

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO**I.A.No.1 of 2018****in/and****WRIT PETITION No.38043 of 2017****COMMON ORDER:**

1. The petitioner is a Society consisting of Gazetted Officers of A.P. Prohibition & Excise Department.
2. The elections to this body were held on 27.09.2013 and the deponent of the affidavit filed in support of the Writ Petition was elected as President then.
3. As per the minutes of the said elections of Office Bearers of the said Association held on 27.09.2013, the term of the Office Bearers is only for two years. It thus expired on 27.9.2015.
4. It is not in dispute that the State Government had issued Andhra Pradesh Civil Services (Recognition of Service Association) Rules, 2001 (for short 'the Rules') vide G.O.Ms.No.264 General Administration (Service Welfare) Department Dt.22.06.2001.
5. Rule 3(5) thereof states that the term of Office of the Officers Bearers of all the recognized Gazetted and Non-Gazetted Service Associations was not more than three years.
6. If this Rule is taken into account, the term of the office bearers of the petitioner association ended on 27.9.2016.

7. However no steps were taken to hold elections before the end of it's term by petitioner association.

8. Rule 7 of the said G.O. empowered the Government to impose penalties including automatic vacation of the post as Office Bearers of the Association after completion of their term of a maximum period of three years. The Associations were advised in the said Rule to complete election process for next body before completing the term of Office of outgoing body of the Office Bearers.

9. On 29.09.2017, the Commissioner of Prohibition & Excise informed all the Deputy Commissioners of Prohibition and Excise, Assistant Commissioners of Prohibition and Excise and Superintendents of Prohibition and Excise that a monthly review meeting will be conducted on 07.10.2017 at his Office at Vijayawada.

10. On the same day evening at 8.00 p.m., a General Body Meeting to the said association was held in the conference hall of the Office of the Commissioner of Prohibition & Excise and it was resolved to form a Temporary *adhoc* Body till elections were taken up for the petitioner-Association. This Temporary *adhoc* Body is the 4th respondent in the Writ Petition. It was further resolved to conduct elections on 11.11.2017 at Vijayawada to the Office Bearers of the petitioner-Association.

11. On 18.10.2017, the Government granted permission to the Commissioner of Prohibition & Excise to invoke Rule 7(ii) of the above Rules and also to take further action to conduct elections to the petitioner-Association as per Rules.

12. As stated above, the election to petitioner body was scheduled to take place on 11.11.2017.

13. Thereupon, the Commissioner of Prohibition & Excise issued proceedings dt.06.11.2017 according permission to the members of the petitioner-Association to leave the Head Quarters on 11.11.2017 to attend the elections of the said Association on the same day and return back to duties on 12.11.2017. This was communicated not only to the deponent of the affidavit filed in support of the Writ Petition, but also to the 4th respondent.

14. On 10.11.2017 this Writ Petition had been filed to stall the said election to be held on the next day on the ground that Rule 7(ii) of the rules merely contained advice to an elected body to hold elections before the expiry of it's term; but the association would not cease to exist after the expiry of term of it's office bearers; that there is difficulty to conduct elections because final allocation u/s.77 of the A.P.Reorganisation Act,2014 of cadre of Prohibition and Excise Superintendents and above ranks and other *political difficulties*; that a resolution was passed that atleast one year time is needed to prepare the electoral rolls; that there was an

atmpt to conduct a General body Meeting on 22.9.2017, which was postponed indefinitely; that an Officer by name Dr.Lakshminarasimham, IAS was posted as Special Commissioner of prohibition and excise, State of Andhra Pradesh by G.O.Rt.No.864, GAD, dt.17.4.2017; that no officer was appointed as Commissioner of prohibition and Excise was appointed under S.3 of the A.P.Excise Act; that the said officer usurped the powers of the Commissioner; there were personal differences between the deponent and the said Officer in regard to issues relating to members of the association and he started acting in a biased manner against the deponent and suspended him from service ; and the 4th respondent was encouraged by the said Officer to act against the petitioner association and to dislodge the Office Bearers of the petitioner; that there was no prior notice to all members for the alleged General body meeting held on 7.10.2017; that assistant prohibition & excise Superintendents had not attended it; any decision taken in the said meeting is invalid in law; and therefore the election should not be allowed to go on.

15. On 10.11.2017 this Court permitted the elections to be held on 11.11.2017 to go on but directed not to officially declare the result and keep the result of the elections in a sealed cover, until further orders of the Court.

16. I.A.No.1 of 2018 is filed by the 4th respondent to vacate the said order.

17. Counsel for petitioner reiterated the contentions of the petitioner.

18. Sri K.S.Murthy, Counsel appearing for Sri K.V.Raghuveer, Counsel for 5th respondent, refuted the said contentions and pointed out that once the term of the Office Bearers elected on 27.09.2013 ended on 27.09.2015, the deponent of the writ petition affidavit automatically ceased to be an Office Bearer. He also contended that even as per the Rules, the term of the Office bearers including the deponent was only three years and by 27.09.2016, their term automatically ended; the petitioner-Association deliberately failed to conduct elections in order to enjoy the privileges of the Office bearers prompting the Commissioner of Prohibition & Excise to issue proceedings dt.02.05.2017 asking the petitioner to produce copy of the Bye-laws, Memorandum of Articles, etc., but the deponent of the writ affidavit did not do so; thereupon on 18.10.2017 the 1st respondent permitted the Commissioner to invoke Rule 7(2) of the above Rules and take action to conduct elections. He contended that in the General Body Meeting held on 07.10.2017 at 8.00 p.m. in the Office of Commissioner, Prohibition & Excise, it was resolved to form a Temporary *ad hoc* Body till the elections are taken up and also to hold the Elections on 11.11.2017. He contended that the

petitioner/deponent cannot stall the elections since he has no right to continue any more as the Office Bearers of the Petitioner-Association; that the grievances of the members of the Association need to be discussed with the Commissioner and the Governments and the members are unable to effectively do so without there being elected Office bearers of petitioner association. He therefore prayed that the order granted on 10.11.2017 by this Court be vacated.

19. I have noted the contentions of both sides.

20. According to the minutes of the elections to the Office Bearers of the petitioner-Association dt.27.09.2013, by which the deponent and his team became the Office bearers of petitioner association, the term of the Office Bearers was only up to 2015. Therefore, by 27.09.2015, the term of the deponent of the Writ Petition affidavit ended. As per Clause 3(5) of the above rules also, the term of the Office Bearers should not exceed more than three years. So even by that standard, the term of the deponent of the Writ Petition affidavit ended by 27.09.2016.

21. Once the term of the deponent and his team expired, the deponent and his team should have taken steps to conduct elections.

22. Rule 7 of the Andhra Pradesh Civil Services (Recognition of Service Association) Rules, 2001 states thus:

“Penalties: The Government may from time to time impose penalties for violation of rule 3(1)(e), rule 3(2)(d), (3), (f) and (g) and rule 3(5). The minor penalties are:-

- i. temporary suspension of recognition to the association/union till the retired/non-government employees are removed from association/union.*
- ii. Automatic vacation of post as office bearers of association/unions after completion of their term of a maximum period of three years. The associations are advised to complete the election process for the next body before completing term of Office of the outgoing body of office bearers.”*

23. The contention of the counsel for petitioner that Rule 7(ii) of the rules merely contained advice to an elected body to hold elections before the expiry of its term, but the association would not cease to exist after the expiry of term of its office bearers is not tenable because once the term of the incumbent body of Office bearers automatically ends, the resultant vacuum would affect the resolution of grievance of the members of the petitioner association.

24. So it was incumbent on the part of the deponent and his team to conduct elections before their term expired. But admittedly, they failed to do so. Now more than 2 years has elapsed since the expiry of their term automatically on 27.9.2016.

25. It is unfortunate that the deponent and his team want to masquerade as office bearers of the petitioner association even now and oppose the holding of elections.

26. Admittedly, the Commissioner had issued proceedings dt.02.05.2017 asking the deponent of the Writ Petition affidavit to produce the copy of the bye-laws, etc., and when he failed to do so he wrote to the Government about the inaction of the deponent to hold elections. Once the State Government vide Memo dt.18.10.2017 had empowered the Commissioner to take steps under Rule 7, there is nothing wrong in the Commissioner issuing proceedings on 6.11.2017 for conduct of elections of petitioner association on 11.11.2017.

27. The contention of the counsel for petitioner that there was no adequate notice to hold the General body meeting held at 8.00 pm on 7.10.2017 is not tenable because if there is any such complaint by other members, nothing prevented them from calling for another General body meeting thereafter. This did not happen admittedly. So there does not seem to be any grievance of any other member on this count.

28. So no exception can therefore be taken to the constitution of the 4th respondent body in the said General Body meeting or its decision to go ahead with the elections since even according to the counsel for petitioner, such elections ought to be held.

29. The contention of the counsel for petitioner that the elections can be postponed on the pretext of non final allocation of the officers pursuant to the A.P. Reorganization

Act, 2014 cannot be accepted because that has nothing to do with the elections being held to the petitioner-Association at all.

30. Therefore, I do not see any valid reason to continue the order dt.10.11.2017 prohibiting the declaration of result of the elections which was held on 11.11.2017.

31. Accordingly, the Writ Petition is dismissed; I.A.No.01 of 2018 is allowed and the order dt.10.11.2017 in W.P.No.38043 of 2017 is vacated; and the 5th respondent is directed to declare the result of the elections held on 11.11.2017 to the Office Bearers of the petitioner-Association. If there is any dispute about the said elections, it is open to the aggrieved party to invoke Section 61(3) of the A.P. Cooperative Societies Act, 1964 or other alternative remedy. No order as to costs.

32. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

M.S.RAMACHANDRA RAO, J

02-05-2018.

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