

(2015) 03 AP CK 0005
In the Andhra Pradesh High Court
Case No : Writ Petition No. 1622 of 2015

Chegoni Sailu and Others

APPELLANT

Vs

The State of Telangana and Others

RESPONDENT

Date of Decision : 24-03-2015

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 32, 32(7)(a), 34, 34A, 34-A
Constitution of India, 1950 — Article 14, 21

Citation : (2015) 5 ALD 730

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : Srinivasa Raoa Madiraju, for the Appellant

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.

1. The President and 2 Directors of the Primary Agriculture Cooperative Society Limited (PACS), Kattangur village, Nalgonda district filed the present writ petition for a mandamus to declare the proceedings issued in No. 1374/2014-C, dated 23-01-2015 of the 3rd respondent as illegal, arbitrary and violative of Articles 14 and 21 of the Constitution of India and to set aside them.

2. The respondents have not filed any counter, however, the writ petition itself is taken up for hearing with the consent of both parties for the purpose of finally disposing of the same.

3. I have heard Sri Srinivasa Rao Madiraju, learned counsel appearing for the petitioners and the learned Government Pleader for Cooperation appearing for the respondents 1 to 4 and 6.

4. The brief facts relevant for considering the issue involved in the present writ petition may be stated as follows:

"(a) The elections to the PACS, Kattangur village of Nalgonda district were held on 31-01-2013 in which 13 members of the Managing Committee, who are hereinafter referred to as Directors, were elected. Thereafter, on 01-02-2013, the 1st petitioner was elected as President and another was elected as Vice-President.

(b) Subsequently, at the instance of some of the members, a meeting for Motion of no-confidence was held by the Deputy Registrar/Divisional Cooperative Officer, Nalgonda on 19-01-2015 at 11.00 a.m. after issuing notice to all the Directors. At the meeting of Motion of no-confidence, the 1st petitioner, who is the President and 7 Directors were present and the Motion of no-confidence could not be carried on for want of quorum. Under the Andhra Pradesh Cooperative Societies Act, 1964 (the APCS Act, for short) and the Andhra Pradesh Cooperative Societies Rules, 1964 (the APCS Rules, for short), for carrying out the Motion of no-confidence, two-thirds of the Directors shall be present at the meeting.

(c) It is submitted by the petitioners that on account of the pressure exerted by the local Member of Legislative Assembly (MLA), the Divisional Cooperative Officer appears to have collected resignation letters from some of the Directors on the very same day i.e. on 19-01-2015. The resignation letters, according to the petitioners, have to be addressed to the President but they shall not be collected by the Divisional Cooperative Officer. The version of the petitioners is that the President of the PACS has to place the resignation letters before the Committee to accept or reject them, but the Divisional Cooperative Officer shall not obtain the resignation letters and keep the said letters with him. In any event, the fact remains that none of the resignations have so far been accepted and the Directors are still continuing in their respective posts. Thereafter, the District Cooperative Officer/Divisional Cooperative Officer/Registrar issued proceedings in No. 1374/2014-C, dated 23-01-2015 purportedly under Section 32(7)(a) of the APCS Act appointing Sri B. Surya Dutt, Sub Divisional Cooperative Officer, the 5th respondent herein, as the Person-in-charge of the PACS, Kattangur village, having recourse to Rule 23-AAA of the APCS Rules."

5. It is contended on behalf of the petitioners that by virtue of sub-section (12) of Section 34 of the APCS Act, if the Motion of no-confidence is not carried by a majority or if the meeting could not be held for want of quorum, no notice of any subsequent motion expressing want of confidence in the same President or, as the case may be, the Vice-President shall be made until, after the expiration of the one year from the date of the meeting and therefore, by virtue of the aforesaid provision, the 1st petitioner is entitled to continue in the office for a period of one year from the date on which the Motion of no-confidence failed for want of quorum and the impugned proceedings are illegal. Contending as above, the petitioners sought to set aside the impugned proceedings.

6. It is argued on behalf of the petitioners that as it is not possible to move a Motion of no-confidence for a period of one year from the date on which it failed, the local MLA influenced the Divisional Cooperative Officer to issue the impugned

proceedings appointing the 5th respondent as the Person-in-charge of the PACS, Kattangur village. Since the impugned proceedings are at the behest of the opponents of the 1st petitioner and sought to achieve the object which could not be achieved directly by moving a Motion of no-confidence are liable to be set aside as they are *ex facie* illegal.

7. On the other hand, the learned Government Pleader for Cooperation would contend that the impugned proceedings are strictly in accordance with the provisions of the APCS Act, they were issued on account of the situation which arose due to the resignation of the majority Directors of the Society and that they cannot be set aside on the ground that the resignations so far have not been accepted.

8. To appreciate the rival contentions, it is necessary to have a glance at the relevant provisions of the APCS Act and the APCS Rules. Obviously, as per sub-section (12) of Section 34-A of the APCS Act, if the Motion of no-confidence was not carried by such a majority as required under the APCS Act or it could not be held for want of quorum, the subsequent motion expressing want of confidence in the same President or Vice-President cannot be made until, after the expiration of one year from the date of the meeting.

9. Section 34A of the APCS Act exclusively deals with the Motion of no-confidence in the President or Vice-President of the Managing Committee. But, Section 32(7)(a) of the APCS Act deals with a different situation. The provision lays down that if there is no committee or in the opinion of the Government or, the Registrar, it is not possible to call a general meeting for the purpose of conducting election of members of the committee, the Government, in respect of such class of societies as may be prescribed and the Registrar in all other cases may appoint a person or persons to manage the affairs of the society for a period not exceeding six months. Therefore, the power and jurisdiction required to be exercised by the Registrar under Sections 34-A and 32(7)(a) of the APCS Act are entirely different.

10. In this context, it is also relevant to look into sub-rule (3) of Rule 23-AAA of the APCS Rules. Under this Rule, if any member or members of the Managing Committee intend to resign their seats, they can do so by sending a letter of resignation by Registered Post or by tendering it in person to the Chief Executive Officer/President of the society and such resignation shall take effect from the date it is accepted by the Managing Committee.

11. Under sub-rule (5) of Rule 23-AAA of the APCS Rules, in the event of resignation of the entire Managing Committee or a majority of the Managing Committee, the Registrar of Cooperative Societies shall hold elections and till the new Managing Committee takes charge the Registrar may appoint person incharge or direct the Managing Committee to continue to discharge their functions till the elections are held and the new Managing Committee takes charge.

12. In this context, it requires to be noticed that the Legislature has cautiously used the expression "in the event of resignation" but not the words "when the resignation is accepted". Therefore, for the Registrar of Cooperative Societies to take a decision to appoint Person-in-charge, mere submitting of resignation by the majority of the members of the Managing Committee is enough and it is not at all necessary that those resignations have to be accepted. The Registrar also under sub-rule (5) of Rule 23-AAA of the APCS Rules, may direct the Managing Committee to continue to discharge its functions till the elections are held. But, the Registrar has to satisfy himself as to whether the Managing Committee can effectively function on account of the resignations or whether it would be essential having regard to the circumstances prevailing on account of resignation of majority of members, a Person-in-charge has to be appointed.

13. It is the subjective satisfaction of the Registrar having regard to the circumstances borne out from the resignation of majority members of the Managing Committee either to appoint a Person-in-charge or to direct the Managing Committee to continue till the elections are held. This Court cannot substitute its opinion to that of the Registrar and direct the Registrar to continue the Managing Committee to discharge the functions till the elections are held. Such a direction, in the opinion of this Court, would be offending the aforementioned provisions of the APCS Act. On the mere ground that the resignations of majority members of the Managing Committee are subsequent to the Motion of no-confidence which failed for want of quorum, this Court cannot automatically presume that the impugned proceedings are prompted by mala fides. The exercise of power by the Registrar in the instant case in issuing the impugned proceedings appointing Person-in-charge cannot be said to be without any authority or jurisdiction. For acting under Section 32 of the APCS Act read with Rule 23-AAA of the APCS Rules, the resignations need not be accepted as is evident from the scheme of the APCS Act. It is enough that the Registrar is satisfied that majority members of the Managing Committee resigned and it is not possible for the Managing Committee to function for the purpose of taking appropriate decisions. In the instant case, having regard to the circumstances which arose on account of the resignation, the Registrar had chosen to appoint the Person-in-charge by exercising his discretion and this Court in exercise of powers of judicial review is not supposed to interfere with the said discretion as the same is in accordance with the provisions of the APCS Act and the APCS Rules.

14. For the foregoing reasons, the writ petition fails and the same is accordingly dismissed without any order as to costs. The miscellaneous petitions, if any, pending in this writ petition shall stand closed.