

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE MS JUSTICE J.UMA DEVI

WRIT APPEAL NO.865 OF 2018

AND

WRIT PETITION NO.21084 OF 2018

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 fourth respondent in WP.No.21084 of 2018 aggrieved by the interim order passed by the learned Single Judge on 25.06.2018.

Respondents 1 and 2 herein filed the Writ Petition to declare the action of the appellant in appointing a Returning Officer to conduct elections to the appellant-Society, and the consequential election notice issued by the Returning Officer on 28.05.2018 proposing to conduct election on 27.06.2018 for head quarters members and on 28.06.2018 for line members, as illegal, arbitrary and in violation of Rule 19(1) of the Multi-State Co-operative Society Rules, 2002 ("the Rules" for brevity), and as without jurisdiction. By way of interim relief, the petitioners sought interim suspension of the proceedings dated 28.05.2018 whereby elections were sought to be held on 27.06.2018 and 28.06.2018.

In the order under appeal, the learned Single Judge noted that the appellant had appointed the third respondent as the Returning Officer under Rule 19(1) of the Rules; and the learned counsel for the respondent-writ petitioners had contended that, as per the proviso to Rule 19(1) of the Rules, the competent authority

to appoint the Returning Officer, in the case of a Railway Employees Credit Society, is the Central Registrar of Co-operative Societies. On the ground that appointment of the Returning Officer was itself contrary to the proviso to Rule 19(1) of the Rules, the learned Single Judge observed that the third respondent could not have issued the notice for election of delegates; and, consequently, granted interim suspension as prayed for.

Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the appellant, would draw our attention to Rule 19(1) of the Rules as amended from time to time. Rule 19 of the Rules prescribes the procedure for conduct of elections; and Rule 19(1) of the Rules stipulates that the election, of members of the Board, shall be conducted by a Returning Officer appointed by the Board in its meeting; and the Returning Officer, so appointed, shall not be a member or an employee of the Society. In the present case, it is the Board of Directors of the appellant who appointed the Returning Officer, and such appointment is in conformity with Rule 19(1) of the Rules.

The contention, urged before the learned Single Judge, was based on the proviso to Rule 19(1) of the Rules whereunder the Central Registrar was required to appoint the Returning Officer to conduct elections of, among others, the Railway Employees Credit Society. It is on the basis of this proviso that the learned counsel for the respondent-writ petitioners had contended before the learned Single Judge that, since appointment of the Returning Officer in the present case was made by the Board of Directors, and not by the Central Registrar, such appointment was contrary

to the proviso to Rule 19(1) of the Rules. This submission weighed with the learned Single Judge in passing the interim order under appeal.

Sri Vedula Venkataramana, learned Senior Counsel appearing on behalf of the appellant, would submit that the proviso to Rule 19(1) of the Rules was omitted by GSR 717(E) dated 12.11.2007 with effect from 15.11.2017; and after it was so omitted, the power to appoint a Returning Officer, for conducting elections even to Railway Employees Credit Society, now vests only in the Board of Directors of the Society, and not the Central Registrar.

Sri C.Raghu, learned counsel for the respondent-writ petitioners, would fairly state that this amendment was not reflected in the copy of the Rules furnished to him; in the light of the omission of the proviso vide GSR 717(E) dated 12.11.2007 with effect from 15.11.2007, it does appear that the Central Registrar lacked jurisdiction to appoint a Returning Officer to the appellant-Society; and such a power is now conferred, in terms of Rule 19(1) of the Rules, only on the Board of Directors of the appellant.

As it is not in dispute that the Board of Directors of the appellant had appointed the third respondent as the Returning Officer, in accordance with Rule 19(1) of the Rules, the order under appeal is evidently erroneous and is, therefore, set aside. Sri C. Raghu, learned counsel for the respondent-writ petitioners, would submit that, since the Writ Petition is based on the proviso to Rule 19(1) of the Rules, which it now transpires was omitted w.e.f.

15.11.2007, the cause in the Writ Petition does not survive necessitating adjudication thereof.

The order under appeal is set aside and the Writ Appeal is disposed of. The Writ Petition is dismissed as infructuous. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand closed.

(RAMESH RANGANATHAN, ACJ)

(J.UMA DEVI, J)

26th June 2018

NOTE: Issue CC by tomorrow
B/O
RRB

