
(1999) 08 AP CK 0063

In the Andhra Pradesh High Court

Case No : Writ Petition No. 26358 of 1997

K. Babu Rao and Others

APPELLANT

Vs

State of A.P. and Others

RESPONDENT

Date of Decision : 03-08-1999

Acts Referred:

Citation : (1999) 4 ALT 656 : (1999) 2 APLJ 288

Hon'ble Judges : S. Ananda Reddy, J

Bench : Single Bench

Advocate : Sanaka Venkateswara Rao, for the Appellant; G.P., for Industries and Commerce for Respondent Nos. 1 to 3, M. Venkateswara Rao and Harender Pershad, for the Respondent

Final Decision : Allowed

Judgement

S. Ananda Reddy, J.—This writ petition is filed seeking a direction to the respondents to hold elections for the Presidentship and Members of the Committee of Repalle Weavers Co-operative Production and Sale Society Limited, Repalle, on the basis of the Voters List already published for the purpose of election of the Society scheduled to be held on 07-06-1997 and pass such other orders.

2. The brief facts of the case are that the Repalle Weavers Co-operative Production and Sale Society Limited, Repalle, was registered under the provisions of A.P. Co-operative Societies Act, 1964 (hereinafter referred to as the Act). Originally the area of operation of the above society covered the entire area of Repalle Municipality. It is claimed that the petitioners are the members of the said society. Later under the scheme of identification of viable societies, potentially viable and non-viable societies in terms of Section 15-A of the Act a Notification was published by the 3rd respondent deleting a part of the area of Repalle Society in respect of Block Nos. 5 to 16 and 23 to 29 and included the same in the area of operation of Nawajeevana Weavers Co- operative Production and Sale Society Limited, Repalle. According to the petitioners the said Society

by that time had already become defunct and was not functioning. As such though a part of the area covered by the Repalle Society was deleted, the members continued to be as Members of the Society only. Accordingly, elections were conducted in the year 1987, 1990 and 1993 without deleting any members, as a result of the bifurcation of the original society. Further for conducting the elections on 07-09-1996, the voters list was also prepared and published. However, at the instance of some interested parties who made representations to the 1st respondent, a stay was granted on 06-06-1996 a day before the date of elections. Later, on further representations the said stay order was withdrawn by the 1st respondent by the order dt. 21 -03-1997. However, as per the directions of the 2nd respondent some of the names to the extent of 100 Members were removed from the voters list and were proceeding to conduct elections. Therefore, the petitioners aggrieved by the said removal of some of the names, have approached this Court, contending that the said action of the 2nd and 3rd respondents are illegal and contrary to the provisions of the A.P. Co-operative Societies Act.

3. The learned Counsel for the petitioners has specifically stated, in fact, by the proceedings of the 1st respondent dt. 21-3-1997, the 2nd respondent was directed to verify the genuineness of the Membership only after the elections. In spite of it the 3rd respondent, as per the instructions of the 2nd respondent interfered with the voters list originally prepared for conducting the elections on 07-06-1996. Therefore, it was stated that the said action of the respondents 2 and 3 is illegal and unsustainable. The learned Counsel also contended that when once the elections are stayed after the schedule is notified and before the date of elections, after vacation of the said stay, the proceedings have to start from that stage and there is no power for the respondents to interfere with the election process or with the voters list already prepared except fixing a fresh date of elections. The learned Counsel also referred to and relied on a decision of this Court in M.A.R.V.S. Sai Babu Vs. Commissioner and Registrar of Co.op. Societies, Government of Andhra Pradesh, Hyderabad and others, where a Division Bench of this Court held that a part of the provisions of Rule 22-AAA of the Act is ultra vires of the Act and unconstitutional. It is therefore contended that under the above circumstances the action of the respondents is liable to be set aside and a direction is to be issued for conducting the elections as scheduled basing on the voters list already prepared.

4. A counter has been filed on behalf of the respondents denying all the contentions of the petitioners. The learned Assistant Government Pleader contended that under the provisions of the Act, the Director of Handlooms and Textiles has got the power to issue appropriate directions for conducting the elections to the Committee of the Society. It was also contended that the alleged direction given by the 1st respondent in his Proceedings dated 21-03-1997, directing to verify the genuineness of the Membership after the election is not correct. The 1st respondent has vacated the interim stay and directed to initiate election programme after removal of the ineligible members with reference to

looms verification report. The process of removal of bogus and ineligible members on the rolls of the Repalle Weavers Co-op. Society, Repalle, was taken up in pursuance of the instructions issued by the Commissioner for Handlooms and Director of Handlooms and Textiles, A.I. Hyderabad. Therefore, the action of the respondents was within the powers conferred under the provisions of the Act. It was also stated that after verification the respondents have found 201 ineligible Members and after removal of the ineligible members a fresh notification was issued for conducting elections on 21-10-1997 and elections were in fact conducted. It was therefore contended that there is no merit in the writ petition.

5. Heard both sides and considered the material on record.

6. The dispute that arises for consideration is whether the respondents have the power, after the notification of the election schedule, to interfere with the Voters List already prepared.

7. The petitioners state that they are Members of the Repalle Weavers Co-operative Production and Sale Society Limited, Repalle. It is also an admitted fact that a part of the area under the operation of the said Society was deleted and added to Na wajeewana Weavers Co-operative Production and Sale Society Limited of the same place. But, however, the said bifurcation orders were not given effect to, according to the petitioners and the old Members of the original Repalle Weavers Co-operative Production and Sale Society are continuing as Members and have even participated in the elections conducted in the years 1987, 1990 and 1993. Accordingly, even for the elections to be conducted in the year 1996 also voters list has been prepared and election schedule was notified fixing the date of election as 07-06-1996. However, on the representation of some of the Members of the Society, the 1st respondent- State Government granted stay which was later vacated on 21-03-1997. In the normal course when once the stay has been vacated by the authorities which has granted the stay the natural course is to proceed with the elections from the stage at which it was stopped. In fact a perusal of the order of the 1st respondent dated 21-03-1997 shows that there were no further objections from the Members of the above Society for holding the elections. Therefore, the Government have decided to withdraw the stay granted earlier to facilitate the conduct of elections to the said Society immediately. In pursuance of the said order instead of conducting elections immediately the respondents 2 and 3 were engaged in conducting enquiry with reference to the voters list at that stage. They conducted enquiry and removed some of the names, which is being questioned in the present writ petition.

8. The contention of the learned Counsel for the petitioners is if there are any defects in the voters list already prepared the remedy open to the aggrieved party is only to approach the Election Tribunal after conducting the elections. According to the learned Counsel even the respondents 2 and 3 are not empowered under the provisions of the Act to engage in any enquiries at that

stage and make any alterations with the voters list already prepared. No doubt the provisions of Rule 22-AAA gives power to the authorities when the election process is stayed or postponed. The said Rule reads as under:-

"22-AAA. Notwithstanding anything contained in these rules the Government or the Election Authority, may, for the reasons to be recorded in writing direct from time to time, the postponement or alteration of the date or the dates of election to the societies fixed or commenced under Rule 22 or Rule 22-B at any stage thereof and the Election Officer shall give effect to the directions issued under this rule. On such postponement or alteration of the date or dates of election, the earlier notification shall stand rescinded in all respects and the eligibility of the voters shall be determined in accordance with sub-rule (3) of Rule 22."

As per the said Rule once the elections are postponed or the date of election is altered, the earlier notification shall stand rescinded in all respects and the eligibility of the voters shall be determined in accordance with the sub- rule (3) of Rule 22. Though this Rule gives power to the respondents to go into the eligibility of the voters, this Court in M.A.R. V.S. Sai Baba 's case (1 supra) held that part of the Rule is ultra vires of the Act and unconstitutional. Accordingly, that portion of the Rule was struck down. When once this is the legal position, the respondents are debarred from interfering with the voters list already prepared and the elections schedule has to proceed from the stage at which it was stopped earlier. As the Rule referred to above was struck down by this Court and further the 1st respondent also made it clear in its order dated 21-03-1997 that there were no objections to the Members for proceeding with the conducting of the elections to the society, there was absolutely no scope for the respondents 2 and 3 to proceed with the enquiry as to the eligibility of the members. The said, action of the respondents 2 and 3 clearly without jurisdiction. When once the action of the respondents 2 and 3 is without jurisdiction what follows is only that they have to proceed to conduct the elections as per the original notification, as per which the elections were scheduled to be held on 07-06-1996. As the elections could not be held on that day, the respondents have to notify the future date to hold elections basing on the voters list prepared originally for the elections to be held on 07-06-1996. In view of the above legal position the fresh voters list prepared by the respondents is illegal and could not be acted upon. Even if the elections are held in pursuance of such new voters list it is illegal and unsustainable. Therefore the new voters list is only an invalid document. Accordingly, the respondents are directed to hold elections basing on the voters list originally prepared and notified.

9. The writ petition is accordingly allowed. No costs,