

(2012) 02 AP CK 0067

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No's. 224, 225 and 226 of 2012

Andhra Pradesh Kayastha Sabha

APPELLANT

Vs

Ashok Kumar Srivastav and Others

RESPONDENT

Date of Decision : 03-02-2012

Acts Referred:

Citation : AIR 2012 AP 124 : (2012) 3 ALT 249

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : P. Veera Reddy, for the Appellant; M.S. Raj Purohit, for the Respondent

Judgement

C.V. Nagarjuna Reddy

1. These three Civil Revision Petitions arise out of common order, dated 14.12.2011, in I.A. Nos. 2236, 2237 and 2238 of 2011 in O.P. No. 1811 of 2011 on the file of the learned II Additional Chief Judge, City Civil Court, Hyderabad. Respondent Nos. 1 and 2 in these Civil Revision Petitions filed O.P. No. 1811 of 2011 for the following reliefs:

(i) declaring that respondent Nos. 2 to 17 are no more office bearers and committee members of first respondent-Sabha;

(ii) declaring that notice, dated 01.08.2011, issued by respondents 2 and 5 wherein the petitioners' membership was terminated as null and void and not binding on the petitioners;

(iii) for an order of injunction against respondents 2 to 17 restraining them from doing any acts pertaining to first respondent-Sabha;

(iv) order prohibiting respondents 2 to 17 from dealing with fixed deposit receipts worth Rs. 3,19,839/- lying in State Bank of Hyderabad, Exhibition Ground Branch, Hyderabad and other immovable properties of first respondent-Sabha;

(v) for appointing (1) Niranjanlal Srivastava, (2) Vijay Raj Srivastava, (3) Sanjay Saxena, (4) R.P.Asthana as Election Officers and observers for conducting elections;

(vi) for a direction against respondents 2 to 17 to handover all movable and immovable properties and papers, keys and records, bank account, pass books, etc., to the persons referred in prayer No. 5; and

(vii) costs and any other incidental reliefs.

2. They have filed I.A. No. 2236 of 2011 for appointment of election officers for holding elections to petitioner No. 1-Sabha, I.A. No. 2237 of 2011 for appointment of Advocate-Commissioner and I.A. No. 2238 of 2011 for temporary injunction restraining the office bearers from functioning as such.

3. In the counter-affidavit filed by the petitioners herein before the lower Court, it is inter alia stated that the O.P. itself was not maintainable as respondent Nos. 1 and 2 knew well that already elections were held on 18.08.2011 and that, on the same day, the President was elected to petitioner No. 1-Sabha. It was further pleaded that when the first General Body meeting was called for holding elections, only 25 members have attended; that, when the second General Body Meeting was called, 50 members have attended; that, when the third General Body Meeting was called on 18.08.2011, it was attended by 150 members; and that on the request of the members elections were held.

4. On the rival pleadings, the lower Court has framed the following points:

(1) Whether there are sufficient grounds for granting temporary injunction restraining the respondents 2 to 17 from continuing any acts on behalf of the first respondent-society and proclaiming themselves as office bearers?

(2) Whether there are sufficient grounds for appointment of advocate-commissioner to seize all the records of first respondent from the custody of respondents 2 to 17 for the purpose of keeping them in the custody of the Court or for conducting elections?

(3) Whether there are sufficient grounds for appointing (i) Niranjan Lal Srivastava, (ii) Vijay Raj Srivastava, (iii) Sanjay Saxena and (iv) R.P.Ashthana for conducting elections to the first respondent-Sabha?

(4) What is the result of all the three applications?

5. The lower Court has passed the impugned order as an interim and immediate measure purporting to safeguard the interests of all the members of petitioner No. 1-Sabha by issuing directions to the effect that fresh elections be held to petitioner No. 1-Sabha for the posts of office bearers. Various other directions were also issued to carry out the direction to hold elections. The reliefs of appointment of Advocate-Commissioner and grant of temporary injunction have not been specifically granted.

6. A perusal of the impugned order of the lower Court would show that while dealing with point No. 3, it has inter alia gone into the truth and validity of the elections held on 18.08.2011. This Court has reproduced the various reliefs claimed by respondent Nos. 1 and 2 herein, who are the petitioners in the O.P., for the purpose of elucidating the scope of the petition and the reliefs claimed in the O.P. Respondent Nos. 1 and 2 have not claimed the relief of declaration that the elections stated to have been held on 18.08.2011 are null and void and that the same is not binding on them.

7. Sri M.S.Rajpurohit, learned counsel for respondent Nos. 1 and 2, has stated that the O.P. having been filed on 16.08.2011, before the alleged holding of elections, there was no occasion for his clients to seek such relief.

8. However, as noted above, in the counter-affidavit filed by petitioner No. 1, it was categorically averred that on 18.08.2011, elections were held. Respondent Nos. 1 and 2 have not amended the O.P. for claiming the appropriate relief of invalidation of the alleged elections. Therefore, I am of the opinion that the lower Court has committed a serious jurisdictional error in embarking upon the examination of the validity of the elections which is not questioned by respondent Nos. 1 and 2 in the O.P.

9. Even with regard to the reasoning of the lower Court in coming to the conclusion that the elections held on 18.08.2011 are not valid, in my opinion, they are thoroughly unsatisfactory, to say the least. As found by the lower Court the petitioners have filed copies of the minutes in support of their plea that a meeting was held on 18.08.2011, during which the office bearers were stated to have been elected. The lower Court has rejected this document at the interlocutory stage on probabilities on the reasoning that respondent No. 16 - Returning Officer in his counter-affidavit did not state anything about holding of such meeting. Such a conclusion even before the parties went to trial is hasty and unwarranted. The lower Court was wholly unjustified in delving into these aspects at the interlocutory stage even in the absence of a specific plea coming forth from respondent Nos. 1 and 2 that either elections were not held on 18.08.2011, or that, even if such elections were held, they were not validly held and consequently, not binding on them.

10. The lower Court has far too exceeded its jurisdiction in not only expanding the scope of the interlocutory applications, but also the very O.P. itself in the absence of the relief claimed by respondent Nos. 1 and 2 seeking invalidation of the elections.

11. The learned trial Judge would do well by trying to delineate the true scope of the applications before him. By giving a direction to hold fresh elections, the lower Court has virtually nullified the elections stated to have been held on 18.08.2011, which as noted above remained unchallenged in the O.P. Issuance of such a direction would have been possible, only if respondent Nos. 1 and 2 have specifically challenged the elections stated to have been held on 18.08.2011 and

the lower Court has finally disposed of the O.P. invalidating the elections. The approach of the lower Court leaves a lot to be desired in adjudicating the cases of this nature.

12. For the above-mentioned reasons, the common order under revision is set aside and all the Civil Revision Petitions are allowed. As a sequel to disposal of the Civil Revision Petitions, C.R.P.M.P. Nos. 323, 324 and 325 of 2012 filed by the petitioners for interim reliefs are disposed of as infructuous.