
(1997) 01 AP CK 0042

In the Andhra Pradesh High Court

Case No : Writ Petition No. 565 of 1996

B. Eranna

APPELLANT

Vs

Government of A.P. and Others

RESPONDENT

Date of Decision : 18-01-1997

Acts Referred:

Citation : (1997) 1 ALD 827 : (1997) 1 ALT 813

Hon'ble Judges : D.H. Nasir, J

Bench : Single Bench

Advocate : A. Chandraiah Naidu, for A. Satya Prasad, for the Appellant; Govt. Pleader for Agriculture for Respondent Nos. 1 to 5 and B. Purushotham Reddy, for the Respondent

Final Decision : Dismissed

Judgement

D.H. Nasir, J.—An Executive Secretary of the Co-operative Society is questioning the legality of the orders passed by the Co-operative Society placing him under suspension in this Writ Petition. The petitioner himself admits in para 2 of his affidavit that during his tenure there were many changes in elected persons as a result of which he could not execute his work according to the duties entrusted to him to the satisfaction of successful managements. The writ petitioner claims that once he was appointed as the Secretary and was allotted to Co-operative Society, he became a permanent employee and he could not be changed "at any costs" according to the whims and fancies of the members of the Executive Committee of the Society. According to him, bye-law No. 12 of special bye laws relating to the service conditions of employees of Primary Agricultural Co-operative Societies, specifically provided that while placing the Secretaries under suspension, the society should consult the District Level Committee and in the absence of such consultation, the same was illegal and void.

2. Proceedings bearing Rc.No. 5987/95-C dated 18-12-1995 issued under the signature of the District Co-operative Officer, Kurnool, was communicated to the writ petitioner stating therein that in view of the circumstances reported by the

President of Kotekal LSCS, and to avoid the dislocation of the work of the society, the Secretary M.C. Rangappa of Kadivella P.A.C.S., was temporarily kept in additional charge of the post of the Secretary, Kotekal LSCS until further orders. He was directed to attend to the work of Kotekal L.S.C.S. in addition to his normal duties at Kadivella P.A.C.S. and that he should assume charge at Kotekal LSCS with immediate effect and report compliance.

3. The respondent No. 6 (President of the 6th respondent Society) in his counter affidavit dated 30-1-1996 alleges that the performance of the writ petitioner was not at all satisfactory and, therefore, notice dated 24-10-1995 was issued calling upon him to hand over the cash book and other records for his (President of 6th respondent Society) scrutiny and also to convene the Committee meeting as per schedule. He was also directed to produce the receipts and expenditure registers for his perusal. But the Secretary did not care either to reply to the notice or to act according to the directions given to him. The Managing Committee of the 6th respondent Society, therefore, passed a resolution dated 17-11-1995 placing the writ petitioner under suspension pending enquiry. It was also resolved that the writ petitioner should be directed to hand over the records and registers of the Society to the Supervisor of the Society. However, the writ petitioner in spite of the resolution having been communicated to him, did not comply with the directions given to him and in fact he refused to receive the order sent to him by registered post with acknowledgement due. A letter was, therefore, addressed to the 3rd respondent - District Co-operative Officer, Kurnool requesting him to ratify the action taken by the society. A charge memo dated 22-11-1995 was issued calling upon the petitioner to show cause why action should not be taken against him for the lapses committed by him as shown in the charge memo. But the writ petitioner did not care to give any reply to the charge memo. Under these circumstances, therefore, according to the respondent No. 6, with a view to safe-guard the interest of the society they had to resort to the locking of the office of the society. He also expressed his concern in his counter affidavit that if the writ petitioner was allowed to continue as Secretary of the Society, it was likely to lead to several complications. He also challenged the maintainability of the writ petition.

4. The question, therefore, which emerges for our consideration is two fold, whether the 6th respondent - society is competent to place the writ petitioner under suspension and whether the writ petition is maintainable in law.

5. On perusal of the special bye-laws relating to the service conditions of the employees of the Primary Agricultural Credit Societies, it appears that under Clause (12) which provides for Disciplinary control, the President of the Society is competent to take disciplinary action against the employees of the society for the lapses committed by them in the discharge of their duties, work and conduct. The particulars of the authority competent to inflict punishments on the employees of the society are given under Clause (12) relating to disciplinary control, and in case of Secretary, the suspension has to be approved by the

Managing Committee in consultation with the District level committee and President is competent to Censor and stoppage of increments.

6. The President of the 6th respondent - society in his counter affidavit stated that the Managing Committee of the 6th respondent - society passed a resolution dated 17-11-1995, placing the writ petitioner under suspension pending enquiry and that a copy of the order dated 18-11-95 placing the writ petitioner under suspension was sent to him by Registered Post, Ack. Due, but the petitioner refused to receive the registered letter.

7. The petitioner in his reply affidavit states as follows:

"It is absolutely false to say that the committee passed a resolution on 17-11-95 placing me under suspension pending charges and a copy of the order dated 18-11-95 placing me under suspension was sent to me and I have refused to receive the same. It is humbly submitted that the suspension was done in a haphazard manner by forging the signatures on the so-called resolution dt. 17-11-1995 by threatening the directors".

From these submissions made by the writ petitioner in his reply affidavit, it becomes evident that the writ petitioner impliedly admitted the resolution having been passed, but he alleges that it was done in a haphazard manner and further that the signatures were forged on the so called resolution dated 17-11-1995 by threatening the directors. If that is so, the suspension can certainly not be lifted as urged by the petitioner in this writ petition. Since the enquiry has already been initiated by sending show cause notice to the petitioner by the person who was appointed as the Enquiry Officer, it is incumbent upon the writ petitioner to face the enquiry and press his points before the Enquiry Officer, as to how the initiation of disciplinary action against him was unlawful and how the allegations made against him were false. In case of disciplinary enquiries the law is quite clearly settled that the delinquent should face the enquiry and approach the High Court invoking its writ jurisdiction only if it could be stated that the enquiry proceedings were conducted in a manner not conducive to the principles of equity and that the Enquiry Officer was conducting the enquiry with a pre-determined mind against the delinquent. At the very first instance, the delinquent cannot cut short the domestic enquiry and rush to the High Court invoking its writ jurisdiction. Before the High Court can look into the matter it is absolutely necessary that there should be a prima facie finding of guilt or otherwise, so that the High Court may not have to examine the disputed questions of facts and the scrutiny by the High Court could be confined only to the legality of the impugned order and/or the legitimacy of the enquiry proceedings and/ or whether any reason existed to believe that the impugned action by the Management was a mala fide exercise of power with a pre-determined mind. Any step not germane to such situation cannot be considered by the High Court in its exercise of writ jurisdiction.

8. Special bye-laws relating to the service conditions of employees of P.A.C.S/

L.S.C.S/C.R.Bs framed according to the circular memo of the Commissioner for Co-operation and Registrar of Co-operative Societies, A.P., Hyderabad in Circular Rc.No. 73089/92/K2(PACS) dated 7-10-1993 empowers under Clause (5) that any authority competent to inflict minor punishments on the employees of the society could place him under suspension pending enquiry of the disciplinary proceedings against the employee. Under Clause (2) of the said bye laws, all employees of the society excluding attenders, but including Secretary, Accountant/accounts clerk/salesman/other equivalent cadres are subjected to the authority of the President for inflicting minor penalties. The appellate authority in such cases is the Managing Committee. But in respect of major penalties, it is provided under Clause (2) that the managing committee was the competent authority to inflict the penalties and the appellate authority shall be the District Level Committee.

9. The provisions of the bye-laws thus, make it abundantly clear that the disciplinary action initiated by the President cannot be called in question at this preliminary stage. In fact, even after the completion of enquiry, the writ petitioner would be at liberty to question the same, if it is so warranted, before the appellate authority, which is the Managing Committee. Only in the event of the petitioner being dissatisfied, even by the order of the Managing Committee, perhaps, the delinquent can invoke the writ jurisdiction of this High Court. This is however, an incidental expression of opinion by this Court and the same should not be treated as an order or a direction by this Court that the maintainability of the writ petition cannot be called in question if it is resorted to by the petitioner after exhausting the remedy before the appellate authority.

10. The resolution of the society dated 17-11-1995 also was considered by my learned brother M.H.S. Ansari. J. in W.P.M.P.No. 680 of 1996 in the present Writ Petition No. 565/1996. In his order dated 23-4-96 the learned Judge observed that a charge memo has been served on the petitioner. However, the enquiry had not progressed and meanwhile the Secretary appointed by the District Cooperative Officer was finding it difficult to function in view of the interim orders dated 23-1-1996, passed by this Court. It was further observed that the question whether the respondent society did not have power to place the Secretary under suspension without prior consultation of the District Level Committee was one which would have to be gone into in the main writ petition itself. The enquiry needs to be disposed of at an early date so that the affairs of the society was not disturbed. Keeping these circumstances in view, the interim orders dated 23-1-1996 was vacated with a direction that the enquiry initiated against the petitioner should be completed within a period of three months from the date of receipt of a copy of the order.

11. It would thus be seen that even according to the aforesaid interim order passed by my learned brother M.H.S. Ansari. J., the departmental enquiry was directed to be proceeded with and a direction was issued to complete the enquiry within three months. However, in spite of the interim direction, the departmental

enquiry does not seem to have made any headway so as to find out whether any cause survives to carry the proceedings of this writ petition any further.

12. In the case of B. Veeraswamy Vs. Large Sized Co-operative Society and Others, , it was held that bye law No. 12 contemplates that the President of the Society shall be competent to take disciplinary action against the employees of the society for the lapses committed by them in the discharge of their duties, work and conduct. The view expressed in the authority Cited above lends substantial support to the views expressed by this Court and, therefore, I firmly believe that the situation does not call for High Court's interference in the matter at this stage, when the departmental enquiry has not yet been concluded.

13. During the pendency of this writ petition serious controversy came to surface with regard to the handing over of charge by the writ petitioner on account of the fact that he was suspended and several affidavits and counter-affidavits have been filed in that regard. But in view of the fact that these aspects of the case relating to charge to be handed over by the Secretary who is suspended has also assumed a controvertial character, the same can be looked into during the enquiry proceedings and no finding need be recorded on that controvertial aspect by this Court in this writ petition. The writ petition, " therefore, deserves to be dismissed with certain directions as follows:

(a) The writ petition is dismissed.

(b) The respondent No. 6 is directed to ensure that enquiry proceedings are conducted in an expeditious manner and shall be concluded latest by 31-3-1997.

(c) The controversy with regard to handing over and taking over the charge of the Secretary of the Society shall also be examined during the course of enquiry.

(d) No costs.