

THE HONOURABLE SRI JUSTICE K.SREENIVASA REDDY

WRIT PETITION No.3203 OF 2022

ORDER:

The Writ Petition is filed with the following prayer:

“...declaring the action of the 3rd Respondent Bank in proceeding with the election of three Directors by appointing its Legal Advisor/Advocate of the Bank as an Election Officer without framing subsidiary regulations for conducting elections to the Board of Directors as prescribed under Bye Law No.29 (C) of the bye-laws of the bank and issuing Notification Dt.21-01-2022 by the election officer for conducting election on 28-02-2022 by stipulating unnecessary conditions as per his wish and suit the convenience of the Managing Committee of the Society is illegal, arbitrary, contrary to byelaws and also contrary to the provisions of A.P.M.A.C.S. Act and consequently to set aside the election process and conduct election afresh by framing necessary rules/regulations for conducting election as prescribed under Bye-Law No.29 (C) of the Byelaws of the Bank and ...”

2. It is the case of the petitioner that he is Member of 3rd respondent Bank, which is registered under the provisions of the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995. The Board of Directors of the Bank consists of not more than 15 members and are elected from among the eligible members. Bye-law No.29 of the Bye-laws prescribed to the Bank, deals with Board of

Directors. Bye-law No.29 (C) prescribes that subsidiary regulation shall be framed by the Managing Committee for conducting the elections to the Board of Directors and it is the statutory obligation on the part of the Managing Committee to frame Regulations before going for elections. But, election is being conducted every year for the last 25 years without there being any regulations for conducting and how to conduct elections. The election is being conducted in a routine and mechanical manner to suit convenience of the Managing Committee by appointing its Legal Advisor/Advocate as Election Officer. The Board of Directors, without framing any Rules for conducting elections, are appointing the very same person as Election Officer and paving way to elect the very same Directors who retired, on rotation.

The Election Officer is acting in a biased manner and has not given publicity for conducting elections. No valid voters list is prepared and displayed on the notice board of the Bank. In view of the irregular process adopted by the Election Officer, Board of Directors residing in Visakhapatnam Urban Area are being elected as Directors for the last 25 years again and again though they incurred disqualification as per the norms of the Reserve Bank of India.

Election Officer issued Election Notification on 21.01.2022 fixing election schedule. Election is scheduled on 28.2.2022. The Election Officer is completely guided by the present Board of Directors and is not conducting the elections as per the Act and bye-laws and intentionally restricted other members to contest in elections. He is not receiving nominations from the persons chosen by the present Board of Directors only but not from others. Election is not being conducted in transparent manner. Hence, the Writ Petition.

3. Separate counter affidavits have been filed by respondent Nos. 3 and 4 denying the allegations made in the affidavit filed in support of the Writ Petition and contending *inter alia* that once election process had already commenced, Courts, under Article 226 of the Constitution of India, cannot interfere with the election process.

It is further stated that Subsidiary Regulations under Bye-law 29 (C) for conducting elections were framed long back in the Board Meeting held on 14.08.2004 and the same are being followed since then for conducting the elections, and the Board has discretion to appoint Election Officer for proper conduct of the elections and there is no bar for appointing a Legal Officer/Standing Counsel as Election Officer either in the Act or Bye-laws or even as per

Subsidiary Regulations; that the election is conducted as per the procedure contemplated and as per the Bye-laws of the Bank and there is no irregularity, and that no legal right of the petitioner is infringed and the petitioner has no *locus standi* to file the present Writ Petition. The petitioner approached this Court with unclean hands and suppressed material facts. It is further stated that the alleged cause of action in the present Writ Petition is not amenable to jurisdiction of this Court under Article 226 of the Constitution of India.

4. Heard the learned counsel for the petitioner, the learned Government Pleader for Co-operation appearing for respondents 1 and 2, and the learned advocates appearing for respondent Nos.3 and 4.

5. Grievance of the petitioner is that election for electing three Directors of 3rd respondent bank is being conducted without there being any regulations for conducting and how to conduct elections, and the election is being conducted in a routine and mechanical manner to suit convenience of the Managing Committee by appointing its Legal Advisor/Advocate as Election Officer.; that the Board of Directors are appointing the very same person as Election Officer and paving way to elect the very same Directors who retired, on rotation. It is his further case that the Election Officer is acting in a biased manner and

has not given publicity for conducting elections, and that no valid voters list is prepared and displayed on the notice board of the Bank and the Election Officer is adopting irregular process. With the above grievance, the petitioner came forward with the present Writ Petition.

6. It is submitted by the learned counsel for respondents that schedule for conducting election to the three Directors of 3rd respondent bank on 21.01.2022 by 4th respondent-Election Officer, and when once election process has commenced, this Court normally would not interfere with the same.

7. The material placed on record would go to show that schedule to conduct the election for the election of three Directors of 3rd respondent bank was issued on 21.01.2022. According to the said Notification, the date of filing nominations is 16.02.2022; scrutiny of nominations is on 18.02.2022; date of withdrawal of nominations is on 19.02.2022 and date of election is on 28.02.2022.

8. On this aspect, it is pertinent to refer to the following judgments:

(i) In *Boddula Krishnaiah and another v. State Election Commission, A.P. and another*,¹ wherein it is held thus:

¹ (2001) 8 SCC 509

“Thus, it would be clear that once an election process has been set in motion, though the High Court may entertain or may have already entertained a writ petition, it would not be justified in interfering with the election process giving direction to the election officer to stall the proceedings or to conduct the election process afresh in particular when election has already been held in which the voters were allegedly prevented to exercise their franchise. As seen, that dispute is covered by an election dispute and remedy is thus available at law for redressal, Under these circumstances, we hold that the order passed by the High Court is not correct in law in giving direction not to declare the result of the election or to conduct fresh poll for 20 persons, though the writ petition is maintainable. The High Court, pending writ petition, would not be justified in issuing direction to stall the election process. It is made clear that though we have held that the respondents are not entitled to the relief by interim order, this order does not preclude any candidate including defeated candidate to canvass the correctness of the election. They are free as held earlier, to seek remedy by way of an election petition as provided in the Act and the Rules.”

(ii) In *C.Subrahmanyam v. K.Ramanjaneyulu*², wherein it is held thus:

“The impugned order was made by the High Court in a writ petition under Article 226 of the Constitution of India filed to challenge an order directing repoll made during the process of election. The first question was

² (1998) 8 SCC 703

whether the writ petition should have been entertained in view of the remedy of election petition under the Act. The High Court took the view that the main point for decision was whether the order directing repoll is in violation of Section 231 of the Andhra Pradesh Panchayat Raj Act, 1994. Having taken this view, the High Court proceeded to say that a reference was made to a provision of the Constitution in that order and, therefore, the writ petition would lie and the impugned order was quashed for violation of Section 231 of the Act.

3. In our opinion, the main question for decision being the non-compliance of a provision of the Act which is a ground for an election petition in Rule 12 framed under the Act, the writ petition under Article 226 of the Constitution of India should not have been entertained for this purpose. Accordingly, the appeal is allowed. The impugned order of the High Court is set aside resulting in dismissal of the writ petition. No costs.”

(iii) In *Gangarapu Ushaiah v. District Collector (Cooperation), Medak District*³, wherein it is held thus:

“It is well settled that when once an election process has begun, this Court should not ordinarily interfere in the said election process.”

9. Having regard to the above, this Court is not inclined to interdict the election process, which has already commenced. If the petitioner has any grievance with regard to finalization of voters’ list of the Bank or breach of, or non-compliance with, mandatory provisions of the Andhra

³ AIR 1992 AP 220

Pradesh Mutually Aided Co-operative Societies Act, 1995, he can agitate the same after the election, before the Tribunal concerned.

10. With the above observations, the Writ Petition is disposed of. No order as to costs of the Writ Petition.

As a sequel, interlocutory applications pending, if any, in the Writ Petition shall stand closed.

K.SREENIVASA REDDY, J

21st.04.2022
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THE HONOURABLE SRI JUSTICE K.SREENIVASA REDDY

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