

HON' BLE DR. JUSTICE B. SIVA SANKARA RAO

Writ Petition No.5780 of 2018

ORDER:

Heard the learned counsel for the petitioners and the learned Govt. Pleader for Fisheries for respondents 1 to 5 and learned Govt. Pleader for Revenue for R.6 before ordering notice to respondents 7 and 8 and perused the prayer in the writ petition with supporting affidavit and the written instructions submitted by the learned Govt. Pleader for Fisheries on behalf of the respondents 1 to 5 and perused the original cash book produced by the 4th respondent-Fisheries Development Officer.

2. Prayer in the writ petition reads as follows:-

To issue a writ, order or direction, more particularly, one in the nature of Writ of mandamus declaring the inaction on the part of the respondent authorities in not taking steps to include the petitioners and similarly placed members of Bairagipatnam Marine Fishermen Cooperative Society(A-55) in the voters list and deletion of ineligible persons before publication of final voters list along with election notice as illegal, unconstitutional and consequently direct the respondent authorities to take all necessary steps to see that all members of Bairagipatnam Marine Fishermen Cooperative Society, vide Reg.No.A-55 are given voting rights, if necessary by receiving the amounts due from the petitioners and other similarly placed fishermen, if necessary at the office of the fishermen department officers and delete the ineligible persons like minors and members of other cooperative societies and then only conduct elections for the managing committee of Bairagipatnam Marine Fishermen Cooperative Society, Vada Narsapuram, Ramballi Mandal, Govindapalem Post, Visakhapatnam District and pass such other order or orders.”

3. It is the contention of the learned counsel for the petitioners in support of the prayer in the Writ Petition vis-à-vis the affidavit averments that there is illegal deletion of the genuine voters in the list particularly about 25 persons of Chintakayala family and illegal inclusion of about 80 persons in the society, the Society was registered as No.A-55/ 1986 and the petitioners paid share capital and became members bearing Nos. 333,356,292 and 321. The elections to the Managing Committee were held in 2013 and in the year 2014 there was membership drive under the supervision of the Fisheries Department officials and after due verification

they were given membership and they became members thereby, having been paid Rs.135/- per head towards share capital in 2014 and previously Rs.10/-only they paid though it was later enhanced in 2013 to the above and if there is any necessity of annual subscription, in fact not required, the petitioners must be given prior notice in calling to pay. In January, 2018, the petitioners came to know about manipulation of the voters list by 8th respondent-Koda Somoru-the President till the Society Managing Committee superseded from afflux of time w.e.f. 2018. They made representation for the reasons that in 2014-15, there were 417 members and by now 453 members and noticed that 63 members names deleted and 38 persons appears not alive and 25 people not paid share capital and they have not given information regarding payment of further fees and out of the 453 alleged finalized eligible voters, there are minors below 18 years not eligible for membership however made as members and some of the persons alive are shown as if dead and the representation of the petitioners including on 16.03.2018 and 17.03.2018 by bringing these facts for finalization of the eligible voters list not attended thereby they are constrained to file writ petition.

4. Along with writ petition, list of 417 members of 2015 shown and the list of the candidates died shown of 38. The list of ineligible persons shown as 25 including 4 petitioners herein.

5. It is the written instructions from the Asst. Director of Fisheries through Govt. Pleader for Fisheries that in Bairagipatnam Marine Fishermen Coop. Society,(for short 'the Society') A.55. Bairagipatnam of Peambilli Mandal, Visakhapatnam District was registered by the Asst.Director of Fisheries & Ex-Officio Deputy Registrar of Coop. Societies, Visakhapatnam under APCS Act, 1964 on 24.09.1987 with initial membership of 75 with area of operation of Bairagipatnam village. All the members belong to Backward

Class Vadabaliya by Caste. The Total membership of the Society is 453 as on date as per the admission register of the society. Sri Mylapalli Lovaraju S/o Kaseyya and three others filed a Writ Petition No.5780 of 2018 complaining the inaction in conducting enquiry on illegal deletion of genuine voters from voters list and illegal addition of 80 minor Children as members into the Bairagipatnam Marine Fishermen Coop. Society by the President of the Society. He further submit that the term of the existing Managing Committee of the Society expired by 29.01.2018 and the election process has been initiated and the Election Officer was appointed by the District Collector/ District Election Authority, Visakhapatnam District vide proceedings No.655/ C/ 2012, dt.23.01.2018 to conduct election to the Managing Committee of the Society. He further submits that Sri Ch.Durga Rao, S/o Demudu and 25 others have represented stating that they have got admission in the Society by remitting the share capital, but their names do not exist in the voters list furnished by Sri Koda Someru-President of the Society. Further out of 63 non-existing names in the voters list, it was shown that 28 persons are died and 25 names for which share capital was not paid and also included the under aged persons in the voters list and requested for enquiry. Further the petitioners also stated that they have paid fishing ban relief to them as they are the members of the said Society. As per the guidelines of the scheme, the scheme is applicable to the ban affected fishermen who are working on Motorized and Mechanized fishing boats irrespective of the membership in the society. The representation is referred to the Election Officer, Bairagipatnam Marine Fishermen Coop. Society and Fisheries Development officer, Atchuthapuram for conducting detained enquiry and to prepare eligible voters list prior to its publication and the enquiry is scheduled on 24.02.2018 and the final voters list will be published on 28.02.2018.

6. The original cash book produced submitted that it running from the year 2006 particularly from page 8 of the book showing entries of November, 2006 and onwards no way shows the name of the petitioners as members, however a perusal of the list of eligible members of 417 shows the names of the petitioners also and it is the impugment in same presently 25 persons mostly of Chintakayala family including of the petitioners declared as if ineligible. It is the submission that they did not pay the contribution though not specifically stated in relation to that from the last but one paragraph of the written instructions shows the disqualification is non-payment of the contribution. However once they are declared as duly admitted of the membership from payment of the contribution though not reflected in the cash book, disqualification of them all of a sudden without any opportunity to them is unsustainable and this Court in W.P.No.16317 of 2011, dt.10.06.2015 in similar case observed that the conducting of election shall be after admitting eligible persons u/ sec.25 of the Co-operative Societies Act(for short, 'the Act'), r/w Rule 18 of the Cooperative Societies Rules(for short, 'the Rules') and they are granted one month time by directing the respondent officials to inform the members through a general notice to pay additional share capital within the prescribed time and thereafter to prepare voters list by including all members who paid the additional share capital and satisfy the provisions of Section 25 r/w Rule 18 of the Rules, shall appoint thereafter an Election Officer by the District Collector to hold elections.

7. Having regard to the above and in view of the fact that the petitioners are earlier shown as eligible and now shown from the cash book not reflected about the payment of membership contribution of Rs.135/- per head not eligible. In the similar case of the expression supra and from the written instructions showing the Election Officer and Fishermen

Development Officer were asked to prepare the detailed enquiry and prepare eligible voters list for its publication by 24.02.2018 and finalize by 28.02.2018 for the election to be held on 13.03.2018, in the meantime, the petitioners and similarly situated other persons shown disqualified for non-payment of share capital for the membership though earlier they were shown as members, shall be given opportunity for their tendering the amount to the Fisheries Development Officer and Election Officer for their cause remitting to the concerned Head of Account of membership contribution and to declare them as eligible while verifying the correctness of the voters list regarding the scrutiny of any dead persons or persons alive declared as dead and any minors improperly admitted for its finalization. If any person among indicated above pays the amount on or before 28.02.2018 shall be declared as eligible by virtue of this order and to publish the voters list immediately thereafter for conducting of the elections.

8. Accordingly and in the result, the Writ Petition is disposed of. Pending miscellaneous petitions, if any, in this Writ Petition shall stand closed.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 23.02.2018
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