

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.2243 of 2017

ORDER:

The petitioners claim that they are all Members of the Puttaparthi Primary Agricultural Cooperative Society, Puttaparthi, Ananthapuram District (in short “the Society”). They challenged the order, dated 08.09.2016, purported to have been issued by the 2nd respondent-Minister for Environment, Forest, Science & Technology and Cooperative, Andhra Pradesh, staying the conduct of elections until further orders.

The facts are that pursuant to the resignation of the present President of the Society and on receiving a requisition from the Members of the Society, the 7th respondent-Sub-Divisional Cooperative Officer/Election Officer had issued a Notification on 01.09.2016 proposing to conduct election on 08.09.2016 for the post of President of the Society. Specific contention of the learned counsel for the petitioners is that on coming to know about stay of the election by the 2nd respondent-Minister, the 2nd petitioner made an application to the District Cooperative Officer, under the Right to Information Act, seeking information whether there is any application from any quarter seeking postponement of the elections, to which, the information was provided to the effect that there was no material available with their office.

Learned counsel for the petitioners submits that in terms of Rule 22-C of the A.P. Cooperative Societies Rules, 1964 (in short “the Rules”), though the Government or the election authority has a power to postpone the elections, such power is exercisable only on limited grounds. The impugned order does not contain any

reasons. In the present case on hand, as per the copy of the order provided, even the Government has not exercised its power, but the Minister, in his individual capacity, appeared to have made the order, which is impermissible.

A counter affidavit is filed by the 6th respondent, whereunder it is asserted that in terms of Rule 22-C of the rules r/w 131 of the A.P. Cooperative Societies Act, 1964, the Government is competent to pass such order and the stay granted by the 2nd respondent-Minister is not contrary to the provisions of the Act and passing of such order and directions in the interest of cooperative movement in general or in a particular matter under the Act and thus, the stay order made is not contrary to the Act and, therefore, prays for dismissal of the Writ Petition.

Considered the respective submissions. This is one of such cases where, unfortunately, the Minister of the State appeared to have not been appraised of the basics as regards exercise of power under the Act and the Rules. At the outset, the record discloses that the order of stay is made on the Minister's letter head, which indicates that it is more in the nature of a personal order, inasmuch as, for initiation of the proceedings, there was no petition before the Minister and even there was no note put up before the Minister under business rules. Further, the election was scheduled on 08.09.2016 and the stay appeared to have been granted on the same day. Since the stay was not granted by the Government, the question of referring to Rule 22-C read with Section 131 of the Act does not arise. Exercising the power by the 2nd respondent is illegal and ultra vires the power under the Act and the Rules. Apart from that, Rule 22-C of the Rules, as rightly

submitted by the learned counsel for the petitioners, can be exercised only in three circumstances, which reads as under:

- “(i) Break down of law and order affecting the peaceful and lawful conduct of elections.
- (ii) Any natural calamity that prevents the conduct of elections particularly, voters from participation in the election.
- (iii) Where there is reasonable apprehension that voters will not be allowed to vote frankly and freely”.

It is not the case of the 6th respondent, in the counter affidavit, that even such circumstances exist in the case on hand. In those circumstances, the Writ Petition is allowed. There shall be no order as to costs.

Consequently, Miscellaneous Petitions pending, if any, in this Writ Petition, shall stand closed.

CHALLA KODANDA RAM, J.

Date: 05.02.2018.

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