

(2012) 10 AP CK 0032
In the Andhra Pradesh High Court
Case No : Writ Petition No. 20688 of 2012

Yeturu Sirish Reddy

APPELLANT

Vs

Sri. P. Patahya Naik and 2 Others

RESPONDENT

Date of Decision : 03-10-2012

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 120, 31, 61(3)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 6, 151

Citation : (2013) 1 ALD 509 : (2013) 2 ALT 598

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

Bench : Single Bench

Advocate : Peri Prabhakar, for the Appellant;

Final Decision : Dismissed

Judgement

Hon"ble Sri. Justice C.V. Nagarjuna Reddy

1. This Writ Petition is filed for a Certiorari to quash Order, dated 08-02-2012, in I.A. No. 197 of 2010 in OPSR. No. 206 of 2010, on the file of the A.P. Co-operative Tribunal, Hyderabad (for short "the Tribunal"). The petitioner claims to be a member of respondent No. 2-Rajiv Co-operative House Building Society. He has filed the above-mentioned OP challenging the election held to the Managing Committee of respondent No. 2. Along with the OP, the petitioner filed I.A. No. 197 of 2010 for condonation of delay of 400 days in filing the said OP. The Tribunal dismissed the said application, by holding that the petitioner failed to explain the delay caused in filing the said OP within the reasonable time after holding the election with cogent and satisfactory reasons and that therefore, there are no justifiable reasons to condone the enormous delay in filing the election petition.

2. When this Writ Petition came up for hearing before this Court on 10-07-2012, this Court has called upon the learned Counsel for the petitioner to apprise on the competency of the Tribunal to condone the delay in the face of the

prescription of specific time limit by the statute for filing election petitions. Today, the learned Counsel submitted that the petitioner was not aware of the election as the same was held without notice to him and that therefore, he could not file the OP within the time stipulated in Rule 49-B of the A.P. Co-operative Societies Rules, 1964 (for short "the Rules").

3. u/s 61(3) of the Andhra Pradesh Co-operative Societies Act, 1964 (for short "the Act"), every dispute relating to, or in connection with, any election to a Committee of a Society referred to in clause (a) of sub-section (3) of Section 31, shall be referred for decision to a Tribunal having jurisdiction over the place where the main office of the Society is situated. Under sub-section 4 thereof, every dispute relating to, or in connection with any election shall be referred under sub-section (3) only after the date of declaration of the result of such election.

4. Under Rule 49-B of the Rules, a dispute relating to, or in connection with, any election to the President of a Primary Society, a Committee, a member of a Committee or an Office shall be preferred to the Tribunal concerned within one month from the date of declaration of the result of such election. No provision is made under the Rules empowering the Tribunal to entertain a petition beyond the stipulated period of 30 days from the date of declaration of the result.

5. The petitioner has filed I.A. No. 197 of 2010 under Order VII Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 (for short "CPC"). The Tribunal is constituted under the provisions of the Act and it is not a civil Court constituted under the provisions of the CPC. Therefore, the provisions of the CPC have no application in respect of the proceedings before the Tribunal except to the extent of the matters, which are prescribed u/s 120 of the Act. Unless the provisions of the Act and the Rules contain a provision empowering the Tribunal to condone the delay, it cannot exercise such a power, which is not vested in it. Therefore, in my opinion, filing I.A. No. 197 of 2010 itself by invoking the provisions of the CPC is misconceived. Unfortunately, the Tribunal has not examined the issue from this legal angle and rejected the petitioner's application by holding that he failed to give proper explanation for the inordinate delay in filing the OP. When the provisions of Rule 49-B of the Rules mandate that an election petition shall be filed within 30 days from the date of declaration of result, a person who seeks to challenge the election is bound to file the petition within the said time failing which the Tribunal has no jurisdiction to entertain such a dispute filed beyond the prescribed limitation. Even though the Tribunal has dismissed the petitioner's application for different reasons as noted above, I am not inclined to interfere with the conclusion arrived at by it though for different reasons, which have already been indicated by this Court herein before.

6. For the above-mentioned reasons, the Writ Petition is dismissed. As a sequel, W.P. M.P. No. 26532 of 2012, filed by the petitioner for interim relief, is disposed of as infructuous.