

IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI

(Special Original Jurisdiction)

**THURSDAY, THE FIRST DAY OF APRIL TWO THOUSAND AND TWENTY ONE
:PRESENT:**

**THE HONOURABLE SRI JUSTICE U.DURGA PRASAD RAO
WRIT PETITION NO: 7313 OF 2021**

Between:

Dosa Murali Krishna Kumar, S/o.Satyanarayana, Hindu, male, aged- 71 yrs, Member in Gosamrakshana Samithi, R/o.Flat No.102, Prasanthi Apartment, Gavaravaram, Sanivarapupeta, Eluru-534003. West Godavari District.

Petitioner

AND

1. State of Andhra Pradesh, Rep by its Principal Secretary to Stamps and Registration Cooperative Societies, Velagapudi, Guntur District.
2. The District Cooperative Registrar, District Stamps and Registration Office, Near State Bank of India, Opp- to IADP Hall, Eluru, West Godavari District.
3. The District Collector, West Godavari District. Eluru.
4. Eluru Gosamrakshana Samithi, West Godavari District, Eluru.
5. Sri K.V.R.K.Subba Rao (Gupta), Returing Officer/Election Officer, D.No.7A-11-12/4, Koney Vari Veedhi, Eastern Street, Eluru-534001, West Godavari District.

Respondents

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed therewith, the High Court may be pleased to issue Writ Order or Direction more particularly one in the nature of WRIT OF MANDAMUS, declaring the appointment of the 5th respondent as a Returning Officer/Election Officer in the 4th respondent Elections, is nothing but abusing of law, against to the byelaws of the 4th respondent and against to the Societies Act and consequently to direct the respondents 1 to 3 to stay of all further proceedings in conducting elections in 4th respondent-society held on 3-4-2021;

IA NO: 1 OF 2021

Petition under Section 151 CPC praying that in the circumstances stated in the affidavit filed in support of the petition, the High Court may be pleased to direct the respondents 1 to 3 to stay of all further proceedings in conducting elections in 4th respondent-society held on 3-4-2021, pending disposal of Writ Petition No.7313 of 2021, on the file of the High Court.

The petition coming on for hearing, upon perusing the Petition and the affidavit filed in support thereof and upon hearing the arguments of Sri.Manchanapalli Suryanarayana Advocate for the Petitioner, GP for Revenue – Stamps & Registration, for Respondent Nos.1 to 3 and Sri Ch.Venkayya, learned Counsel for Respondent No.4, the Court made the following.

ORDER:

Heard learned counsel for the petitioner Sri P. Gangaiah Naidu, learned Assistant Government Pleader for Revenue-cum-Stamps & Registration representing respondent Nos.1 to 3, and Sri Ch. Venkayya, learned counsel representing the 4th respondent.

Notice was served on the 5th respondent, but there is no representation for him.

The election for the 4th respondent Gosamrakshana Samithi is scheduled to be held on 03.04.2021 as per notification dated 21.03.2021 issued by the Election Officer for electing its Executive Body consisting of one President, two Vice-Presidents, one Secretary, one Additional Secretary, one Treasurer and 18 Working Members.

The petitioner is said to be one of the members of the 4th respondent Samithi. He challenges the proposed election, which is scheduled to be held on 03.04.2021, on the main ground that as per Rule 49-D of Cooperative Rules-Election of Cooperative Societies, a member or an employee of the society shall not be appointed as a Returning Officer, however, in the instant case, the 5th respondent, who is one of the members of the 4th respondent society (vide serial No.730 of the particulars of the members of the society at page 25 of the material papers) has been appointed as a Returning Officer/Election Officer by the existing General Body obviously to obtain some favour. Learned counsel would strenuously argue that the appointment of the member of the society as a Returning Officer would vitiate the entire election procedure and therefore, the proposed election need to be stalled. He reiterated that the petitioner is not against the holding of election, but the procedure must be adhered to strictly.

Learned Assistant Government Pleader for Revenue-cum-Stamps & Registration took notice for respondent Nos.1 and 2 and submitted that he has not received any instructions so far.

Sri Ch. Venkayya, learned counsel appearing for the 4th respondent, submitted that in respect of the same issue, S.O.P.No.72/2021 has been filed by some of the members of the 4th respondent on the file of the Principal District Judge at Eluru, challenging the election under Section 23 of the Societies Registration Act and as per his information, today the said Court has heard arguments and reserved orders in I.A.No.318/2021. He would submit that since the matter falls under the Societies Registration Act, the petitioner, if proposes to challenge the election, has to file an application before the concerned District Court and not in the form of writ petition.

Heard.

Rule 49-D of Cooperative Rules-Election of Cooperative Societies reads thus:

“Appointment of Returning Officer – The Returning Officer shall be appointed by the authority to conduct the election before minimum 20 days of the expiry of the tenure of the Board of Directors. Such appointment order shall consist of the final voter list duly signed by the Registration Officer, which will be a marked

copy, the order of reservation of seats in the Board of Directors as per the provision of Section 48(3) of the Act and the programme to conduct elections. Subject to the provisions of the Act and as specified in these rules, the Returning Officer shall conduct the election under the direction of the Authority and according to byelaws of the society:

Provided that no member and employee of the society shall be appointed as Returning Officer."

The proviso to this rule no doubt pellucidly tells that no member or employee of the society shall be appointed as a Returning Officer. The contention of the petitioner is that the 5th respondent being the member of the 4th respondent he shall not officiate in the capacity of a Returning Officer/Election Officer.

So far as the constitution of the rules is concerned, learned counsel for the 4th respondent would submit that the "Cooperative Rules-Election of Cooperative Societies" are being followed in the matter of conduction of elections by all the cooperative societies. However, he fairly admitted that these rules are not a part of the rules appended to either the A.P.Cooperative Societies Act or the Societies Registration Act. Therefore, the validity and authenticity of the rules in the matter of conduct of elections of the societies is to be heard in detail after the respondents filed their full-fledged counters. So also, the objections of the petitioner against holding of elections on other grounds are also to be heard after the respondents filed their counters.

Be that it may, as the election is proposed to be held on 03.04.2021, suffice to order that the validity of the election will be subject to the order in the writ petition. Therefore, it is ordered that the proposed election may be conducted on 03.04.2021, however, the validity of said election will be subject to the outcome of the present writ petition.

The observations made in this order will not come in the way of the Principal District Court to pass orders in I.A.No.318/2021 in SOP No.72/2021.

Post the matter for counters on 16.04.2021.

//TRUE COPY//

SD/- A.VIJAYA BABU
ASSISTANT REGISTRAR

A

For A

SECTION OFFICER

To,

1. The Principal Secretary to Stamps and Registration Cooperative Societies, State of Andhra Pradesh, Velagapudi, Guntur District.
2. The District Cooperative Registrar, District Stamps and Registration Office, Near State Bank of India, Opp- to IADP Hall, Eluru, West Godavari District.
3. The District Collector, West Godavari District. Eluru.
4. Eluru Gosamrakshana Samithi, West Godavari District, Eluru.

5. Sri K.V.R.K.Subba Rao (Gupta), Returing Officer/Election Officer, D.No.7A-11-12/4, Koney Vari Veedhi, Eastern Street, Eluru-534001, West Godavari District. (1 to 5 by RPAD)
6. One CC to Sri.Manchanapalli Suryanarayana Advocate [OPUC]
7. One CC to Sri.Ch.Venkayya, Advocate (OPUC)
8. Two CCs to GP for Revenue-cum-Stamps & Registration, High Court Of Andhra Pradesh. [OUT]
9. One spare copy

SRL

HIGH COURT

UDPRJ

DATED:01/04/2021

NOTE: POST THE MATTER FOR COUNTERS ON 16.04.2021

ORDER

WP.No.7313 of 2021

DIRECTION

