

THE HONOURABLE SRI JUSTICE M.S. RAMACHANDRA RAO

CRP. Nos.1290 and 1303 of 2019

COMMON ORDER:

Heard Sri Hari Sreedhar, learned counsel appearing for the petitioners and Sri Ashok Kumar Agarwal, learned counsel appearing for the 1st respondent.

2. Since these Revisions have been filed by same parties and the issues arise out of the common order dt.15.04.2019 passed in I.A. Nos.171 of 2019 and 422 of 2019 in SOP.No.2 of 2019, they are being disposed of by this common order.

3. These Revisions have been filed under Article 227 of the Constitution of India challenging the order dt.15.04.2019 passed in I.A. Nos.171 of 2019 and 422 of 2019 in SOP.No.2 of 2019 by the XV Additional District and Sessions Judge-cum-XV Additional Metropolitan Sessions Judge-cum-II Additional Family Judge, R.R.District at Kukatpally.

4. Petitioners are respondents 1 and 4 to 7 in the said SOP, which was filed by the 1st respondent against the petitioners and others for a direction to the 1st petitioner to call for General Body Meeting of the 1st petitioner, Kakateeya Hills Welfare Association, appoint an *ad hoc* Committee for the purpose of conducting elections, supervising elections to the executive body of the 1st petitioner by appointing an Election Officer and to declare that petitioners 2 to 5 and 3rd

respondent are not qualified to contest in the elections to be conducted for the Executive Committee of the 1st petitioner for the period 2019-2021 and for costs.

5. In the said SOP, it is the contention of the 1st respondent that he is a primary member of the 1st petitioner Association entitled to vote in the elections and he was holding member of Executive Committee in the 1st petitioner's Association. According to him, the 1st petitioner's Association was registered under the A.P. Societies Registration Act, 2001 on 18.09.2015 and bye-laws were framed for the Society and one such bye-law 12(c) states that no office bearer shall continue more than two consecutive terms. He contended that the petitioners and 3rd respondent were previously holding the positions as office bearers in one Sarojini Naidu Nagar Welfare Association, which had been wound up on 18.09.2015 on the formation of 1st petitioner's Association; that all the assets and liabilities of the Sarojini Naidu Nagar Welfare Association were transferred to the 1st petitioner's Association from 18.09.2015; and the 1st petitioner Association is nothing, but the earlier Sarojini Naidu Nagar Welfare Association and the term completed by the Executive Committee members like the petitioners and the 3rd respondent in the Sarojini Naidu Nagar Welfare Association should be deemed to have been a term in the 1st petitioner's Association. According to him, on account of this reason, the petitioners and the 3rd respondent should be disqualified from contesting elections to be conducted for the

Executive Committee of the 1st petitioner's Association for the period 2019-2021. He also contended that the term of the present Committee had expired on 31.06.2018 and there is nobody to call for the General Body Meeting to decide about the elections and there is necessity to appoint an *ad hoc* Committee for such elections, appoint a Returning Officer for conducting elections and therefore, he is compelled to approach the Court to file the said SOP.

6. Along with the said SOP, the 1st respondent had filed I.A. Nos.171 of 2019 for a direction to the 1st petitioner's Association not to entertain contest by petitioners and 3rd respondent for Executive Committee for the period 2019-2021 for the first petitioner's Association reiterating the pleadings in the said SOP.

7. He also filed I.A. No.422 of 2019 for a direction to the 1st petitioner to conduct General Body Meeting of the 1st petitioner's Association for appointing *ad hoc* committee, for appointing Returning Officer to conduct elections for the Executive Committee of the 1st petitioner's Association.

8. Counter affidavit was filed in both the applications by the petitioners. They contended that since the 1st petitioner was registered as a Society only on 18.09.2015 and elections were conducted thereafter for the first time and term of Executive Members expired on 30.06.2018, by-law 12(c) would not have any application; and the fact that petitioners had been office bearers of the Executive Committee of

the Sarojini Naidu Nagar Welfare Association cannot be taken into consideration. They contended that Sarojini Naidu Nagar Welfare Association and Kakateeya Hills Welfare Association are not one and the same but they are two different registered bodies and once the Sarojini Naidu Nagar Welfare Association was wound up on the formation of the Kakateeya Hills Welfare Association, the fact that petitioners 2 to 5 had worked as office bearers in Sarojini Naidu Nagar Welfare Association cannot be taken into account while counting term period for disqualification to contest as Executive Committee Members of Kakateeya Hills Welfare Association.

9. Before the Court below, the 1st respondent marked Ex.P.1 to P.8 and the petitioners marked Ex.R.1.

10. By common order dt.15.04.2019, the Court below allowed both applications. With regard to eligibility of the petitioners 2 to 5 to contest the elections of the Executive Committee of the 1st petitioner's Association, the Court below observed as under:

“The above documents as discussed above, prima facie show that even as per the prima facie contention of the respondent, respondent No.1 society was formed in the year 2013 and by then there was elected body which continued even during the period of earlier society and even if their tenure is not considered, the term of the body had expired and as per the conditions as discussed above, it is prima facie seen that the present members are not entitled to contest in the

elections since their tenure of two terms was completed.”

11. From the above passage, it is obvious that the Court below was of the opinion that the Sarojini Naidu Nagar Welfare Association and the first petitioner's Association has to be treated as one and the same because the assets and liabilities of the former were taken over by the latter on its formation on 18.09.2015; and it treated the term as Executive Committee members done by the petitioners 2 to 5 in Sarojini Naidu Nagar Welfare Association as a term in the 1st petitioner's Association also. Thereby it held that they are disqualified to contest as Executive Committee members in view of the bye-law 12(c), which prohibits office bearers to continue for more than two consecutive terms.

12. This view is not correct because it is not the case of the 1st respondent that the Sarojini Naidu Nagar Welfare Association was merely 'renamed' as Kakateeya Hills Welfare Association. Admittedly the Sarojini Naidu Nagar Welfare Association was wound up and the 1st petitioner's Association was registered on 18.09.2015. Under Section 18 of the Act, the Registration of a Society shall render it a body corporate by the name under which it is registered having perpetual succession and a common seal and a legal entity. Therefore, the 1st petitioner's Association is a different Society.

13. Merely because the assets and liabilities of the Sarojini Naidu Nagar Welfare Association were taken over by the 1st petitioner's Association it does not follow that both the Associations are one and the same. Therefore, the Court below appears to have been under a mistaken impression that the Sarojini Naidu Nagar Welfare Association is same as the 1st petitioner Association. It erroneously treated the term of office of the petitioners 2 to 5 in the former Association as a term of office in the Executive Committee of the 1st petitioner Association and disqualified them on the said ground.

14. In this view of the matter, the impugned order of the Court below, insofar as I.A. No.171 of 2019 is concerned, cannot be sustained and it is accordingly set aside and the petitioners shall also be permitted to participate in the ensuing elections to be conducted pursuant to the directions of the Court below for posts of members of Executive Committee of the 1st petitioner's Association.

15. Accordingly, CRP. No.1303 of 2019 is allowed.

CRP.No.1290 of 2019:

16. In this CRP, the order dt.15.04.2019 passed in I.A. No.422 of 2019 directing the 1st petitioner to conduct General Body Meeting for the purpose of appointing an *ad hoc* committee and Returning Officer for the purpose of conducting elections for the Executive Body of the 1st petitioner's Association is challenged.

17. Admittedly, the tenure of the Executive Committee of the 1st petitioner Association has expired on 30.06.2018 and therefore, new Executive Committee has to be formed. In the minutes of the Annual General Body Meeting held on 03.02.2019 there was a resolution of the General Body that the current body will be continued till elections are held as interim body.

18. Since the General Body is the highest authority and it has already resolved to conduct elections, there is no necessity for the General body to again conduct a meeting for appointing an *ad hoc* committee to conduct the elections as directed by the Court below.

19. It is also not in dispute that one D.Ramesh, Advocate, has been appointed as Returning Officer to conduct elections for the Executive Body of the 1st petitioner's Association for the year 2019-2021. Though he has fixed a schedule on 02.04.2019, since now the petitioners 2 to 5 have been held to be eligible to contest as the office bearers of the Executive Committee of the 1st petitioner Association, the said Returning Officer shall notify a fresh election schedule and permit all eligible persons to nominate their nominations and proceed further in the matter.

20. Accordingly, both the Revisions are allowed. There shall be no order as to costs.

21. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 11.06.2019
LSK

