

(2022) 08 TEL CK 0054

In the Telangana High Court

Case No : I.A.Nos. 4, 5 Of 2022 In Writ Petition No. 23060 Of 2022

A.Kanakaiah

APPELLANT

Vs

State Of Telangana And 3 Others

RESPONDENT

Date of Decision : 25-08-2022

Acts Referred:

Constitution Of India, 1950 — Article 14

Telangana Cooperative Society Rules, 1964 — Rule 22, 22(6)

Telangana Cooperative Societies Act, 1964 — Section 31B, 31B(b), 32, 32(7), 32(7)(a) (i), 32(7)(a)(ii), 32(7)(a)(iii)

Citation : (2022) 08 TEL CK 0054

Hon'ble Judges : Ujjal Bhuyan, CJ;C.V.Bhaskar Reddy, J

Bench : Division Bench

Advocate : B Mahender Reddy

Final Decision : Disposed Of

Judgement

I.A.Nos.4 and 5 of 2022

1. I.A.Nos.4 of 2022 has been filed by respondent Nos.1 and 2 for vacating the interim order dated 15.06.2022 passed in W.P.No.23060 of 2022. Similarly, I.A.No.5 of 2022 has been filed by respondent No.4 for vacating the aforesaid order.

2. We have heard Mr. Vivek Reddy, learned Senior Counsel for the writ petitioner; Mr. J.Ramachandra Rao, learned Additional Advocate General for respondent Nos.1, 2 and 3; and Mr. Ch.Koteswara Rao for respondent No.4.

3. W.P.No.23060 of 2022 has been filed by the writ petitioner who is a member of fourth respondent cooperative society assailing the legality and validity of G.O.Rt.No.151 dated 18.04.2022 of the Agriculture and Cooperation (Coop.II) Department, Government of Telangana, whereby Fifteen Member Non-official Person-in-charge Committee has been appointed to the fourth respondent cooperative society for a period of one year beyond 27.02.2022 or till elections

are held, whichever is earlier. Alternatively, petitioner seeks a declaration that Section 32(7)(a)(i) and (ii) of the Telangana Cooperative Societies Act, 1964 is unconstitutional and therefore to strike down the same as such.

4. Petitioner is a consumer and member of the fourth respondent cooperative society which was formed for the purpose of providing electricity in Rajanna Sircilla District covering 260 villages, 13 mandals and 2 municipalities. Total number of members of fourth respondent cooperative society would be more than three lakhs.

5. Elections to the managing committee of the fourth respondent cooperative society were conducted in the month of February, 2016. The tenure of the elected managing committee was for five years which term was scheduled to expire on 27.02.2021.

6. One week before expiry of the schedule term of the elected members of the managing committee, second respondent i.e., Commissioner for Cooperation and Registrar of Cooperative Societies appointed Person-in-charge Committee comprising of eleven members vide proceedings dated 19.02.2021. Immediately thereafter the said proceedings dated 19.02.2021 was cancelled and in its place, another proceedings was issued by the second respondent appointing District Collector of Rajanna Sircilla District i.e., respondent No.3 as the Official Person-in-charge Committee of the fourth respondent cooperative society vide proceedings dated 01.03.2021, with effect from 28.02.2021.

7. After expiry of the one year term of the third respondent Official Person-in-charge Committee, first respondent issued the impugned proceedings vide G.O.Rt.No.151 dated 18.04.2022 appointing Fifteen Member Non-official Person-in-charge Committee to the fourth respondent cooperative society. The said appointment has been made under Section 32(7)(a)(i) of the Telangana Cooperative Societies Act, 1964 (briefly, 'the 1964 Act' hereinafter). The appointment is for a period of one year or till elections are held, whichever is earlier. Aggrieved thereby, the related writ petition has been filed seeking the reliefs as indicated above.

8. This Court by order dated 15.06.2022 stayed the operation of the impugned order dated 18.04.2022 till the next date of hearing, which order has been extended from time to time. Order dated 15.06.2022 reads as under:

The petitioner before this Court has filed this writ petition challenging the constitutional validity of G.O.Rt.No.151 dated 18.04.2022 as violative of Article 14 of the Constitution of India as well as contrary to the spirit of the Telangana Cooperative Societies Act, 1964 (for short "the Act of 1964").

Sri K. Vivek Reddy, learned Senior Advocate appearing on behalf of the petitioner, has argued before this Court that the Act of 1964 certainly empowers the State Government under Section 32(7) to appoint an officer, in case the Managing Committee is defunct or in other contingencies, initially for a period of

one year which can extend upto a period of three years. He has stated that by virtue of the amendment, which came into force with effect from 20.05.2016, the person or persons so appointed by the State Government can continue indefinitely even for a period beyond three years. He has further stated that in the present case, the Person-In-Charge Committee was appointed on 19.02.2021 and by the impugned order dated 18.04.2022 a fresh Committee has been appointed. His contention is that as per Section 32(7)(a)(ii), it is only the Committee earlier appointed can be granted extension and even the amended Act does not empower the State Government to appoint a fresh Committee.

Learned Senior Advocate has been able to make out a prima facie case for grant of interim relief.

Resultantly, the operation of the impugned order dated 18.04.2022 shall remain stayed till the next date of hearing.

Let process fee be paid within seven days failing which the writ petition shall stand dismissed without reference to this Court.

Learned counsel for the petitioner shall also implead the persons mentioned in the order dated 18.04.2022 as respondents in the present writ petition.

List the matter on 18.07.2022.

9. For vacating the aforesaid interim order, two interlocutory applications have been filed. Respondent Nos.1 and 2 in I.A.No.4 of 2022 has contended that last elections to the managing committee were conducted in the month of February, 2016 for a five-year term which expired on 27.02.2021. On expiry of the term of the elected managing committee, process was initiated for holding fresh elections. Fourth respondent cooperative society has 3,03,912 members and because of Covid-19 pandemic the huge voters list could not be updated. The voters list requires passport size photograph of the voters against the names of the voters.

10. By virtue of powers vested under Section 32(7)(a)(i) of the 1964 Act, second respondent issued proceedings dated 19.02.2021 appointing Person-in-charge Committee to the fourth respondent cooperative society for a period of one year or till elections were held, whichever was earlier.

11. A complaint dated 16.02.2021 was received on 25.02.2021 against the Person-in-charge Committee. Considering all aspects, second respondent issued proceedings dated 01.03.2021 appointing District Collector as Person-in-charge Committee of the fourth respondent cooperative society for a period of one year or till elections were held, whichever was earlier with effect from 28.02.2021. The earlier proceedings dated 19.02.2021 was cancelled. Period of one year expired on 27.02.2022. Person-in-charge Committee vide letter dated 23.02.2022 explained the reasons for the delay in conducting elections and sought for some more time to update the voters list. Accordingly, proposals were submitted by the second respondent on 18.04.2022.

12. District Collector being over all in-charge of the district is preoccupied by many issues and cannot be kept confined to affairs of the fourth respondent cooperative society which is a huge organisation having more than three lakh consumer members. In the above backdrop, first respondent exercising powers under Section 32(7)(a)(i) of the 1964 Act issued the order dated 18.04.2022 appointing Non-official Person-in-charge Committee for a period of one year from 28.02.2022.

13. Adverting to the aforesaid provision, it is contended that the 1964 Act does not contemplate that the previous Person-in-charge Committee can only be continued beyond the initial period and a new committee cannot be appointed. In this regard, reliance has been placed on previous decisions of this Court.

14. It is contended that State Government is empowered under Section 32(7)(a)(ii) of the 1964 Act to grant extension of Person-in-charge Committee even beyond three years. However, this provision has not been invoked in the present case. Impugned order has been issued in legitimate exercise of statutory power by the first respondent. Appointment of Person-in-charge Committee is essential to ensure uninterrupted functioning of the fourth respondent cooperative society. Therefore, the interim order dated 15.06.2022 should be vacated. Otherwise interest of fourth respondent cooperative society would be jeopardised.

15. Similar contentions have been raised by the fourth respondent cooperative society in I.A.No.5 of 2022.

16. In the hearing which took place on 16.08.2022, this Court had called upon learned Additional Advocate General to apprise the Court as to within how much time the electoral rolls of the fourth respondent would be prepared to enable holding of elections. On the next day, i.e., on 17.08.2022, learned Additional Advocate General submitted on instructions that electoral rolls would be prepared and that he would place before the Court a tentative schedule of election to the fourth respondent cooperative society. In view of such submission, learned Additional Advocate General was called upon to place before the Court a tentative schedule of election on 22.08.2022. Accordingly, two tentative election schedules were placed before the Court on 22.08.2022.

17. Mr. Vivek Reddy, learned Senior Counsel for writ petitioner submits that the Fifteen Member Non-official Person-in-charge Committee was hand picked by Hon'ble Minister, Information Technology. Hon'ble Minister has no role to play in constitution of managing committee of the fourth respondent cooperative society. Whatever names were short-listed by the Hon'ble Minister, those names find place in the order dated 18.04.2022. Placing reliance on the decision of the Supreme Court in Chandrika Jha v. State of Bihar (1984) 2 SCC 41, he submits that the departmental authority should take over the fourth respondent cooperative society and under their supervision elections to the managing committee should be held.

18. Though learned Senior Counsel also canvassed argument questioning the

constitutional validity of Section 32(7)(a)(i) and (ii) of the 1964 Act, in view of the trajectory of the hearing, elaborate submissions on this aspect was not made.

19. On the other hand, Mr. J.Ramachandra Rao, learned Additional Advocate General submits that State has filed a Memo dated 22.08.2022 furnishing two tentative election schedules – one commencing from 01.11.2022 and the other commencing from 01.12.2022. This, he submits, is only to ensure that in the event of delay in finalising the voters list, the second schedule may be adopted. However, he submits that this Court may consider lifting the stay order as the impugned order has been passed in accordance with the statutory provisions. Managing the affairs of the fourth respondent cooperative society would be a herculean task for officials including the District Collector as he is the overall in-charge of the entire district. Therefore, as a practical and pragmatic measure, Committee constituted on 18.04.2022 should be allowed to function and under its supervision, election should be conducted. This, he submits, would be in conformity with the provisions of the 1964 Act as well as Rule 22(6) of the Telangana Cooperative Society Rules, 1964 (briefly, 'the 1964 Rules' hereinafter).

20. The above arguments have been adopted by Mr. Ch.Koteswara Rao, learned counsel for respondent No.4.

21. Submissions made have been duly considered. Also perused the materials on record.

22. Facts are not in dispute. From the materials on record, we find that there is a letter dated 16.04.2022 from the second respondent to the first respondent (page 24 of I.A.No.4 of 2022). After noting that the Person-in-charge Committee was appointed for a period of one year beyond 27.02.2021 or till elections were held, whichever was earlier, it was further noted that some more time would be required for preparation of voters list and re-organisation of territorial constituencies of the fourth respondent cooperative society. Adverting to the communication of the District Cooperative Officer that there is a need for appointment and continuation of Person-in-charge Committee beyond 27.02.2022, it was mentioned that proposals were received through the second respondent for appointment of Non-official Person-in-charge Committee comprising of fifteen primary members. The fourth reference was the D.O., letter No.782/D/M(IT, MA & UD, I&C)/2022, dated 16.04.2022 of Hon'ble Minister for IT, MA & UD, I&C, Government of Telangana. The following names were recommended by the Hon'ble Minister:

Sl. No.

Name of the Primary Member of CESS Ltd., Sircilla proposed as Non-Official PIC

Name of the Revenue Mandal

Proposed designation in the PIC Committee

1

Guduri Praveen

Sircilla – I

PIC/Chairman

2

Nandi Shankar

Sircilla – II

PIC/Member

3

Pusapelli Saraswathi

Thangallapalli

PIC/Member

4

Gudise Allaiah Yadav

Ellantakunta

PIC/Member

5

Gourineni Narayana Rao

Gambhiraopet

PIC/Member

6

Kommu Balaiah

Mustabad

PIC/Member

7

Kumbala Malla Reddy

Yellareddypet

PIC/Member

8

Madugula Mallesham

Veernapalli

PIC/Member

9

Dappula Ashok

Chandurthy

PIC/Member

10

Akula Gangarajam

Rudrangi

PIC/Member

11

Devarakonda Thirupathi

Konaraopet

PIC/Member

12

Polasa Narender

Vemulawada-I

PIC/Member

13

Regulapati Charan Rao

Vemulawada-II

PIC/Member

14

Akula Devarajam

Vemulawada Rural

PIC/Member

15

Medudula Mallesham

Boinpalli

PIC/Member

23. Adverting to Section 32(7)(a)(i) of the 1964 Act, it was stated that

Government is competent to appoint and extend the term of Person-in-charge Committee of a society beyond the initial one year period. In the instant case, Person-in-charge Committee was first appointed for one year from 28.02.2021 to 27.02.2022. Thereafter, proposal was submitted for appointment of Fifteen Member Non-official Person-in-charge Committee to the fourth respondent cooperative society, beyond 27.02.2022 for a period of one year or till elections are held. On the basis of the said proposal, first respondent issued the impugned order dated 18.04.2022 appointing Fifteen Member Non-official Person-in-charge Committee to the fourth respondent cooperative society. All the names suggested by the Hon'ble Minister and proposed by the second respondent are included in the Fifteen Member Non-official Person-in-charge Committee. Order dated 18.04.2022 reads as under:

AGRICULTURAL AND COOPERATION (COOP.II) DEPARTMENT

G.O.Rt.No.151 Dated : 18.04.2022

Read:-

From the CC&RCS, Hyderabad, Lr.Rc.No.1404/2021/PE, Dt.18.04.2022.

ORDER:

In the circumstances reported by the CC&RCS, Hyderabad, Government after careful examination of the matter, hereby appoint (15) member Non-Official Person-in-charge Committee to the CESS Ltd., Sircilla District beyond 27.02.2022 for a period of one year under Section 32(7)(a)(i) of TCS Act, 1974 or till elections are held whichever is earlier as detailed below.

Sl.

No.

Name of the Primary Member of CESS Ltd., Sircilla proposed as Non-Official PIC

Name of the Revenue Mandal

Proposed designation in the PIC Committee

1

Guduri Praveen

Sircilla – I

PIC/Chairman

2

Nandi Shankar

Sircilla – II

PIC/Member

3

Pusapelli Saraswathi

Thangallapalli

PIC/Member

4

Gudise Allaiah Yadav

Ellantakunta

PIC/Member

5

Gourineni Narayana Rao

Gambhiraopet

PIC/Member

6

Kommu Balaiah

Mustabad

PIC/Member

7

Kumbala Malla Reddy

Yellareddypet

PIC/Member

8

Madugula Mallesham

Veernapalli

PIC/Member

9

Dappula Ashok

Chandurthy

PIC/Member

10

Akula Gangarajam

Rudrangi

PIC/Member

11

Devarakonda Thirupathi

Konaraopet

PIC/Member

12

Polasa Narender

Vemulawada-I

PIC/Member

13

Regulapati Charan Rao

Vemulawada-II

PIC/Member

14

Akula Devarajam

Vemulawada

Rural

PIC/Member

15

Medudula Mallesham

Boinpalli

PIC/Member

2. The Commissioner for Cooperation & Registrar of Cooperative Societies, Telangana, Hyderabad shall take necessary further action accordingly.

24. Having noticed the above, we may now advert to Section 32 of the 1964 Act, which deals with general meetings and committee meetings. Section 32(7)(a)(i) says that if there is no committee or in the opinion of the Government or, the Registrar, it is not possible to call a general meeting for the purpose of

conducting election of members of the committee, the Government, in respect of such class of societies and the Registrar in respect of all other class of societies may appoint a person or persons to manage the affairs of the society for a period not exceeding one year and the Government may, on their own and the Registrar with the previous approval of the Government, extend, from time to time, such period beyond six months, but the aggregate period including the extended shall not exceed three years. However, as per clause (ii), in the event of special circumstances and for reasons to be recorded, if in the opinion of the Government, it is not possible to hold elections to the societies or class of societies, the Government may extend the term of the person or persons appointed to manage the affairs of the society even beyond three years.

25. However, we need not go to clause (ii) in as much as the impugned order has been issued under clause (i). That apart, since the State has already placed before us the election schedule for holding elections to the fourth respondent cooperative society, the special circumstances contemplated under clause (ii) does not arise.

26. Section 31-B of the 1964 Act starts with a non-obstante clause. It says that notwithstanding anything contained in the 1964 Act or in the 1964 Rules or in the bye-laws of any society, the Government shall constitute a State Cooperative Election Authority which is headed by an officer not below the rank of Additional Registrar of Cooperative Societies. Section 31-B(b) clearly stipulates that superintendence, direction and control of the preparation of electoral rolls and conduct of all elections shall vest with the State Cooperative Election Authority which shall conduct all elections in the manner prescribed for all types of cooperative societies registered under the 1964 Act. It may also lay down guidelines for conduct of elections. Section 31-B is extracted as under:

31-B. (a) Notwithstanding anything contained in this Act, Rules and Bye-laws of the society, the Government shall constitute a State Cooperative Election Authority. The State Cooperative Election Authority shall be headed by an officer not below the rank of Additional Registrar of Cooperative Societies. The said Authority is to be assisted by not more than two Additional Cooperative Electoral Officers who are not below the rank of Joint Registrar of Cooperative Societies. The service conditions of the State Cooperative Election Authority and the Additional Cooperative Electoral Officers shall be as prescribed.

(b) The superintendence, direction and control of the preparation of electoral rolls and conduct of all elections shall vest with the State Cooperative Election Authority which shall conduct all elections in the manner prescribed, for all types of Cooperative Societies registered under this Act:

Provided that the State Cooperative Election Authority referred to under subsection (a) above may issue guidelines otherwise laying down the procedure for conduct of elections from time to time.

(c) The Registrar of Cooperative Societies shall deploy the supporting staff to the

State Cooperative Election Authority as may be prescribed to assist in conduct of Elections.

(d) Provided that the election of a Board shall be conducted before expiry of the term of the Board so as to ensure that the newly elected members of the Board assume office immediately on the expiry of the office of the outgoing Board.

27. In the course of hearing, we had asked learned Additional Advocate General as to whether the State Cooperative Election Authority has been constituted or not. In response, he submits that such an authority has been constituted and is functioning.

28. Since learned Additional Advocate General has placed reliance on Rule 22 (6) of the Rules, it would be apposite to refer to the same as well. Rule 22 deals with conduct of elections to cooperative societies. As per sub-rule (1), the incumbent managing committee/ Person-in-charge Committee etc., shall at least sixty days before expiry of the term of the committee submit proposals to the State Cooperative Election Authority for conduct of elections to the society. However, as per sub-rule (6) which deals with Voters List, it is the incumbent Managing Committee/Person-in-charge Committee which shall prepare and publish the list of members eligible to vote.

29. On a comparative analysis of Section 31-B(b) of the 1964 Act and Rule 22(6) of the 1964 Rules, we find that the Rules are not in consonance with the Act, as per which superintendence, direction and control over preparation of electoral rolls and conduct of all elections shall vest with the State Cooperative Election Authority. It is trite that in the event of any conflict between a provision of the Act and the corresponding provision of the Rules, it is the former which will prevail.

30. However, without getting bogged down on legalese, what is noticeable is that the entire list of Person-in-charge Committee was submitted by the Hon'ble Minister of IT, MA&UD, I&C to the second respondent. This is more than clear from the proposal of the second respondent dated 18.04.2022 when he specifically referred to the letter of the Hon'ble Minister and on the same date, the impugned order was issued by the first respondent containing the names of all the fifteen members so suggested by the Hon'ble Minister. We may mention that the Hon'ble Minister is not in-charge of the Cooperation Department and is in no way connected with either the said department or with the fourth respondent.

31. A similar situation had happened long back in 1983 which was dealt with by the Supreme Court in Chandrika Jha (supra). Of course, in that context, it was the Cooperation Minister who had interfered with the functioning of a cooperative society. Taking the view that neither the Chief Minister nor the Cooperation Minister nor the Minister for Industries had the power to arrogate to themselves the statutory functions of the Registrar under the Bihar and Orissa Cooperative Societies Act, 1935 and Bihar Cooperative Societies Rules, 1959, Supreme Court

held that action of the Chief Minister in extending the term of the committee of management was not within his power. For the same reasons, it was held that Minister for Industries had also exceeded his authority in directing the manner in which the new Board of Directors was to be constituted. In the facts of that case, it was found that the impugned order issued by the Registrar to reconstitute the Board of Directors was not made by him at his own discretion but was made at the behest of the Minister for Industries. Accordingly, it was held to be invalid.

32. Learned Additional Advocate General strenuously argued that considering the size of the fourth respondent cooperative society and the details required for preparation of final voters list which is a time consuming affair some time would be required for holding election and during the interregnum the committee constituted vide the order dated 18.04.2022 should be allowed to manage the affairs of the fourth respondent, including holding of elections.

33. In view of what we have discussed above, we are afraid we cannot accede to the submissions made by the learned Additional Advocate General. We are of the view that it would be just and proper if elections are held to the fourth respondent cooperative society under the supervision and control of the Telangana State Cooperative Election Authority. Further, we are also of the view that the second tentative election schedule submitted by the State would be more appropriate, taking into account all eventualities. The said schedule as submitted by the Additional Registrar/State Cooperative Election Authority reads as under:

1

Scrutiny of the proposals

From 01.12.2022

To 05.12.2022

2

Date of issue of Election

Notification by the State Cooperative Election Authority

06.12.2022

3

Issue of Election Notice in Form I by the Election Officer

10.12.2022

4

Receipt of the Nominations (in

Form-II) by the Election Officer (3 working days)

16.12.2022

17.12.2022

19.12.2022

5

Scrutiny of the Nominations by
the Election Officer

20.12.2022

6

Withdrawal of the Nominations, Publication of Final list of contesting candidates
and

allotment of symbols by the Election Officer

21.12.2022

7

Date of Poll

28.12.2022

8

Counting of the Votes

29.12.2022

9

Declaration of the results (after completion of counting)

29.12.2022

10

Election of Office Bearers

Within three days from the date of declaration of
results

34. Thus, upon thorough consideration of all aspects of the matter and in the
facts and circumstances of the case, we issue the following directions:

(1) State Cooperative Election Authority, Telangana, shall finalise the voters list
of the fourth respondent cooperative society latest by 31.10.2022; however, in
case of any unavoidable circumstances, the period may be extended upto
15.11.2022;

(2) State Cooperative Election Authority, Telangana shall notify on 01.11.2022 the election schedule as extracted above commencing from 01.12.2022 and ending on 29.12.2022;

(3) Interim stay granted by this Court on 15.06.2022 shall continue till the election process is over and new body takes charge; and

(4) Till election process is completed and the new body takes charge, third respondent/District Collector, Rajanna Sircilla District shall continue to look after the affairs of the fourth respondent cooperative society as the Official Person-in-charge Committee.

I.A.Nos.4 and 5 of 2022 are accordingly disposed of.

W.P.No.23060 of 2022

In view of the order passed above disposing of I.A.Nos.4 and 5 of 2022, in our view further deliberation on the writ petition is not required.

Accordingly, the writ petition is disposed of in terms of the directions issued today in I.A.Nos.4 and 5 of 2022. However, there shall be no order as to costs.

Miscellaneous petitions, pending if any, shall stand closed.