

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.14980 & 40653 of 2018

COMMON ORDER :

As the issue involved in both these writ petitions is one and the same, they are being heard together and disposed of by way of this Common Order:

2. WP No.14980 of 2018

This Writ Petition is filed by Vagdevi Educational Society, rep. by its Secretary and Correspondent by name B.Ram Mohan Reddy, declaring the action of the 3rd respondent in refusing to receive the list of executive body members elected in the general body meeting held on 14.03.2018 and sent by AP Online No.15293946820180316 dated 15.03.2018 as illegal and arbitrary and consequently to direct the 3rd respondent to receive the said list.

The petitioner's society is registered under A.P.Societies Registration Act, 2001 (for short 'the Act of 2001') on 04.06.2003 vide registration bearing No.495/2003. It was established to cater to the educational needs of Rayalaseema Region and in pursuit of its aims and objectives, it established Sri Krishna Chaitanya College of Pharmacy, College of Physiotherapy, College of Nursing and School of Nursing. In pursuant to the General Body Meeting held on 14.03.2018, the elected list of Managing Committee of the office bearers entrusted with the management of the affairs of the society was sent to the 3rd respondent along with the minutes and resolution dated 15.03.2018 and same was rejected on

19.03.2018 and that the 3rd respondent cannot reject the list unless there is any elected body of the executive committee other than the petitioner's body and that he cannot assume disputes among the society and reject the list on his own imagination. Aggrieved by the same, present Writ Petition is filed.

3. Counter and vacate petition I.A.No.3 of 2018 is filed by the 3rd respondent denying the averments in the affidavit filed in support of the Writ Petition stating that the petitioner society filed Annual List containing the names and addresses of the Managing Committee for the year 2014-15 on 27.10.2015; that one Sri B.Sasivardhan Reddy, claiming to be the Secretary/Correspondent of petitioner society, has presented a representation dated 26.12.2016 to the Registrar of Societies, Chittoor stating that there is a dispute among the members of the society and has requested not to entertain any amendments/filing of returns for the purpose of renewal without the consent of all the members present in person before the Registrar of Societies; that on 05.05.2018, one Sri B.Ram Mohan Reddy, petitioner in the Writ Petition claiming himself as the Secretary to the petitioner society filed Annual List for the years 2015-16 and 2016-17 through 'Meeseva' along with a copy of the orders of the Court dated 26.04.2018 in IA No.01/2018 in WP No.14980/2018 wherein this respondent was directed to receive the Annual List filed by the petitioner. Subsequently, when similar Annual Lists were filed by another group for the years 2015-16, 2016-17 and 2017-18 in respect of above society were rejected by recording reasons therefor and sought for dismissal of the writ petition.

4. Vacate and implead petition I.A.No.2 of 2018 in WP No.14980 of 2018 is filed by the respondents 4 and 5 stating that they have been elected as President and Secretary of the petitioner society in pursuance of General Body meeting held on 07.8.2016 and have been functioning as members of the executive body of the petitioner society, managing the affairs of the petitioner society since then. It is stated that the petitioner has filed writ petition with unclean hands by misrepresentation and suppression of facts without impleading the respondents 4 and 5 as necessary parties. When the disputes arose among the members of the society, OP Nos.94 of 2007 and 150 of 2009 were filed on the file of 2nd Additional District Judge, Madanapalle and subsequently, the same were compromised on 07.03.2018. during the pendency of the above OPs, the deponent of the affidavit in the writ petition has resigned on 07.08.2016 and the members of the petitioner society have convened general body meeting on 16.10.2016 and elected them as President and Correspondent of the said society. Subsequently, the deponent of the affidavit and other members were removed as members of the said society on account of their misconduct and indulging in misappropriation of wealth of the society. While so, the deponent of the affidavit along with other members of the society, alleged to have convened a meeting and allegedly claimed to have passed the resolution on 14.03.2018, got declared themselves as elected members of the executive body without even being the members of the society and submitted application to the 3rd respondent for recognizing them as the elected members of the executive body.

5. Counter affidavit is filed by the petitioner society to the implead petition denying all the allegations in the affidavit filed in support of the implead petition by the respondents 4 and 5.

6. WP No.40653 of 2018

This Writ Petition is also filed by Vagdevi Educational Society, rep. by its Secretary and Correspondent by name B.Sashivardhan Reddy, declaring the action of the 2nd respondent in refusing to receive and register the Managing Committee submitted by the petitioner society vide application dated 13.05.2018 as illegal and arbitrary and consequently to direct the 2nd respondent to receive and register the Management Committee list of the members of the Managing Committee of the petitioner society.

7. The averments in this affidavit are similar to that of implead petition filed in I.A.No.2 of 2018 in WP No.14980 of 2018. In addition to the grounds in the implead petition, it is the case of the petitioner society that after settlement of disputes between the members of the society, MOU dated 07.03.2018 was entered into between the parties in OP Nos.94 of 2007 and 150 of 2009 and by the time of filing of MOU, the 3rd respondent (who is representing petitioner society in WP No.14980 of 2018), is no more president of the society as he resigned to the post of President and even to the membership, which is accepted by resolution dated 07.08.2016. The resignation of the 3rd respondent was accepted and elected Smt.Syamamma as the President of the Society vide resolution dated 07.08.2016 and subsequently, due to problems created by other members, their membership were removed vide

resolutions dated 16.10.2016 and 11.12.2016. After inducting two members into the committee on 05.02.2017, the petitioner society was formed with nine members in the society. The 2nd respondent, after verifying the records and as there is no authenticated document filed along with the application by the 3rd respondent, rejected their application in view of objection letter dated 26.12.2016 by the petitioner society. The 3rd respondent has filed WP No.14980 of 2018 by suppressing all the material facts.

8. Counter affidavit is filed by the 3rd respondent (who is representing the petitioner society in WP No.14980 of 2018) denying the all the averments in the affidavit filed in support of the writ petition.

9. Heard Sri Raja Reddy Koneti, learned counsel for the petitioner, learned Assistant Government Pleader for Stamps and Registration appearing for respondents 1 to 3, Sri N.Pramod, learned counsel for the respondents 4 and 5 in WP No.14980 of 2018 and Sri I.Koti Reddy, learned counsel for the petitioner, learned Assistant Government Pleader for Stamps and Registration appearing for respondents 1 and 2 and C.Prakash, learned counsel for the 3rd respondent in WP No.40653 of 2018.

10. This Court, by order dated 26.04.2018 granted interim direction directing the 3rd respondent to receive the list of the names of the Managing Committee and Office bearers sent on behalf of the petitioner society dated 15.03.2018.

11. In this case, it is to be seen that the petitioner in WP No.14980 of 2018 (3rd respondent in WP No.40653/2018) had

categorically stated that in the affidavit that there is no other body claiming to be the elected body of the Executive Committee at any Annual General Body Meeting. It is also stated that the 3rd respondent therein cannot reject the list of elected body sent to him unless there is any dispute among the members of the society, as such, the 3rd respondent cannot reject the list of the elected members of the society, when there is no body claiming to be the elected body of the executive committee. However, 3rd respondent rejected the application for recording the list of the petitioner society as follows:

“Since there are disputes among members of the Society, the Annual list cannot be taken on record, unless the dispute is settled through a competent court as per Section 23 of the A.P.Societies Registratin Act, 2001.”

But a perusal of the affidavit filed by the 3rd respondent-Registrar of Societies goes to show that one B.Sasivardhan Reddy, claims to be the Secretary/Correspondent of petitioner society, presented a representation dated 26.12.2016 to this respondent stating that there is a dispute among the members of the petitioner society and requested not to entertain any amendments/filing of returns for the purpose of renewal without the consent of all the members present in person before the Registrar of Societies. That apart, the affidavit filed by implead petitioners/respondents 4 and 5 goes to show that there were two OPs i.e., OP Nos.94 of 2007 and 150 of 2009 were filed on the file of 2nd Additional District Judge, Madanapalle by the members of the petitioner society against each other and subsequently, the same were compromised on 07.03.2018 and that S.O.P No.94 of

2007 is filed by the petitioner i.e., B.Rama Mohan Reddy himself in the capacity of President of petitioner society. But the said fact is not at all mentioned in the affidavit filed in support of the writ petition in WP No.14980 of 2018.

No doubt, Section 9 of the Act of 2001 only provides for receiving and recording the list of elected members of the Executive Committee of a Society. Section 9 of the Act reads as follows:

“Filing of Annual List: Every year the society shall, within fifteen days from the date on which the General Body meeting was held furnish a list to the Registrar of Society which shall contain the names and addresses of the members of the Managing Committee and Officers entrusted with management of the affairs of the Society.”

Admittedly, there is a dispute with regard to election of members of the petitioner society. One of them claiming to be the elected body of the executive committee and the other committee of members disputes the said election. It is not as if that the parties aggrieved in such cases do not have any remedy. If anyone is acting contrary to the provisions of the Act, or the bye-laws of the Society, the aggrieved party can approach the District Court by filing a petition under Section 23 of the Act. In this case, the 3rd respondent cannot be found fault with rejection of the list furnished by the petitioner society at the earliest point of time, since he is in receipt of objection letter dated 26.12.2016 sent by the petitioner in WP No.40653 of 2018 with regard to the disputes among the members of the society.

In **All India SC and ST Railway Employees Association, Zonal Office at Secunderabad v. E.Venkateshwarlu and others**¹, this Court held as follows:

“7. As per Section 23 of 2001 Act, disputes arising among the Committee or the members of the Society, in respect of any matter relating to the affairs of Society, have to be decided either under the provisions of the Arbitration and Conciliation Act, 1996 or by a District Court concerned. Therefore, if any of the member of the Society is aggrieved by the way in which the election of the Association was conducted, he has a right to move the District Court concerned under Section 23 of the 2001 Act, which is an effective remedy provided by the Statute. It is well known that when an effective alternative remedy is open, the jurisdiction of this Court under Article 226 of the Constitution cannot be invoked.”

The Hon’ble Division Bench of this Court in WA Nos.502 and 980 of 2018 vide Common Judgment dated 19.09.2018, held as follows:

“11. The controversies between the parties before us are in respect of matters relating to the Society, including disputes arising among members touching the membership, constitution of management committee and the officers who are entrusted with the management and the affairs of the Society. Therefore, if there is any dispute as to the correctness of the list of members, which is to be furnished to the Registrar in terms of Section 9 of the Act, or if there is any dispute relating to the identity of the persons, who are the members of the managing committee and officers entrusted with the management of the affairs of the Society, all such disputes can be resolved only by recourse to Section 23 of the Act, which provides a dual mode for disputes resolution; that is to say, by taking recourse to arbitration under Arbitration and Conciliation Act, 1966 or by recourse to adjudication by the District Court under Section 23 of the Act itself.”

When once the petitioner in WP No.14980 of 2018 has suppressed material facts and obtained interim order directing the 3rd respondent therein to receive the Annual List of the alleged Executive Body, the same cannot be given effect to and writ petition is liable to be dismissed on this ground alone. Therefore, the list submitted by the petitioner in WP No.40653 of 2018 is liable to be accepted by the Registrar of Societies.

¹ (2003) 2 ALD 384; (2003) 3 ALT 674

In view of above facts and circumstances, since the deponent of the affidavit filed in support WP No.14980 of 2018 has suppressed material facts and obtained interim order on 26.04.2018, the same is liable to be vacated and accordingly vacated and the Writ Petition is accordingly dismissed directing the 3rd respondent therein not to give effect to the list furnished by petitioner society therein.

As a sequel thereto, WP No.40653 of 218 is disposed of directing the 2nd respondent-Registrar of Societies to receive the list of the Managing Committee of the petitioner society vide application dated 13.05.2018, since their first objection application is prior in point of time i.e., dated 26.12.2016 and that the list will also be subject to the finality of any proceedings which the parties may take recourse under Section 23 of the Act of 2001.

There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, pending in these Writ Petitions shall stand closed.

A.RAJASHEKER REDDY, J

31.12.2018
kvs

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.14980 & 40653 of 2018



Date: 31.12.2018

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