

(1998) 04 AP CK 0077

In the Andhra Pradesh High Court

Case No : CC No. 1360 of 1996 and Batch

B. Ramanaiah and others

APPELLANT

Vs

District Collector and Election Authority (Co-operation)
Nellore, and others

RESPONDENT

Date of Decision : 09-04-1998

Acts Referred:

Citation : (1998) 4 ALD 41 : (1998) 4 ALT 305

Hon'ble Judges : B.S.A. Swamy, J

Bench : Single Bench

Advocate : A. Prabhakar Rao, for the Appellant; Advocate-General and Government Pleader for Cooperation, for the Respondent

Judgement

1. These two contempt cases are filed by Sri B. Ramanaiah and Writ Petition No.6270 of 1997 was filed by Madiri Ramaiah and they can be disposed of by a common judgment as the dispute in these cases is one and same and between the same parties.

2. In this case while one group headed by Sri B. Ramaniah, is trying to continue as members of Venkateswara Weavers Co-operative society, (Indukurpet Society), Indukurpet Village and Mandal, Nellore District, the other group headed by Erra Dasaratharamaiah, are trying to get the members of the society who are not residents of Indukurpet deleted from the membership of the society, by contending that they are not residing in the area of operation of the society and as such they seized to be the members of the society. Hence, both the groups will be referred by the names of the leaders for the sake of convenience in disposing of these cases.

3. While B. Ramanaiah filed CCNo.1360 of 1996 alleging that the contemnors flouted the orders of this Court dated 6-8-1996, CC No. 1176/97 was also filed by him alleging that the order of this Court in CC No.1360/97, dated 17-12-1996 has been flouted by the contemnors. Writ Petition No.6270/97 was filed by Madiri Ramaiah, who belong to the group of B. Ramanaiah, questioning the orders

passed by the Director of Handlooms and Textiles in the capacity of functional Registrar for Handlooms and Textiles u/s 27 of the Co-operative Societies Act (for short "the Act"), in RC No.19833/95-F.1, dated 28-2-1997, seeking a writ of certiorari and also to quash the above proceedings, wherein the Director gave directions to the District Co-operative Officer to delete the names of the members of the society who are residing at Narayanareddypet by accepting the contention of the Dasaratha Ramaiah's group.

4. Before advertng to various contentions raised by the respective parties, to know the controversy involved in the case, the facts leading to the filing of these cases have to be adverted to for better appreciation of the case of both the parties.

5. From the record it is seen that one Handloom Weavers Cooperative Production and Sales Society was functioning at Narayanareddypet since 1945, and its area of operation extended over to Narayanareddypet, and Pallipadu. After some time, a co-operative society seemed to have been registered for Indukurpet village and some other villages by showing it as Indukurpet Bit No. 1. In 1979, a new Weavers Co-operative Society at Indukurpet came into existence and its area of operation initially extended over Indukurpet, Vilukanpalli and Narayanareddypet, and was registered as Indukurpet Bit No.2.

6. Admittedly, several residents of Narayanareddypet and Vilukanpalli villages were admitted as members of the society, and they were actively involved in the production activity of the society. While things stood thus, the Government of Andhra Pradesh gave directions to all the concerned to re-organise the primary Weavers Co-operative Societies in consultation with the National Bank for Agriculture and Rural Development. For the purpose of identifying the viable and non-viable Societies and to take action u/s 15-A of the Act for their continuance, amalgamation, wounding-up and merger in the viable Societies Government gave necessary guidelines G.O. Ms. No.593, dated 8-12-1993. Pursuant to the said direction, the Assistant Director, Handlooms and Textiles, issued Gazette notification published in the extraordinary Nellore District Gazette, dated 19th December, 1983, inviting objections on further action u/s 15-A(1)of the Act, having identified the viable and non-viable societies. In the said notification, both the societies i.e., Narayanareddypeta Society and Indukurpet Society Bit No.II, were identified as viable societies. But, while retaining the area of operation of Narayanareddypet Society intact, in Indukurpet Society, Narayanareddypet and Vilukanpalli villages were not shown in the area of operation of the society. It was proposed to include Indukurpet Bit No.1 Society and Mypadu Society in the society and the villages covered by these two societies i.e., Mypadu, Venkannapalem, Narasapuram and Gangapatnam revenue villages were sought to be included in the area of operation of the society. The residents of Vilukanpalli and Narayanareddypet villages who are members of the Indukurpet Society, seemed to have not raised any objection against the proposed action, as there was no indication whatsoever, in this show-cause notice that their

memberships from the Indukurpet Society will be deleted. After considering the objections received with regard to other societies, a final notification was issued in Proceedings RC No.4400/83-B, dated 7-2-1984. But, now it is on record that except issuing that notification, the District Authorities have neither taken the necessary steps that are required u/s 15-A(2) of the Act, nor produced any evidence that they have obtained the consent of the financing bank or the creditors of the society before passing the final orders. Further, they seemed to have not given any individual notice either to these members or to the Managing Committee of Indukurpet Society as required under the provisions of the Act. Now, it is also on record that even after issuance of the said notification the residents of Narayanareddypet and Velukanpalli villages continued as members of the Indukurpet Society. By the time elections were due to the society in the year 1995, there were 224 members and on 28-5-1995, the members of the society elected 9 Board of Directors unanimously. Here we have to keep in mind tint in the Assembly Elections held during the year 1995, there is a change in the ruling party at the State level and this seemed to have given liver to some of the members of the society on the basis of their political lineage to gain control over the administration of the affairs of the society. Further it is also on record that the group lead by Dasaratha Ramaiah started making allegations against the President and ultimately, having failed to get resolved their disputes, all the Directors seemed to have resigned on 8-2-1996. Having accepted the resignations of these Board of Directors, the District Registrar appointed a departmental official as part-time person incharge for a period of three months on 26-2-1996 or till the date of elections to the society. Subsequently, without conducting elections to the society alongwith other Societies, under election notification issued by the election authority i.e., the District Collector under Rule 22-A of the Rules, the term of the PPIC was extended by 3 more months.

7. The group lead by B. Ramanaiah, having waited for sufficient time filed Writ Petition No.15430/96, questioning the action of the respondents in not conducting the elections to the society and this Court by order dated 6-8-1996, directed the authorities concerned to hold elections to the society and complete the entire process including the declaration of results and induct the newly elected members of the Managing Committee into office within three months from the date of receipt of a copy of the order.

8. Perhaps Dasaratha Ramaiah and his group of persons might have felt that if elections are conducted with the present strength, they may not gain control over the affairs of the society and for the first time on 9-9-1996, they seemed to have filed a representation before the District Co-operative Officer to conduct inquiry into the alleged misappropriation of funds by the ex-President and the Manager of the society and also for the first time they raised their objections for continuance of the residents of the Narayanareddypet, Vilukanpalli in Indukurpet Society and sought for their removal from the membership of the society. Having waited for one day on 11-9-1996, they filed another representation to the same effect and one week thereafter they filed another representation before the

District Co-operative Officer i.e., on 18-9-1996, seeking enquiry u/s 52 of the Act. Having waited for one more week Mr. Dasaratha Ramaiah and 4 others belonging to his group filed another Writ Petition No.20153/96 seeking a direction to the District authorities to conduct inquiry into the representations filed by them. Neither Dasaratha Ramaiah nor the Government Pleader brought to the notice of the Court about the earlier order passed on 6-8-1996. With the result Justice M.H.S. Ansari, as he then was, disposed of the writ petition by order dated 25-9-1996, directing the District Co-operative Officer to hold inquiry u/s 52 as well as under Rule 20 of the rules, on the representations filed by the group and pass appropriate orders therein, and the action, the 2nd respondent proposes to take with respect to the said representation of the petitioners to be communicated to them within six weeks from the date of receipt of a copy of the order. Under the guise of these orders, the District Authorities seemed to have conducted an enquiry and proposed to delete as many as 222 members out of the total 278 members of the society under various categories, which is as hereunder:

1. 54 members admitted under resolution dated 11 -1-1996 without collecting the share capital and admission fee and without following the procedure.
2. 55 weavers residing at Narayanareddypet and Vilukanpalli villages on the ground that they are not residing within the area of operation of the society.
3. 50 members, on the ground that they have left the area of operation of the society.
4. 63 members, from the membership of the society on the ground that they are not having looms of their own.
5. 8 members from the membership of the society on the ground that they are no longer alive.

9. At same time, the authorities did not conduct any inquiry on the alleged misappropriation of funds by the ex-President and Manager of the society. In the mean time, Mr. Ramanaiah filed CC No.1176/97 as the orders of this Court dated 6-8-1996 in WP No.15430/96 were not complied with. After hearing the contemnors by order dated 17-12-1996, I extended the time limit for completion of the election upto 31-1-1997. The report submitted by the DCO seemed to have been accepted by the District Collector and forwarded the same to the Assistant Director, Handlooms and Textiles, to take action on 1-1-1997. On 2-1-1-1997, the Assistant Director, gave show cause notice returnable in 7 days to the members who are sought to be deleted from the membership of the society u/s 21(3) and Rule 20 of the Rules. About 146 members having received the show-cause notices, submitted a representation that their memberships cannot be removed from the society as they are caking out livelihood by joining as members of the society since its inception. The Asst. Director in his turn passed a combined order in his proceedings RC No.4/ 97-B, dated 10-1-1997 ordering deletion of 219 members and to prepare voters list with the remaining

58 members. On the same day the election authority in exercise of his powers under Rule.22-A, issued election notification under which the programme for holding elections was communicated. On 11-1-1997, the part time person incharge, passed a resolution removing 219 members from the rolls of the society. Pursuant to the notification issued by the election authority, the election officer issued election notification on 16-1-1997 and also published the final voters list on the same day while fixing the date of poll as 31-1-1997. Aggrieved by the orders of the Assistant Director, in RC No.4/97-B, dated 1-1-1997, removing large number of members from the membership of the society, 85 members belonging to the group of B. Ramanaiah, filed a revision petition u/s 77 of the Act, before the Director of Handlooms and Textiles on 18-1-1997, seeking orders to permit them to participate in the elections by suspending the order dated 20-1-1997. The Director, in his orders dated 20-1-1997 permitted the petitioners in the revision petition to participate in the elections to be held on 31-1-1997, subject to the final orders that are going to be passed in the revision petition u/s 77(3) of the Act.

10. Having come to know of the orders passed by the Director, Dasaratha Ramaiah, filed revision petition u/s 77 of the Act on 24-1-1997 before the Government and also sought for suspension of the orders of the Director, dated 20-1-1997. The Government issued G.O. Ms.No.89, Industry & Commerce (Textile) Department, dated 29-1-1997, suspending the orders of the Director and also postponing the elections scheduled to be held on 31-1-1997 for a period of two months from the date of receipt of the orders, pending final decision in the revision petition, in exercise of its powers under Rule 22-AAA of the rules. Subsequently, on 22-2-1997, the Government disposed of the revision petition, whereunder the procedure adopted by the Asst. Director in not communicating the proceedings to all the disqualified persons individually and also the interim orders passed by the Director on 20-1-1997, were found fault with and remanded the matter to the Director for final decision in GO Rt. No. 181, dated 22-2-1997. The Director, in turn disposed of the revision-petition by order dated 28-2-1997, whereunder he held that Velukanpalli village is deemed to have been continued in the area of operation of the Indukurpet society and as far as residents of the Narayanareddypet village are concerned, as a separate weavers Co-operative Society is functioning at Narayanareddypet village, they cannot be continued in this society. Questioning the said order M. Ramaiah filed the present writ petition. It is also interesting to note that the part time person incharge, amended the bye-law No. 1, relating to the area of operation of the Indukurpet Society for the first time after the orders of the Director on 28-2-1997, including the villages, Mypadu, Venkatapuram, Narasapuram, Gangapatnam and Velukanpalli villages which were included in the area of operation of Indukurpeta Society in the re-organisation programme undertaken in 1984 and deleting Narayanareddypeta village.

11. Pursuant to the orders of the Director, the Assistant Director conducted physical verification of the members residing in Velukanpalli village and deleted

11 persons as ineligible to continue as members of the society by order dated 3-3-1997. On the same day, he also issued individual notices to 95 members removing them as members of the society. As the contempt cases are coming up for hearing in those days, to justify his action, the Assistant. Director addressed a letter dated 7-3-1997 to the President, Narayanareddypet Society to admit the residents of the Narayanareddypet village as members of their society. On 8-3-1997, he removed 11 more persons from the membership of the society and ultimately, on 9-3-1997, he instructed the person incharge, to remove 206 members on the ground that they are ineligible, and 13 persons, since died from the rolls of the society, in all 219 out of 278 members, -leaving the strength of members of the society at 59. Subsequently, the election authority by his proceedings dated 10-3-97 issued election notification fixing the date of poll as 31-3-1997 and the newly elected Managing Committee was inducted into office on 31-3-1997 itself

12. Subsequently, Mr. B. Ramanaiah filed Contempt Case No. 1176/97 in Contempt Case No.1360/96, by contending that the orders of this Court dated 17-12-1996 again were flouted by the contemnors.

13. From the narration of the facts it is seen that after the orders of this Court dated 6-8-1996 directing the authorities concerned to complete the election process within three months from the date of receipt of a copy of the order, at the instance of Mr. Dasaratha Ramaiah's group, the officers involved in this case moved with promptness and swiftly, which is unexpected and unknown in the present day administration of the affairs of the State. Having gone through the record carefully, I have no manner of doubt to hold that the officers conducted themselves in this manner to hand over the administration of affairs of the society to the group lead by Dasaratha Ramaiah, who all of a sudden wokeup and started complaining against the continuance of the residents of the Narayanareddypet village as members of the society, after the orders of tills Court dated 6-8-1996 for the first time in the second week of September, 1996 and they have succeeded in removing the majority of the members of the society before holding the elections as directed by this Court. Having seen the functioning of the beurocracy, I came to a firm conclusion that any amount of indictment of the officials of the Government will not achieve the required results in running the affairs of a welfare State in a manner known to law. Hence, I propose to dispose of the writ petition on merits.

14. From the facts stated supra, this Court is called upon to decide the following issues:

(1) Whether there is any legal bar for the weavers residing at Narayanareddypet village for their continuance as members of the Indukurpet Society, as per the provisions of the Co-operative Societies Act?

(2) Whether Narayanareddypet and Vilukanpalli villages were deleted from the area of operation of Indukurpeta Society during re-organisation of the Weavers"

Co-operative Societies in 1984 ? If so, whether the authorities concerned have followed the statutory provisions and the guidelines issued by the Government in G.O. Ms. No.593, dated 8-12-1983?

(3) Whether the weavers residing in Narayanareddypeta and Velukanpalli villages were removed from the membership of the Indukurpeta Society after the alleged re-organisation of the Weavers Co-operative Societies ?

(4) Whether the department officials are justified in removing the majority of the members under various categories from the membership of the society under the guise of holding an enquiry u/s 52 of the Co-operative Societies Act, more so, the residents of the Narayanareddypeta village, at this length of time, after completion of re-organisation of the Societies were over way back in 1984 ?

15. Now, I will answer the above issues in seriotam.

Issue No. 1:

Under Section 2(J), of the Co-operative Societies Act, a member is defined as a member of the society and includes a nominal or associate member. u/s 2(q), "society with limited liability"" means a society in which the liability of its members for the debts of the society, in the event of its being wound up, is limited by its bye-laws (i) to the amount if any, unpaid on the shares held by each of them; or (ii) to such amount as they may undertake to contribute to the assets of the society; u/s 4, a co-operative society can be registered for a group of persons. u/s 6 of the Act, 10 or more individuals belonging to the same class or pursue the same occupation can submit an application for provisional registration of the society to the Registrar. Under clause (c) of sub-section (2) of Section 6, if the object of the society is to raise funds to lend to its members, the applicant shall reside or own immovable property in the same town, village or group of villages or belonging to the same class or pursue the same occupation. Under proviso, in the case of a society with unlimited liability, the members thereof shall reside in the same town, village or group of villages : Sub-clause (cc), deals with the productive societies, i.e., where the objectives of the society include production and sales activity by supplying raw material to members for production of finished products all applicants have to reside in the area of operations proposed for the society and belong to the same class or pursue the same occupation. u/s 18 of the Act, the Registrar shall classify the Societies in accordance with their objectives, area of operation, membership, or any other matter specified in rules. Chapter III deals with the members and their rights and liabilities. u/s 19, every individual who attained majority and is of sound mind and who belongs to a class of persons for whose benefit the society was formed is eligible to become a members of the society. Under Explanation II, a weaver is defined as any individual not being a master weaver, who attends to operations of weaving of cloth or fabric or product on the loom whether such operation is carried on in private dwelling house or any other place and dependent on weaving as profession and income thereof. u/s 19(2)(iv), minors

can also be admitted as associate members of such class of Societies as may be prescribed. u/s 19(2A), a person duly qualified for admission is entitled to apply for membership to the Registrar. Under sub-section (3), no society shall refuse admission to membership to any qualified person without sufficient cause. u/s 22, every members is entitled for the service available to the members of the society and be rendered to him on his application to the Committee. Under Rule 2(j) of A.P. Co-operative Societies Rules, 1964, a society consists of individuals is defined as a Primary Society. Under Rule 3, every application for the provisional registration of the society shall be made in Form "A" or in such other form as may be specified by the Registrar and shall be duly signed by the applicants and shall be accompanied by : (a) four copies of the proposed bye-laws of the society, (b) a list of persons who have come forward to organise the society with their names and their father's name, residential address and share amount and entrance fee likely to be contributed by them, (c) a declaration from each individual that he is a members of a different family, (d) a scheme setting out the economic soundness of the proposed society and (e) such other documents as may be specified in the model bye-laws and other particulars, if any, specified by the Registrar from time to time. Rule 5 deals with the subject-matter of the bye-laws. The bye-laws of a society shall not be contrary to the provisions of the Act and rules and may deal with all or any of the matters specified therein and with such other matters incidental to the organisation of the society and the managements of its business, as may be deemed necessary by the society : (1) the name and address of the society; (2) the area of its operation; (3) the objects of the society; (4) the purpose for which its funds are applicable; (5) the payment, if any, to be made or the interest to be acquired as a condition for exercising the right of membership; (6) the nature and extent of the liability of the members for the debts contracted by the society; etc.

16. u/s 21-A, a person who is not eligible for membership u/s 19 is disqualified to be a member of the society. u/s 21 (3), where a member who is disqualified under sub-section (1), shall be removed by the Registrar or the Committee of the society after giving an opportunity to the person affected to make a representation.

17. The above are the provisions under the Act and rules which throw light on the eligibility/disqualification of a person to be a members of the society.

18. Admittedly, none of the provisions do not prohibit inclusion of a village in more than one Co-operative society in its area of operation, except Credit Societies. Accordingly, the Weavers Co-operative Society being a productive society and intended for the economic upliftment of its members with mutual assistance and help, no such restriction is imposed either by the provisions of the Act or the rule made thereunder. This is evident from the feet that the Venkateswara Co-operative Society was registered in the year 1979 and Indukurpet, Vilukanpalli and Narayanareddypet villages were included in its area of operation. The departmental officials knowing fully well that a Co-operative

Society was registered wayback in the year 1945 for Narayanareddypet and Pallipadu revenue villages under Registration No.583, registered another society i.e., Indukurpet Handloom Weavers Co-operative Production and Sales Society Limited under Registration No.563 at Indukurpet village and its area of operation extends over Indukurpet, Vilukanpalli, Narasapuram, Gangapatnam revenue villages, while another Society with Registration No.563 functioning at Indukurpet village was identified as Indukurpet Bit No.1. The Venkateswara Handloom Weavers Co-operative Productive and Sales Society, the present society was identified as Indukurpet Bit No.2. While registering the present society, the Narayanareddypet village was not only positively included in the area of operation of this society but also most of the weavers residing at Narayanareddypet were admitted as members of the society and neither the departmental authorities at the time of registration or residents of Indukurpeta did raise any objection for their admission as members of the society. When the minority group felt doubtful about their success in the elections, if these weavers were continued as members of the society, they raised their voice only for the first time in September, 1996 by contending that Narayanareddypeta village was deleted from the area of operation of the society in 1984, that too after this Court directed the District Authorities to complete the process of elections within three months from the date of receipt of a copy of the order in Writ Petition No.15430/96, dated 6-8-1996, and under the guise of the orders of this Court in Writ Petition No.20157/96, dated 25th September, 1996, the departmental officials jumped into the fray and removed as many as 220 members from the membership of the society on various grounds without looking into the records and without verifying whether the procedure prescribed for deletion of the village was followed or not.

19. I have no doubt to hold that these officers resorted to such an action only to handover the reins of the society to Dasaratha Ramaiah and his group which seems to be in minority under the directions of hidden forces not apparent to the naked eye. Otherwise, absolutely there is no prohibition for the weavers who are residing at Narayanareddypet and Vilukanpalli villages to continue as members of the society.

20. In fact, I am fortified in my view by a Division Bench judgment of this Court in the Vizianagaram Co-operative Land Mortgage Bank, Ltd., Vizianagaram v. the Bheemunipatnam Co-operative Land Mortgage Bank Ltd 1968 (1) An. WR 52. In this case, the action of the Registrar in registering a separate Co-operative Land Mortgage Bank at Bheemunipatnam and extending its area of operation to Bheemunipatnam and the neighbouring village, which was already included in the Vizianagaram Co-operative Land Mortgage Bank, was assailed.

21. Their Lordships having referred to the statutory provisions clearly recorded the following finding:

"A combined reading of these provisions reveals that the Act does not lay down that more than one society complying with the provisions aforesaid cannot be

registered with the same area of operations. Once a society is registered, it will be entitled to do all things necessary for carrying out its objects. Before registration, the Registrar is expected to satisfy himself that the society is likely to be economically sound, and its registration would not have an adverse effect on the development of the Cooperative movement, and also that in the instant case, the society having been registered, it has to be presumed that the Registrar was satisfied on both these matters, in particular, that the bye-laws including the area covered by the bye-laws of another society, as not being contrary to the Act or the rules. We hold, and Sri Narasa Raju also concedes, that there is nothing in this Act prohibiting the registration of more than one Land Mortgage Bank for the same area."

22. Their Lordships also rejected another contention of the petitioner's Counsel i.e., within the area of operation of the existing society, another society cannot be registered with the same area of operation and held as follows:

"The language of Section 15 does not warrant a finding that the registration of a new society for an area already served by an existing society amounts to a division of the area of operations of the existing society, or that the procedure indicated in Section 15 should be followed before the registration of the new society, or that it is a proceeding started by the Registrar for division of the existing society. As already stated there is no provision in the Act or the rules giving any monopoly in respect of the area of operations provided in any bye-laws."

23. The above decision makes it clear that no society can have a monopoly over a particular area and it is for the residents of that area to choose the society and no one can compel them to seek admission in a society which does not cater to their needs according to them.

24. In the light of the foregoing discussion, I hold that there is no statutory prohibition for the residents of Narayanareddypeta to continue as members of Indukurpeta Society.

Issue No. 2:

The officers resorted to this action by contending that in the year 1984, at the time of re-organisation of the Weavers Co-operative Societies, Narayanareddypet and Velukanpalli villages were deleted from the area of operation of the Indukurpet Society and as such the weavers residing in these two villages are ineligible to continue as members of the society. Stating so, about 55 persons were removed from the membership of the society. Now, it has to be seen to what extent their action is justified.

25. Section 15-A deals with the identification of viable societies and the action to be taken thereafter. u/s 15-A(1)(e) after identification of viable or non-viable Societies, which may be retained or divided with consequential restriction of the area of operation or the transfer of such area or amalgamated or liquidated, as

the case may be, the officer concerned has to issue notification to be published in the prescribed form and invite objections or suggestions from the societies or any members, depositors, creditors, employees or other persons concerned with the affairs of each of such society within a prescribed time limit. u/s 15-A(2), after considering the objections and suggestions received by him the Registrar has to pass an order and publish the same in the prescribed manner as proposed or with modifications as he may deem fit. Under sub-clause (4), the assets of such amalgamated or divided society shall stand transferred to and its liabilities shall devolve on, the society with which it is amalgamated and all immovable properties located in the area transferred, shall be deemed to be transferred to society to which the area is transferred. Under sub-clause (5), every member of such amalgamated or divided society and residing in the area so transferred shall be deemed to have been transferred together with his loans, share capital deposits to the society with which it is amalgamated or to which the area is transferred and he shall have the same rights, privileges and liabilities which he had in the amalgamated or divided society. Under Rule 11, the Registrar shall direct the society to amend the bye-laws of the society by indicating the reasons therein and issue notice calling upon the committee of such society to convene a General Body Meeting to consider such amendment. Under Rule 11-A, the Registrar shall publish notification referred to in Section 15-A(1)(e) and the final order passed u/s 15-A(2) of the Act by affixer in the respective offices of the society or Societies affected by such devision, amalgamation, liquidation or transfer of area and also in the concerned Gram Panchayats and Mandal Revenue Offices. Under Rule 11-AA, the Managing Committee of the society has to convene a General Body Meeting by affixing the notice in the office of the society, in the office of the MRO specifying the place date and time to consider the notification issued by the Registrar u/s 15-A(1) and also notices u/s 16(5) for adoption. Under Rule 20(1), where a person is disqualified to be a members of the society continues as such the Registrar may pass an order in writing and declare that he shall cease to be a members of the society from the date of such disqualification and under sub-rule (2), such an order can be passed only after giving an opportunity to the person affected, to state his objections, if any, against the proposed action, and after hearing him, if he so desires.

26. From the above it is seen that the Registrar is bound to issue not only a general notification but also by affixer of notification in the office of the society, Gram Panchayat and MRO office in whose area the society is situated and the Managing Committee has to place the notification before the General Body by convening a meeting and the views of the General Body have to be conveyed to the Registrar. Likewise, the Registrar also has to invite objections or suggestions from individual members, depositors, if any, creditors, employees and other persons concerned with the affairs of the society.

27. Further, when the area of operation of a society is sought to be transferred to another society, the Registrar has to give notice to the society to convene a General Body Meeting and to pass an amendment to the bye-laws.

28. Keeping the above principles in mind, if we see the notification in the extraordinary Gazette, Nellore District published on 19-12-1983 it says that the Assistant Director, functional Registrar of the District identified the Societies mentioned in column No.2 to the notice as viable with the area of operation as indicated in column No.3, then the societies specified in column No.4 of the annexure as non-viable or having overlapping jurisdiction. Both the Indukurpet and Narayanareddypet Societies were identified as viable societies and the entries relating to these two societies in the show-cause notices u/s 15(A)(1) of the Andhra Pradesh Co-operative Societies Act 7 of 1964 in the Nellore Gazette, Extraordinary, dated 19th December, 1983 as well as final orders u/s 15-A(2), dated 8th February, 1984, respectively are as hereunder:

Show cause Notice u/s 15(A)(1) of A.P. Co-operative Societies Act, 1964

Sl.No. Name of the viable/potentially viable society proposed to be retained Area of the operations proposed for the society in Col.No.2 Name of the non-viable societies proposed for merger with the society in Col.No.2 Name of the liquidated societies whose area is proposed for merger with the society in Col.No.2 Area of operation of the societies in Col.No.4 Area of operations of the society in Col.No.5 Reasons in brief for the proposed action

(1) (2) (3) (4) (5) (6) (7) (8)

Indukurpet Panchayat Samithi

21.

Sri Venkateswara Handloom Weavers Co-op. Production & Sales Society Ltd. No.140, Indukurpet.

Indukurpet Mypadu Venkanna palem Narasapuram and Ganga patnam Revenue Villages

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1. Indukurpet Handloom Weavers Co-op. Production and Sales -Society Ltd. No. V563, Indukurpet.

2. My-padu Handloom Weavers Co-op. Production & Sales Society Ltd. No.475, Mypadu.

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Indukurpet Bit-1.Mypadu

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22.

Narayanareddypeta Handloom Weavers Co-op. Production and Sales Society Ltd. No.V, 583.Narayanareddypeta.

Narayana-reddypeta & Pallipadu Villages

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1. Rajarajeswari Hand-loom Weavers Co-op. Production & Sales Society No,7D, Narayanareddipeta.

2. Sarvodaya Handloom Weavers Co-op. Production and Sales Society Ltd. No.23, Pallipadu.

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Narayana reddipeta and PaDipadiu

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Final Order u/s 15-A(2), dated 8th February, 1984

SI. No. Name of the viable/potentially viable society retained Area of operation of The society in Col. No.2 Name of the non-viable societies merged with the society in Col. No.2 Names of the liquidated societies whose area is merged with the society in Col. No.2 Area of operations of the societies in Col. No.4 Area of operations of the societies in Col. No.5 Reasons in brief for the merger of the society in Col. No.4 retention of the societies in Col. No.2

(1) (2) (3) (4) (5) (6) (7) (8)

28.

Sri Venkatesware Handloom Weavers Co-op. Production and sales Society Ltd. No. 140, Indukurpeta.

Indukurpeta, Mypadu, Venkannapalem, Narasapuram, and Gangapatnam Revenue villages

Nil

1. Indukurpet Handloom Weavers Co-op. Production & Sales Society Ltd. No. V. 563, Indukurpeta.

2. Mypadu Handloom Weavers Co-op. Production & Sales Society Ltd. No. 475, Mypadu

Nil Indukurpeta Bit-1 Mypadu

The Society in Col. No. 2 is a viable society with annual turnover of Rs. 4.57 lakhs and there is a loomage of 326 in the area of operation of the Society. Hence it is retained.

29.

Narayanareddypeta Handloom Weavers Co-op. Production and Sales Society Ltd. No. 583, Narayanareddypeta.

Narayanareddypeta & Pallipadu Revenue Villages.

Nil

1. Rajarajeswari Handloom Weavers Co-op. Production & Sales Society Ltd. No. 70. Narayanareddypeta.

2. Sarvodaya Handloom Weavers Co-op. Production & Sales Society Ltd. No. 23, Pallipadu.

Nil Narayanareddypeta and Pallipadu

The Society in Col. No.2 is retained as it is a potentially viable society. There are 809 looms in the area of operation of the retained society.

29. From the above it is seen that Narayanareddypeta and Vilukanpalli villages were not mentioned in the area of operation of the Indukurpet Society. Likewise, no mention was made that these two villages will be deleted from the area of operation of this society in the show-cause notice on the ground that this Society is having overlapping jurisdiction over these two villages. Hence, it is difficult to say that either for the Indukurpet Society or the affected members that Narayanareddypeta and Vilukanpalli villages were deleted from the area of operation of the society and they have to file their objections, if any. Now, in the order passed by the Director, it was held that Vilukanpalli village was deleted from the area of operation of Indukurpet society inadvertently. The same logic can be extended for deletion of Narayanareddypeta village from Indukurpet Society. The issue can be looked at from another angle also. If the intention of the authorities concerned is to delete these two villages from the area of operation of the Indukurpet Society, under Rule 11-AA, a notification has to be fixed in the office of the society and also in the Gram Panchayat and Mandal Revenue Office. On receipt of such notification, the Managing Committee is bound to convene a General Body Meeting for ascertaining the views of the members of the society to be communicated to the Registrar. It is not the case of the respondents that any notification was sent to the office of the Indukurpet Society or Gram Panchayat or MRO and the society made representation after ascertaining the view of the members of the General Body Meeting. Likewise, when a particular village has to be deleted from the area of operation of the society, the bye-laws of the society have to be necessarily amended and for that purpose the Registrar has to give a notice to the Committee to convene General Body Meeting to adopt the proposed amendment. Even this was not done. Now bye-law No.1 of the bye-laws of the society is sought to be amended only after the orders of Director of Handlooms in Proceedings Rc No.19833/95-F1, dated 28-2-1997 by the PPIC. Likewise, it is not known whether the financing bank and the employers were served with the notices and their objections were invited or not.

30. u/s 15-A(2), Registrar is bound to pass an order and publish it in the manner prescribed. Under sub-section (5), every member of the society residing in the area so transferred shall be deemed to have been transferred together with the loans, share capital etc. But, the Registrar failed to take action as required u/s 21-A of the Act read with Rule 20 of the rules, i.e., the procedure prescribed for removal of the ineligible members consequent upon their disqualification by virtue of transfer of the area in which they are residing, was not followed, and all these years i.e., from 1984 to 1997, the residents of these two villages were not only continued as members of the society but also were participating in the elections held to the society from time to time.

31. The issue can be seen from another angle also, i.e., the Government while trying to reorganise the primary weavers co-operative Societies, framed certain guidelines for the District officials to be followed in G.O. Ms. No.593 Industries & Commerce (HL) Department, dated 8-12-1983. It is true that clause (1), says that there should be one society for one administrative Unit. Under clause (2), a society having minimum 300 Handlooms producing cotton fabric, 200 looms producing pure silk or mixed fibre fabrics and 500 looms producing cotton Nava/tape and a society's minimum turnover of Rs.3:5 lakhs in the immediate preceding co-operative year, will be considered as potentially viable for the purpose of reorganisation. Under clause 3, if a society with the area of operation of a village or a town is not having the minimum number of looms or turnover, the area of operation of the society can be extended to the adjoining village/town within a radius of 5 kilometres for enlisting minimum number of looms, clause (4-A) says that at the end of immediate preceding co-operative year, even if a society is not having a minimum number of looms and there are sufficient number of looms in the village which can in due course be useful to the society in achieving the minimum level of turnover, the society can be considered as potentially viable and retained provided that there is/are no other Society/Societies covering the same village/town. Under clause 4(b), if there are more than one society covering the same village/town, the society which is not having minimum number of looms, has to be grouped under the category of non-viable society and merged with either; (1) other non-viable societies in the same village/town or in adjacent village/town or with the viable or potentially viable society in the same village/ town or adjacent town/village. Under clause 10, if more than one society is found to have by and large satisfied all these norms then the society which has the higher annual turnover and secured a higher amount of cash credit from the Co-operative Central Bank in the immediate preceding co-operative year in comparison to other societies should be selected as a Nucleus Society to be retained.

32. As the Societies in question being Weavers Co-operative Societies producing cotton fabric, a society must have 300 looms with a minimum annual turnover of Rs.3:5 lakhs in the immediate preceding co-operative year. If a society for one administrative unit does not satisfy the requirement, the neighbouring villages within a radius of 8 kilometres can be clubbed together. If a society in one

administrative unit is not having minimum number of looms, but if sufficient number of looms are there in the same village and there is a possibility of enlisting them into the society in future, that society can also be considered as potentially viable if no other society is functioning in the same village, if more than one society is found to be viable, the society with higher annual turnover and secured higher cash credit from the Co-operative Central Bank in the preceding Co-operative year, shall be selected as Nucleus society to be retained.

33. But, in the orders passed by the Asst. Director in Proceedings No. Rc.4400/83-B, dated 7-2-1984, the functional Registrar has shown that the Indukurpet Society is having 326 looms in its area of operation as proposed in the order and is having a turnover of Rs.4.57 lakhs. Coming to the Narayanreddipet Society, the officer has shown that the society is having 809 looms but he has not given the turnover of the society.

34. During the course of arguments, I called for the status reports of both the Societies. The turnover of the Indukurpet society prior to its activity came to standstill i.e., during the co-operative year 1995-96, is far high when compared to the turnover of Narayanareddipeta Society. The figures given by the District Co-operative Officer, 2nd respondent in the writ petition in his affidavit dated 20-12-1997 are extracted hereunder for better understanding of the controversy.

Sri Venkateswara Weavers Co-op. Society, Indukurpeta.

Sl. No Particulars 1991-92 1992-93 1993-94 1994-95 1995-96

1 2 3 4 5 6 7

1. No. of members 210 215 224 226 280

2. Active members 98 91 86 73 64

3. Paid up share Capital (Rs. in lakhs) 1.67 1.88 1.93 2.18 2.19

4. Cash Credit sanctioned by NDC Bank (Rs. in lakhs) 4.90 4.90 7.50 7.92 7.92

5. Yarn purchased (Rs. in lakhs) 7.90 13.35 12.58 11.65 10.05

6. Production value (Rs. in lakhs) 11.04 19.34 19.89 16.42 15.15

7. Sales (Rs. in lakhs) 11.82 20.21 18.52 18.70 16.78

8. Profits/loss(Rs. in lakhs) (-) 0.59 0.46 0.35 0.22 0.70

Sri Narayanareddy Weavers Co-op. Society, Narayanareddypeta

Sl. No Particulars 1991-92 1992-93 1993-94 1994-95 1995-96

1 2 3 4 5 6 7

1. No. of members 163 172 172 172 172

2. Active looms 17 14 25 23 21

3. Paid up share Capital (Rs. in lakhs) 0.82 0.86 1.13 1.35 1.35
4. Cash credit sanctioned by NDC Bank (Rs. in lakhs) 1.00 1.00 1.00 1.50 1.50
5. Yarn purchased (Rs. in lakhs) 0.21 0.64 2.31 3.36 2.04
6. Production value (Rs. in lakhs) 0.79 0.94 3.80 5.44 3.08
7. Sales (Rs. in lakhs) 1.07 0.96 3.98 5.51 3.20
8. Profits/loss (Rs. in lakhs) (-) 0.84 1.25 1.18 1.31 1.55

35. From this it is seen that the reasons given by the functional Registrar in identifying both the societies in 1984 as viable is contrary to the status report filed by the 2nd respondent. At any rate it is established beyond doubt that the procedure prescribed in G.O. No.593, dated 8-12-1983 was not at all followed while re-organising the Weavers Co-operative Societies in Nellore district. As such the action of the respondents in re-organisation of the Weavers Societies suffers from serious illegalities and the same cannot be given any credence at this length of time. Hence, these orders cannot be pressed into service now.

Issue No. 3:

I have already taken the view that the District Authorities did not give notice to the members of the society inviting their objections or suggestions on the deletion of the Narayanareddipet village from the area of operation of the Indukurpet Society. Even assuming without admitting that the departmental officials intended to delete Narayanareddipet village from the area of operation of the society, after passing of the final orders u/s 15-A(2), the weavers residing membership of the society by following the procedure prescribed u/s 21 Rule 20 of the rules, i.e., the individual members have to be given notices inviting objections and pass final orders after considering the objections filed by them. But, no such thing was done by the departmental officials all these years and the residents of all these villages continued to be the members of the society.

36. Hence, it can be safely concluded that the weavers of these two villages i.e., Narayanareddipet and Velukanpalli villages were not removed from the membership of the Indukurpet Society. In fact, the Director, Handlooms and Textiles also agreed with the view taken by me with regard to the weavers residing at the Vilukanpalli village, on the ground that the village was not included in the area of operation of any other society. The same reasoning equally applies to the residents of the Narayanareddipet village also who are continuing as members of the Indukurpet Society. For the above, I hold that the action of the respondents in removing the residents of Narayanareddypeta village on the ground that the village was deleted in the year 1984 at this belated stage is vitiated by illegalities.

Issue No. 4:

From the orders passed by the departmental officials as well as the Directors, Handlooms, they tried to justify their action by contending that Narayanareddipet village was deleted from the area of operation of Indukurpet Society and as such they incurred disqualification.

37. Sri M.V. Ramana Reddy Counsel appearing for Dasarata Ramaiah and his group contends that the present action of the departmental officials is only a consequential one, following the deletion of Narayanareddipet village from the area of operation of the society in 1984, as such B. Ramanaiah and his group can neither have any grievance nor can be permitted to question the order that has become final in the year 1984.

38. This contention is devoid of merits in the light of the discussion and finding on Issue No.2. In other words, the very re-organisation of Weavers Co-operative Societies undertaken by the departmental officials is contrary to the statutory provisions as well as the guidelines given by the Government in this regard and as such the final orders passed by the Asst. Director, Handlooms, on 7-2-1984 are inoperative insofar as the deletion of Narayanareddipet village and Velukanpalli village from the area of operation of Indukurpet Society. Hence, the question of removal of weavers residing in these villages at this stage does not arise. Likewise, it cannot be said that the orders passed in the year 1984 have become final, as the departmental officials themselves do not know of this, leave apart the weavers residing in Narayanareddipet village more so in the absence of a notice to the society as well as its members.

39. In the teeth of the Rules 11, 11-A and 11 -AA of the rules, the order passed by the Asst. Director cannot be sustained in law and it is an ab initio void order. Hence, the departmental officials cannot implement an illegal order passed by them about 13 years back, now.

40. In fact, all the weavers residing at Narayanareddipet village appeared before the Advocate Commissioner appointed by this Court and deposed that Narayanareddipet Society is not having any production activity and almost all the members of the society belong to the CPM Party and they will be always participating in dharnas and processions conducted by that party. Hence, if they are asked to join such a society it will be difficult for them to eak-out their livelihood and they have no intention of joining in such a society. Here it should be kept in mind that the very principle underlying the co-operative movement is that a group of like-minded persons belonging to a particular class have formed themselves into a society with the object of working together with a view to share the profits and benefits among them by working together. That being the objective of the cooperative movement, an unwilling person cannot be compelled to join as a member in a society in which he has no confidence. Further Narayanareddipet village is within 8 km as per Commissioner's report. Hence, even under the guidelines given by the Government for reorganisation Narayanareddypeta village can be continued in Indukurpeta Society. As such the action of the respondent in removing the weavers residing at Narayanareddipet

village and directing them to join in Narayanareddipet Society after 13 years of the alleged reorganisation cannot be sustained in law.

41. Next, as many as 63 individuals were removed from the membership of the society on the ground that they do not possess looms. u/s 19 of the Act, any person who attained majority and is of sound mind and belongs to the class of persons for whom the society was formed are eligible to become members of the society. u/s 6(2) cc, in case of a production society the persons to be admitted as members of the society should belong to the same class or pursue the same occupation. Under bye-law No.5, the membership of a society is open to weavers who attained majority and is of sound mind and resides in the area of operation of the society are only eligible. In fact, minors who possess looms can be admitted as associate members without voting right under bye-law 5 of the bye-laws of the society.

42. From this it is seen that one need not hold a loom to claim membership in the society. The applicant has to satisfy the Registrar that he has attained majority and is of sound mind and is a person belonging to the group of persons for whose upliftment the society is formed. Except these, it is nowhere mentioned either in the statute or in the rules that one has to possess a loom also to seek membership in the society. Hence, the action of the Asst. Director, Handlooms and Textiles in deleting these members from the membership of the society is not a bona fide one and only intended for extraneous consideration.

43. Now coming to the members who were removed from the membership on the ground that they are residing outside the area of operation of the society, these members categorically stated in their representation to the show-cause notice that as the Society's activities came to a stand still position because of the internal fights from almost 1995 they have gone to the neighbouring villages to eak-out their livelihood. Their statement is supported by status report submitted by the respondents themselves. A society with an annual retail sales of a society for the Cooperative year 1995-96 was about Rs. 16.78 lakhs and the same came down gradually to Rs.9.86 during 1996-97 and to Rs.1.48 lakhs during 1997-98. From the status report it is also seen that out of 59 members after deletion of these members, the Managing Committee could provide work only to 32 members. But, without considering the representation of these weavers, the officers concerned removed them from the membership of the society arbitrarily. During the visit to the place by the Advocate Commissioner appointed by this Court most of the persons appeared before him and deposed that they left the village in search of work as the activities of the society came to stand still position and they are interested to continue as members of the society and intend to eak-out their livelihood.

44. Accordingly, the action of the respondents in deleting the members under this category has also to be set aside.

45. Coming to the other two categories, i.e., admission of 58 members by the

past President without following the procedure and dead persons the authorities are justified in removing them as members of the society.

46. Lastly, the respondents raised an objection with regard to the maintainability of WP No.6270/97 by one single person. I find no substance in this contention. Even if a single individual filed the writ petition questioning the impugned order, the order passed in the writ petition is the law declared by the Court and it ensures to the benefit of all covered by that order and all need not join as petitioners in the writ petition more so when a single writ petition is maintainable by all of them as the cause of action being common. Further for effective adjudication of the dispute in the ends of justice the relief can always be moulded by the Court suitably.

47. In the result, the action of the respondents in deleting 224 weavers from the membership of the society :

(1) on the ground that some of them are residents of Narayanareddipet and Velukanpalli village;

(2) on the ground that they are not having looms of their own; and

(3) on the ground that they left the area of operation of the society, is declared as invalid and the action of the respondents in removing the members who are admitted by the past President without following the procedure and the dead persons is upheld.

48. Consequently, the results of the elections to the society conducted on 31-3-1997 do not reflect the wishes of the majority and in fact, the elections of the society were held with minority group of persons by deleting the majority of members on one ground or the other. Further the action of the respondents in conducting the elections while contempt proceedings are pending before this Court for alleged violation of orders of this Court dated 6-8-1996 in WP No.15430/96 as extended by the orders of this Court dated 17-12-1996 in CC No.1360/96, more so, after the time limit fixed by this Court expired long back without waiting for the result of the contempt case, is nothing but a colourable exercise of power by the officers concerned. Having failed to conduct elections within the time allowed by this Court, they would have either waited for the result in the contempt proceedings or at least would have sought permission of this Court for conducting the elections, if they are having any respect for the Court.

49. Accordingly, I hold that the elections held to the Indukurpet society on 31-3-1997 are not in accordance with law. As no one preferred an election petition questioning the validity of the elections, the only course left open to this Court is to direct the Registrar to take action u/s 32(7) of the Act for appointment of a part time person incharge and to hold elections to the society afresh after restoring the membership of the persons as directed above at the earliest, at any rate not later than three months from the date of receipt of a

copy of the order.

50. Accordingly, Writ Petition No.6270/ 97 is allowed with costs. Advocates fee Rs.2000/- to be paid by the official respondents and Sri Dasaratha Ramaiah in equal proportion.

51. At the time of appointment of Advocate Commissioner, the department advanced necessary amounts for execution of the warrant. Now, as I am disposing the matter finally, the amounts advanced by the department may be recovered from the society.

52. In the light of the orders passed in Writ Petition No.6270/97 both the contempt cases are closed as no further orders are necessary.