

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.18178 of 2018 and 20362 of 2018

ORDER:

According to the petitioners, first petitioner is the Fishermen Cooperative Society and Petitioner No.2 is the Secretary of the First Petitioner Society.

2. In the elections held on 26.07.2016, the Managing Committee of the First Petitioner's Society got elected unanimously and its term is valid till 2021. The Managing Committee took charge of the Management of the Society on 28.07.2016. The area of operation of the first petitioner society is Kodada Pedda Cheruvu, which spreads over 370 hectares and according to the petitioners' existing members are 347 in number.

3. Earlier, the District Collector directed the petitioners Society to conduct public auction for the year 2016-2017 and questioning the validity of the said orders petitioner society filed W.P.No.18677 of 2017 by contending that the majority of the General Body Members approved the fishing by the society and not by the department.

4. This Court, on 09.06.2017, passed the interim order in the said writ petition, suspending the condition of public auction. Pursuant to the said order, petitioner society was permitted to do fishing operations in Pedda Cheruvu, Kodada and for the year 2017-2018, petitioner society was given lease on 11.07.2017 and the society deposited Rs.1,60,810/- towards the same.

5. It is pleaded in the writ affidavit that despite repeated requests for grant of fishing rights since April, 2018, the respondent authorities have not granted any fishing rights to the society. According to the petitioners,

pursuant to a notice of General Body dated 30.04.2018, General Body meeting was held on 03.05.2018, which was attended to by 237 members and as against Item No.5 of the agenda, it was decided that the Managing Committee would undertake fishing activities in the interest of the society and the Managing Committee would do the needful for catching fish. It is also pleaded that by the end of the meeting the said resolution was accepted by 318 members.

6. The District Fisheries Officer/4th respondent herein, addressed a letter bearing No.37/C/2017, dated 21.05.2018 to the District Fisheries Officer, Suryapet, the District Audit Officer, Suryapet and the Revenue Divisional Officer, Kodada informing about the constitution of a Committee by the note orders of the District Collector with the said officers along with the District Fisheries Officer and 5 members to be nominated by the first petitioner committee either from the Managing Committee Members or other members or any members for departmental fishing in Pedda Cheruvu for the year 2017-2018 (1427 Fasli). By way of the said order, the District Fisheries Officer/fourth respondent herein also asked the Committee Members to attend the meeting on 22.05.2018 at 10.30 AM at the Office of the Revenue Divisional Officer, Kodada. According to the petitioners, they went to the office of the Revenue Divisional Officer on 22.05.2018 and gave a representation, informing that the Managing Committee of the Society is very much in force and the action of the respondents would amount to setting aside or superseding the Managing Committee.

7. Thereafter, the District Fisheries Officer/Respondent No.4, pursuant to the District Collector's orders, indicated the following Committee vide Lr.No.37/E/2017, dated 25.05.2018 for holding auction:

1. The District Cooperative Officer, Suryapet
2. The District Audit Officer, Suryapet (State Audit)
3. The Sub-Divisional Police Officer, Kodad
4. The Revenue Divisional Officer, Kodad
5. Mandal Officer, Kodad
6. The District Fisheries Officer, Suryapeta

and the following members of Fishermen Cooperative Society with a direction to take action:

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|----|-----------------------------|------------------|----------------|
| 1. | Vemula Pullaiah, | s/o Mangalagiri, | Kodad. |
| 2. | Ithanaboyina Venkateswarlu, | s/o Pullaiah | Venkatrampuram |
| 3. | Ponugoti Dhanamurthi | s/o Veeraiah. | Venkatrampuram |
| 4. | Reddiboyina Rangaiah | s/o Rangaiah | Khanapuram |
| 5. | Gudiboyina Buchibabu | s/o Sathaiah | Kodad |

8. Subsequently, the District Fisheries Officer on 25.05.2018 issued a public auction notification No.27/2018 to hold public auction on 28.05.2018 for the period 2017-2018.

9. In the above background, the present writ petition came to be filed, questioning the above referred proceedings dated 21.05.2018, 22.05.2018 and the auction notification dated 25.05.2018. This Court, on 31.05.2018 passed the following order:

“At the request of learned counsel for respondents, post on 04.06.2018 in Motion list for counters/instructions.

The auction to be held on 28.05.2018 is postponed to 02.06.2018.

This Court grants opportunity to the respondents to proceed with the auction scheduled to be held on 02.06.2018. However, the same shall not be confirmed or a right created in favour of a third party till 04.06.2018.

I.A.No.4 of 2018, seeking to vacate interim order, supported by counter affidavit deposited by the District Fisheries Officer, fourth respondent herein is filed, denying the averments and allegations made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned action.”

10. Submissions/contentions of the learned counsel for the petitioners:

- 10.1 The questioned action is highly illegal, arbitrary, unreasonable and violative of Article 14 of the Constitution of India besides being opposed to the very spirit and object of the provisions of the A.P. Cooperative Societies Act, 1964 and the Rules framed thereunder.
- 10.2 Neither the District Collector nor the District Fisheries Officer nor the Commissioner of Fisheries has power or jurisdiction to resort to the impugned action.
- 10.3 As per Section 30 of the A.P. Cooperative Societies Act, 1964 and the Bye-laws of the society, the General Body of the Society is the supreme authority for deciding the business of the societies.
- 10.4 The impugned action amounts to ordering supersession of the Committee without being preceded by any notice and opportunity to the Society and the Members of the Managing Committee and as such the same is contrary to Section 34 of the A.P. Cooperative Societies Act, 1964.
- 10.5 Till date no orders are passed against the Society either under Section 34 or Section 51 of the Act nor the petitioner herein is put on notice.
- 10.6 The District Fisheries Officer, instead of granting fishing rights to the petitioner Society in terms of General Body Resolution dated 03.05.2018 erroneously issued the impugned auction notification dated 25.05.2018.
- 10.7 Mere appointment of Enquiry Officer under Section 51 of the Act cannot be a ground to resort to the impugned action in the absence of any proof of the same and only after charges are proved the respondents have power to take action as per law.

11. Submissions/contentions of the learned Government Pleader:

- 11.1. There is no illegality nor there is any procedural infirmity in the impugned action and in the absence of the same, the questioned action is not amenable for any judicial review under Article 226 of the Constitution of India.

11.2. A group of members filed a representation making various allegations on the working, business and administration of the Society and stating that the petitioners have deliberately failed to disburse the sale amount of fishing during 2017 bids to all members till November, 2017 and they requested to cause a detailed enquiry into the matter and to initiate action against the Existing Management under Section 34 of the Act.

11.3. On the complaint given by a group of members, the third respondent got conducted an enquiry by the District Audit Officer (State Audit) and the District Fisheries Officer, who conducted joint inquiry submitted a detailed primary enquiry report, confirming the factum of misappropriation of funds and non-disbursement of amounts to the members and retention of the cash balance of Rs.70,000/-.

11.4. Second respondent ordered a statutory enquiry under Section 51 of the Cooperative Societies Act and appointed District Fisheries Officer as enquiry officer. The District Administration did not issue the fishing rights to the petitioners' society on the ground of pendency of the enquiry against the petitioners.

11.5. The Committee appointed by the respondents cannot be treated as a parallel committee constituted over the elected management and the action taken by the respondents 2 and 3 is only to safeguard the sale proceeds of the fishery wealth.

12. In the above background, now the issue that arises for consideration of this Court is_ "Whether the respondents herein are justified in appointing a committee by way of the impugned orders when there is no action under Section 34 or orders under section 51 of the Act.

13. Section 30 of the Cooperative Societies Act reads as under:

"30. Ultimate authority of society:— (1) (a) Subject to the provisions of this Act, the rules and the bye-laws, the ultimate authority of a society shall vest in the general body :
Provided that nothing in this clause shall affect the exercise by the committee or any officer of a society or any power conferred on such committee or officer by the Act, the rules or the bye-laws.

(b) Notwithstanding anything in clause (a), where the area of operation of a society is not less than such area as may be prescribed, or where the society consists of not less than such number of members as may be prescribed, the society may and if so directed by the Registrar shall provide in its bye-laws for the Constitution of smaller general body designated as the representative general body consisting of such number of members of the society as may be specified in and elected in accordance with, the rules, to exercise all or any of the powers of the general body except the power to conduct elections of members of the committee as may be specified in the bye-laws ; and thereupon any reference in this Act to the general body meeting thereof shall be construed as a reference to the representative general body or its meetings :

Provided that the representative general body shall not alter any provision in the bye-laws relating to its Constitution or powers.

(c) The exercise of any power by representative general body shall be subject to such restrictions and conditions as may be specified in the rules or the bye-laws.

(2) Subject to the other provisions of this Act, the following matters shall be dealt with by the [General Body in the manner prescribed]-

(i) election and removal of [members of the committee and members];

(ii) annual report to the Registrar ;

(iii) consideration of the audit report and the annual service ;

(iv) disposal of the net profits ;

(v) amendment to bye-laws ;

(vi) expulsion of a member ;

(vii) approval of the annual budget of income and expenditure ;

(viii) affiliation of the society to the financing bank or other societies ; [x x x]

(ix) [election of delegates to the financing Bank or other societies] :

[Provided that where a delegate is not elected under this item the President shall be the delegate to the Financing Bank or other society until a delegate is elected ; Provided further that where a President is elected by direct election, he shall represent the society as a delegate to the Financing Bank or other Societies.] [(x) review of the loans and advances sanctioned to or the business done with the society by the members of the committee or their such near relatives as may be prescribed, and report to the Registrar about any default in the recovery of the amounts due to the society :]

Provided that the general body may delegate, by a resolution, to the committee its powers in respect of [items (viii) and (ix)] or to withdraw by a resolution such powers at any time.

[(xi) appointment of two internal auditors from among its members other than the members of the committee ;

(xii) consideration of the report of the internal auditors appointed by it.] [(xiii) contribution to Cooperative Education Fund;

(xiv) consideration of report of inquiry under Section 51 or Inspection under Section 52 or under Section 53 or Special report of Audit under Section 50;

(xv) decision on bad debts considered irrecoverable;

(xvi) management of deficits in stocks or cash;

(xvii) appointment of members of supervisory council, entrustment of duties to the supervisory council and consideration of its reports;

(xviii) decision on transfer of assets and liabilities, on division or amalgamation;

(xix) review of attendance of Committee members;

(xx) review of membership;

(xxi) review of the report on the disqualification of the members and the committee members;

(xxii) review of all overdue loans and defaulters;

(xxiii) approval of the staffing pattern, pay and other allowances of the employees of the society and contingencies, subject to the availability of administrative and contingent fund and approval of the Registrar.”

14. According to the above said provision of law, the General Body of the Society is the supreme authority. The jurisdiction of the concerned authorities to take action either under Section 34 or under section 51 of the Cooperative Societies Act cannot be doubted.

15. In the instant case, there are no orders passed by the respondents either under Section 34 or under section 51 of the Act. The existence of the democratically elected managing committee is also not in dispute. As rightly pointed out by the learned counsel the impugned action of appointing a committee to oversee the activities of the petitioner society does certainly

amount to superseding the Committee under Section 34 of the Act without there being any orders. Therefore, the impugned action, in the considered opinion of this Court cannot be sustained in the eye of law, in the absence of any orders under the above cited provisions of law.

16. Coming to W.P.No.20362 of 2018, it is brought to the notice of this Court that after filing this Writ Petition the respondents herein issued a show-cause notice for supersession of the Managing Committee and the same was followed by an order of supersession. The said order of supersession was questioned in W.P.No.38155 of 2018 and the same was allowed by this Court on 29.10.2018. In view of the said development, no orders are necessary in this writ petition and is liable to be closed.

17. For the aforesaid reasons, W.P.No.18178/2018 is allowed, setting aside Lr.No.37/C/2017 dated 21.05.2018, Lr.No.37/E/2017 dated 25.05.2018 and public auction Notice No.37/2018 dated 25.05.2018 and the petitioners are entitled for the consequential reliefs. However, this order will not preclude the respondents to take action strictly in accordance with law. W.P.No.20362 of 2018 is closed. As a sequel, the miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.

Date:09.11.2018
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A.V.SESHA SAI, J

THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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Dated:09.11.2018

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