

**(1997) 08 AP CK 0040**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 27490 of 1996**

Katakam Venkateswarlu and Another

APPELLANT

Vs

Asst. Director, Handlooms and Textiles and Others

RESPONDENT

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**Date of Decision : 30-08-1997**

**Acts Referred:**

**Citation : (1997) 6 ALD 154 : (1997) 6 ALT 796**

**Hon'ble Judges : V. Rajagopala Reddy, J**

**Bench : Single Bench**

**Advocate : A. Ananta Reddy, for the Appellant; Govt. Pleader for Co-operation for Respondent No. 1 and S. Ganesh Rao, for the Respondent**

**Final Decision : Allowed**

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## **Judgement**

V. Rajagopala Reddy, J.—Elections were conducted for the Board of Directors of the 2nd respondent- Society and for the Presidentship of the Society, on 27-5-1995. All the eight Directors were elected unanimously. So also the President, the 3rd respondent herein. The petitioners were elected as Directors. There were strained relations between the petitioners and the 3rd respondent, the President. Therefore, it was alleged, the 3rd respondent, who is the President of the Society, along with 3 Directors hatched a plan to declare the petitioners as disqualified members on the ground of not attending three meetings of the Board, which renders automatic cessation of the membership. Accordingly a meeting was called on 5-12-1996, and one of the agenda to be discussed was to declare the petitioners as disqualified. However, the petitioners were not served with the notices for the meeting to be held on 5-2-96 (sic. 5-12-96). Coming to know of the agenda, they filed a representation to the 3rd respondent, stating that they had been attending all the Board meetings regularly. They also requested that they should also be given notice of the meeting to be held on 5-12-96. However, the 3rd respondent did not send the notice and held the meeting on 5-12-96. As three Board Members did not agree with the 3rd respondent to declare the petitioners as disqualified, the meeting was postponed

by the President. Another notice dated 6-12-96 was issued for the meeting to be held on 13-12-96. But no notice was sent to the petitioners on the ground that they ceased to be members of the Society. The meeting was conducted on 13-12-96, where only three Members of the Board attended, presided over by the 3rd respondent. In spite of lack of quorum, it was resolved in the meeting that the petitioners were declared as disqualified for not attending three consecutive meetings. On the same day respondents 4 and 5 herein, have been co-opted as Directors. The petitioners challenge their disqualification and Co-option in this writ petition.

2. It is contended by the learned Counsel for the petitioners that the disqualification was not in accordance with Section 21-B of the A.P. Co-operative Societies Act, 1964 (for short "the Act") and the Rules framed thereunder. No show-cause notice was issued to the petitioners to enable them to submit their explanations. The President or the Secretary of the Society was bound to inform the 1st respondent-Asst. Director of Handlooms & Textiles, and he in turn is required to satisfy himself that the action was proper and thereafter he has to inform the petitioners about cessation as members. This mandatory procedure has been observed only in breach. It was also contended that the petitioners have got a right for applying for reinstatement from the date of the intimation by the 1st respondent and the Board of Directors or the Society was obligated, under law, to reinstate the petitioners. The co-option of Respondents 4 and 5 was also challenged as it is violative of. Rule 24-B of the Rules.

3. Counter-affidavit has been filed by the 1st respondent stating that the representation made by the petitioners to the 1st respondent regarding the meeting dated 5-12-96 called for to disqualify the petitioners, was sent to the concerned Asst. Development Officer for his report. In his report dated 4- 1-97, the Asst. Development Officer stated that the 3rd respondent has not sent the notice of the meeting to be held on 5-12-96 to the petitioners and four Directors have attended the meeting and the meeting was postponed due to lack of quorum. The notices for the meeting to be held on 13-12-96 were also not sent to the petitioners, though in the agenda one of the items was to take action against the petitioners. In the said meeting the petitioners were removed from their Directorship and two members were co-opted. In the counter-affidavit it was clearly stated that the 1st respondent was not intimated about the action taken in disqualifying the petitioners. It was, also stated that the meeting convened at 2 p.m. on 13-12-96 to co-opt two members was in violation of the statutory obligation.

4. In the counter-affidavit filed by the Respondents 2 and 3, it was stated that the petitioners did not attend the meetings held on 4-9-96, 7-9-96 and 13-9-96 in spite of having received the notices and hence they ceased to be members. The 2nd respondent issued a show-cause notice on 10-10-96 before the cessation of the petitioners and they submitted a representation. Hence the petitioners were rightly disqualified in the meeting held on 13-12-96. As per Bye-

law 26 the minimum strength for the quorum was three members and in the meeting held on 13-12-96 there were four members including the President.

5. Though notices were served, none appeared for the Respondents 4 and 5.

6. Learned Government Pleader contends that the procedure prescribed u/s 21-B which provides for cessation of membership, was not followed by the Society. In that view, the learned Government Pleader, relying upon the counter-affidavit filed by the 1st respondent, has supported the case of the petitioners.

7. Learned Counsel for the Respondents 2 and 3, strenuously refuted the arguments advanced by the learned Counsel for the petitioners and submits that the petitioners have acquired disqualification since they had not attended three consecutive meetings. Thus, they ceased to be members of the Society. He also submitted that the procedure prescribed under the Act and the Rules was strictly followed. It was also contended that respondents 4 and 5 were co-opted in accordance with law.

8. To appreciate the above contentions it is necessary to notice some of the provisions of the Act. Section 21-B provides for cessation of membership and reinstatement. If a member of the Committee absents himself from three consecutive meetings of the Committee, he ceases to be a member of the Committee. However, he can be reinstated by the Committee in the manner prescribed in the Rules. It is useful to extract Rule 24-B

"24-B. Reinstatement of a Committee Member:- (1) If any member of the Committee ceases to be a member of Committee u/s 21-B the President/ Secretary shall inform the same to the Registrar. On receipt of such intimation, the Registrar after satisfying himself that the member had failed to attend the meetings, shall inform the member and also the society about the cessation. The member may apply to the Committee under a copy to Registrar for reinstatement within a period of 15 days from the date of intimation. On such application, the Committee in the next meeting shall reinstate him. The Committee shall not fill up the vacancy by co-option during the above period."

Rule 24-B prescribes the procedure after a member of the Committee has ceased to be such a member u/s 21-B of the Act. The Registrar should be intimated by the President or the Secretary of the Society about the fact of cessation of the membership. On such intimation, the Registrar should consider the relevant material to find out whether the member has failed to attend the meetings and after such inquiry if he was satisfied that the member has failed to attend the meetings, thereafter, he should inform the member concerned and also the Society about the cessation. The member, after receipt of such intimation from the Registrar, is given a right to apply for reinstatement within 15 days from the date of intimation. On such application, the Committee is obligated to reinstate the member in the next meeting. Pending such reinstatement, the Committee is precluded from filling up the vacancies by co-option. All the steps of procedure prescribed by Rule 24-B are mandatory in nature since failure of which will

deprive the member, who ceased to be a member u/s 21-B, of his right to be reinstated.

9. It is the contention of the learned counsel for the petitioners that Rule 24-B has been flagrantly violated, resulting in their right to apply for reinstatement. Hence, their disqualifying and cessation of membership was vitiated and has to be quashed. It is the case of the petitioners that they have attended the meetings on 4-9-96, 7-9-96 and 13-9-96 and hence they cannot be disqualified u/s 21-B. I am not prepared to go into this question, since it is a question of fact. However, assuming that the petitioners incurred disqualification u/s 21-B and thus ceased to be a member of the Committee, a right is given under the same Section for reinstatement by the Committee. The procedure for such reinstatement is prescribed in Rule 24-B and the said procedure has been discussed above. In the counter- affidavit filed by the respondents 2 and 3 it was only stated that a show- cause notice was issued to the petitioners before cessation of their membership. The rule contemplates giving intimation by the President or the Secretary to the Registrar after cessation, intimating the said fact to him. Thereupon he has to satisfy himself about the validity of the order disqualifying the petitioners and then inform the petitioners about their cessation. Within 15 days thereafter, the petitioners have got a right to make representation for reinstatement. As per this rule, the petitioners shall be reinstated in the next meeting. The counter-affidavit filed by the 1st respondent also supports the case of the petitioners and it was stated therein that the Registrar also was not intimated about the cessation of the petitioners. It is also a clear violation of Rule 24-B. Thus, Rule 24-B was followed only in its breach, thus rendering the order of cessation illegal and the same is liable to be quashed.

10. It is also to be noticed that the respondents 4 and 5 have been co-opted to fill-up the vacancies caused by the petitioners, on the same day ie., 13-12-96, the day on which the petitioners ceased to be members. There is a clear mandate, contained in Rule 24-B, by which the Committee shall not fill-up the vacancy by co-option during the period between the order of cessation and the order of reinstatement, if a representation is made within 15 days from the date of intimation. Since the Rule 24-B has been violated, the petitioners could not avail their right to file an application for reinstatement. Hence, the co-option of respondents 4 and 5 is vitiated and also is liable to be quashed.

11. In view of the above discussion the writ petition is allowed. The decision or orders passed in the meeting held on 13-12-1996, regarding the disqualification and cessation of the membership of the petitioners, are declared as illegal and are accordingly quashed. Consequently the co-option of the respondents 4 and 5 is also set aside. In the circumstances, no costs.