

(1999) 12 AP CK 0081

In the Andhra Pradesh High Court

Case No : Writ Petition No. 24750 of 1999

D. Madhava Reddy and others

APPELLANT

Vs

Collectors (Co-operation), Warangal and another

RESPONDENT

Date of Decision : 22-12-1999

Acts Referred:

Citation : (2000) 1 ALD 495 : (2000) 2 ALT 357

Hon'ble Judges : Goda Raghuram, J

Bench : Single Bench

Advocate : Mr. L. Narasimha Reddy, for the Appellant; A.A.G. and Mr. D. Prakash Reddy, for the Respondent

Judgement

1. The petitioners 1 to 3 have been elected as Presidents of the PACS, Aminabad; of the Electricity Employees Co-operative Society and of the PACS, Komatlagudem respectively. The 1st petitioner had been elected as President and petitioners 2 and 3 as Directors along with 19 other Directors, of the Warangal District Co-operative Central Bank Limited (WDCCB), in the elections held in August, 1995. The term of office of such elected management is five years. The 1st petitioner received on 22-11-1999 proceedings Rc.No.4930 of 1999-D, dated 20-11-1999, issued by the 1st respondent-Collector (Co-operation), Warangal, accompanied by the draft of a No- Confidence Motion signed by some of the Directors expressing no confidence against the 1st petitioner and the Vice President of WDCCB, Sri Ch. Surender Reddy. The proceedings (impugned in the writ petition) proposed convening of the meeting of the Management Committee on 7-12-1999 for consideration of the proposed motion of No-Confidence, only against the 1st petitioner since by that time the Vice President against whom also the motion of No-Confidence was proposed had resigned and his resignation was accepted. The 2nd petitioner on 24-11-1999 and 3rd petitioner on 25-11-1999 received similar proceedings of the 1st respondent.

2. Inter alia contending that the convening of the meeting to consider the No-Confidence Motion on 7-12-1999 is illegal and contrary to the provisions of

Section 34-A of the Andhra Pradesh Cooperative Societies Act, 1964 (for short "the Act"), this writ petition is filed seeking invalidation of the impugned proceedings of the 1st respondent dated 20-11-1999. In the writ petition the impugned proceedings is assailed on other grounds also, which however, have not been pursued at the hearing of the writ petition and as such neither adverted to nor analysed herien.

Section 34-A of the Act to the extent relevant to the case on hand reads as under :

"34-A. Motion of No-Confidence in the President and Vice-President of the Committee :-- (1) A motion expressing want of confidence in the President or the Vice-President of a Committee may be made in accordance with the procedure laid down in the -following sub-sections.

(2).....

(3) The Registrar shall then convene a meeting for the consideration of the motion at the office of the society on a date appointed by him which shall not be later than thirty days from the date on which the notice under sub-section (2) was delivered to him. He shall give to the members notice of not less than fifteen clear days of such meeting in such manner as may be prescribed :

Provided that where the holding of such meeting is stayed by an order of a Court the meeting shall be adjourned, and the Registrar shall hold the adjourned meeting on a date not later than thirty days from the date on which he received the intimation about the vacation of stay, after giving to the members notice of not less than fifteen clear days of such adjourned meeting".

3. As is apparent from the above, the Legislature has specifically mandated that the Registrar give to the members, notice of not less than fifteen clear days of the meeting convened for consideration of the motion expressing want of confidence. The legislature has in clear and unmistakable terms expressed the mode in which and the period ordained for issue of notice by the Registrar by using negative phraseology "of not less than fifteen clear days". The Registrar is thus obligated in law to exercise the power in the manner legislatively prescribed and in no other manner - See AIR 1936 253 (Privy Council) , Ballabhdas Agarwala Vs. J.C. Chakravarty, , Gujarat Electricity Board Vs. Girdharlal Motilal and Another, .

4. The learned Additional Advocate General Sri D. Prakash Reddy agreed that the notice dated 20-11-1999 issued by the 1 st respondent falls short of the legislative prescription that it should be of not less than fifteen clear days. However, the prescription must be construed as directory and not mandatory and since there was a sufficient compliance of the provisions in that, a notice has been issued, the period of which was rationally adequate, no interference is called for, is the contention.

5. The inference, whether the prescription of time, in Section 34-A (3) of the Act

for issuance of a notice by the Registrar, is mandatory or directory, must be drawn on the basis of the intention of the Legislature, as expressed in the unit of legislation. The governing principles in this area are well defined. If the legislative intent is expressed clearly and strongly in imperative words such as the use of "must" instead of "shall", that will itself be sufficient to hold the provision to be mandatory and it may not be necessary to pursue the enquiry further. Also, if the provision is couched in prohibitive or negative language it can rarely be directory. The use of peremptory language in a negative form is clearly signatory of the legislative intent that the provision is to be mandatory - Crawford, the Construction of Statutes PP. 523-524. In the case on hand the language of Section 34-A(3) of the Act is emphatically prohibitive and commands the Registrar in unambiguous negative terms that the period of the requisite notice must be not less than fifteen clear days. In the circumstances this Court is of the view that the provision is mandatory and the impugned notice issued, admittedly falling short of the legislative prescription must be declared as void and is accordingly set aside.

6. It is contended on behalf of the petitioners that if the impugned notice dated 20-11-1999 issued by the registrar is set aside, then and in such a case it is not permissible for the Registrar to issue a fresh notice founded upon the notice given by the 14 members of the Managing Committee dated 18-11 -1999 and that a fresh notice has to be given if the members still wish to move such a motion and only thereafter is the Register empowered to issue a fresh notice. On this aspect of the matter, on behalf of the petitioners Sri L. Narasimha Reddy learned Counsel, contends that the proviso to Section 34-A(3) of the Act has no application to the circumstances on hand as the proviso would be attracted only in the event, the notice of the Registrar issued u/s 34-A(3) is stayed by an order of the Court and only in such specific event the meeting has to be adjourned and the Registrar empowered to hold the adjourned meeting on a date not less than thirty days from the date on which he receives the intimation about the vacation of the stay and after giving to the members notice of not less than fifteen clear days of such adjourned meeting. The contention is that when the initial notice of the Registrar dated 20-11-1999 is itself void on account of the violation of the provisions of the Act, the proviso to Section 34-A(3) of the Act has no application.

7. This interpretation does not commend itself to this Court. On the basis of the challenge to the impugned notice in the writ petition, this Court by its order dated 3-12-1999 in WPMP No. 1159 of 1999 directed stay of a! further proceedings pursuant to the notice issued by the Registrar dated 20-11-1999. The cause for issuance of the said order by this Court no doubt has been on prima facie satisfaction as to the invalidity of the notice qua the provisions of Section 34-A (3) of the Act. Nevertheless having regard to the fact that the proviso to Section 34-A (3) of the Act does not enjoin that the adjourned meeting shall be held only if the stay of the meeting is ordered by a Court in certain specified circumstances, it will have to be held that the requirement as to the adjourned meeting being held would operate regardless of the circumstances

and reasons for which the stay has been granted by the Court. The aforesaid interpretation of Section 34-A(3) proviso does not, however, offer any guidance to what the Registrar ought to do in the circumstances of case on hand. In this case stay granted on 3-12-1999 by this Court in WPMP No. 31159 of 1999 in the writ petition has not been vacated, but the notice of the Registrar dated 20-11-1999 issued u/s 34-A(3) of the Act, impugned in this writ petition is set aside as being violative of the Act. Section 34-A(3) proviso is thus not attracted.

8. Since the impugned notice dated 20-11-1999 is invalidated by this Court on the ground that the notice is ultra vires the provisions of Section 34-A(3), the notice is void ab initio and non est, the Registrar is thus obligated to convene a meeting founded on the notice of the members dated 18-31-1999, for considering the motion expressing want of confidence in the President, by duly adhering to the legislative prescription that the notice should be of not less than fifteen clear days. Since the validity of the Registrar's notice dated 20-11-1999 has been under consideration of this Court in this writ petition and has been interdicted by the interim orders of this Court dated 3-12-1999, the inability of the Registrar to conform to the legislative requirement set out in the first part of Section 34-A(3) of the Act viz., that he should convene a meeting for the consideration of the motion.....on a date appointed by him which shall not be later than thirty days from the date on which the notice under sub-section (2) was delivered to him, is the consequence of circumstances beyond his control and circumstances integral to the operation of the Rule of Law and would thus be of no consequence. In the premise the Registrar may now proceed to issue a notice for convening a meeting in accordance with Section 34-A(3) of the Act.

9. The writ petition is accordingly allowed setting aside the impugned proceedings dated 20-11-1999" and with the directions as above. No order as to costs.