

(2010) 09 AP CK 0073

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 23349, 23488 and 23511 of 2010

Dhulipalla Narendra Kumar

APPELLANT

Vs

A.P. Cooperative Tribunal and Others

RESPONDENT

Date of Decision : 21-09-2010

Acts Referred:

Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 — Section 21(7), 233, 37, 37(1), 37(2)

Citation : (2011) 1 ALD 292

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

Bench : Single Bench

Advocate : B. Adinarayana Rao, for T. Ramesh Babu, B.V. Subbaiah and S.R. Ashok for S. Ashok Anand Kumar, for the Appellant; GP for Cooperation for Respondent No. 1, V.V. Prabhakar Rao, for Respondents 2 and 3 and B.V. Subbaiah, for the Respondent

Judgement

C.V. Nagarjuna Reddy, J.—The subject matter of these three writ petitions is common and therefore they are heard and being decided together.

2. The Petitioner in each of these writ petitions is the Member of the Guntur District Milk Producers Mutually Aided Cooperative Union Limited, Sangam Dairy, Vadlamudi, Guntur District (for short, "the society"). An election officer was appointed for conducting elections to the post of three Directors of the society. The election officer has issued an election notification on 12.09.2010. According to the said notification, 15.09.2010 was fixed for filing nominations and finalization of the list of the nominations, 17.09.2010 for withdrawal of the nominations, publication of the list of the candidates remaining in the field, for allotment of election symbols to the candidates and also to declare the names of the candidates, who are unanimously elected in case the number of candidates does not exceed the number of posts of Directors. It is further notified that in case of contest, the poll will be held on 23.09.2010 and results to the post of Directors will be declared and election to the post of Chairman will be held on the same day. In pursuance of the said election notification, the Petitioners in Writ

Petition Nos. 23488 and 23349 of 2010 filed their nominations to the post of Directors.

3. It is not in dispute that the Petitioner in Writ Petition No. 23488 of 2010 has withdrawn his nomination and that as the number of candidates, who filed the nominations to the post of Directors, did not exceed the number of posts of Directors, the election officer has published the list of the candidates, who have unanimously got elected as Directors on 17.09.2010 itself.

4. While so, the Petitioner in Writ Petition No. 23488 of 2010 filed O.P. No. 4 of 2010 questioning acceptance of the nomination of the Petitioner in Writ Petition No. 23349 of 2010 on multiple grounds, reference to which is not necessary in the context of adjudication of the present writ petitions. On 17.09.2010, the A.P. Cooperative Tribunal, Vijayawada, Krishna District (for short, "the Tribunal") has passed an order restraining the Petitioner in Writ Petition No. 23349 of 2010 from taking part in the elections. However, the said order was vacated by the Tribunal by its order dated 20.09.2010. Assailing the said order, Writ Petition No. 23488 of 2010 has been filed by the Petitioner in O.P. No. 4 of 2010. Before the interim order granted by the Tribunal was vacated, the Petitioner in Writ Petition No. 23349 of 2010 has filed the said writ petition. Another Member of the Society filed Writ Petition No. 23511 of 2010 without approaching the Tribunal for a Mandamus to declare the action of the election officer in acting contrary to some of the provisions of the A.P. Mutually Aided Cooperative Societies Act, 1995 (for short, "the Act") and the bye-laws made thereunder and sought for a direction to declare that the Petitioner in Writ Petition No. 23349 of 2010 is ineligible to contest the elections to the post of Chairman of Respondent No. 1, proposed to be held on 23.09.2010.

5. I have heard Sri B.V. Subbaiah, Sri S.R. Ashok, learned Senior Counsel and Sri B. Adinarayana Rao, learned Counsel appearing for the Petitioners in their respective writ petitions.

6. Sri B.V. Subbaiah and Sri S.R. Ashok, learned Counsel appearing in Writ Petition Nos. 23488 and 23511 of 2010 contended that the Tribunal was not justified in vacating the interim order without properly appreciating the main submission of their clients that the Petitioner in Writ Petition No. 2349 of 2010 does not satisfy the fundamental requirement of Section 21(a) and (b) of the Act.

7. Sri B. Adinarayana Rao, learned Counsel appearing for the Petitioner in Writ Petition No. 23349 of 2010, who is impleaded as Respondent Nos. 3 and 4 in Writ Petition Nos. 23511 and 23488 of 2010 respectively submitted that the O.P. filed by the Petitioner in Writ Petition No. 23488 of 2010 is not maintainable, as the remedy of election petition can be availed only after the whole election process is completed and the election results are declared in terms of Section 37(2) of the Act. The learned Counsel also placed reliance on the judgments of the Apex Court in *Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others*,

8. I have carefully considered the submissions of the learned Counsel for the parties and perused the record.

9. Section 37 of the Act provides for mechanism for settlement of the disputes. While Sub-section (1) deals with the various types of disputes enumerated in Sub-clauses (a) to (f) thereof, Sub-section (2) concerns itself with the election disputes. Sub-section (2) of Section 37, which is relevant for the present purpose, reads as under:

Any dispute relating to elections held to a cooperative society may be referred to the Cooperative Tribunal for decision.

10. In *Shri Sant Sadguru Janardan Swami (1 supra)*, which dealt with the elections to the cooperative societies under Maharashtra Cooperative Societies Act, 1960, the Apex Court held that even the preparation of the electoral roll being an intermediate stage in the process of election of the managing committee of a specified society and that the election process having been set in motion, the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll.

11. In *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, the Supreme Court interpreted the word "Election" as bearing wide meaning comprehending the entire process culminating in a candidate being declared elected and not merely declaration of election. This view was reiterated by the Supreme Court in *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*,

12. This Court in Writ Petition No. 15905 of 2006 (*Sri Manganellore Veeraraghavan v. District Collector, Nellore, Nellore District and Ors.*), having considered the case law on this aspect, held as under:

The ratio that could be culled out from the judicial precedents discussed above is that the word "election" has a far wider connotation than mere final result of the election and it takes within its sweep the entire process of election commencing from the election notification till declaration of the results, that once the election process is commenced, individual interests should yield to larger public interest of completing the election process as per the schedule, relegating the party raising the disputes pertaining thereto to a properly constituted election petition and that no Court, including the High Court and the Supreme Court, can interfere even where the authority concerned passes erroneous orders except where such erroneous orders have the effect of impeding or hindering the process of election. In the light of these firmly established legal principles, this writ petition is not maintainable because acceptance of nomination of Respondent No. 5, even if illegal, has not hindered the process of election, but, it is a step to further the election by conducting poll. In this process, even if Respondent No. 3 has committed a patent illegality, the Petitioner shall have to wait till the completion of the election before availing his remedy under Article 243-O(b) read with

Section 233 of the Act by presenting an election petition before the authority concerned.

13. Sri S.R. Ashok, learned Senior Counsel, submitted that while the cases decided by the Supreme Court in N.P. Ponnuswamy (2 supra) and Mohinder Singh Gill (3 supra) contained constitutional bar on entertaining the election disputes, no such bar exists in the present cases pertaining to cooperative society elections.

14. In my opinion, even in the absence of a constitutional bar, in the face of the legislative mandate, which enables an aggrieved party to raise a dispute relating to holding of elections to a cooperative society, it is not possible for this Court to interfere at the stage of election process. Further more, the logic behind non-interference with the election process applies equally to cooperative societies as much as they apply to the Legislative Assemblies and Parliament, as the primary objection of holding of elections to a body corporate is to ensure that the organization is administered by the elected persons. In any event, the judgment in Shri Sant Sadguru Janardan Swami (1 supra) is an authority for the proposition that even in respect of election disputes relating to cooperative societies, the Courts would not ordinarily interfere with the election process.

15. For the abovementioned reasons, I do not find any reason to grant relief in Writ Petition Nos. 23488 and 23511 of 2010 and the same are accordingly dismissed. As regards Writ Petition No. 23349 of 2010, in the face of the statutory mandate contained in Section 37(2) of the Act, the O.P. filed by Respondent No. 4 before the Tribunal is not maintainable and the writ petition is accordingly allowed. The Tribunal is restrained from proceeding with the said O.P. The Petitioners in Writ Petition Nos. 23448 and 23511 of 2010 are entitled to avail the remedy of raising election dispute u/s 37(2) of the Act at their option.

16. As a sequel to disposal of the writ petitions in the manner indicated above, WPMP. Nos. 30065 and 30088 of 2010 in W.P. Nos. 23488 and 23511 of 2010 respectively are dismissed and WPMP. No. 29869 of 2010 in W.P. No. 23349 of 2010 is disposed of as infructuous.