 3 others

.....Respondents

Date of Judgment pronounced on : 28-02-2018

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?

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> HEAD NOTE:

! Counsel for the petitioner : Smt. Kavitha Gottpati

^ Counsel for the respondents : learned Government Pleader for Animal Husbandry

? Cases referred



HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**I.A.No.2 of 2018****IN/AND****WRIT PETITION No.1957 of 2018****ORDER:**

The writ petitioner is Venugopala Primary Sheep Breeders Cooperative Society at Pullalacheruvu Village and Mandal, Prakasam District, represented by its President K. Edukondalu. Among the 4 respondents, respondent No.1 is the Principal Secretary, Animal Husbandry, Dairy Development and Fisheries, respondent No.2 is the Director, Animal Husbandry, Vijayawada, respondent No.3 is the Joint Director, Ongole and the 4th respondent is Prakasam District Sheep Breeders Cooperative Society represented by its Executive Director.

The prayer in the writ petition reads as follows:

“.....to issue an appropriate Writ, Order or Direction, more particularly **one** in the nature of Writ of Mandamus, declaring the action of the respondents in postponing the elections to the Prakasam District Sheep Breeders Co-operative Union Limited, Ongole i.e., 4th respondent is arbitrary illegal and unjust and consequently direct the respondents to conduct the elections to the 4th respondent union with the available affiliated Primary Societies and to pass such other order or orders.....”

It is the supporting affidavit averment of the writ petitioner that the population of the sheep and goats in Prakasam District is 14 lakhs and 4 lakhs respectively and nearly 60,000 weaker sector sheep breeders depend on this sector for livelihood directly or indirectly and there are 463 societies of which 368 societies are affiliated to the 4th respondent District Union supra. The Government issued orders in G.O.Rt.No.219 dated 26.07.2017 as

per Rule 22-C of the Andhra Pradesh Cooperative Societies Rules, 1964 (for short 'the Rules') by postponing the elections of the 4th respondent-District Union that was scheduled on 29.08.2017 until completion of affiliation process of all sheep breeders societies. As per oral instructions of 3rd respondent-Joint Director, Ongole on 31.08.2017, the 4th respondent-District Union addressed a letter Roc.No.18/A/2017 dated 22.11.2017 to respondent No.3 supra wherein furnished the details of the Primary Sheep Breeders Cooperative Societies which are affiliated to the 4th respondent-Union. The tenure of Managing Committee of the 4th respondent-Union was expired on 30.08.2017 and a non-official person-in-charge of the society is appointed by proceedings in Roc.No.18/A/2017 dated 28.08.2017 for six months till 28.02.2018 and Government intending to postpone the elections further on the ground of remaining primary societies not affiliated to District Union. The elections conducted previously for only 120 primary societies that were affiliated to District Union out of by then existing 360 societies which indicates affiliation of all societies to the Union is not necessary to conduct elections because formation of societies is continuing process, thereby the Government is bound to conduct elections rather than postponing with no justifiable reason. The 3rd respondent-Joint Director by letter in Roc.No.18/A/2017 dated 03.01.2018 addressed to the Joint Director, Animal Husbandry-the 2nd respondent that as per memos dated 04.09.2017, 25.09.2017 and 15.12.2017 of respondent No.4-Union, he made sincere efforts to convince the concerned Presidents of Primary societies which are not affiliated in District Union for 74 societies

are to be affiliated and non-official person-in-charge Committee also expires its term by 28.02.2018 and in view of the above circumstances and it is indicating the Government's intention to postpone the elections further after 28.02.2018 for no mind to conduct meantime unless the Court intervenes, the petitioner is constrained to maintain the writ petition.

The Prakasam District Sheep Breeders Cooperative Society represented by its non-official person in charge Committee Chairman by name Ch. Raghavulu, sought for impleadment in this writ petition in I.A.No.2 of 2018 as respondent No.5 saying the writ petition is filed suppressing the material facts by the writ petitioner and the proposed party who is non-official person-in-charge of the 4th respondent-Union is not made party though proper and necessary party to the writ petition for the incharge committee is subsisting till its period of expiry by 28.02.2018, the writ petition is required to be dismissed for the non-joinder. It is also averred that the elections were due by 30.08.2017 and postponing to the 4th respondent-Union as remaining 100 and odd societies has to be affiliated into it as a result of which, the incharge Committee to manage the affairs of the 4th respondent was appointed for six months till 28.02.2018 and the incharge committee of the 4th respondent is interested in contesting the matter and thereby to be impleaded.

Undisputedly it is a six months tenure stop gap arrangement of the incharge committee and what is the prayer in the writ petition is not against the said appointment, leave about the tenure expires by 28.02.2018, which is within a day of this month end and there is nothing to say what defence they can

raise against the conducting of the elections postponement impugment in the writ petition. Thereby the proposed party sought to be impleaded is neither necessary nor proper party and the petition in I.A.No.2 of 2018 deserves dismissal and accordingly, dismissed from the elaborate hearing of arguments in this regard.

From the writ petition averments supra, the learned counsel for the petitioner society reiterated the same and also drawn attention to the Rule 22 of the Rules in force and the learned Government Pleader submits that the very G.O.Rt.No.219 dated 26.07.2017 issued by the Special Chief Secretary to the Government of Animal Husbandry, Dairy Development and Fisheries is clear that there are 450 sheep breeders societies registered in the Prakasam District, of which 350 are affiliated and remaining 100 and odd societies to be affiliated and District Collector, Prakasam, issued election schedule to conduct elections to the Managing Committee of the District Union and representations are received stating remaining 100 societies and odd to be affiliated before conducting elections and thereby having examined the matter it is decided to be held elections after affiliations by postponing the same by invoking Rule 22-C of the Rules. The representations who submitted and what are the contents not referred undisputedly. The learned Government Pleader though contended in support of said G.O.Rt.No.219, it could not be substantiated as to so far after G.O.Rt.No.219 what action taken for all the period of more than 1 ½ years by now for affiliation of 100 and odd non-affiliated societies of the District in the 4th respondent-District Union. Once such is the case, when

those are not willing or not interested and no steps taken even by the Government for their affiliation with 4th respondent so far, there is no justification to invoke Rule 22-C of the Rules or to postpone the elections. Leave about as rightly contended by the learned counsel for the writ petitioner that formation of societies and affiliation of District Union is a continuing process and if such is the route to be taken to postpone the elections, the very provision to conduct elections within the expiry of the tenure will be otiose and unworkable and that is the object of the Rules particularly covered by Rule 22 supra.

In fact Section 32(7) of the Cooperative Societies Act (for short 'the Act') speaks that if there is no committee or in the opinion of the Government, or the Registrar, it is not possible to call a general meeting for the purpose of conducting election of members of the committee, the Government, in respect of such class of societies as may be prescribed and the Registrar in all other cases may appoint a person or persons to manage the affairs of the society for a period not exceeding six months and the Government may on their own and the Registrar with the previous approval of Government, extend from time to time such period beyond six months, however that the aggregate period include the extended period if any, shall not exceed three years. Even from reading of the Rule, the original period of 6 months provided itself has its own sanctity for any imminent necessity, so also for further extension with further imminent necessity and not so casual, leave about merely because the maximum period provided of 3 years is there it cannot be routinely extended till then. As per Rule 2-A of the Rules amended by G.O.Ms.No.37

dated 28.01.2002, a cooperative society is an association of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly-owned and democratically controlled enterprise and the basic cooperative principles are voluntary and open membership, Democratic Member Control, Member Economic Participation, Autonomy and Independence, Cooperation Among Cooperatives to strengthen the cooperative movement by working together through local, national, regional and international structures. Once such is the case, even from the Rules a person who can affiliate with the District Union not chosen to affiliate for not a case of the District Union refused even got eligibility of the societies to affiliate out of it on that ground the postponing of the elections by the respondents is highly unjust that too for more than 1 ½ year by this month end is uncalled for, for the simple reason of other non-affiliated societies as members to the Union not chosen to come forward to join.

Conducting of the elections to the cooperative societies concerned, Rule 22 of the Rules reads as follows:

“22. Conduct of Elections to the Co-operative Societies: - Notwithstanding anything in the bye-law of the societies election to the committee of all classes of societies, shall be in the manner laid down in this rule.]

(1)(a) The incumbent Managing Committees shall themselves conduct and hold elections to societies which are not in receipt of State aid as specified under Section 43 of the Andhra Pradesh Cooperative Societies. Act, 1964 as per the procedures laid down in their bye-laws well before the expiry of the term of the existing Managing Committees. Such societies, if they so desire may request the Registrar of Cooperative Societies to conduct elections in which case the Registrar of Cooperative Societies shall conduct the elections as per bye-laws and for which purpose the society shall pay the fee as prescribed in [Rule 48] of the Andhra Pradesh Cooperative Societies

Rules, 1964. The request to Registrar of Cooperative Societies shall be made at least sixty (60) days before the expiry of the term of the committee and the Registrar of Cooperative Societies shall hold elections before the expiry of the term of the Managing Committee.

(b) In the case of the societies that are in receipt of state aid as specified under Section 43 of the Act, the Registrar shall hold elections to them before the expiry of their term of the committee subject to the provisions in these rules schedule and regulations that the government may make from time to time.

(2)[Appointment of Election Officers:]

(a) The Registrar and the Collector of the District shall be the election authority for the society or class of societies and the election officer shall be from the class of officers specified in the Table below.

Table

	Election Authority	Election Officer	Class of Societies
1.	Registrar	1. Officer of the Cooperative Department not below the rank of Deputy Registrar (2) Any Gazetted Officer	1.Societies specified in Section 31(3)(a) of Andhra Pradesh Cooperative Societies Act, 1964 2. Any society to be so specified by the Govt.
2.	District Collector of the District in which Head Office of societies is situated	Any employee of the Government	All other classes of societies in the District except those specified under Item (1) and (2) above

(b) The Election Authority shall appoint an Election Officer for each society at least forty five (45) days prior to the expiry of the term of the Managing Committee for the purpose of conducting the elections. [The Election Authority shall issue a notification fixing the Election Schedule and date of poll separately]. [The fixation of Election Schedule] shall be as prescribed below.”

Among Rule 22 supra, Rule 22(1)(a) clearly speaks that the incumbent Managing Committees shall themselves conduct and hold elections to societies which are not in receipt of State aid as specified under Section 43 of the Act as per the procedures laid down in their bye-laws well before the expiry of the term of the existing Managing Committees and such societies, if they so desire may request the Registrar of Cooperative Societies to conduct elections in which case the Registrar shall conduct the elections as per bye-laws and for which purpose the society shall pay the fee as prescribed in Rule 48 of the Rules and the request to Registrar shall be made at least sixty (60) days before the expiry of the term of the committee and the Registrar of Cooperative Societies shall hold elections before the expiry of the term of the Managing Committee. In the case of the societies that are in receipt of State aid as specified under Section 43 of the Act, the Registrar shall hold elections to them before the expiry of their term of the Committee subject to the provisions in these rules schedule and regulations. As per Rule 22(2)(a) of the Rules, the Registrar and the Collector of the District shall be the election authority for the society or class of societies and the election officer shall be from the class of officers specified in the Table. The proceedings of the Special Principal Secretary referred supra in G.O.Rt.No.219 dated 26.07.2017 speaks that the District Collector already issued election schedule to conduct elections to the Managing Committee of the 4th respondent-Union, however that is interdicted by the Government with that cause referred supra. Rule 22(2)(b) speaks the Election Authority shall appoint an Election Officer for each society at least forty five (45) days

prior to the expiry of the term of the Managing Committee. Thus the Election Authority shall issue a notification fixing the Election Schedule and date of poll separately. As per Rule 22(2)(b) Clauses 1 & 2, the Election Officer shall issue the communication of election and requisition for production of records and voters list stipulating a time schedule for fulfilling the requisition to the society within three days from the date of receipt of appointment of the election officer.

Once such is the case, it is practically the duty of the person-in-charge, respondent No.5 to commence the process, but not taken up any process and the other respondents particularly respondent Nos.2 & 3 simply saying the extended tenure of the person-in-charge even going to expire by 28.02.2018 not even made a request to conduct the elections. The said procedure adopted by the respondents is thereby highly uncalled for and unsustainable under law and equity and the Government's order interdicting election process is to be set aside.

Having regard to the above and in the result, the Writ Petition is allowed by setting aside the G.O.Rt.No.219 dated 26.07.2017 postponing the election process and by directing the respondents to address a letter to the District Collector to issue fresh election notification within seven (7) days from the date of receipt of this order as per Rule 22 of the Rules supra and appoint election officer to conduct elections as early as possible by fixing schedule by following the procedure contemplated therein. Any appointment of a person incharge after 28.02.2018 will be only for such period till completion of the election of the

Managing Committee of the 4th respondent-Union and shall not be beyond.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 28.02.2018

Note: L.R. copy to be marked

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