
(1998) 04 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 25221 of 1997

Anantapur District Govt. Employees Cooperative Housing
Society Ltd., Anantapur

APPELLANT

Vs

Divisional Cooperative Officer, Anantapur and Another

RESPONDENT

Date of Decision : 27-04-1998

Acts Referred:

Citation : (1998) 3 ALD 727 : (1998) 3 ALT 628 : (1998) 2 APLJ 379

Hon'ble Judges : S.R. Nayak, J

Bench : Single Bench

Advocate : Mr. O. Manohar Reddy, for the Appellant; Government Pleader for Cooperation, for the Respondent

Judgement

1. The validity of the show cause noticebearing Rc.No.2249/96-B dated 23-9-1997 issued by the first respondent u/s 34(1) of the Andhra Pradesh Co-operative Societies Act, 1964, for short "the Act", to the petitioner-society is assailed in this writ petition. The first respondent is holding substantive post of Deputy Registrar of Co-operative Societies.

2. The undisputed facts may be stated briefly, at the outset, as under:

"Government Employees Co-operative Housing Society Limited, Anantapur" was registered with Registration No. 1764 under the provisions of the Act on 26-4-1994 by the Deputy Registrar of Co-operative Societies/ Divisional Co-operative Officer, Anantapur, and it was not registered as "Anantapur District Government Employees Co-operative Housing Society" as shown in the cause title. The petitioner-society was registered as a primary society and the petitioner-society adopted the model bye-laws prescribed for the primary societies. Elections to the Managing Committee of the petitioner-society were also held treating the petitioner-society as a primary society in terms of Rules 22(1), 22(5) and 22(9) of Andhra Pradesh Co-operative Societies Rules, 1964, for short "the Rules". In other words, the petitioner-society although was treated as a primary society.

3. The facts leading to the filing of this writ petition may be stated now briefly as under:

Four elected Directors of the petitioner-society submitted a representation to the first respondent on 8-9-1997 alleging that Sri. P. Sreedhar, President of the Society has not conducted any Board meeting since the date of election but they were given to understand that the President has reported to the Divisional Co-operative Officer, Anantapur that he conducted the meeting of the Board of Directors on 24-8-1997 with an agenda to convene the General Body meeting on 28-9-1997, but they did not receive any meeting notice and therefore they did not attend the Board meeting convened on 24-8-1997, and they suspected that there was forgery of the signatures of the Directors and requesting the first respondent to call for the minutes book for verification of signatures of the Directors. On this representation, the President of the Society was requested to produce the minutes book and the minutes notice service record on 18-9-1997 at 11.00 a.m. for verification by the first respondent. The President of the Society did not comply with the direction issued by the first respondent, and he did not produce the records on 18-9-1997 but sent a letter dated 18-9-1997 stating that the records are required for investigation by the police on a complaint filed by him against the ex-President of the Society. However, the President sent xerox copies of all the resolutions recorded in the minutes book, but he did not produce any record relating to service of notice on the Directors. The first respondent after perusing the xerox copies of the resolutions recorded in the minutes book and satisfying himself that the Committee of Management disobeyed the lawful orders issued by him, thought it fit to initiate action u/s 34 (1) of the Act to supersede the Committee of Management of the petitioner-society. Therefore, the first respondent issued the impugned notice contemplated u/s 34(1) of the Act calling upon the petitioner-society to show cause as to why the Committee of Management should not be superseded for the reasons set out in the impugned notice.

4. The validity of the show cause notice is assailed on two grounds. The first ground is that the first respondent is not conferred with the power of the Registrar u/s 34(1) of the Act, therefore, the impugned notice is one without jurisdiction and ultra vires of the Act. The second ground taken in the affidavit filed in support of the writ petition is that the impugned action is also tainted with mala fide. Although these two grounds are taken in the affidavit, the learned Counsel for the petitioner at the time of argument did not press the second ground for decision. The only ground urged by the learned Counsel for the petitioner is that under G.O.Ms. No.34, Food and Agriculture (Co-op.1V) Department dated 18-1-1989, the first respondent is not conferred with the power of the Registrar u/s 34 (1) of the Act relating to the District level societies whereas the petitioner-society is a District level society. Therefore, the learned Counsel would conclude that the impugned notice is one without jurisdiction and maintain that only the District Collector or Special Cadre Deputy Registrar of Co-operative Societies working as District Cooperative Officer can initiate

proceedings u/s 34 (I) of the Act. On the other hand, the learned Government Pleader for Co-operation would contend that the first respondent has the power u/s 34(1) of the Act to supersede the Committee of a primary society and the petitioner being a primary society, the impugned action cannot be said to be one without jurisdiction or ultra vires of the Act.

5. The Registrar is an important statutory functionary under the Act on whom important regulatory and controlling powers are conferred. On such power is the power to supersede the Committees of Management of Co-operative Societies u/s 34 of the Act. The term "Registrar" is defined under clause (n) of Section 2 of the Act to mean the Registrar of Co-operative Societies appointed u/s 3 (1) and includes any other person on whom all or any of the powers of the Registrar under the Act are conferred. Sub-Section (1) of Section 3 provides that there shall be appointed a Registrar of Cooperative societies for the State and as many other persons as the Government think fit for the purposes of the Act. Sub-section (2) of Sections further provides that every other person appointed under sub-section (1) shall exercise under the general superintendence of the Registrar, such powers of the Registrar, under the Act as the Government, may, from time to time confer on him. The Governor of Andhra Pradesh, in exercise of the powers conferred by Section 3 of the Act as amended by the Andhra Pradesh Co-operative Societies (Amendment) Act, 1985 and in supersession of the earlier Government Orders issued u/s 3 of the Act, appointed the authorities mentioned in column (2) of the Schedule appended to the order and conferred on them in respect of societies mentioned in column (3) thereof, the powers of the Registrar under the Act and the Rules made thereunder, specified in the corresponding entry in Column (4) of the Schedule. The relevant parts of the Schedule dealing with the delegated powers conferred on the District Collector, Special Cadre Deputy Registrar of Co-operative Societies working as District Co-operative Officers and Deputy Registrar of Co-operative Societies incharge of Divisions, are extracted here below:

SCHEDULE

SI. No. Authority Types of Co-operative Societies Extent of powers conferred

(1) (2) (3) (4)

1. District Collector (i) x x x x x x

(ii)

District Co-operative Marketing Societies, other District level Societies and Societies whose area of operation extends to more than one district and whose head quarters is Situated in the district and which is not an Apex Society other than societies under the Administrative Control of the Functional Registrar,

All the powers of the Registrar under the Act except those under (Sec. 7(1)) insofar as it relates to prescribing minimum share capital and membership) Sections 17, 18, third proviso to sub-section (1) of Section 31, Sections 50, 26,

115,116, 116-A and 116-C and the powers of the Registrar under Rules 4, 12,27,28, 23,34(14),39,41, 45, 59, and 68.

2.

Special Cadre Deputy Registrar of Cooperative Societies working as District Co-operative Officers.

(i) x x x x x x

(ii)

Other District level societies and other societies whose area of operation extends to more than one district and whose headquarters is situated in the district and which is not an Apex society and primary Societies other than the societies under the administrative control of functional Registrars.

All the powers of the Registrar under the Act except those under Sacs. 4(2), 7(1) insofar as it relates to prescribing minimum share capital and membership) Secs. 17, 18, third proviso to sub-sec. (1) of Sec. 31, Secs. 50, 83, 115, 116, 116-A & 116-C and the powers of the Registrar under Rules 4, 12, 27, 28, 29, 34(14), 38, 41,45, 59 and 88.

(iii) x x x x x x

3.

Deputy Registrar of Co-operative Societies (1) incharge of divisions.

(i) x x x x x x

(ii)

Societies specified in Rule 12-A of the APCS Rules, 1964 and all other Primary Societies and Societies whose area of operation extends beyond the division and whose headquarters is situated in the division except societies under the administrative control of functional Registrars

All the powers of the Registrar under the Act, except those under Secs. 4(2), 7(1) insofar as it relates to prescribing minimum share capital and membership) Secs. 17, 18, 19(2-B), (second and third proviso to sub-section (1 Xa) of Sec. 31 insofar as district and State level Societies are concerned, Secs. 50,51, 52, 76, 86, 115,116, 116A &116C and the powers of the Registrar under Rules 4, 12, 27, 28, 29, 34(14), 45, 58and 68.

6. Before dealing with the contention of the learned Counsel for the petitioner, relevant statutory provisions be noted, Section 18 provides that the Registrar shall, in accordance with the rules, classify societies with reference to their objects, area of operation, membership or any other matter specified in the rules. Rule 12 (1) generally classifies the societies into 13 categories: Co-operative union; Credit society; Distributive society; Farming society; Housing

society; Labour contract society; Marketing society; Processing society; Productive society; Supervising union; Training institute; Field labour society; and Miscellaneous society vide Entries (a) to (m). Entry (e) is "Housing Society". Clause (c) of Explanation to Sub-Rule (1) of Rule 12 defines "housing society" to mean a society which has as its principal object the construction of houses for its members or the financing or facilitating the construction of houses by its members. The petitioner is admittedly a housing society. Rule 12 (5) reads:

If any society classified as aforesaid is a federal society it may be further classified under any of the following heads, namely:-

(a) Apex society;

(b) Central society;

(c) Primary society;

Explanation:--For the purpose of this sub-rule-

(i) "apex society" means a society whose area of operation extends to the whole of the State and which has as its principal object the promotion of principal objects and the provision of facilities of the operations of other societies affiliated to it;

(ii) "central society" means a society whose area of operation is confined to a part of the State and which has as its principal object the promotion of the principal objects and the provision of facilities for the operation of other societies affiliated to it;

(iii) "primary society" means a society which is neither an apex nor a central society.

Section 2 (e) defines "Federal Society" to mean a society to which similar class of societies are affiliated.

7. A Federal society within the meaning of that term as defined u/s 2(e) cannot be comprehended at all without affiliated and federating societies. Admittedly the petitioner society is affiliated to and a member of the Andhra Pradesh State Cooperative Housing Societies Federation, hereinafter shortly referred to as "the Federation". The Federation is a Federal society within the meaning of Section 2 (c) of the Act. Since a Federal society should necessarily consist of affiliated or federating societies, Rule 12 (5), in turn, classifies federal societies into Apex societies, Central societies, and Primary societies. The terms "Apex society", "Central society", and Primary society" are not defined separately anywhere in the Act or the Rules except in Rule 12 (5). The term "District level society" is not defined anywhere in the Act or the Rules. Keeping in mind the definition of Apex society under Rule 12(5), the Federation should be held to be an apex Society and the petitioner society as a primary society. Rule 12 (1) which classifies the societies generally does not classify any class of societies as primary societies. Only Rule 12 (5) classifies federal societies into Apex societies. Central societies

and Primary societies. The District Collectors and Special Cadre Deputy Registrars of Co-operative Societies working as District Co-operative Officers have power to supersede a Committee of Management of a Co-operative Society if that society is a District level society. The argument of the learned Counsel for the petitioner is that the functions and duties of the petitioner-society are restricted to District level only, and therefore, the petitioner-society should be considered to be a District level society. However, the learned Counsel, quite fairly and according to me, rightly, did not contest the stand taken by the respondents that the petitioner-society is registered as a primary society. Two questions fell for consideration. The first question is whether a primary society can, at all, be brought under the term "District level society". The second question is whether the petitioner-society, on facts and in law, can be treated as a District level society. As pointed out supra, the term "primary society" is nowhere defined under the Act or the rules except in Rule 12(5) while classifying federal societies into Apex societies, Central societies and Primary societies. Therefore, the classification made under Rule 12(5) could apply only to federal societies and that classification cannot be applied to other categories of societies. In that view of the matter, there is absolutely no scope to import the concept of "primary society" in classifying any other categories of societies other than the federal societies.

8. Secondly, the petitioner-society, on facts and in law, cannot be treated as a District level society. As pointed out supra, the petitioner-society itself is a member of the Federation. The petitioner-society has two sets of functions and duties; the first set includes its duties and functions at the District level and the second set includes its duties and functions at the Federation level. The Federation is an apex society as defined under clause (i) to the Explanation of sub "Rule (5) of Rule 12. The word "Apex" means the summit, tip or point or the culminating point of anything. Apex society cannot be comprehended without the association or union of smaller units. The term "District level societies* shall necessarily include only those societies where the duties and functions of those societies should occupy or reach only upto District level and not beyond district level. As pointed out supra, the duties and functions of the petitioner-society do occupy and reach beyond District level also. Therefore, the petitioner society cannot be considered to be a District level society. If it is so held, it goes without saying that the first respondent being the Deputy Registrar of Co-operative societies is delegated with the power to initiate proceedings u/s 34(1) of the Act in respect of primary societies. The petitioner being a primary society, the impugned notice issued by the first respondent is very much within his power delegated to him under G.O. Ms.No.34, Food and Agriculture (Co-op. IV) Department dated 18-1-1989.

9. In the result the writ petition fails and is dismissed with no order as to costs.