
(2019) 12 TEL CK 0002
In the Telangana High Court
Case No : Writ Petition No. 25603 Of 2019

V. Radha Krishna & others

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 10-12-2019

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2019) 12 TEL CK 0002

Hon'ble Judges : Challa Kodanda Ram, J

Bench : Single Bench

Advocate : Kiranmayee, Venkata Diwakar

Final Decision : Dismissed

Judgement

Petitioners claim that they are members of Motinagar Co-operative Housing Society Limited, Motinagar, Hyderabad, essentially, a house building society registered under the Telangana Co-operative Societies Act, 1964 (for short, 'the Act').

In this Writ Petition, the petitioners challenge the election notification dated 14.11.2019 issued by the 4th respondent - Election Officer-cum-Assistant Registrar, Motinagar Co-operative Housing Society Limited proposing to conduct elections to the 3rd respondent Society, pending consideration of their objections dated 05.11.2019.

I.A.No.2 of 2019 was filed by one Sri Anji Reddy, S/o Bangaru Reddy, member of the society and who is interested in the process of election of the society to be completed, as party respondent to the Writ Petition so as to enable him oppose the prayer of the petitioners in the Writ Petition. Since the Application was not opposed, the same is ordered.

Considering the nature of relief, learned Government Pleader for Cooperation was directed to get instructions in the matter on 21.11.2019. On 22.11.2019, arguments were advanced by the learned counsel for the petitioners, learned

Government Pleader for Cooperation and learned counsel for the 5th respondent (now impleaded).

The brief averments in the writ affidavit, as articulated by Sri Prasanth, learned counsel on behalf of the petitioners, are as follows:

The term of Office of the Managing Committee expired on 29.12.2018 and the present person-in-charge is conducting the affairs of the Society. There were large number of complaints that the Society had admitted bogus members and hence, objections were filed on 12.07.2019 pursuant to the notification of the 2nd respondent, dated 10.07.2019. Since the said objections were not considered, and the voters' list was published on 12.07.2019, Writ Petition No. 16337 of 2019 was filed to scrutinize the voters' list only after considering the objections filed by the petitioners. In the said Writ Petition, vide order dated 02.08.2019, this Court directed the 2nd respondent to consider the pending objections before proceeding further. While so, some of the bogus members filed Writ Petition No. 21015 of 2019 to conduct elections to the Society by initiating the election process, wherein, once again, this Court passed orders on 01.10.2019 directing the 2nd respondent to consider the objections and then proceed with election process. It is further observed that if the objections had already been considered, the same should be informed to the election authority to take further steps, however, so far, no further action was taken except the 2nd respondent seeking information from the members to be furnished within the stipulated date. The petitioners assert that on 05.11.2019, detailed objections were furnished enclosing all the documents specifically stating the names of 40 to 50 members, who are otherwise ineligible to be continued in the voters' list and also the details of the individuals who have sold away the plots without seeking permission. But unfortunately, pending consideration of the objections, the process of election was commenced on 06.11.2019 itself. Hence, the petitioners were constrained to file Writ Petition No. 25114 of 2019, however, the same was dismissed as infructuous as it was reported that election notification was issued on 06.11.2019. Thereafter, on 15.11.2019, the petitioners made an Application to the 3rd respondent to furnish the information with regard to the details of the members who made Applications so far, pursuant to which, it was endorsed that only 313 out of 442 members of the Society had submitted the Applications.

The sum and substance of the arguments of the learned counsel for the petitioners is to the effect that the entire process of election is vitiated, for, the objections filed by his clients were not considered and further, while the 2nd respondent gave time vide Circular dated 31.10.2019, to submit information of the members in proforma up to 07.11.2019, the same were not considered in terms of the orders of this Court dated 01.10.2019. The learned counsel placed reliance on the judgment of the Supreme Court in *Pundlik v. State of Maharashtra* (2005) 7 SCC 181 to support his contention that the defective voters' list can be interfered with under Article 226 of the Constitution. Para 18

thereof reads as under:

" We are also supported in taking this view by a recent three-judge Bench decision in Ahmednagar Zilla S.D.V. & P. Sangh Ltd. V. State of Maharashtra (2004) 1 SCC 133. In that case, the electoral roll was prepared on the basis of bye-laws which were held to be illegal. When the action was challenged it was contended that the Court could not interfere with the list of voters prepared in accordance with the provisions of the Rules and the only remedy available to the aggrieved party was to file election petition after the election was over. Reliance was placed on Sant Sadguru Janardan Swamy and held that where the voters' list had been prepared on the basis of non-existent rules, it would be illegal and the Court could interfere under Article 226 of the Constitution."

On the other hand, learned counsel for the implead petitioner - 5th respondent opposes the Writ Petition and asserts that the petitioners are resorting to abuse of process of court by filing one Writ Petition after the other only to prevent and scuttle the election process. He further asserts that all the objections raised by the petitioners were, in fact, considered and orders were passed on 16.07.2019 itself and the representation made by the learned Government Pleader in Writ Petition No. 16337 of 2019 on 02.08.2019 that the objections filed by the petitioners on 12.07.2019 are yet to be disposed of was factually not correct, as by that date, the objections filed by the petitioners stood disposed of. In spite of the same, yet another Writ Petition was filed by the petitioners. According to him, though this Court noticed the objections having been considered on 16.05.2019, however, on account of wrong submission of the learned Government Pleader, it was directed that if the objections were not considered, the authorities concerned to consider the objections and dispose of the same. If objections were already considered, the information may be provided to the election authority, which should complete the process of election within two months. In the facts of the present case, it is asserted, there is no further scope to the petitioners to file any objections. The learned counsel further submits that once the election process commences, no writ petition is maintainable challenging the election process and hence, prays for dismissal of the Writ Petition.

Learned Government Pleader for Cooperation, placing reliance on the judgments of the Division Bench in M.A. Sami Khan v. The District Collector, Hyderabad 1992(1) ALT 611(DB), K. Appa Reddy v. Election Officer 1996(2) ALD 1007 (D.B.) and Janga Raghava Reddy v. State of Andhra Pradesh 2013(4) ALD 544 would urge that the Writ Petition is not maintainable with respect to the election matters and there is an effective alternative remedy to the petitioners to challenge the election result in an Election Petition. Even on facts, the learned Government Pleader would assert that the objections cited by the petitioners were considered yet another time and dealt with by the 2nd respondent and the same was communicated to the election officer vide letter dated 06.11.2019. Though the petitioners are in know of the said fact, they willfully did not disclose

the same in the Writ Petition, asserts the learned Government Pleader.

Having heard the learned counsel and having perused the material, it is to be seen, in the judgment in M.A. Sami Khan's case (cited supra), the Division Bench had held, in para 7, as under:

" Yet another reason for not interfering is equally important. The election process for elections to the Managing Committee of this Society stood already set in motion when the writ petitions were filed. What is more, the said election process has since been almost complete save and except declaration of results which stood stayed by virtue of an interim order of this Court in the present appeals. Now, well settled is the position that once an election process is set in motion, Courts would not interfere, stall or stultify the same. Election process once commenced must be permitted to run its logical course till the end. If Courts interfere in the midst of an election process and litigation being what it is, no election will ever be expeditiously completed. It is best, therefore, that the process once set in motion is not interrupted, it is best left undisturbed and allowed to be completed. Once aggrieved by the result of the election or by any one or the other aspect relating thereto has, as earlier indicated, his remedy open by way of an election dispute."

Likewise, in the judgment in K. Appa Reddy's case (cited supra), the Division Bench dealing with the illegalities in the voters' list, referred to its earlier judgment in R. Venugopal v. Dt. Collector (1988(2) ALT 211), wherein it was held:

" It must be remembered that dispute is not merely as to the admission of members, in which case it would not be a dispute relating to or in connection with the election to the committee; it is a dispute whether they are entitled to participate in the election. Such a dispute can only be raised and determined in an election petition filed under the said sub-sections (sub-sections (3) and (4) of Section 61)"

It may be noted that the sheet anchor argument of the learned counsel for the petitioners, essentially, is with respect to the alleged illegalities in the voters' list, either deletion or addition of eligible / ineligible members. A careful reading of the judgment relied on by the learned counsel for the petitioners discloses that it relates to preparation of voters' list on the basis of non-existent rules, which is not the issue in the present case. The same is evident from the facts of the case in the said judgment and thus, the same has no application. Yet another judgment of this Court in Janga Raghava Reddy's case (cited supra) also, in unequivocal terms, after reviewing the case law, held that it would be impermissible for the election officer to stop or postpone the election process except for the reasons set out in Rule 22-C. There being no such conditions in the existing case, the relief as claimed by the petitioners cannot be granted.

In the light of the above authoritative judicial pronouncements, particularly of the Division Benches, under the Telangana Co-operative Societies Act, there is no merit in the Writ Petition and the same is accordingly, dismissed. No costs.

The miscellaneous Applications, if any shall stand closed.