

(2010) 02 AP CK 0006

Andhra Pradesh High Court

Case No: Writ Petition No. 19968 of 2009

Patnam Venkateswarlu

APPELLANT

Vs

Commissioner and Registrar of
Co-operative Societies and
Others

RESPONDENT

Date of Decision: Feb. 9, 2010

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2010) 4 ALT 254

Hon'ble Judges: P.S. Narayana, J

Bench: Single Bench

Advocate: V.R. Machavaram, for the Appellant; G.P. for Respondent Nos. 1 to 3 and Bobba Vijaya Lakshmi, for Respondent Nos. 4, 5 and 7, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P.S. Narayana, J.

This Court ordered notice before admission on 17-9-2009. Counter affidavits had been filed.

2. Sri R. Machavaram, the learned Counsel representing the writ petitioner had taken this Court through the averments made in the affidavit filed in support of the Writ Petition and also the averments made in the respective counter affidavits and would maintain that in the light of the specific allegations made as against 6th respondent, inasmuch as the election itself was not held in accordance with law, the same being nonest in the eye of law, such election can be challenged by way of a Writ Petition under Article 226 of the Constitution of India and hence the stand taken in the respective counter affidavits cannot be sustained in this regard. The learned Counsel also placed strong reliance on the decision of the Division Bench of this Court in B. Rajagopala Rao v. The Registrar of Co-operative Societies, A.P.,

Hyderabad and Ors. 1967 (2) An. W.R. 26. The learned Counsel while further elaborating his submissions had also taken this Court through the letter of the Divisional Co-operative Officer, Kavali dated 31-1-2006, the notice for the Managing Committee made dated 2-11-2006, the show cause notice of termination dated 18-7-2009 and the termination order dated 1-8-2009. The learned Counsel also would contend that the stand taken by the other side that there is inordinate delay in approaching this Court also cannot be sustained inasmuch as the same had been well explained in the affidavit filed in support of the Writ Petition.

3. The learned Government Pleader for Co-operation had taken this Court through the respective counter affidavits and would maintain that the Writ Petition itself is not maintainable in view of the fact that there is an effective alternative remedy available to the writ petitioner, if at all the writ petitioner is aggrieved of the election by challenging the same by invoking Section 61(3) of the A.P. Co-operative Societies Act (in short referred to as "Act" for the purpose of convenience). The learned Government Pleader for Co-operation also would point out that after a long lapse of time, the writ petitioner approached this Court making certain allegations against the specified officers which had been specifically denied. In the light of the clear counter affidavit filed by the 6th respondent, the Writ Petition is liable to be dismissed. The learned Government Pleader for Co-operation also placed strong reliance on the decision in Dr. Anil Kolly v. The State of A.P. 2006 (1) APLJ 353.

4. Smt. Bobba Vijaya Lakshmi, the learned Counsel representing respondents 5 and 7 had taken this Court through the stand taken in the counter affidavit and would maintain that even if the conduct of the petitioner to be taken into consideration, in the light of the averments made in the affidavit filed in support of the Writ Petition, it is clear that the Writ Petition is not a bonafide one and on this ground alone, the Writ Petition is liable to be dismissed. The learned Counsel also would maintain that inasmuch as the alternative remedy is available to the writ petitioner, on the said ground also, the Writ Petition to be dismissed as not maintainable. Further while elaborating her submissions, the learned Counsel would maintain that elections were held in the year 2006 and for the reasons best known, though the writ petitioner, being the Secretary of Jaladanki Primary Agricultural Co-operative Society (in short hereinafter referred to as Society), had knowledge of the same and having kept quiet for sufficiently a long time, the writ petitioner had preferred to challenge the same in the year 2009 and on the ground of inordinate delay also, the Writ Petition to be dismissed.

5. Heard the Counsel, perused the averments made in the affidavit filed in support of the Writ Petition, the respective stands taken in the counter affidavits and also the material papers placed before this Court.

6. The Writ Petition is filed for a writ of mandamus declaring the election of 5th respondent as President of 7th respondent Society on 10-11-2006 as illegal and to set aside the same and to pass such other suitable orders.

7. It is the case of the writ petitioner that the petitioner has been working as one of the four Secretaries of the 7th respondent-Society and being the senior-most Secretary is entitled to be promoted as Chief Executive Officer. It is further stated that one Dagumati Krishna Reddy was the President of the Society and consequent to his election as President of the Society in the year 2006, the post of President of the Society fell vacant and respondents 3 to 6 colluded amongst themselves to install the 5th respondent as the President of the above Society by illegal means and as senior-most Secretary of the Society, the writ petitioner did not support the above act of the respondents 3 to 6 and hence they bore grudge against the writ petitioner. As the matters stood thus, consequent to the resignation of the said Dagumati Krishna Reddy as President of the Society, G. Venkateswarlu, Vice-President of the Society was acting as the President of the Society by virtue of devolution of powers and functions as laid down u/s 32(B) of the Act. It is also further stated that some of the members of the Society made representation to the Deputy Registrar of Co-operative Societies, Kavali to make necessary arrangements for election of the President/office bearer of the Society. The Deputy Registrar of Cooperative Societies, Kavali had given direction to the acting President vide his letter dated 31-10-2006 to hold election to the post of President by Committee itself in violation of Rule 22(2) and (12) of A.P. Co-operative Society Rules which mandates that the District Collector is the election authority to appoint Election Officer for conducting election of office bearer/President. The Deputy Registrar, Cooperative Societies, Kavali by violating the directions of this Court issued in W.P. No. 2395/2000 deputed the 6th respondent who was the then Sub-Divisional Co-operative Officer, Kavali who was the mentor of the 4th respondent to the Board meeting as the election observer under the guise of giving guidance and assistance for the election process. The Deputy Registrar and the respondents 4 to 6 colluded amongst themselves and installed the 5th respondent as the President of the Society in the meeting held on 10-11-2006 in the premises of the Society at Jaladanki in violation of the Act and Rule 22(12) of the A.P. Co-operative Society Rules. The election of the 5th respondent as President in the aforesaid manner without following the Rules was not supported by the writ petitioner and hence the 5th respondent started harassing the writ petitioner and as the writ petitioner had not followed the illegal directions of the 5th respondent in manipulating the accounts of the Society, the writ petitioner was suspended. W.P. No. 24902/2007 filed by the writ petitioner questioning the same was allowed by this Court and C.C. No. 183/2009 also hence filed for non-implementation of the orders of this Court and the 5th respondent served a show cause notice to the petitioner's Counsel during hearing of the contempt petition for removal of writ petitioner from service and also the removal order. Though the 5th respondent had assumed office of the President of the Society through back door without following the due procedure, he had been bent upon removing the petitioner from service which speaks volumes about his illegalities to harass the staff who had not towed his line. In such circumstances, the Writ Petition had been filed.

8. The 6th respondent filed counter affidavit specifically denying the allegations. In para-5 of the counter affidavit of the 6th respondent, it is averred that the statement that some of the members made a representation to the Deputy Registrar of Co-operative Societies is not correct. The majority members of the Managing Committee of the 7th respondent society made a representation to the Deputy Registrar of Co-operative Societies, Kavali on 4-9-2006 requesting him to make necessary arrangements to fill up the vacancy of office bearers relating to Territorial Constituency No. 1 and to elect the President of the Society. It is further stated that pursuant to the said representation, the Deputy Registrar of Cooperative Societies, Kavali had given a direction to the acting President vide his letter Rc. No. 1255/2006-C dated 31-10-2006 to hold Election to the post of the President by the Committee itself as per Section 31 A(8) of the Act and Bye-Law No. 25 of the Society with a request to intimate the date of meeting proposed in advance to his office. It is further stated that there is no violation of Rule 22(2) and (12) of the A.P. Co-operative Society Rules. When the term of the entire Managing Committee expires, the Election Officer will be appointed by the Election Authority under Rule 22(2) to take up the elections for the new Managing Committee Members and the office bearers of the Society. After completion of the election to the Managing Committee members, the Election Officer shall hold elections to the office bearers of the Society as per Rule 22(12) of A.P. Cooperative Society Rules. Section 31(5) of the Act provides for election of the President to be elected by the members of the Committee from among themselves in the manner prescribed. The corresponding Rule 22(11) also reiterates Section 31(5) of the Act. Rule 22-A(5) of the Rules provide filling up of the vacancies by Co-option. Sub-rule (b) of Rule 22-A(5) provides "Any vacancy other than the President that the may arise due to non-filling of nominations or any casual vacancy that may arise during the term of office, shall be filled up by co-option by the member of the committee." Earlier, the words "other than the President" were omitted vide G.O.Ms. No. 223, Agricultural and Co-operation (Coop. IV) dated 27-6-2005. Therefore it is now to be construed that the vacancy of the President can also be filled up by the members of the Committee through co-option. The allegations regarding the deputation of the 6th respondent are baseless and untenable. The 6th respondent, while was working as Sub-Divisional Co-operative Officer, Kovur, was appointed as Election observer by the Divisional Co-operative Officer, Kavali vide R.C. No. 1255/2006-C dated 7-11-2006. The Divisional Co-operative Officer, Kavali had also instructed the Sub-Divisional Cooperative Officer, Kovur to attend the meeting as observer to be proposed by the acting President to observe the process of Election to be taken up by the Managing Committee. Accordingly on 10-11-2006, the Managing Committee meeting was conducted by the acting President and the Election had taken place for the post of Managing Committee member and President. The Sub-Divisional Co-operative Officer, Kovur had submitted a report stating that election was conducted peacefully on 10-11-2006. It is also further stated that as per the report of the Sub-Divisional Co-operative Officer, Kovur and the Minutes of the Managing

Committee held on 10-11-2006 it had been noticed that all the 13 Managing Committee members had agreed to the Minutes resolved by the Managing Committee. The allegations of collusion are absolutely untrue, baseless and made only for the purpose of the present Writ Petition. The petitioner, only with a mala fide intention resorted to make such allegations. The various averments which are not specifically traversed had not been admitted. It is also further stated that during the relevant period, the 6th respondent discharged his duties as Election observer only. The petitioner as is seen from the averments in the Writ Petition is inimical towards the 5th respondent and filed the present Writ Petition with oblique motives.

9. In the counter affidavit filed by respondents 4, 5 and 7, several of the averments made in the Writ Petition had been specifically denied. It is stated that it is true that the petitioner was working in the Society as Secretary and prior to his suspension on 5-2-2007 he was suspended earlier. On the election of the then President D.V. Krishna Reddy as President of Jaladanki M.P.P. in 2006, the members of the Managing Committee of the Society addressed a representation dated 4-9-2006 to the 3rd respondent seeking direction to fill up the vacancy which arose due to the resignation of the then President as member of the Managing Committee as well as the President of the Society. The 3rd respondent vide Rc. No. 1255/2006-C dated 31-10-2006 informed that as per Section 31-A(8) of the Act and Bye-Law No. 25 of the Bye Laws of the Society, the Managing Committee empowers to fill up the vacancy of the member of the Managing Committee and elect the President. In pursuance of the said directions of the 3rd respondent, a meeting was convened on 10-11-2006 to elect the President from among the members of the Managing Committee after duly giving notice to the members of the Managing Committee. On 10-11-2006, I was elected as the President of the Society. Till the election to the post of President was conducted, the Vice-President G. Venkateswarlu was holding the post of President as laid down u/s 32-B of the Act. Section 31(5) of the Act provides for election of the President to be elected by the members of the Committee from among themselves in the manner prescribed. The corresponding Rule 22(11) also reiterates Section 31(5) of the Act. Rule 22-A(5) of the Rules provides for filling up of the vacancies by co-option. Sub-rule (b) provides "Any vacancy other than the President that the may arise due to non-filling of nominations or any casual vacancy that may arise during the term of office, shall be filled up by co-option by the member of the committee." Earlier the words "other than the President" were omitted vide G.O.Ms. No. 223, Agriculture & Co-operation (Coop. IV) dated 27-6-2005. Therefore it is now to be construed that the vacancy of the President can also be filled up by the members of the Committee through co-option. However, in the instant case, it is stated that as the 5th respondent had been already elected as the member of the Managing Committee in the elections conducted in the year 2005, Rule 22(2) and (12) of the Rules are not applicable. When elections are conducted and new management takes over then only the said sub-rules apply. Further it is stated that the petitioner who was suspended by the Society as early as 5-2-2007, described himself as Secretary of

the Society in the cause title. In fact, domestic enquiry had been conducted and a show cause notice dated 18-7-2009 was issued to the petitioner. When he did not give proper explanation except stating that the report was not provided to him, the termination orders dated 1-8-2009 were sent to him through registered post and the same was acknowledged by his nephew Mr. Mahesh (brother's son). In the contempt proceedings filed in C.C. No. 183/2009, this Court directed to furnish a copy of the inquiry report and then directed him to submit his explanation and treat the order dated 1-8-2009 as show cause notice. Accordingly, the report was furnished on 4-8-2009 during the contempt case hearing. He submitted his explanation as per the directions of this Court and after considering the same, the 7th respondent society convened a meeting of the Managing Committee on 9-9-2009 to discuss the necessary action to be taken in pursuance of the said explanation. The society, vide Resolution No. 2, dated 9-9-2009 resolved to accept the findings of the domestic inquiry and proposed to remove the petitioner from service of the society. The 5th respondent had been authorized to take action in pursuance of the said resolution. Accordingly, the Society sent the proceedings of removal vide Registered post dated 11-9-2009, 25-9-2009, 7-10-2009 and 15-10-2009. All of them had been returned unserved as he is not available. It was construed that the petitioner wantonly avoided to receive the said orders and therefore substituted service was made in Eenadu, Andhra Bhoomi and Andhra Prabha newspapers dated 19-10-2009 and therefore it is deemed that the termination order had been served on the petitioner.

10. Further it is stated that the petitioner, on coming to know that the termination order was being served on him, had approached this Court by challenging my election as President of the Society dated 10-11-2006 only to threaten, blackmail and somehow see that he is reinstated into the service of the Society. Further it is also stated that the petitioner, who is a suspended employee of the Society, is challenging the election of the 5th respondent as the President of the Society. Normally, the elections are challenged by the defeated candidates that too u/s 61(3) of the Act before the Co-operative Tribunal. The petitioner chose to challenge the election after three years of being elected only to put pressure on the 5th respondent to drop the charges framed against him and not to terminate him. The petitioner is not making himself available even to receive the termination orders and had been contesting the allegations made against him and stalling the domestic enquiry by filing various writ petitions. Further specific stand had been taken that the petitioner is having an effective alternative remedy u/s 61(3) of the Act and the ground of laches also had been pleaded.

11. Section 61 of the Act deals with Disputes which may be referred to the Registrar. Section 61(1)(b) of the Act reads as hereunder:

Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or the business of a society, other than a

dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or arbitrary officer, agent or employee of the society

It is needless to say that Section 61 of the Act falls under Chapter VIII - Settlement of Disputes. In the decision referred (1) supra the Division Bench while dealing with Section 32(5) and 127 of the Act held that where the election to the Committee of the Society was held in disregard to the statutory provisions and the members assumed office, a writ of mandamus is the proper remedy and a writ of quo warranto need not been issued.

12. In [Umesh Shivappa Ambi and Others Vs. Angadi Shekara Basappa and Others](#), the Apex Court while dealing with Section 70(2)(c) of the Karnataka Co-operative Societies Act 1959 and Article 226 of the Constitution of India held that when the effective alternative remedy is available u/s 70(2)(c) of the Act aforesaid, such election not to be interfered with under Article 226 of the Constitution of India.

13. Reliance also was placed on R. Venugopal v. District Collector, Medak and Ors. 1988 (2) ALT 211, A. Anji Reddy v. G. Yella Reddy and Ors. 1989 (1) ALT 231. Further reliance was placed on the decision referred (2) supra wherein the learned Judge of this Court while dealing with the dispute relating to election to a committee of a society held that such disputes shall be referred to the Tribunal as constituted u/s 75 of the Act and the dispute if any, with regard to the preparation of voters list as well as the rejection of nominations, being disputes relating to the election, undoubtedly come under Sub-section (3) of Section 61 of the Act and a Writ Petition under Article 226 of the Constitution of India is not maintainable.

14. It is not in controversy that elections were held even in the year 2006. The petitioner, having kept quiet for sufficiently a long time, approached this Court after a long lapse of time in the year 2009. Even as per the stand taken by the writ petitioner only in the light of the disciplinary action, may be the Writ Petitioner might have thought of filing the present Writ Petition challenging the very elections. Thus, the conduct of the writ petitioner also to be taken into consideration. Hence, viewed from any angle, this Court is satisfied that the Writ Petition is a misconceived remedy and accordingly the Writ Petition shall stand dismissed, with costs. However, this may not come in the way of the writ petitioner in pursuing such appropriate remedies which may be available to the writ petitioner in law.