

HIGH COURT FOR THE STATE OF TELANGANA

WRIT PETITION Nos.1617 of 2021 and 22607 of 2020

In W.P. No.1617 of 2021

Between:

Kakarla Venkateshwarlu S/o. Kotaiah,
Aged 64 years, Occ : Member, Fishermen, Cooperative Society,
Vallabhi, R/o. H.No.6-99, Vallabhi, Mudigonda (M),
Khammam District.

.. Petitioner

And

The State of Telangana rep. by Principal Secretary
Cooperation Department, Secretariat,
Hyderabad & 26 others.

.. Respondents

In W.P. No.22607 of 2020

Between:

Kakarla Venkateshwarlu S/o. Kotaiah,
Aged 64 years, Occ : Member, Fishermen,
Cooperative Society, Vallabhi,
R/o. H.No.6-99, Vallabhi, Mudigonda (M) Khammam District.

.. Petitioner

And

The State of Telangana rep. by Principal Secretary
Cooperation Department, Secretariat,
Hyderabad & 3 others.

.. Respondents

DATE OF THE ORDER PRONOUNCED: **03.04.2023**

1. Whether Reporters of Local newspapers
may be allowed to see the judgment? No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals Yes
3. Whether his Lordship wish to
see the fair copy of the judgment? Yes

*** HON'BLE SRI JUSTICE J. SREENIVAS RAO**

+ WRIT PETITION Nos.1617 of 2021 and 22607 of 2020

% DATED 03RD APRIL, 2023

WP No.1617 of 2021

Kakarla Venkateshwarlu .. Petitioner

Vs.

\$ The State of Telangana rep. by Principal Secretary
Cooperation Department, Secretariat,
Hyderabad & 26 others.

.. Respondents

WP No.22607 of 2020

Kakarla Venkateshwarlu Petitioner

Vs.

\$ The State of Telangana rep. by Prl. Secretary,
Hyderabad & 3 others.

... Respondents

<Gist:

>Head Note:

! Counsel for the Petitioner : Sri Kowturu Pavan Kumar

^Counsel for Respondents : Asst. Govt. Pleader for
Cooperation for R-1 and R-6
Asst. Govt. Pleader for
R-2 to R-5
Sri Nagesara Rao Repakaula
For Respondent Nos.7 to 27.

? CASES REFERRED :

1. (1997) 6 SCC 37
2. J.T. Registrar of Cooperative Societies,
3. 2008 SCC OnLine AP 599 : (2009) 2 ALD 118
4. 1987 SCC OnLine AP 188 : *(1987) 2 AP LJ 287
5. 2004 SCC OnLine AP 195: (2004) 2 ALD 726
6. 2012 (3) ALD 366
7. 2006 SCC ONLine AP 204 : (2006) 2 AP LJ 52
8. W.P.(C) 3255/2014, CM APPL.6729/204, of Delhi High Court.

HON'BLE SRI JUSTICE J. SREENIVAS RAO

WRIT PETITION Nos.1617 of 2021 and 22607 of 2020

COMMON ORDER:

Heard Sri Kowturu Pavan Kumar, learned counsel for the petitioner, learned Assistant Government Pleader for Cooperation for Respondent Nos.1 and 6, learned Assistant Government Pleader for respondent Nos.2 to 5 and Sri Nageswara Rao Repakula, learned counsel appearing for respondent Nos.7 to 27.

2. W.P. No.1617 of 2021 is filed for the following relief.

".... to issue Writ of Mandamus, declaring the voters list dated 16.01.2021 published by the Respondent No.4 to the extent it included 21 ineligible persons at Sl.Nos.118 to 138 as illegal, arbitrary and violative of Secs. 19 and 25 of the Telangana Cooperative Societies Act, 1964 and Rule 22 of the Telangana Cooperative Societies Rules and violative of the order dated 15.12.2020 passed by the Hon'ble High Court in W.P. No. 22607 of 2020 and consequently direct the respondent Nos.3, 4 and 6 to conduct elections to respondent No.5 society with the existing 117 eligible voters as on 11.02.2019".

3. W.P. No.22607 of 2020 is filed for the following relief.

".... to issue Writ of Mandamus, declaring the inaction of the respondent Nos.2 and 3 in conducting elections to the Respondent No.4 society despite the fact that the terms of the earlier Committee of the Respondent No.4 Society had expired way back on 11.2.2019 as illegal, arbitrary and violative of the scheme of the Telanganan Cooperative Societies Act, 1964 and consequently direct the respondent Nos.2 & 3 to conduct the elections to the respondent No.4 society immediately for constitution of the Managing Committee in accordance with law".

Brief facts of the case are as under :

4. The petitioner submits that he is a member of respondent No.5 Fishermen Cooperative Society. He was Director in the previous body and term of the Managing Committee of the society had expired on 11.02.2019. On 17.02.2019 respondent No.5 Society passed a resolution that the elections to the Society to be conducted expeditiously and necessary challan was duly paid. However, without conducting elections, respondent No.2 had issued proceedings Rc.No.,.3169/E2/2019, dated 2.01.2020 appointing Fisheries Development Officer, Khammam/respondent No.4 as official person-in-charge to the Society for a period of six months or until elections conducted to the Society. He states that as on the date of expiry of tenure of the Managing Committee of the Society 117 members were existing.

4.1. He further submits that the petitioner and other members of the Society made several representations to the respondent authorities to conduct elections. When they failed to consider the same, the petitioner had approached this Court and filed W.P.No.22607 of 2020 questioning the inaction of the respondents 2 & 3 in conducting elections to the Society. This

Court granted interim direction on 15.12.2020 directing the respondent No.4 society to complete the process of preparation of voters list and place the same before the Telangana State Cooperative Election Authority (respondent No.6 in W.P.No. 1617/21), within a period four (4) weeks.

4.2. He also submits that the petitioner came to know through information furnished under Right to Information Act, 2005 dated 25.11.2020, that the person-in-charge of the Committee had illegally entered the names of 21 new members in the records of the Society on 13.01.2020. Further, the respondent No.3 addressed a letter to the respondent No.2 *vide* Letter No.1017/A/2020, dated 28.11.2020 and sought clarification as to from which date the 21 persons should be treated as members of the Society i.e. whether from the date of payment of share capital or date of issuance of order by respondent No.3 or from the date of entries in the Society records by official person-in-charge for taking necessary action for preparation and publication of voters list. In the said letter respondent No.3 stated that about 21 persons have been ordered to be made new members of the Society, Vallabhi *vide* Letter No.262/A/2017, dated 25.07.2017, and the then President of the Society, was

directed to admit them as members into the Society by duly passing a general body resolution as they have already paid admission fee and share capital amount and the Managing Committee had not passed resolution and said 21 members were not included as members of the society. Respondent No.4 after assuming charge as official person-in-charge of the society on 06-01-2020, he made entries on 31.01.2020 in admission book of the society. Immediately, the petitioner and other members have submitted objections on 18.01.2021 specifically pointing out that the 21 members, who were added in the voters list which was published on 16.01.2021, cannot be part of the voters list and elections must be conducted with the earlier existing members only. When the respondents failed to consider the objections, the petitioners filed the present writ petition.

5. Respondent No.3 filed *counter-affidavit* on his behalf and on behalf of respondent Nos.2 and 4 also, stating that the term of earlier Managing Committee of the Society was expired on 17.02.2019, and the respondent No.2 issued Proceedings Rc.No.3169/E2/2019, dated: 02.01.2020 appointing the respondent No.4 as an official person-in-charge of respondent

No.5, Society and he assumed charge of the society on 06-01-2020. He further submits that then the Assistant Director of Fisheries, Khammam directed the President of respondent Society to provide membership to 21 members *vide* Lr.No.262/A/2017, dated 25.07.2017 and 25.10.2017 by duly passing a General Body resolution. The then President has not passed resolution and not taken any decision to admit the 21 persons as members. The respondent No.4 after assuming charge as official person-in-charge (PIC) of the Society, he made necessary entries on 31(13).01.2020 in the society records i.e. admission book along with share capital entries of Rs.1155/- paid by the 21 persons on 16.06.2017 in DCCB Bank. Thereafter, respondent No.4 published the preliminary voters list on 16.01.2021 under Section 19 (2-A) & 3 of Telangana State Cooperative Society, 1964, (hereinafter referred to as 'the Act' for brevity) by including 21 persons as members.

5.1. He further submits that the respondent No.3 addressed a letter *vide* Lr.No.1017/A/2020, dated 28-11-2020 to the respondent No.2 seeking clarification from which date the 21 persons should be treated as members (either from the date of payment of share capital/date of issue of orders by the Asst.

Director of Fisheries or from the date of entry in the society records by the official PIC) so as to take necessary action for preparation and publication of voters list of FCS Vallabhi. Pursuant to the same, respondent No.2 issued a Memo No. 3169/E2/2018, dated 29.01.2021 directing the District Fisheries Officer, Khammam to take further course of action as per the provisions of Sec.19(3) and (4) of TSCS Act 1964.

5.2. Thereafter, respondent No.4 had prepared voters list and published the same on 9.01.2023 with 133 eligible members by including 21 *Muthrasi* fishermen, who have been enlisted communities in G.O.Ms.No.98, and affixed the voters list on notice board of Grampanchayath Office Vallabhi and other respective places. At that stage, the petitioner has raised objection and the same was rejected vide Lr.No.35/A/2023, dated 13-1-2023. He further submits that proposals were submitted to the State Cooperative Election Authority/ Respondent No.6 vide Lr.No.535/A/2016, dated 27.1.2023 along with necessary fee requesting for appointment of Election Officer to carry out the election process of the Society and the 21 members are eligible to participate in the election process.

6. Respondent Nos.7 to 27 filed *counter affidavit* contending that the writ petition filed by the petitioner is not maintainable under law, and respondent No.4 has not committed any irregularities while publishing the voters list. He further submits that respondent No.4 after following the due procedure under the provisions of the Act and rules made thereunder, the names of the respondent Nos.7 to 27 were rightly included as members in the Society. They further pleaded that they have submitted representation to the respondent No.3 along with J-Forms by paying necessary fee to provide membership in the Society and the said applications were forwarded to the then President of the society *vide* Lr.No.262/A/2017 dated 25-07-2017, directing the President of the Society to admit the respondent Nos.7 to 27 i.e. qualified fisherman as members of the society duly passing a General Body resolution. They further submit that respondent No.4 issued Procs.Rc.No.80/Co-Op/2017, dated 13.01.2020 to the respondent No.3 wherein he specifically stated that the Society was registered during the year 1989, with an area of operation of Peddacheruvu of Vallabhi Village and the said Society is having 122 members by that time and the Irrigation Authorities have issued the details of water spread area of Peddacheruvu consisting of Acs.143.20

gts and specified that the source comes under the category of Canal fed and there is a provision to provide membership at one acre to each member as the source is a Canal fed and as per the existing water spread area, 143 fishermen may be accommodated and there is a provision to provide membership to 21 qualified fishermen.

6.1. They further submit that as per the procedure skill tests were conducted to the respondent Nos.7 to 27 on 11.07.2017 in the presence of the Committee. The Asst. Director of Fisheries issued Letter No.262/A/2017, dated 25.07.2017 to the President of the Society to provide membership to the respondent Nos.7 to 27 as they are qualified fishermen, by duly passing General Body resolution as they have already paid admission fee and share capital amount.

6.2. They further submit that as per Section 19 (3) of the Act, if the Managing Committee failed to include the respondent Nos.7 to 27 as members as soon as after completion of 60 days time period they shall be treated as deemed members of the Society. They also submit that respondent No.4 after following the due procedure under Section 25 (1-A) (a) of the Act, included them in the voters list.

7. That the petitioner filed application *vide* I.A No.1 of 2023 in the above W.P.No.1617 of 2021 stating that the respondent No.3 without properly considering the objections raised by the petitioner dated 13.01.2023 erroneously rejected the same vide Lr.No.35/A/2023, dated 13.01.2023. The petitioner submits that respondent No.4, who is acting as person-in-charge of the Society, is not having authority to include the 21 persons as members of the Society.

8. Sri Kowturu Pavan Kumar, learned counsel for the petitioner vehemently contended that the tenure of the Managing Committee of the Society expired on 11.02.2019 and thereafter the Fisheries Development Officer, Khammam has been appointed as person-in-person (PIC) of respondent No.5 Society to manage the affairs of the Society for a period of six months or until the elections are conducted, whichever is earlier *vide* proceedings Rc.No.3169/E2/2019, dated 02.01.2020 issued by respondent No.2. Pursuant to the same, the person-in-charge assumed the charge of the Society on 06.01.2020. Thereafter, he included the names of 21 persons viz., respondent Nos.7 to 27 in the society records and forwarded the same to the respondent No.3 for inclusion of those persons as

members of the Society. He submits that as per the provisions of the Act, the respondent No.4 is not having any authority or jurisdiction to include or delete any person as a member of the Society. As per the bye-laws of the Society, the Managing Committee is alone having the power for inclusion or deletion of any person as members from the Society.

8.1. He further contended that respondent No.4 was appointed as person-in-charge of the respondent No.5 Society only to manage the affairs of the Society but the respondent No.4 in the absence of any such power recommended for inclusion of 21 persons who are the respondent Nos.7 to 27 as members and he prepared the voters list. The entire exercise done by the respondent No.4 is contrary to the provisions of the Act and Rules and the same is liable to be declared as illegal without jurisdiction. He further, submits that the respondent No.4 may be directed to prepare the voters list for 117 members to conduct elections.

9. In support of his contentions he relied upon the following judgments.

(1).K. Shantharaj and Another Versus M.L. Nagaraj and Others¹.

¹ (1997) 6 SCC 37

**(2).J.T. Registrar of Cooperative Societies, Kerala
Versus T.A. Kuttappan and Others².**

**(3).Daggumalli Ravichandra and Others Versus District
Cooperative Officer, Guntur and Others³.**

10. *Per contra*, Sri Nageswera Rao Repakula, learned counsel appearing for the unofficial respondents, submits that the respondent Nos.7 to 27 have made applications as per the prescribed proforma seeking membership in respondent No.5 Society, by paying requisite fee on 15.03.2017 and 16.06.2017. Respondent No.3 after following the due procedure under the Act, issued letter No.262/A/2017, dated 25.07.2017 directing the then President of the respondent No.5 Society, to admit the 21 qualified fishermen viz., respondent Nos.7 to 27 as members into the society duly passing General Body Resolution, but then President/Managing Committee of Society has not taken any decision and as per the provisions of the Act, the respondent Nos.7 to 27 were included as members under deemed clause and since then they are continuing as members of the Society and they have paid share capital also. He also contends that the respondent No.4 after following the due procedure rightly

² (2000)6 SCC 127

prepared the voters list and the petitioner is not having any *locus standi* to question the same. Hence, writ petition filed by the petitioner is not maintainable under law, and the same is liable to be dismissed.

10.1. In support of his contention he relied upon the following judgments.

- (1) **Y. Ankeswara Reddy and another Vs. The District Collector, Nellore and others⁴.**
- (2) **Fishermen Cooperative Society, Kondair Village, Itkyl Mandal, Mahaboobnagar District Vs. Commissioner of Fisheries, Hyderabad and Others⁵.**
- (3) **G. Ramesh Goud and Others Vs. District Collector, Ranga Reddy District, Hyderabad and Others⁶.**

11. The learned Assistant Government Pleader for Fisheries appearing for the respondent Nos.1 to 4 submits that the respondent Nos. 3 & 4 after following the due procedure as contemplated under the provisions of Act and the Rules made there under included the 21 persons viz., respondent Nos.7 to 27 as members in respondent No.5 Society, and respondent No.4 has rightly prepared the voters list. The contentions raised

³ 2008 SCC OnLine AP 599 : (2009) 2 ALD 118.

⁴ 1987 SCC OnLine AP 118 : (1987) 2 AP LJ 287

⁵ 2004 SCC OnLine AP 195 : (2004) 2 ALD 726

by the petitioner that the respondent No.4 is not having any authority to include the 21 persons as members in respondent No.5 Society is not tenable under law.

12. Having considered the rival submissions made by the respective parties and upon perusal of the record, the following points would arise for consideration:

- (i) *Whether the writ petition filed by the petitioner seeking deletion of persons at Serial Nos.118 to 138 from voters list dated 16.1.2021 published by the respondent No.4/person-in-charge is maintainable under law?*
- (ii) *Whether respondent No.4/person-in-charge is having authority/jurisdiction for inclusion of 21 persons as members of the respondent No.5 Society while discharging as official person-in-charge of the Society?*
- (iii) *To what relief?*

Point Nos.i to iii

13. It is undisputed fact that, the respondent No.5 Society was registered under the Provisions of the T.S. Cooperative Societies Act, 1964 and the said Society is having its own bye-laws. The tenure of the Managing Committee of the Society was expired on 11.02.2019. Thereafter respondent No.2 issued proceedings vide Rc.No.3169/E2/2019, dated 02.01.2020

appointing Fisheries Development Officer, Khammam as person-in-charge (PIC) of respondent No.5 Society, for a period of six months or until the elections are conducted to the Society, whichever is earlier. Pursuant to the same, respondent No.4 was assumed the charge on 06-01-2020 as PIC.

14. The specific contention of the counsel for the petitioner is that as on the date of expiry of tenure of the Managing Committee of the Society i.e. 11.2.2009, there were 117 members in the Society. The then Assistant Director of Fisheries, Khammam vide Lr.No.262/A/2017, dated 25.07.2017 directed the then President of the Society to admit 21 persons as members by duly passing General Body resolution. Neither the then President nor Managing Committee of the Society has taken any decision to admit the 21 persons as members and their names were not entered in the Society records. The Respondent No.4 after assuming charge as official person-in-charge of Society only, he made entries in the admission book of the Society on 13.01.2020 and prepared voters list on 16.01.2021 by including the respondents 7 to 27 as voters and the respondent No.4 is not having any authority or jurisdiction to include respondent Nos.7 to 27 as members in respondent

No.5 Society draft voters list dated 16-01-2021 as well as the voters list which was published on 09.01.2023 for 137 eligible members by including the 21 members. The objections raised by the petitioner and others was rejected by the respondent No.4 vide letter No.35/A/2023 dated 13.01.2023 and the same is illegal and contrary to the provisions of Sec.19 and 25 of the Act and Rule 22 of the Telangana Cooperative Societies Rules, 1964.

15. According to the learned counsel for the un-official respondents the respondent Nos.7 to 27 were admitted as members of respondent No.5 Society under deemed provision. Whereas, in the counter affidavit of respondent No.3, specifically stated that the respondent No.4 after taking charge as Person In-Charge of the Society, he included 21 persons names in the admission book of the Society on 13.01.2020 and thereafter he prepared preliminary voter list on 16-01-2021 and subsequently published final voters list on 09-01-2023 and rejected the objections of the petitioner on 13-10-2023 and published 2nd voters list on 17-01-2023 with 133 eligible members. Hence, the contention of the learned counsel for the unofficial respondents that the respondent Nos.7 to 27 were included as

members in respondent No.5 Society under deemed provisions, is contrary to the averments made by the respondent No.3 and also contrary to the material evidence on record.

16. The core issue is whether respondent No.4 while discharging his duties as Person-in-Charge (PIC) of respondent No.5 Society is having power, authority to include 21 persons i.e. respondents 7 to 27 as members of the Society.

17. It is relevant to extract the provisions of Section 19 of the Act hereunder:

“19. Eligibility for membership: - Subject to the provisions of Section 21 —

(a) *An individual who attained majority and is of sound mind and who belongs to a class of persons, if any, for whom the society is formed as per its bye-laws and who paid the minimum share capital as prescribed by the Registrar from time to time and who possesses such qualifications as may be specified in the bye-laws or as may be prescribed for the concerned class of societies in the interest of Co-operative movement:*

Provided that the applicant is not already a member of a Cooperative Society registered under this Act, or any other Coop. Act providing the same or similar services.]

(b) *a society registered, or deemed to be registered, 57[under this Act or the 58Telangana Mutually Aided Cooperative Societies Act, 1995]; 59[and which belongs to the class of societies, if any, for which the society is formed as per its bye-laws:*

Provided that the Co-operative Society registered under the 61 Telangana mutually Aided Co-operative Societies Act, 1995 which were admitted into Central, Apex Level Co-operative Societies, shall not be entitled for voting rights.

xxxxx

(2-A) Any person duly qualified for admission as a member under the provisions of this Act, the rules and the bye-laws may apply through the Registrar for membership of such societies and in such form as may be prescribed and such person shall be deemed to have been admitted as a member of the Society from the date of receipt of the application in the office of the society.

(2-B) Notwithstanding anything in this Act, the Registrar may, either suo motu at any time or on an application by the society or any aggrieved person made within fifteen days from the date mentioned in sub-section (2-A), and after giving an opportunity to the person concerned and recording the reasons therefor declare such person as not eligible for membership of the society within thirty days from the date of receipt of the application by the Registrar.

(3) The Managing Committee of a society shall not without sufficient cause, refuse admission to membership to any person duly qualified therefor under the provisions of this Act and its bye-laws. Where admission is so refused, the decision, with the reasons therefor, shall be communicated by registered post to such person within fifteen days of the date of the decision, or within sixty days from the date of his application for membership, whichever is earlier”:

xxx

(4) The name of every person admitted or deemed to have been admitted as a member of the society shall be entered in such records of the society as may be prescribed and the member so admitted shall be issued a photo identity card.

(5) The name of every associate member admitted or deemed to have been admitted, shall be entered in a separate register and a photo identity card shall be issued.

18. In **K. Shantharaj and Another** (*supra*) case, paragraph Nos.7 and 8 run as under:

“7. The Division Bench after elaborate consideration has agreed with the above conclusion reached by the learned Single Judge and held thus:

Accordingly, he is not entitled to enrol new members. But it has to be noted that the wording of Section 33(2) of the Kerala Cooperative Societies Act is slightly different from the wording of Section 30 of the Act. In the Kerala Act, the Administrator has power to exercise all or any of the functions of the committee, whereas in the Karnataka Act, the Administrator can only exercise all or any of the functions of

the committee. Moreover, as stated earlier, the difference in the authority vested in an Administrator and a Special Officer, as is made in the Karnataka Act is not considered in the Kerala decision. The difference in the authority vested in an Administrator and a Special Officer in the Karnataka Act, is very significant which is absent in the Kerala Act. In that view of the matter, the dictum laid down by the Division Bench of the Kerala High Court, cannot have any application while determining the comparative authority of an Administrator and a Special Officer appointed under Sections 30 and 30-A of the Karnataka Act respectively.

In view of what is stated above, we confirm the decision of the learned Single Judge and dismiss these appeals. The direction regarding election given by the learned Single Judge shall be carried out by the respondent concerned within two months from the date of receipt of a copy of this judgment.”

8. Shri Santosh Hegde, learned Senior Counsel, contends that since the Administrator has power to conduct elections, by necessary implication, he has power to update the electoral lists by either enrolling the new members or substituting the legal representatives of the members in accordance with the bye-laws; therefore, he has power to enrol the members. We find that there is no force in the contention. The power of Administrator given under the statute to conduct elections should be confined within the parameters set under the relevant provisions of the Act, rules and bye-laws. The Division Bench has minutely and carefully gone into all the questions and agreed with the learned Single Judge that the Administrator has no power to enrol new members; but he has the power to organise election process in accordance with the provisions of the Act, the rules and the bye-laws of the Society. In that view of the matter, we think that the High Court has not committed any error of law warranting interference”.

19. In the above judgment, the Hon’ble Apex Court specially held that Administrator or Special Officer has no power to enroll new members but he has the power to organize election process in accordance with the provisions of the Act, the rules and the bye-laws of the Society.

20. In **JT Registrar of Cooperative** (*supra*) case, paragraph

No.7 runs as under:

“7. If we carefully analyse the provisions of the Act, it would be clear that the administrator or a committee appointed while the Committee of Management of the society is under supersession cannot have the power to enrol new members and such a question ought not to be decided merely by indulging in an exercise on semantics in ascertaining the meaning of the expression “have power to exercise all or any of the functions ...”. Whether an authority is discharging a function or exercising a power will have to be ascertained with reference to the nature of the function or the power discharged or exercised in the background of the enactment. Often we do express that functions are discharged or powers exercised or *vice versa* depending upon the context of the duty or power enjoined under the law if the two expressions are interchangeable. What is necessary to bear in mind is that nature of function or power exercised and not the manner in which it is done. Indeed this Court, while considering the provisions of Section 30-A of the Karnataka Act, which enabled a Special Officer appointed to exercise and perform all the powers and functions of the Committee of Management or any officer of the cooperative society (and not merely functions), took the view that the administrator or a Special Officer can exercise powers and functions only as may be required in the interests of the cooperative society. In that context, it was stated that he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by necessary implication, he is not vested with power to enrol new members of the society. We may add that a cooperative society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected committee rather than by an administrator or a committee appointed by the Registrar while the Committee of Management is under supersession. This Court has taken the view, it did, bearing in mind these aspects, though not spelt out in the course of the judgment. Even where the language of Section 30-A of the Karnataka Act empowering a Special Officer to exercise and perform all the powers and functions of the Committee of Management of a cooperative society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions “have power to exercise all or any of the functions of the committee” in the Act and “exercise all or any of the functions of

the committee” in the Karnataka Act as they are not different and are in substance one and the same and difference in language will assume no importance. What is of significance is that when the Committee of Management of the cooperative society commits any default or is negligent in the performance of the duties imposed under the Acts, rules and the bye-laws, which is prejudicial to the interest of the society, the same is superseded and an administrator or a committee is imposed thereon. The duty of such a committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult”.

21. In the above said judgment also the Hon’ble Apex Court held that the Administrator or a Committee appointed while the Committee of Management of the Society is under supersession, cannot have the power to enroll new members. The duty of such a Committee or an Administrator is to set right the default, if any, and to enable the Society to carry on its functions as enjoined by law. Thus, the role of an Administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring on an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult”.

22. In **Daggumalli Ravichandra and others** (*supra*) case, paragraph No.3 reads as under:

“ 3. The proceedings, cancelling the membership of the petitioners, were issued by the 5th respondent. The short question that arises for consideration in this writ petition is as to whether the 5th respondent is competent to cancel the membership in a society. The judgment of the Supreme Court in *Joint Registrar of Co-operative Societies v. T.A. Kuttappan*, (2000) 6 SCC 127, had a direct bearing on the issue. The subject-matter of the case before the Supreme Court was the competence of the person-in-charge, in the context of admission of members. It was held that the person-in-charge does not have the power to admit members and that it is only for the General Body of the society to admit new members. The power to cancel a member is almost incidental to the one of admission. When in categorical terms, the Supreme Court held that the person-in-charge does not have the power to admit, it goes without saying that he does not have the power to cancel the membership of the existing members. Therefore, the impugned proceedings are liable to be set aside”.

23. In the above judgment this Court while following the principle laid down by the Hon'ble Apex Court held that the person-in-charge is not having power or jurisdiction to issue show-cause notice to the petitioners therein why their membership shall not be cancelled from the rolls of the Society, and further held that the person-in-charge does not have power to admit the members or delete the members from the Society and such power is vested upon only by the General Body of the Society.

24. In this instant case admittedly the term of the Managing Committee of the respondent No.5 Society, was expired on 11.02.2019. Thereafter, respondent No.4 was appointed as

person-in-charge of the respondent No.5 Society. As on the date of assuming charge, the erstwhile Managing Committee of the respondent No.5 Society has not passed any General Body resolution for inclusion of 21 persons as members of the Society. Respondent No.4 only included the names of the persons in the register of the respondent No.5 Society on 13.01.2020. As per the law laid down by the Hon'ble Apex Court as well as this Court as stated *supra*, the respondent No.4 also discharging his duties as person-in-charge (PIC) of respondent No.5 Society, he is not having power and authority to include 21 persons as members on the rolls of respondent No.5 Society. Hence, the proceedings issued by the respondent No.4 dated 13.01.2020 entering 21 members in respondent No.5 Society records and subsequent proceedings are liable to be declared as illegal and contrary to the provisions of the Act as well as the law laid down by the Hon'ble Apex Court and this Court.

25. In **Y. Ankeswara Reddy and another** (*supra*) case, paragraph No.6 reads as under:

“6. On 14-5-1987, it is the case of the petitioners, the applications for membership were sought to be presented, before the Persons-in-charge, but they were not present in the office. In these writ petitions, this allegation cannot be decided for the reason that the Persons-in-charge have denied

the allegation, whereas in the affidavit filed on behalf of the Collector, it is averred that the Collector advised persons, who approached him, to approach the Person-in-charge concerned for admission as members. The Divisional Co-operative Officer who filed an affidavit on behalf of the Collector, and the persons-in-charge have taken conducting stands in the affidavits filed by them. We therefore, consider it not expedient or necessary to go into these disputed questions of fact. The petitioners assert that the applications were presented by them before the Collector on 16-5-1987. But the Collector is not the person statutorily enjoined to admit members. The function lawfully belongs to the society under Section 19 of the Act either the Managing Committee or the person-in-charge, as the case may be, exercises the functions relating to admission of members as per Section 31 and the bye-laws. Merely because under Sec.32(7)(b) of the Act the person-in-charge or the Committee functions under the control of the Registrar (the Collector), it cannot be held that the Collector himself can discharge the statutory functions of the Society. There is no warrant in law for such a presumption; on the other hand, it is settled law that the authority on whom the statute corners functions, himself alone must discharge those functions”.

26. The issue involved in the above judgment is that whether the application submitted by the persons seeking membership to the person-in-charge of the Society, has to be taken into consideration or the presentation of the application before the Collector (Election Authority) has to be taken into consideration. The Division Bench of this Court held that the Collector is not the person statutorily enjoined to admit the members. The principle laid down in the said judgment is not applicable to the facts and circumstances of the case.

27. In **Fishermen Co-operative Society, Kondair Village**

(*supra*) case, paragraph Nos.6 and 9 read as under:

“6. In the instant case, it is clear from the order passed by the Assistant Director that having received the applications from those persons intending to enrol themselves as members in the appellant-Fishermen Co-operative Society, the same were sent to the society as is required under Section 19 (2-A) of the Act but the society failed to acknowledge the same. The society in fact refused to receive the same. Refusal to receive the applications, in our considered opinion, would amount to receipt of the application in the office of the society. It is under those circumstances, the Assistant Director, passed the impugned order declaring that the persons intending to enrol themselves as members in the appellant Fishermen Co-operative Society shall be deemed to have become the members of the society.

9. The observations made by this Court in *Badugu Giribabu's case* (*supra*), in our considered opinion, are required to be understood so as to be in conformity with the provisions under Section 19(2-A) of the Act. We are unable to subscribe to the view taken by the learned Single Judge that in the first instance the qualified individuals intending to enrol themselves as members of the Co-operative Societies are required to necessarily first approach the Co-operative Society itself and it is only after rejecting their applications such eligible persons are entitled to move to the Registrar to take steps under Section 19(2-A) of the Act. A plain reading of Section 19(2-A) of the Act does not support the broad view taken by the learned Single Judge both in *Badugu Giribabu's case* (*supra*) and W.P. No. 29772 of 1998. A cumulative reading of Section 19(2-A) and 19(3) of the Act would make it abundantly clear that there are two modes available to the qualified persons seeking admission as a member under the provisions of the Act, the rules and the bye-laws, intending to become the members of such societies. It is open to such individuals either to directly apply to the society or have recourse to the procedure contemplated under Section 19 (2A) of the Act. Both are complementary to each other. In the circumstances, it cannot be held that a qualified person seeking admission as a member under the provisions of the Act has to necessarily first approach the society and only thereafter approach the Registrar under Section 19 (2-A) of the Act”.

28. In the above said case the issue involved is that, the persons who are seeking membership in the Society, have approached the Registrar, Cooperative Societies for membership, when the Managing Committee of the Society failed to consider their request. The Asst. Director of Fisheries included the names of the said persons as members in the Society. The same was questioned by the Society contending that the Assistant Director of Fisheries is not having such power. The Division Bench of this Court held that when the Managing Committee refused to consider the request of the persons for inclusion as members in the Society under the provisions of the Section 19 (2) of the Act, the Registrar is having power to include the said persons as members and also held that the provisions of Section 19 (2-A) and 19 (3) of the Act clearly says that there are two modes available seeking admission as members. It is open to such individuals either directly apply to the Society or have recourse to the procedure contemplated under Section 19 (2) (a) of the Act. Both are complementary to each other. The principle laid down in the above judgment is not applicable to the facts and circumstances of this case.

29. In **G. Ramesh Goud & Others** (*supra*) the petitioners have questioned the action of the respondent No.4 in exclusion of petitioners therein from the voters list of the Society. This Court held that the petitioners therein are continuing as members of the Society and they cannot be denied benefit of being included in voters list as per the Rule 18 of A.P. Cooperative Society Rules, 1964. The said judgment is also not applicable to this case.

30. In **The Nidumolu Fisherman Coop. Society Vs. The Dy. Director of Fisheries, Joint Registrar, Fishermen Co-op. Societies, Krishna District & Others**⁷ at paragraphs 6 & 7 held as under:

6. Section 19 of the A.P. Co-operative Societies Act, 1964 (for short "the Act") provides for eligibility for membership of a society registered under the Act. Sub-section (2-A) thereof, specifies that any person duly qualified for admission as a member under the provisions of the Act may apply through the Registrar in such form as may be prescribed, and such person shall be deemed to have been admitted as a member of the society from the date of receipt of the application in the office of the society. Rule 12-A of the A.P. Co-operative Societies Rules, 1964 (for short "the Rules") prescribes that any person duly qualified for admission as a member under sub-section (2-A) of Section 19 of the Act, has to apply for membership in Form-J. It is not in dispute that the said provision applies to Fishermen Co-operative Societies. A perusal of Form-J makes it clear that the application for membership has to be addressed to the society through the Registrar of the Co-operative Society. When once such an application is received in the office of the society, it is open to the general body of the society either to grant or refuse

⁷ 2006 SCC OnLine AP 204 : (2006) 2 AP LJ 52

admission to the applicant. However, membership shall not be refused without sufficient cause and where Admission is refused, decision with reasons thereof, shall be communicated by registered post to such person within 15 days of the date of decision or within sixty days from the date of application for membership, whichever is earlier.

7. In the light of the above provision, it is clear that discretion has been conferred on the general body of the society either to grant or refuse membership. However, refusal if any, shall be for sufficient cause and for reasons to be recorded in writing. It is not in dispute that the 2nd respondent is the functional Registrar. This Court while disposing of W.P. No. 24969 of 2004 directed the 2nd respondent to consider the request of the petitioner therein for grant of membership following the Rules and Regulations made thereunder. In the circumstances, the 2nd respondent is required to take necessary steps following the procedure prescribed under Section 19(2-A) and (3) of the Act, read with Rule 12-A of the Rules”.

31. In **Raj Kumar Gupta Versus The Registrar Cooperative Societies & Another**⁸ Division Bench of Delhi High Court paragraph Nos.6 & 7 read as under:

6. It was keeping in mind this truth and principle that K. Shantaraj & Anr v M.L. Nagaraj & Ors 1997 (6) SCC 37 held that an Administrator cannot enroll new members of a co-operative society. That decision was followed later in Joint Registrar Co-operative societies v T.A. Kuttappan 2000(6) SCC 127 which contains a lucid enunciation of the principle:

"What is necessary to bear in mind is that nature of function or power exercised and not the manner in which it is done. Indeed this Court, while considering the provisions of Section 30-A of the Karnataka Act, which enabled a Special Officer appointed to exercise and perform all the powers and functions of the Committee of Management or any officer of the Cooperative Society (and not merely functions), took the view that the administrator or a special officer can exercise powers and functions only as may be required in the interests of the Cooperative Society. In that context, it was stated that

⁸ W.P. © 3255/2014, CM Appl. 6729/2014 dated 16.02.2016

he should conduct elections as enjoined under law, that is, he is to conduct elections with the members as on the rolls and by W.P.(C)3255/2014 Page 5 necessary implication, he is not vested with power to enrol new members of the society. We may add that a Cooperative Society is expected to function in a democratic manner through an elected Committee of Management and that Committee of Management is empowered to enrol new members. Enrolment of new members would involve alteration of the composition of the society itself and such a power should be exercised by an elected Committee rather than by an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession. This Court has taken the view, it did, bearing in mind these aspects, though not spelt out in the course of the judgment. Even where the language of Section 30-A of the Karnataka Act empowered a special officer to exercise and perform all the powers and functions of Committee of Management of a Cooperative Society fell for consideration, this Court having expressed that view, we do not think, there is any need to explore the difference in the meaning of the expressions "have power to exercise all or any of the functions of the Committee" in the Act and "exercise all or any of the functions of the Committee" in the Karnataka Act as they are not different and are in substance one and the same and difference in language will assume no importance. What is of significance is that when the Committee of Management of the Cooperative Society commits any default or is negligent in the performance of the duties imposed under the Acts, rules and the bye-laws, which is prejudicial to the interest of the society, the same is superseded and an administrator or a Committee is imposed thereon. The duty of such a Committee or an administrator is to set right the default, if any, and to enable the society to carry on its functions as enjoined by law. Thus, the role of an administrator or a Committee appointed by the Registrar while the Committee of Management is under supersession, is, as pointed out by this Court, only to bring on W.P.(C)3255/2014 Page 6 an even keel a ship which was in doldrums. If that is the objective and is borne in mind, the interpretation of these provisions will not be difficult."

7. This court therefore holds that whatever be the semantics of the provision, the essential fact, i.e., an Administrator (charged with a limited remit to set right the affairs of the society or to conduct election) cannot encroach upon the right of a co-operative society or its existing members to enroll fresh members. Barring regulatory provisions enacted under the reasonable restrictions clause ([Article 19 \(4\)](#)), which generally deal with public interest controls required to be placed on its functioning, it is doubtful whether such a power can ever be usurped through statute. Therefore, we find no

infirmity with the impugned award. The writ petition has to fail and is accordingly dismissed. No costs.

32. In the above judgment the Division Bench of Delhi High Court after considering the Hon'ble Apex Court judgments held that an Administrator (charged with a limited remit to set right the affairs of the society or to conduct election) cannot encroach upon the right of a co-operative society or its existing members to enroll fresh members.

33. Having regard to the view expressed in the above judgments, the respondent No.4, who is discharging his official duties as a person-in-charge/administrator of respondent No.5 Society, is not having power and authority to include the 21 persons as members on the rolls of respondent No.5 Society. Hence, the action of the respondent No.4 dated 13.01.2020 entering the 21 members in respondent No.5 Society records and consequential proceedings including publication of final voters list dated 17.01.2022, is liable to be declared as illegal and contrary to law and accordingly set aside.

34. W.P.No.1617 of 2021 is accordingly allowed. The respondent Nos.1 to 4 and 6 are directed to conduct elections to

respondent No.5 Society by following the due procedure as contemplated under the provisions of the Telangana State Cooperative Societies Act, 1964 and Rules made thereunder, within a period of three (3) months from the date of receipt of a copy of this order. Point Nos. i to iii are answered accordingly.

35. In view of the orders passed in W.P.No.1617 of 2021, no further orders are required to be passed in W.P.No.22607 of 2020. Accordingly, W.P.No.22607 of 2020 is closed. No order as to costs.

Miscellaneous petitions, if any, pending in these writ petitions, shall stand closed.

JUSTICE J. SREENIVAS RAO

03rd April, 2023.

Note

L.R. Copy to be marked

B/o.
Skj.