
(1994) 02 AP CK 0016

In the Andhra Pradesh High Court

Case No : Writ Petition No. 1428 of 1994

Awari Devanna

APPELLANT

Vs

Divisional Co-operative Officer

RESPONDENT

Date of Decision : 03-02-1994

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1994 AP 357 : (1994) 1 ALT 363

Hon'ble Judges : B. Subhashan Reddy, J

Bench : Single Bench

**Advocate : M/s. C. Malla Reddy, G. Anandam and Padmalatha, for the Appellant;
G. P., for the Respondent**

Judgement

B. Subhashan Reddy, J. 1. Heard the learned counsel for the petitioner and the learned Government Pleader for Co-operation.

2. This writ petition arises under Andhra Pradesh Co-operative Societies Act, 1964 (hereinafter referred to as "the Act"). The order dated 10-1-1994, passed by the respondent, i.e., the Divisional co-operative, Officer, Nizamabad, is impugned, as by the said order, the elected Managing Committee is held to have ceased to be in office for the violation of the Statutory provision contained under sub-section (1) of Section 32 of the Act. In fact, the impugned order is passed not only u/s 32(1)(1A), but also u/s 21AA(4) of the Act. The committee was elected in the year 1992 for a period of three years and that will expire only in the year 1995. Several grounds are stated in support of the impugned order, namely.

"(1) That the President has misutilised the funds of the society to the tune of rupees one lakh for his personal gain by drawing amounts as and when required by him under suspense account and adjusting the said amount on instalment basis conveniently and leisurely causing unnecessary loss to the society towards interest.

(2) That Sri K. Ashok, a clerk of the said society has drawn an amount of Rs. 20,000/- in his name and paid the same to the President as requested by him and that an amount of Rs. 12,800/- has been remitted leaving a balance of Rs. 7200/- yet to be remitted. Besides this, Sri Ashok, clerk found to be responsible for shortages valuing Rs. 12,859-00 in the ESCOM business. Thus, he has to make good a total sum of Rs. 20,059-60 ps. of this he has remitted an amount of Rs. 2,000/- leaving a balance of Rs. 18,050-00. In his deposition dated 7-12-1993 before the CSR(C), he has pleaded that he would remit Rs. 1500/- every month till the entire amount is repaid.

(3) That Sri Limbagiri Swamy, a salesman of the society found to be responsible for shortages in ESCOM business valuing Rs. 10,961-00.

(4) That the President has incurred an expenditure of Rs. 10,000/- towards opening of cash counter at Uppalur village and Rs. 5,000/- towards colouring of the society building without the approval of the managing committee and without the pre-permission of the Registrar of Co-operative Societies.

(5) That the President failed in his duty to call the meetings of the committee. He has not convened any M.C. meeting during last five months which is in contravention of Section 32(3) of the Act."

2A. The four references made in the impugned order do not disclose issuance of any notice either to the President or to any members of the Managing Committee.

3. Mr. Durga Reddy, learned Government Pleader appearing for the respondent, strenuously contends that neither the statute nor the rules framed contemplate issuance of any notice before the impugned order is passed and as such, there was no obligation cast on the respondent to issue any notice.

4. If a member of a committee incurs any disqualification, Rule 24 of the rules framed contemplate an enquiry preceded by a notice entitling the said member to file objections. Such member is also entitled for an opportunity to be heard. If that be the case, I cannot countenance a contention that for an order to be passed of the instant nature, no opportunity is necessary to the petitioner. Maybe, the statutory provision is silent, but by that, it cannot be concluded that the principles of fair play need not be followed. The committee is elected for a specific term and has got a vested right under law to hold the office for the said tenure. But, that can be terminated prematurely for the grounds stated under the statute. If that be so, the vested rights of the committee are being divested even before the expiry of the term on stated grounds and when such is the order passed by the State or its servants, to the prejudice of the petitioner in derogation of his said rights, it can only be made in accordance with the basic rules of natural justice which includes fair play. Rules of natural justice are not rules embodied always expressly in a statute or in rules framed thereunder. They may be implied from the nature of the duty to be performed under a statute. What particular rule of natural justice should be implied and what its context should be, depends upon the framework of the law under which the enquiry is

held. If the stated provisions of the A. P. Co-operative Societies Act are silent as to the procedure to be adopted for ousting the elected committee prematurely as happened in the instant case, the power should be exercised only after due enquiry in accordance with the principles of natural justice. As the same is not followed in the instant case, I set aside the impugned order and direct the respondents to issue a notice to the President and all the members of the managing committee by specifying a minimum period of 7 clear days from the date of service of notice for filing replies and then consider the same. Should the said office bearers require a personal hearing, the same should also be given. The decision afresh shall be taken only after due observance of procedure stated supra.

The writ petition is disposed of at the admission stage.

5. Order accordingly.