

THE HON' BLE SRI JUSTICE M. SEETHARAMA MURTI

Writ Petition nos.6837, 8373 & 18714 of 2018

COMMON ORDER:

Three sets of petitioners filed these three writ petitions with a common and singular request to issue a writ of Mandamus declaring the action of the 4th respondent - Assistant Director of Fisheries, Kavali, SPSR Nellore District, in deleting the names of the petitioners in the three writ petitions from the list of eligible voters of the 5th respondent, Fishermen Co-operative Society, as illegal, arbitrary, without authority and violative of principles of natural justice and consequently direct for inclusion of the names of the writ petitioners in the three writ petitions in the list of eligible voters and allow them to participate in the elections to the Managing Committee of the said 5th respondent society.

2. I have heard the submissions of *Sri P.Ganga Rami Reddy*, learned counsel appearing for the petitioners in W.P.nos.6837 of 2018 & 18714 of 2018; of *Sri P.V.Raghu Ram*, learned counsel appearing for the petitioners in W.P.no.8373 of 2018; of learned Government Pleader for Fisheries (AP) appearing for the respondents 1 to 4; of *Sri K.Narsi Reddy*, learned counsel appearing for the 5th respondent society; and, of *Sri G.Vijaya Babu*, learned counsel appearing for the impleaded respondents. I have perused the material record.

3. The case of the writ petitioners in all the writ petitions, in brief, is this:

The Fishermen Co-operative Society ('the 5th respondent society', for brevity) was registered, on 03.01.1976. The writ petitioners and others were admitted as members of the 5th respondent society, on 05.02.2015. All the members paid the membership fee and the names of

the petitioners were entered in the admission register of the 5th respondent society. The total number of members of the 5th respondent society is 574. For the years 2015-16 and 2016-2017, the 5th respondent society has paid the dividend to the petitioners. The term of the Managing Committee of the 5th respondent society expired, on 18.03.2018. The 3rd respondent - Joint Director of Fisheries with the permission of the 2nd respondent - District Collector & District Election Authority, Nellore, issued election notification, dated 18.01.2018, *vide* Proceedings no.718/ B/ 2015, for conduct of elections to the Managing Committee of the 5th respondent society. The 4th respondent - Assistant Director of Fisheries, was appointed as the Election Officer for conduct of elections. On 07.02.2018, the 5th respondent society sent a voters list, with 574 members, to the 4th respondent - Assistant Director of Fisheries. The 4th respondent - Assistant Director of Fisheries published list of 574 voters, on 09.02.2018. However, based on a complaint of the rival group, the 4th respondent removed the names of the writ petitioners in all the three writ petitions and others from the voters list and published a final voters list consisting of 417 members. Thus, the 4th respondent - Assistant Director of Fisheries removed the names of the petitioners and others from the list of eligible voters on the ground that no skill test was conducted and the approval of the Registrar has not been obtained before admitting the petitioners as members of the 5th respondent society. The petitioners were admitted as members of the 5th respondent society, on 15.02.2015. The Managing Committee and the General Body have passed resolution admitting the petitioners as members of the 5th respondent society. The petitioners belong to Scheduled Caste community. They are carrying on fishing activities. Some of the petitioners are the legal heirs of the deceased members of

the 5th respondent society. The Managing Committee or the General Body of the 5th respondent society is competent to admit the eligible persons as members of the society. The action of the 4th respondent - Assistant Director of Fisheries, that is the action of the Election Officer in removing the names of the petitioners from the list of eligible voters is illegal and arbitrary. The 5th respondent society has to prepare and publish the list of members, who are eligible to vote. The list was prepared accordingly by the 5th respondent society, on 07.02.2018. In the said list, all the petitioners were shown as eligible voters. The list was communicated to the 4th respondent - Assistant Director of Fisheries on the same day, that is, 07.02.2018. If there are any omissions & commissions noticed while scrutinizing the list, the 4th respondent - Assistant Director of Fisheries shall refer the list to the President of the 5th respondent Society for rectification. After rectification, the 4th respondent has to publish the list of eligible voters. However, the 4th respondent - Assistant Director of Fisheries, that is, the Election Officer, deleted the names of the petitioners in the writ petitions from the voters list without referring the same to the President of the 5th respondent society. The said action of the 4th respondent - Assistant Director of Fisheries is without any authority and is arbitrary. The names of the petitioners have not been removed from the membership of the 5th respondent society. The petitioners have not incurred any disqualification. As long as the petitioners are members of the 5th respondent society and have not incurred any disqualification, they are entitled to participate in the elections and exercise their franchise. The names of the petitioners were deleted by the 4th respondent - Assistant Director of Fisheries from the list of voters without giving an opportunity to the petitioners. Before deletion of the names, no notice

was issued to the petitioners. It is a clear violation of the principles of natural justice. The 4th respondent - Assistant Director of Fisheries has deleted 229 voters from the list of 574 eligible voters. If elections are to be conducted with the said list published by the 4th respondent - Assistant Director of Fisheries, the members of the 5th respondent society would suffer serious and irreparable loss. Hence, the writ petitions are filed.

4. The then Assistant Director of Fisheries - 4th respondent, filed a counter affidavit on behalf of all the official respondents 1 to 4 in W.P.nos.6837 of 2018 & 18714 of 2018, *inter alia* contending as follows:

The 2nd respondent - District Collector & District Election Authority, *vide* Proceedings, dated 18.01.2018, appointed the 4th respondent - Assistant Director of Fisheries, Kavali, as the Election Officer to conduct election to the Managing Committee of the 5th respondent Society. After receiving the election proceeding, the 4th respondent issued notice, dated 27.01.2018, to the President of the 5th respondent society requesting to submit list of members (voters list) of the 5th respondent society after due intimation to all its members. On 07.02.2018, the President of the 5th respondent society submitted the list of members (voters list) with 574 members. As per the election schedule issued by the 2nd respondent - District Election Authority, the 4th respondent - Assistant Director of Fisheries published the voters list, on 09.02.2018. He called for objections on the voters list, to be submitted on or before 16.02.2018. One Dara Pullayya and 21 others, who are members of the 5th respondent society filed objections, on 16.02.2018, stating that after the previous elections, the Managing Committee of the 5th respondent society admitted 229 members irregularly without conducting skill test by the Committee constituted

for this purpose and without prior permission of the Registrar. Therefore, the objectors requested to delete the ineligible members (229 members) from the voters list published, on 09.02.2018, and further requested to conduct elections as per the voters list of 2013 elections. On discussion with the President of the 5th respondent society, on 17.02.2018, and after verification of the records of the 5th respondent society, it was noticed that out of 419 members, names of two members were deleted, vide General Body Meeting, dated 28.03.2017, and that the strength of the 5th respondent society is 417; that the 5th respondent society submitted list with 574 members. It was also noticed that the 5th respondent society admitted 109 members into the society vide General Body meeting, dated 05.02.2015, and 79 members vide General Body Meeting, dated 25.11.2016, and 41 members without a resolution of the General Body; and, that the above members were admitted without following the circular memo no.182/ 1(I)/ 1997, dated 16.10.1998, of the Director of Fisheries, AP, Hyderabad, and G.O.Ms.no.74, dated 21.10.2011 of Animal Husbandry, Dairy Development and Fisheries (F-II) Department, and without conducting skill test by the committee constituted for the said purpose and without prior permission of the Registrar. Hence, 4th respondent - Assistant Director of Fisheries, who is the Election Officer, deleted from the published list of voters, the names of 229 ineligible members, who have been admitted illegally as members of the 5th respondent society; and published a final voters' list with 417 members, on 23.02.2018, as per the voters list of 2013 elections related to the election to the Managing Committee of the 5th respondent society. No permission has been issued and no skill test has been conducted for admission of new members into the 5th respondent society after 2013 elections. As per G.O.Ms.no.74,

dated 21.10.2011 (supra), 'Three Men Committee' has been constituted to conduct skill test for admission of new members into the Societies in order to avoid admission of bogus members and to provide opportunity to the genuine and needy fishermen to become members of the societies. But, the 5th respondent society overcame the circular memo and the G.O.Ms.no.74 and admitted 229 members illegally and by means of simple resolutions in the General Body and at one time even without such resolution. There is no provision to admit legal heirs of the deceased members directly into the society in the place of deceased members as per the provisions of A.P. Cooperative Societies Act, 1964. The removal of any members from the membership of the 5th respondent society does not arise for consideration as the petitioners have been admitted illegally and they are not entitled to vote and participate in the elections to the Managing Committee of the 5th respondent society. The eligibility of a person to become a member of the society will be decided only after conducting the skill test by the 'Three Men Committee' constituted for the said purpose. The election schedule issued by the 2nd respondent – District Election Authority prescribed a time bound programme. Hence, there was no possibility to issue individual notices to the writ petitioners and/ or provide an opportunity of hearing to the petitioners before their names were deleted from the voters' list. The petitioners, in the event, they are aggrieved, ought to have approached the 2nd respondent - District Election Authority. Without availing the said opportunity, the present writ petitions are filed. Hence, the writ petitions may be dismissed.

5. The case of the impleaded respondents 6 to 8 as stated in the affidavit of the 6th respondent, in brief, is this: 'These respondents 6 to 8 are the members of the 5th respondent society. The petitioners have

not impleaded them as parties these writ petitions. Hence, these respondents 6 to 8 got themselves impleaded. In the elections proposed to be held, on 15.03.2018, the 8th respondent is one of the contestants for the post of Secretary. Basing on the complaint given by the 6th & 7th respondents along with 22 other members of the 5th respondent society and also their representation, dated 15.02.2018, the 4th respondent - Assistant Director of Fisheries verified the records and came to the conclusion that the petitioners in the three writ petitions are not validly admitted members of the 5th respondent society and, hence, he deleted the names of the petitioners from the voters list. The earlier elections to the Managing Committee of the 5th respondent society were held, on 19.03.2013; at that time there were only 419 members. After the said earlier elections, no skill test was conducted to facilitate admission of any new member by giving an application in Form J as required under Rule 12-A of the A.P. Cooperative Societies Rules, 1964. Unless a proposed member applies in the prescribed form, such proposed member is not entitled to become a member of the society. Applications made by the aspiring members have to be forwarded to the 4th respondent - Assistant Director of Fisheries. Afterwards, a skill test has to be conducted by a duly constituted committee 'three man committee' as per the terms of G.O.Ms.no.74, however, after verifying the aspiring members' places of residence, social statuses, main occupations and castes as required under G.O.Ms.no.98, dated 22.01.1964, and also the viability of the Society, as there must be one hectare of long seasonal water spread area for one member as per the norms prescribed. Subject to other conditions, the Managing Committee of the Society cannot admit any person as a member of the Society, unless such a person becomes qualified in the skill test. Though, the Managing

Committee of the 5th respondent Society is the ultimate authority to admit the members into the society, the Managing Committee has to adhere to the Rules & Regulations in force; and it cannot admit any person as a member as per its whims and fancies. The main occupation of all the petitioners is not fishing. They have not applied for membership of the 5th respondent society in Form J. No skill test was conducted for them by the newly constituted committee. The persons belonging to the castes specified in G.O.Ms.no.98, dated 22.01.1964, are only eligible to become members of a Fishermen Cooperative society. Persons of other castes not specified in the said GO are not eligible to become members of the Fishermen Cooperative Societies. A proposed member should be residing in the area of operation of the Society as required under Bye-law 4 (a) & (b). All these aspects have to be verified and confirmed by the 4th respondent - Assistant Director of Fisheries, who is the Registrar for the Fishermen Co-operative Societies. The earlier President and members of the Managing Committee, for the reasons best known to them, have not followed the procedure prescribed. They might have inducted the petitioners in the three writ petitions and others (a total of 229 members) as members of the society illegally for their personal gains. The 4th respondent - Assistant Director of Fisheries, by following the procedure established by law, has rightly deleted the names of the ineligible and not validly admitted members from the list of voters of the 5th respondent society. Basing on the representation of the respondents 6 & 7 only, action was taken by the 4th respondent - Assistant Director of Fisheries. Hence, the writ petitions are liable for dismissal.

6. The writ petition was admitted, on 21.03.2018. Respondents 1 to 4 in the writ petition filed W.V.M.P.no.3 of 2018 to vacate the interim

order, dated 08.03.2018. When the vacate stay petition is taken up for hearing, a joint request is made that instead of the interlocutory applications all the three writ petitions may be heard and disposed of on merits. Hence, all the writ petitions are heard together and are being disposed of by this common order.

7. Learned counsel for the parties including the learned Government Pleader made submissions in line with the pleadings of the parties. I have given earnest consideration to the facts & submissions.

8. The Core facts are as follows:

The election to the Managing Committee of the 5th respondent society is due for the year 2018, as the term of the existing managing Committee had expired, on 18.03.2018. The 2nd respondent/ District Collector, being the Election Authority issued election notification, dated 18.01.2018, for conduct of election to the Managing Committee of the 5th respondent society. The 2nd respondent - District Election Authority appointed the 4th respondent - Assistant Director of Fisheries as the Election Officer ('4th respondent - Election Officer', for brevity). On the request of the 4th respondent – Election Officer, the President of the 5th respondent Society sent a voters list with 574 members. The 4th respondent – Election Officer published the list, on 09.02.2018; and, called for objections. The respondents 6 & 7 and 22 others filed objections *inter alia* stating that 229 members were irregularly and illegally admitted by the Managing Committee without conducting the skill test. It appears that the 4th respondent – Election Officer verified the record and had discussions with the President of the 5th respondent society and noticed that out of 419 members, names of two members were deleted and that the strength of the 5th respondent society is 417

members; but the 5th respondent society submitted list with 574 members. It appears that he also noticed that the 5th respondent society admitted 109 members and 79 members as per its resolutions, dated 05.02.2015 and 25.11.2016, respectively and that 41 members were admitted without any resolutions. Hence, the 4th respondent – Election Officer deleted from the published list of voters, the names of 229 members whom he found to have been illegally admitted as members of the 5th respondent society and published a final voters list, on 23.02.2018, with 417 members, as per the voters' list of 2013 related to the elections to the Managing Committee of the 5th respondent society. The persons, whose names are thus deleted from the voters' list submitted by the President of the 5th respondent society and who are aggrieved by the final list published by the 4th respondent – Election Officer, filed these three writ petitions.

9. Be it noted that the principal grievance and the submissions of the writ petitioners in support of their case are as follows: 'They are the validly inducted members of the 5th respondent society. Hence, the President and Managing Committee of the 5th respondent society sent a voters' list to the 4th respondent – Election Officer with all the names. The 4th respondent – Election Officer is obliged to take the said list as it is into consideration. In any view of the matter, the 4th respondent – Election Officer is not authorized to delete the names of any of the members/ voters from the list of voters. If he finds, on verification, that the voters' list sent by the 5th respondent society requires any rectification, he is obliged to make a reference of the matter to the President of the 5th respondent society as envisaged under the Rules. But, he cannot finalize the voters' list by meddling with it.' Whereas, the official respondents and the contesting non-official respondents

submit that the procedure contemplated was not followed before admitting the petitioners and certain others as members of the 5th respondent Society and that the said members, whose names are deleted from the voters' list, are not qualified to be the members and, therefore, they are ineligible to continue as members and vote in the elections and, hence, the names of such persons are rightly deleted from the voters' list furnished by the President of the 5th respondent society and that the 4th respondent - Election Officer is justified in publishing a final list of eligible voters after deleting the names of the writ petitioners and others, who are illegally and irregularly admitted as members at the whims and fancies of the President and the Managing Committee of the 5th respondent society, and that the writ petitioners and others whose names do not appear in the final list are not eligible to vote in the ensuing elections.

10. In the above stated backdrop of facts and contentions the first question to be considered is as to whether the 4th respondent/ Election Officer's action in deleting the names of certain persons from the voters' list submitted by the 5th respondent society and in publishing a final voters' list after deleting the names of 229 members from the list furnished by the 5th respondent society is in accordance with the procedure established by law. If the answer to the question is in the negative, it follows that the writ petitioners are entitled to the redressal of their grievance.

10.1 The election process for the election of the managing committee of the 5th respondent society commenced with the 2nd respondent District Election Authority appointing the 4th respondent – Assistant Director of Fisheries, as the Election Officer, as per A.P. Co-operative

Societies Rules, 1964 ('the Rules', for brevity). It is stated that the 5th respondent society is not receiving any aid from the State. And, the said statement is not disputed before this Court. Admittedly, in the case on hand, the election notification, *vide* Progs.no.718/ B/ 215, dated 18.01.2018, was issued by the 2nd respondent - District Election Authority under Rule 22 of the Rules by making a specific reference to the said Rule, however, by also making a reference in the concluding paragraph of the said notification to Rule 22-B of the Rules. Thus, the notification itself refers to two rules, viz., Rule 22 and Rule 22-B, which postulate provisions applicable to major societies not receiving state aid and weaker section societies respectively. Therefore, from the notification, it is evident that the District Collector – District Election Authority is himself not sure of the process of election to be adopted in respect of the notified election. This anomaly itself is a ground to set aside the election notification.

10.2 Be that as it may. Rule 22-B deals with 'Mode of Election of Member of Committees of Weaker Section societies or Societies having a small membership'. The 5th respondent society as per its' voters' list is having 574 members. Even after excluding the members, whose names are deleted from the list of the 5th respondent society, yet, as per the final list published by the 4th respondent – Election Officer, there is a membership of more than 200 members. Further, there was a membership of 417 members as per the voters' list related to 2013 elections. Though there is no material produced by any of the parties to show as to whether the 5th respondent society is not a Weaker Section Society, yet, in view of the admitted & undisputed fact that the 5th respondent society is not receiving any State aid as specified under the provisions of the Act and as its membership is more than 200, it is

possible to hold that Rule 22 would apply, is the contention of the writ petitioners. If this contention, which merits consideration in the facts and circumstances of the case, is to be accepted, then, the procedure envisaged under Rule 22 is to be applied in the matter of conduct of elections to the Managing Committee of the 5th respondent society. Under this Rule 22, the incumbent Managing Committee shall conduct elections to the society, which is not in receipt of State aid as specified under Section 43 of the Andhra Pradesh Co-operative Societies Act, 1964, or in the alternative such society, if it so desires 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. 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 under the said Rule. In the case on hand, the election authority appointed the Election Officer, by Proceedings, dated 18.01.2018. Hence, it is apt to refer to clause (vi) of Rule 22(2) of the Rules, which reads as under:

‘After receipt of the final list of members eligible to vote from the society, the Election Officer shall verify the cases and satisfy himself that the list conforms to the criteria for eligibility to vote as laid down under the Act and Rules.[if there are any omissions or commissions noticed while scrutinizing the list, the Election Officer shall refer the same to the Chief Executive Officer or the President of the Society for rectification. After such rectification, the Election Officer shall publish the final list of the voters along with the schedule as prescribed in Form I.’

As per the above provision, after receipt of final list of members eligible to vote, the Election Officer shall verify the same and satisfy himself that the list conforms to the criteria for eligibility to vote as laid down under the Act & the Rules. On scrutinizing the list, if he finds that there are omissions and commissions, he shall refer the same to the Chief Executive Officer or the President of the Society for rectification. After

rectifications, the Election Officer shall publish the final list of the voters along with the schedule as prescribed in Form I. In the case on hand, after the President of the 5th respondent society furnished the list, the 4th respondent – Election Officer called for objections; later, on receipt of objections from some of the members of the society, he verified the records and deleted the names of writ petitioners and certain others, that is, names of 229 voters from the list furnished by the 5th respondent Society containing total number of 517 voters, as according to him, he found that there are some omissions and commissions in the list sent by the 5th respondent society. Nevertheless, he has not chosen to refer or send back the list of voters to the President of the 5th respondent Society for rectification all though the Rule specifically mandates that on noticing of omissions and commissions, the 4th respondent, as an Election Officer shall refer the same to the President of the 5th respondent Society for rectification and that after such rectification, he shall publish the final list of voters along with the schedule as prescribed in Form I. Therefore, it is clear that the action of the 4th respondent – Election Officer in deleting the names of some of the voters from the voters list sent by the President of the 5th respondent society and that his further action in finalizing the voters list on his own and publishing the final voters list is a clear infraction of the mandate contained in Rule 22 (2)(vi) of the Rules. On this ground alone, it is possible to hold that the matter warrants interference and the writ petitions deserve to be allowed.

11. Be that as it may. Before arriving at a final decision, it is necessary to note that the learned Government Pleader appearing for the official respondents and the learned counsel appearing for the contesting non-official respondents 6 to 8 strongly contended as follows:

‘Once an election notification has been issued, any dispute has to be raised and determined in an election petition that may be filed after the conduct of the elections, but not before the elections are held. In support of the said contention, they placed reliance on the following decisions: (i) MJ.Veeramani and others v. Government of AP & others¹; (ii) K.Appa Reddy v. Election Officer²; R.Venugopal v. District Collector, Medak & others³; (iv) Logisa Suribabu v. State of A.P⁴; and (v) Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra and others⁵. It is no doubt true that all disputes relating to elections to a Managing Committee of a Co-operative Society shall be determined only by an authority competent to do so and such disputes could be raised only after the result of the election is declared and the election process should not be generally interrupted on the parties aggrieved raising any disputes even before the elections are held. However, it is also settled law that when the illegality or irregularity is very serious and fundamental, election process could be interrupted in deserving cases. This view of this Court is reinforced by the decision in R.Venugopal’s case (3rd supra). Under similar circumstances, this Court in the decision in Tadem Satish & others v. District Collector, Nalgonda District⁶ having found that the Election Officer committed a clear infraction of the mandate contained in Rule 22 (II)(vi) of the Rules and that the difference of number of voters in the two voters’ lists being phenomenal and as the number of voters is slashed down from 930 to 379 held that the said case is a fit case warranting interference and accordingly held

¹ 2002 (1) ALD 621 (DB)

² 1996 (20 ALT 913 (D.B)

³ 1988 (2) ALT 211 (D.B)

⁴ 2017 (5) ALT 335

⁵ AIR 2001 SUPREME COURT 3982

⁶ 2007 (4) ALD 328

that the voters' list published by the 2nd respondent therein shall not be treated as final and directed him to follow the mandate of the Rule and thereafter publish the voters' lists and the fresh election programme. Accordingly this Court disposed of the said writ petition. Therefore, the contention that election process could not be interrupted under any circumstances, including in cases where the illegality and/ or irregularity is very serious and fundamental cannot be countenanced.

12. In the case on hand, there is one more important facet that goes to the root of the matter, which also supports the view of this Court that it is a fit case to grant the relief/ s to the writ petitioners in all the writ petitions. The District Collector, who is the election authority issued proceedings dated 18.01.2018, *vide* Proceedings no.718/ B/ 2015, for conduct of elections to the Managing Committee of the 5th respondent Society. While appointing the 4th respondent – Assistant Director of Fisheries, as an Election Officer and while fixing the schedule, he mentioned in the said proceedings, the date '01.02.2018' as the date of appointment of the Election Officer. The said election schedule, verbatim, reads as under:

S.No.	Item	Date
I	Appointment of Election Officer	1-02-2018
1	Date of Publication of voters list by Election Officer & handing over of records to Election Officer	09-02-2018
2	Date for receipt of objections if any	16-02-2018
3	Publication of List of eligible voters	23-02-2018
4	Issue of election notification with eligible voters list	24-02-2018
5	Date of receipt of nominations	5-03-2018
6	Scrutiny & publication of list of Valid Nominations	6-03-2018
7	Withdrawals & publication of list of Valid Nominations	7-03-2018
8	Date of Poll	15-03-2018
9	Election of Office Bearers	16-03-2018

Therefore, the Election Officer shall commence discharging of his functions from 01.02.2018 and not before. However, in the case on hand, the 4th respondent - Assistant Director of Fisheries issued a notice, dated 27.01.2018, to the President of the 5th respondent Society requiring him to submit a list of members (voters list). Therefore, he commenced the election process even before his appointment as the Election Officer, that is, before 01.02.2018. Further, the Proceedings of the Collector, dated 18.01.2018, make a reference to the note order of the District Collector, at reference no.3. However, the said reference no.3 in the said proceedings reads thus: 'Note orders of the District Collector/District Election Authority, SPSR Nellore District, dt.22-01-2018.' Thus, a proceeding issued, on 18.01.2018, makes a reference (at reference no.3) to a note order, dated 22.01.2018, which is of a subsequent date. When the matter is reopened to give an opportunity for clarification and production of the original record, learned Government Pleader could not give any clarification obviously as the mistake is unexplainable; and, the original records are also not produced for perusal of this Court. It is only stated that it might be a typographical mistake. However, in the absence of any explanation, much less a valid explanation forthcoming, and in the absence of production of the original record, such a contention cannot be countenanced. Therefore, the proceedings of the Collector, on a careful perusal, raise a serious doubt about the whole exercise that was undertaken in the matter. Further, a learned Judge of this Court in an intermediary order earlier passed in W.P.no.6837 of 2018 observed *verbatim* as follows:

‘In fact, a perusal of the original record is also required as to for any of them skill test was conducted

or not. Even the names of the 229 members find place in the preliminary voters list admitted by the Managing Committee of the Society not in dispute but for in saying there is no skill test conducted to any of them. Once that is the crux as it is not one or two members total 229 members of which the petitioners are 117 in number and the election process is scheduled to conduct polls by 17.03.2018 has to be interdicted rather than conducting the elections, based on 2013 voters list without deciding the same.'

Having thus passed a detailed order, the said learned Single Judge of this Court, on the said date, suspended the impugned proceedings of the Collector, dated 18.01.2018, and directed the official respondents to file counter and submit the original record. Yet, the original record is not produced before this Court. It is to be further noted that the said learned Single Judge while passing the above said interim order in one of these matters has taken note of the contention of the writ petitioners herein that even in the final list published by the Election Officer, which is invalid, there are members who did not pass the skill test. Thus, the contention of the writ petitioners is that when some of the members, who did not pass the skill test, are being allowed to vote in the proposed elections, there is no justification in not allowing the petitioners to exercise franchise on the ground that they did not pass the skill test.

13. A passing reference is also necessary to the incidental submission made on behalf of the writ petitioners. It is to be noted that the petitioners are stating that some of them are the legal heirs of the deceased members of the 5th respondent society and that they are entitled to be the members of the said society in the place of the deceased members. It is also their case that they are having necessary skills to conduct fishing operations and that they are already admitted as

members of the society and received dividends during certain earlier years and that they are also eligible to vote in the elections, and that, therefore, their names cannot be deleted from the voters' list submitted by the 5th respondent society, that too, without considering their eligibility to continue as the members of the society and without conducting skill test, if so required. It is also stated before this Court that the relevant procedure required to be followed by the official respondents is envisaged in G.O.Ms.No.74, dated 21.10.2011. As per the terms of the said GO whenever any skill test is to be conducted, advance intimation of the date, time and venue of the skill test has to be given not only to the aspiring applicants but also to the others concerned by beat of tom tom, and by a notifying in the Gram Panchayat and other public places in the village including hamlets, if any. The authority concerned is also required to obtain an acknowledgment from the Chief Promoter and Sarpanch of the village wherever such publicity is made. This is the requirement as per term (D) of G.O.Ms.No.74, which read as under:

‘ADVANCE INTIMATION OF DATE, TIME AND VENUE OF THE SKILL TEST: - The Dist. Fisheries Officer shall give communication about the date, time and venue well in advance to the applicants and other concerned by beat of tom-tom, notice in Gram Panchayat and other public places in the village (including hamlets if any) and obtain an acknowledgment from the chief promoter and Sarpanch.’

In the case on hand, as already noted, the 4th respondent – Assistant Director of Fisheries, who is the Election Officer, without any authority meddled with the voters' list submitted by the 5th respondent society and published a final voters' list prepared by him after deleting the names of 229 voters from the list. The said action is a clear infraction of the Rules, as already held supra. Be that as it may. As per

G.O.Ms.No.6, dated 24.03.2016, one acre of water spread area is required for one member in case of perennial/ canal fed water sources; and, two acres of water spread area is required for one member in case of all other water sources (rain fed). Therefore, the total membership of the 5th respondent society depends upon the water spread area of the available water sources, which are within the jurisdiction of the 5th respondent society. It is also to be noted that as per norms if the number of eligible applicants is more than the norms prescribed Group Wise, the age criteria should be followed while eliminating people of higher age group to start with.

14. On the above analysis and for the reasons afore-stated, this Court finds that the election notification itself is to be set aside directing the official respondents concerned to follow the procedure established by law in the matter of conduct of elections to the Managing Committee of the 5th respondent society.

15. In the result, the Writ Petitions are allowed in part and the impugned election notification is set aside with a direction to the official respondents to follow the procedure established by law in the matter of conduct of elections to the Managing Committee of the 5th respondent Society and accordingly conduct elections by undertaking the election process afresh. It is made clear that this order shall not preclude the District Collector, who is the election authority, to first arrange for the conduct of the skill test to the eligible/ aspiring members of the 5th respondent society before the election process is undertaken afresh, as directed supra, if in his discretion, he considers that conducting of a skill test before conducting of the elections afresh is necessary to avoid unpleasantness and/ or for giving a quietus to the

matter. In which event, the necessary exercise in the above regard shall be completed within two months from the date of receipt of a copy of this order and the elections shall be conducted thereafter.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

05th November, 2018
RAR

M. SEETHARAMA MURTI, J

