

THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

WRIT APPEAL No.542 OF 2018

&

WRIT PETITION No.44993 OF 2016

COMMON JUDGMENT: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan).

This appeal, under Clause 15 of the Letters Patent, is preferred by the respondents 1 and 2 in W.P.No.44993 of 2016 aggrieved by the order of the learned Single Judge in I.A.No.1 of 2016 (W.P.M.P.No.55467 of 2016) and I.A.No.1 of 2017 (W.V.M.P.No.1151 of 2017) dated 07.03.2018. The first respondent herein filed the said Writ Petition seeking a *Mandamus* to declare the proceedings of the 2nd appellant dated 07.12.2016 as arbitrary, irrational and contrary to Section 30(2)(ix) of the A.P. Cooperative Societies Act, 1964 (for short, "the Act"), and for a consequential direction to set side the same.

By his proceedings dated 07.12.2016, the 2nd respondent-appellant informed the 1st respondent-Writ Petitioner that, consequent on the expiry of the elected term of the Managing Committee of Srikalahastiswara Handlooms Weavers' Co-operative Society Limited on 19.11.2016, the delegation of the 1st respondent-Writ Petitioner, as a Member of the Managing Committee of the A.P.C.O, stood disqualified for continuance because of expiry of his term as a President of the said Society.

Facts, to the limited extent necessary, are that the 1st respondent-Writ Petitioner was elected as the President of Srikalahastiswara Handlooms Weavers' Co-operative Society

Limited on 19.11.2016 for a term of five years which expired on 19.11.2016. In the interregnum, he was elected as a member of the managing committee of the 1st appellant society on 25.2.2013. While the term of office of the member of the Managing Committee is also for a period of five years which, in the ordinary course, would have come to an end only on 24.2.2018, the 1st respondent-Writ Petitioner was held ineligible to continue as a member of the Managing Committee of A.P.C.O on the ground that he was elected to the said office only as the President of the Srikalahastiswara Handlooms Weavers' Co-operative Society Limited; and, since his term as President came to end on 19.11.2016, he was disqualified from continuing as a member of the Managing Committee of A.P.C.O thereafter.

While, initially an interim order was passed in W.P.M.P.No.55467 of 2016 in W.P.No.44993 of 2016 dated 22.12.2016 directing the 1st appellant not to fill up the vacancy of the petitioner until further orders, the said order was suspended by order dated 7.12.2016, and the Commissioner was directed to take all consequential steps to extend the benefits to the petitioner as was extended to other Directors. The Learned Single Judge further observed that, since the Commissioner had taken a decision on 14.2.2018 to constitute a Committee of persons'-in-charge, comprising of all the erstwhile members of the Managing Committee of A.P.C.O, the petitioner, who was similarly situated, could not be treated differently.

Sri N. Jayasurya, learned counsel for the appellants, would submit that, unlike a delegate of the Primary Society, who, on his

election as a member of the Managing Committee of the first appellant-Society, is entitled to hold office for a period of five years from the date of his election, the first respondent-Writ petitioner was elected as a member of the Managing Committee as the President of the Primary Society; and, since his term of office as the President of the Primary Society expired on 19.11.2016, the first respondent-Writ Petitioner was disqualified thereafter from continuing to be a member of the Managing Committee of the first appellant-Society.

On the other hand, Sri D.V. Nagarjuna Babu, learned counsel for the 1st appellant-Society, would submit that the 1st respondent-Writ Petitioner was elected to be a member of the Managing Committee of the 1st appellant-Society only as a delegate of the 1st respondent, and not as its President; consequently he was entitled to continue as a member of the Managing Committee for a period of five years from the date he was elected as a member on 25.2.2013; and, even before the term of office of members of the Managing Committee expired on 24.2.2018, the Commissioner of Handlooms had, by proceedings dated 14.2.2018, constituted a committee of persons in charge consisting of all the members of the Managing Committee of A.P.C.O who held office as on 14.2.2018.

Section 30(1)(a) of the Act stipulates that, subject to the provisions of the Act, Rules and Bye-laws, the ultimate authority of a society shall vest in the general body. Section 30(2)(ix) of the Act stipulates that, subject to the other provisions of the Act, certain matters shall be dealt with by the General Body in the manner prescribed, including election of delegates to the financing Bank or

other societies. Consequently, it is the General Body of the Primary Society which is to elect its delegate to be a member of the Managing Committee of A.P.C.O (the other society).

Under the proviso to Section 30(2)(ix), where a delegate is not elected, the President shall be the delegate to the other society until a delegate is elected. The power conferred on the general body of the society, under Section 30(2)(ix) of the Act, is only to elect its delegate to be a member of the Managing Committee of A.P.C.O. In terms of the proviso to Section 30(2)(ix) of the Act, till a delegate is elected, it is the President of the Society who would be the delegate of the said society in the Managing Committee of A.P.C.O. The proviso enables the President of the Society to act as the delegate of the Society, and to be treated as member of the managing committee of A.P.C.O, till the said Society, of which he is the President, elects its delegate.

It is not in dispute that the 1st respondent-Writ Petitioner was elected, by the Srikalahastiswara Handlooms Weavers' Co-operative Society Limited on 25.2.2013, to be a member of the Managing Committee of A.P.C.O. The mere fact that, in his nomination form, the first respondent has referred to himself as the President of the Society is of no consequence as the elections, which were held on 25.2.2013, were only to elect a delegate of the Society to be a member of the Managing Committee of A.P.C.O. The proviso to Section 30(2)(ix) of the Act does not require the President of the Society to be elected, as a Member of the Managing Committee of A.P.C.O, in order to enable him to function as such. The said proviso only relates to election of a delegate of the Society to be a

member of the Managing Committee of A.P.C.O, and in the absence of an elected delegate, it is only the President of the Society who is entitled to function as a member of the Managing Committee of A.P.C.O. Section 30(2)(ix) of the Act only provides for the election of the delegate of the Society. As it is not in dispute that the 1st respondent-Writ Petitioner was elected on 25.2.2013 to be a member of the Managing Committee of A.P.C.O, his election could only have been as a delegate of the 4th respondent-society in the Managing Committee of A.P.C.O. It is relevant to note that Section 30(2)(ix) of the Act does not provide for election of the President of the Society to be a member of the Managing Committee of A.P.C.O in addition to any other delegate of the said Society. We find no error in the order under appeal necessitating interference in proceedings under Clause 15 of the Letters Patent.

The Learned Single Judge has taken into consideration the proceedings dated 14.2.2018, which was issued long after the Writ Petition was filed, in directing that parity of treatment be accorded to the 1st respondent-Writ Petitioner. We enquired from Sri N. Jaya Surya, learned counsel for the appellant, whether all the other delegates, who were elected as members of the Managing Committee of A.P.C.O, were also Presidents of the concerned societies, and whether all of them were continued as members of the Committee of persons in charge. Learned counsel, on instructions, submits that all of them were Presidents of the concerned societies. He would further submit that it is only such of the members of the Managing Committee, who held office as on 14.2.2018, who were continued as members of the Committee of

persons'-in-charge of A.P.C.O for a period of six months. As his disqualification as a member, vide proceedings dated 7.12.2016, is evidently illegal, the 1st respondent-Writ Petitioner was entitled to continue as a member of the Managing Committee of A.P.C.O till 24.2.2018; and, if he had been continued as such, he should have, in terms of the proceedings dated 14.2.2018, also been entitled to be a member of the Committee of persons'-in-charge for a period of six months.

While it is no doubt true that the validity of the proceedings dated 14.2.2018 has not been subjected to challenge in the Writ Petition, interference in an intra-Court Appeal, under Clause 15 of the Letters Patent, is justified only if substantial prejudice is caused to the appellants by the order under appeal. It has not been disputed before us that the proceedings dated 7.12.2016, which were suspended by the order under appeal, fall foul of Section 30(2)(ix) of the Act and its proviso. But for the said order dated 7.12.2016, the 1st respondent-Writ Petitioner would have continued as a member of the Managing Committee of A.P.C.O till 24.2.2018, in which event he, like all other members of the Managing Committee who held office till then, would have been appointed as a member, of the Committee of Persons'-in-charge of A.P.C.O, for a period of six months. All that the Learned Single Judge has done, by the order under appeal, is to direct the Commissioner to treat the petitioner similar to the erstwhile members of the Managing Committee of A.P.C.O.

We see, no reason, therefore, to interfere with the order under appeal. Both Sri N. Jaya Surya, learned counsel for the appellants

and Sri D.V.Nagarjuna Babu, learned counsel for the 1st respondent-Writ Petitioner, would submit that, instead of keeping Writ Petition No.44993 of 2016 pending on the file of this Court, the said Writ Petition itself be disposed of.

We consider it appropriate, therefore, to dispose of the W.P. No.44993 of 2016, setting aside the proceedings dated 7.12.2016 as it is in violation of Section 30(2)(ix) of the Act, and its proviso. Needless to state that, as a result of the impugned proceedings being set aside, the 1st respondent-Writ Petitioner shall be entitled to claim parity in treatment with all the other members of the Managing Committee of A.P.C.O, who held office as such on 14.2.2018 when the Commissioner, Handlooms and Textiles, constituted them as members, of the Committee of Persons'-in-charge, for a period of six months from 25.2.2018.

Both the Writ Appeal and the Writ Petition are, accordingly, disposed of. No order as to costs. Miscellaneous Petitions, if any pending shall also stand closed.

RAMESH RANGANATHAN, ACJ

KONGARA VIJAYA LAKSHMI, J

2nd April, 2018
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