
(2013) 11 AP CK 0155
In the Andhra Pradesh High Court
Case No : Writ Petition No. 32732 of 2013

Dr. P. Jayapal Reddy

APPELLANT

Vs

The District Cooperative Officer and two Others

RESPONDENT

Date of Decision : 22-11-2013

Acts Referred:

Citation : (2013) 11 AP CK 0155

Hon'ble Judges : A. Rajasheker Reddy, J

Bench : Single Bench

Advocate : B. Narayana Reddy, for the Appellant; G. Vidyasagar for Respondent Nos. 2 and 3, for the Respondent

Final Decision : Dismissed

Judgement

A. Rajasheker Reddy, J.—This writ petition is filed seeking writ of mandamus declaring the inaction of the respondents 1 and 3 in not amending Sub Bye Law No. 13 of Bye Law No. 21 and Bye Law No. 22 of the 3rd respondent Society as illegal and arbitrary and contrary to Section 20 of the A.P. Mutually Aided Cooperative Societies Act, 1995 The petitioner filed W.P.M.P. No. 40699 of 2013 to stay the Election Notification dated 21.10.2013 issued by the 2nd respondent and this Court by order dated 19.11.2013 granted interim stay of the aforesaid Election Notification. Vacate stay petition along with counter affidavit is filed by R-3 and both counsel agreed for disposal of main writ petition.

2. Learned counsel for the petitioner contended that while issuing election notification and preparation of voters list, Sub bye Law No. 13 of Bye Law No. 21 and Bye Law No. 22 of R-3 bye laws are not followed. He also contended that there is no proper division of constitution and reservation is not followed as envisaged under bye Law No. 22 of the bye Laws of the 3rd respondent society.

3. Learned counsel for the 3rd respondent submits that when once the petitioner's nomination is accepted, he should not have any grievance and on the ground of suppression of fact in the writ affidavit, the writ petition is liable to

be dismissed. In support of his contention, he relied on the decision reported in K.D. Sharma Vs. Steel Authority of India Ltd. and Others,

4. He also contended that when election process is set in motion, the same cannot be interdicted by exercising jurisdiction under Article 226 of the Constitution of India. In support of his contention, he relied on Dhulipalla Narendra Kumar Vs. A.P. Cooperative Tribunal and Others,

5. In Shri Sant Sadguru Janardan Swami (Moingirid Maharaj) Sahakari Dugdha Utpadak Sanstha and Another Vs. State of Maharashtra and Others, , it is held as under:

12. In view of our finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, it is well settled that 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. It is not disputed that the election in question has already been held and the result thereof has been stayed by an order of this Court, and once the result of the election is declared, it would be open to the appellants to challenge the election of the returned candidate, if aggrieved, by means of an election petition before the Election Tribunal.

6. In Dhulipalla Narendra Kumar v. A.P. Cooperative Tribunal and others (supra) it is held

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 noninterference 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 (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.

7. In K.D. Sharma v. Steel Authority of India Limited and others it is held

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If

material facts are suppressed or distorted, the very functioning of Writ Courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because, "the Court knows law but not facts".

39. If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, an applicant who does not come with candid facts and "clean breast" cannot hold a writ of the Court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is a jugglery, manipulation, maneuvering or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not disclose all the material facts fairly and truly but states them in a distorted manner and misleads the Court, the Court has inherent power in order to protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits. If the Court does not reject the petition on that ground, the Court would be failing in its duty. In fact, such an applicant requires to be dealt with for contempt of Court for abusing the process of the Court.

8. The Election Notification was issued on 21.10.2013 and the petitioner filed his nomination, which has been accepted and the said fact has not been stated in the writ affidavit. The petitioner highlighted other grievances and he filed detailed representation. It seems the petitioner is having knowledge about the A.P. Mutually Aided Cooperative Societies Act, 1995, but he suppressed the fact of filing and acceptance of his nomination. In view of the above, Writ Petition is liable to be dismissed for suppression of above fact as well as on the ground that election process cannot be interdicted. Accordingly, Writ Petition is dismissed and interim stay granted on 19.11.2013 in W.P.M.P. No. 40699 of 2013 is hereby vacated. There shall be no order as to costs. As a sequel thereto, miscellaneous petitions, if any, pending in this Writ Petition, shall stand closed.