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**(2003) 01 AP CK 0107**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 1248 of 2003**

All India SC and ST Railway Employees Association

APPELLANT

Vs

E. Venkateshwarlu and Others

RESPONDENT

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**Date of Decision : 28-01-2003**

**Acts Referred:**

Andhra Pradesh and Telangana Societies Registration Act, 2001 — Section 23  
Constitution of India, 1950 — Article 226

**Citation : (2003) 2 ALD 384 : (2003) 3 ALT 674**

**Hon'ble Judges : C.Y. Somayajulu, J**

**Bench : Single Bench**

**Advocate : K. Venkataramaiah, for the Appellant; S.S. Varma, Additional SC, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

C.Y. Somayajulu, J.—This writ petition is filed by All India SC and ST Railway Employees Association, Head Office at New Delhi, Zonal Office at Secunderabad, represented by its Divisional Secretary (for short "the Association"), for "issuance of a writ, order or direction, more particularly one in the nature of a writ of mandamus, declaring the respondents to order re-elections according to law after cancelling the elections held on 10-1-2003 as arbitrary, null and void and consequently to direct respondent No. 7 not to recognize the elected members and office bearers and to conduct fresh elections according to bye-laws of All India SC and ST Railway Employees Association Guidelines issued by the Railway Board."

2. The affidavit filed in support of the writ petition, sworn to by one K. Nageswara Rao S/o. K.P. Naganna, enumerates the irregularities said to have been committed during the course of election and it is stated that in view of those irregularities, the election held to the petitioner-Association should be declared null and void.

3. As I entertained a doubt about the maintainability of the writ petition for the

relief sought in this petition and also the maintainability of a petition to declare the election of the office bearers of the Association null and void by the Association itself, but not by a member of the Association, I questioned and requested the learned Counsel for the petitioner to state as to how this petition filed by an Association, which is said to be a Society registered under the Societies Registration Act, 1860 is maintainable, more so because there is no allegation in the affidavit that the Association is being funded or receiving grant from either the State or the Central Government. The learned Counsel for petitioner, placing strong reliance on B.S. Minhas Vs. Indian Statistical Institute and Others, , contended that this petition is maintainable in view of Article 12 of the Constitution of India.

4. In B.S. Minhas's case (supra), relied on by the learned Counsel for the petitioner, the writ petition was filed against Indian Statistical Institute, dominated by the representatives appointed by the Central Government, and, in fact, the money required for running of the said institute was provided by the Central Government and it can receive money from others only with the approval of the Central Government. The accounts of the said institute have to be submitted to the Central Government for its scrutiny and satisfaction, and the said institute has to comply with all directions as may be issued by the Central Government, and thus the control of the Central Government on the institute is deep and pervasive. Therefore, the Supreme Court held that the said institute, for all incidents and purposes, is but an instrumentality of the Central Government, and as such is an "authority" within the meaning of Section 12 of the Constitution, and would be subject to Constitutional obligations under Articles 14 and 16 of the Constitution. The case of the petitioner-Association is entirely different, the constitution of the petitioner-Association, filed along with the writ petition, shows that its General Body comprises of zonal bodies, and has Central Executive Committee, Zonal Executive Committee Divisional Executive Committee, Branch Executive Committee, Zonal Executive of CLW/DLW/ICF/RDSO & Railway Board, Works Executive Committee and Sub-Workshop Executive, and has a President, Vice-President, General Secretary, Additional General Secretary, Treasurer, Cashier, etc., and other office bearers; and uniform membership fee of Rs. 3/-has to be paid by the each member of the Association annually. Learned Counsel for the petitioner, took me through the Byelaws of the petitioner-Association under heading "share due to each unit" at page-17, "distribution of income" at page-19 of the Bye-laws and contended that "headquarters" mentioned therein relates to headquarters of the South Central Railway and so South Central Railway has control over the Association. I am unable to agree with the said contention. "Headquarters" mentioned therein relates to headquarters of the Association, whose Registered Office is situate at 202, South Avenue, New Delhi -110011, as mentioned in Clause-2 of the Memorandum of Association of the petitioner association. The Bye-laws of the petitioner-Association clearly show that it has zones, divisions and branches. Those Bye-laws relate to sharing of the funds of the Association between its

headquarters, zones, divisions. There is nothing in the Bye-laws to show some part of its income is being paid to Railways, or any Government and/or that it is to be run on the funds received from the Government. Thus there is nothing in the constitution, (Memorandum of Association)" or bye-laws of the petitioner-Association to show that it is controlled by the Central Government or any other Government Agency; On the other hand they clearly show that it is an Association being organised by Railway Employees. Neither the Central nor State Government has control thereon and do not fund it, i.e., it is not being run on the funds or grants received from any Government or Government Agency. So, Article 12 does not apply to petitioner-Association and so B.S. Minhas's case (supra) relied on by the learned Counsel for the petitioner is of no help to the petitioner.

5. The petitioner-Association was registered under the Societies Registration Act, 1860 (for short "1860 Act"), which Act stood repealed by Section 32 of A.P. Societies Registration Act, 2001 (for short "2001 Act"). Section 32(2) of 2001 Act lays down that notwithstanding the repeal of 1860 Act, anything done or action taken under that Act shall be deemed to have been done or taken in exercise of the powers conferred by or under the 2001 Act as if that 2001 Act was in force on the date on which the thing was done or action was taken. Therefore, the petitioner-Association should be deemed to have been registered under the provisions of 2001 Act. As per Section 18 of the 2001 Act, a Society registered under that Act becomes a body corporate, by the name under which it is registered, and would have a perpetual succession and common seal, and can acquire, hold and dispose of property, enter into the contracts, institute and defend suits and other legal proceedings. Even as per 1860 Act, as held in *PBNC Committee v. Government of A.P.* AIR 1958 AP 773, a Society registered with the Registrar under that Act, by filing memorandum and certified copy of rules and regulations, and after the Registrar issuing a certificate that it is a Society registered under the 1860 Act, it enjoys the status of a legal entity, apart from the members constituting the same, and is capable of suing and being sued, and the members of the Society, or its Governing Body, do not have any proprietary or beneficial interest in the property of the Society. Thus it is very clear that a Society registered either under 1860 Act, or 2001 Act, becomes an artificial person, and is and would be entirely different from its members. Therefore, if the elections held for that Society are not in accordance with its Bye-laws, or constitution (Memorandum of Association), person aggrieved by those irregularities has to file a petition, but the society itself cannot file a petition questioning the elections held to its Governing Body.

6. As per the Bye-laws of the petitioner-Association (Note (iii) of Byelaw 1 of Part II), a suit on its behalf has to be filed in the name of the General Secretary, who is authorized to sign and verify the pleadings and engage Advocates, etc., General Secretary, according to Note No. (xiii) of Bye-law No. 1, is Secretary of the Governing Body of the Association. "Governing Body", as per Note No. (xi), is the Committee of the members of the Association, who shall be the elected

office bearers of the General Body and shall include the office bearers, i.e., President, Working President, Senior Vice-President, Vice-president, General Secretary, Additional General Secretary, Office Secretary, Assistant Secretaries, Organizing Secretaries, Cashier, Assistant Cashiers and Auditors including the members of the Central Executive Committee with due representatives of each Zone. But, this writ petition is filed by one K. Nageswara Rao, the Divisional Secretary, who cannot represent the petitioner-Association. Therefore, the writ petition filed on behalf of the Association, not being in accordance with the Bye-laws of the Association, is not maintainable.

7. As per Section 23 of 2001 Act, disputes arising among the Committee or the members of the Society, in respect of any matter relating to the affairs of Society, have to be decided either under the provisions of the Arbitration and Conciliation Act, 1996 or by a District Court concerned. Therefore, if any of the member of the Society is aggrieved by the way in which the election of the Association was conducted, he has a right to move the District Court concerned u/s 23 of the 2001 Act, which is an effective remedy provided by the Statute. It is well known that when an effective alternative remedy is open, the jurisdiction of this Court under Article 226 of the Constitution cannot be invoked.

8. In view of the above, I find no grounds to admit this Writ Petition and hence the Writ Petition is dismissed at the admission stage. No costs.