

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CONTEMPT CASE No.2997 OF 2018

ORDER :

Heard counsel for the petitioner, Sri R.N.Hemendranath Reddy, counsel for respondents 1 & 2, and Sri S.A.Razak, counsel for 3rd respondent.

2. Petitioner has filed this Contempt Case alleging willful disobedience of the order dt.04.09.2018 in IA.No.1 of 2018 in WP.No.35436 of 2017. The said order reads as under:

“ Sri R.N. Hemendranath Reddy takes notice on behalf of respondent Nos.1 and 2.

The counsel for petitioner(s) shall take out personal notice to respondent nos.3 and 4 by way of Registered Post Acknowledgment Due(R.P.A.D.) and file proof of service into the Registry.

Prima facie, the holding of election on 23.09.2017 to elect persons to the casual vacancies which have arisen in the Andhra Bank Employees' Co-operative Bank Limited, which is registered under the Multi-State Co-operative Societies Act, 2002, without following the procedure in the Schedule to the said Act and in violation of bye-law no.33, is illegal, more so, because it was conducted at Bangalore instead of its principal place of business which is at Hyderabad, and Rule 13(1) mandates all Annual General Meetings to be held at the principal place of the Society. Since there is gross violation of the provisions of Schedule to the Act as well as the bye-law, the existence of alternative remedy by way of an election petition is no bar for entertaining Writ Petition.

Therefore, there shall be interim suspension as prayed for.”

3. The prayer in the said I.A. was that this Court should suspend the election/co-option of the 3rd respondent in the contempt case and one T.Ravindranath, who was the 3rd

respondent in the Writ Petition, to the 1st respondent-Bank on 23.09.2017.

4. It is not in dispute that there was an election on 23.09.2017 and a reading of the entire order passed by this Court on 04.09.2018 suggests that the focus of this Court was primarily on the election and its legality.

5. Though in the interim application both election/co-option were mentioned, I am of the opinion that the interim suspension granted by this Court is essentially and primarily of the election, and this Court cannot be said to have made any direction with regard to the co-option of the 3rd respondent in the contempt case and the 3rd respondent in the writ petition, because it is the admitted case of both sides that there was no such co-option on 23.09.2017.

6. Merely because there is a subsequent co-option of the 3rd respondent on 13.10.2018 by adopting *proviso* to Article 243 ZJ(2i) of the Constitution of India introduced by way of 97th amendment to the Constitution of India in Part IX B with effect from 15.02.2012, it cannot be said *prima facie* that there is any contempt committed by the respondents.

7. It may be that the Gujarat High Court in ***Rajendra N.Shah v. Union of India***¹ had quashed the constitution 97th Amendment

¹ On 22.04.2013 in WP(PIL).No.166 of 2012

Act, 2011, and it is also admitted that, the said order was challenged before the Supreme Court, but there is no stay granted by the Supreme Court.

8. However, it cannot be presumed that the respondents in the Contempt Case were aware of these orders.

9. In my considered opinion, they are entitled to the benefit of doubt and if the action appears to be bonafide on an understanding of the law by the respondents that the said amendment was till in force, they cannot be punished for Contempt of Court.

10. Therefore, this Contempt Case is dismissed granting liberty to the petitioner to seek appropriate relief in WP.No.35436 of 2017. No order as to costs.

11. Consequently, Miscellaneous Petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

27th December, 2019.

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