
(2021) 09 TEL CK 0059

In the Telangana High Court

Case No : Writ Petition Nos. 20367, 20444 Of 2021

Katragadda Kishore

APPELLANT

Vs

State Of Telangana

RESPONDENT

Date of Decision : 28-09-2021

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 30, 31, 31A, 32, 32(2) (iv), 51, 60, 61, 62, 64

Citation : (2021) 09 TEL CK 0059

Hon'ble Judges : P.Naveen Rao, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

1. Heard Sri Bikki Raveendra Babu, learned counsel for the petitioner in W.P.No.20367 of 2021, Sri Subramanyam Daraboina, learned counsel for the petitioner in W.P.No.20444 of 2021, learned Government Pleader for Cooperation appearing for respondents 1 to 3 in W.P.No.20367 of 2021 and respondent Nos.1 and 2 in W.P.No.20444 of 2021 and Sri Kadiyala Ravi Chandra Mohan, learned counsel appearing for respondent Nos.4 to 9 in W.P.No.20367 of 2021 and respondent No.3 in W.P.No.20444 of 2021.

2. In these two writ petitions, petitioners challenge convening General Body Meeting of Telugu Cine Workers Co-operative Housing Society Limited (for short 'the Society') on 29.08.2021. As the substantive issue is same in both the writ petitions, they are disposed of by this common order.

3. In W.P.No.20444 of 2021, the main grievance of the petitioner is only with reference to convening General Body Meeting by the Managing Committee comprising of members against whom serious allegations are levelled and the Enquiry report dated 31.07.2021 points out grave illegalities committed by them. It is the case of petitioner that the said Managing Committee ought not to have convened the General Body Meeting. In W.P.No.20367 of 2021, in addition to this aspect, petitioner also expresses grievance of the General Body Meeting taking

up other issues in the list on items specified in the Agenda which include removal of members and apprehends that the General Body may pass a resolution removing the petitioner from the membership. Therefore, petitioner contends that the present Executive Committee should not preside over the General Body Meeting and an officer appointed by the Registrar should preside over the General Body Meeting.

4. Vide G.O.Ms.No.658, Revenue (ASN.III) Department, dated 04.07.1994, Government allotted Ac.67.16 guntas of land in Sy.No.246/1 of Manikonda Jagir Village, Rajendranagar Mandal, Ranga Reddy District for the benefit of workers working in various activities relating to production of Movies, Serials and other entertainment content. The Society is formed to look after the welfare of cine workers in whose favour the land was allotted. It is a Society registered under the Andhra Pradesh Co-operative Societies Act, 1964 (for short 'the Act 1964'). The affairs of the Society are managed by the Managing Committee elected by the members of the Society.

5. The members of the Society lodged complaint with the Registrar alleging that the members forming part of the Managing Committee have indulged in lot of illegalities defeating the very objective of allotment of land by the Government, the objective of the Society and the bye-laws which govern functioning of the Society. The complainants alleged that the members of the Managing Committee resorted to admission of illegal members, minors and spouses of existing members, allotted flats/row houses to ineligible members, cancellation of allotment of flats/row houses to main members during the Covid-19 pandemic period, irregular construction of row houses, duplex houses, mis-appropriation of funds by IVRCL in collusion with Managing Committee and so on. Based on the said complaint, the Registrar in exercise of power under Section 51 of the Act, 1964 ordered enquiry appointing Smt. K.Anitha working as District Cooperative Audit Officer, Ranga Reddy District as Inquiry Officer. The Inquiry Officer submitted report.

6. The report was forwarded to the President of the respondent-Society directing him to place the report before the General Body. In compliance of the said direction, the Executive Committee called for meeting of General Body on 29.08.2021. In the notice issued by the Secretary on 12.08.2021, convening a meeting of the General Body on 29.08.2021, he has indicated the Agenda of Items to be discussed in the General body, which includes several other aspects of the Society in addition to discussion on report of the enquiry conducted under Section 51 of the Act, 1964. The grievance of the petitioner in W.P.No.20367 of 2021 is also on other items of the Agenda.

7. Learned Counsel Sri Raveendra Babu appearing for petitioner in W.P.No.20367 of 2021 contended that as serious allegations are levelled against the members of the Executive Committee, the very same Executive Committee members cannot preside over the General Body Meeting. Further, as petitioner and other members have no confidence in the impartiality of the members of the Executive

Committee, more particularly, the President, Vice President, Secretary and Treasurer, who have committed grave illegalities, they cannot preside over meeting of the General Body. He further submits that petitioner has serious apprehension on the manner of conducting proceedings by the Executive Committee and also subverting the report of enquiry under Section 51 of the Act, 1964 and nullifying the endeavour made by the members of the Society in bringing forth grave illegalities committed by the members of the Executive Committee causing hardship and suffering to the ordinary members and huge financial loss to the Society as is evident from the report of enquiry under Section 51 of the Act, 1964.

8. He further submitted that Y.V.Manyavasi and others submitted representation on 12.07.2021 listing out irregularities against the members of the Executive Committee and requested the Registrar to place the Managing Committee under suspension and appoint person-in-charge to look after the day to day affairs of the Society. As no action was taken by the Registrar, W.P.No.18225 of 2021 was filed praying to declare the inaction to consider the representation as arbitrary, illegal and to declare the election of the Managing Committee as illegal and to appoint person-in-charge of the Committee and the said writ petition is pending consideration of this Court.

9. The Managing Committee called for General Body Meeting, vide notice dated 05.03.2021, on 21.03.2021. At that stage also representations were submitted not to hold the General Body Meeting. As there was no decision on the representations, W.P.No.6810 of 2021 was filed. In the said writ petition, I.A.No.1 of 2021 was filed praying to stay the Annual General Body Meeting. This Court stayed holding of General Body Meeting. When the said writ petition is pending and stay is in operation, the Executive Committee could not have called for fresh General Body Meeting.

10. Learned counsel further submitted that six members who now form part of the Executive Committee were also members of the Executive Committee elected in the year 2015 and in the earlier tenure grave illegalities were committed that lead to conducting enquiry under Section 51 of the Act, 1964 and the report of enquiry clearly points out the alleged illegalities committed by them. Further, as per the provisions of bye-laws, a member of the Society can contest and be part of the Managing Committee only for two terms, whereas, six persons which include President, Vice President, Secretary, Treasurer and other members have been continuing in the Managing Committee, since the year 2015 and the same is illegal. Thus, when the composition of Managing Committee is ex-facie illegal, they cannot convene the meeting of the General Body to discuss the crucial issues relating to the affairs of functioning of the Society.

11. Learned Counsel also submitted that as petitioner was forthright in raising issues of concern, the members of the Managing Committee have developed serious grudge against the petitioner. It is not palatable as petitioner is raising voice against them. Therefore, they have hatched a plan to terminate the

membership of petitioner. There is every possibility of the General Body passing resolution removing the petitioner as member.

12. He submitted that several unqualified persons were inducted as members and instead of taking action against them, petitioner is likely to be removed from the membership of the Society and in such an event grave prejudice would be caused to the petitioner. He therefore submitted that the General Body Meeting should be conducted under the supervision of the Commissioner for Cooperation & Registrar of the Cooperative Societies.

13. While concurring with Sri Raveendra Babu, learned counsel Sri Subramanyam Daraboina appearing for the petitioner in W.P.No.20444 of 2021, submitted that it is not in the interest of Society to conduct the meeting of the General Body by the Executive Committee comprising members against whom serious allegations are made and in the interest of Society, the Commissioner for Cooperation & Registrar of the Cooperative Societies-2nd respondent ought to have taken initiation to convene the meeting on his own and conduct the affairs of the Society.

14. Learned counsel in both the writ petitions, contend that convening of new General Body Meeting is per se illegal, as long as the stay granted by the Court in W.P.No.6810 of 2021 is in operation.

15. Learned counsel Sri Kadiyala Ravi Chandra Mohan opposed the claim of petitioners. He would submit that the General Body meeting is called as directed by the Registrar. The Executive Committee is competent to call General Body to discuss and decide any issue concerning the affairs of the Society.

16. There are two aspects. First is convening of General Body Meeting by the Executive Committee, primarily to consider report of enquiry under Section 51 of the Act, 1964 and secondly, on the apprehension of petitioner in W.P.No.20367 of 2021 on possible decision by the General Body to remove him from the membership and listing several other items of agenda concerning the Society.

17. As the Telugu Cine Workers Co-operative Housing Society Limited is registered under the Act, 1964, it is necessary to look into the statutory scheme to appreciate the contentions of learned counsel for the petitioners.

18. The relevant provisions are Sections 30, 31, 31-1, 32, 51, 60, 61 and 62 of the Act, 1964.

"S.31-A. The committee of a society shall, subject to the provisions of the Act, rules, bye-laws and resolutions of the General body, exercise the following powers and functions, namely:-

- (1) admit the members to General Body;
- (3) recommend removal of the members disqualified under section 21;
- (9) conduct general meetings as prescribed in the Act;

(13) place the reports of inquiry under section 51 or inspection under section 52 or under section 53 or special audit report under section 50 before the General Body within the time prescribed;

(14) rectify the defects noted in the reports of audit under section 50 or inquiry under section 51 or inspection under section 52 or under section 53;

(21) place annual report, annual financial statement, annual plan and budget before the General Body;

S.51. The Registrar, may of his own motion and shall, on the application of a society to which the society concerned is affiliated, or of not less than one-third of the members of the committee, or of not less than one-fifth of the total number of members of the society, hold an inquiry or direct some person authorised by him by an order in this behalf to hold an inquiry into the constitution, working and financial condition of a society. Such inquiry shall be completed within a period of four months and the report of inquiry along with the findings of the Registrar thereon shall be communicated to the managing committee of the society. It shall be the responsibility of the managing committee to place the inquiry report before the General Body or Special General Body convened for the purpose for its information, within a period of one month from the communication of the inquiry report by the Registrar. The Registrar shall be the competent to initiate action under the provisions of this Act, if the committee fails to take action as aforesaid:

Provided that notwithstanding anything contained in this Act and the Rules made thereunder, the byelaws of a society and the action of the society in placing the inquiry report along with the findings of the Registrar, the Registrar shall not be precluded from taking follow up action as may be required on the basis of inquiry report:

Provided further that such action shall not be nullified even if the General Body of the Society passes a resolution negating the findings of the inquiry:

Provided also that the Registrar may for reasons to be recorded in writing extend the period of four months for completion of inquiry for a further period not exceeding two months.

Explanation: For the purposes of this section,? Managing Committee? includes a Committee constituted under section 31 (1) (a) and a person-in-charge appointed under section 32(7) (a) and also Administrator(s) appointed under section 34 of the Act.

S.60. Notwithstanding anything contained in any other law for the time being in force where in the course of an audit under section 50 or an inquiry under section 51 or an inspection under section 52 or section 53, or the winding up of a society, it appears that any person who is or was entrusted with the organisation, affairs or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other

property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment contrary to the provisions of this Act, the rules or the bye-laws, the Registrar himself, or any person specially authorised by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributory, may inquire into the conduct of such person or officer or servant and make an order requiring him/her or his/her legal heir to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retention, breach of trust, or wilful negligence as the Registrar or the person authorised as aforesaid thinks just:

Provided that no order shall be passed against any person referred to in this subsection unless the person concerned has been given an opportunity of making his representation in the manner as prescribed by the Registrar from time to time.

S.61. (1) Notwithstanding anything in any law for the time being in force, if any dispute touching the constitution, management or the business of a society, other than a dispute regarding disciplinary action taken by the society or its committee against a paid employee of the society, arises-

- (a) among members, past members and persons claiming through members, past members and deceased members; or
- (b) between a member, past member or person claiming through a member, past member or deceased member and the society, its committee or any officer, agent or employee of the society; or
- (c) between the society or its committee, and any past committee, any officer, agent or employee, or any past officer, past agent or past employee or the nominee, heir or legal representative of any deceased officer, deceased agent or deceased employee of the society; or
- (d) between the society and any other society. such dispute shall be referred to the Registrar for decision:

Provided that the such dispute has already been referred to the subcommittee of the society constituted for the purpose and could not be resolved by such sub-committee amicably, it shall be referred to the Registrar for decision.

(2) If any question arises whether a dispute referred to the Registrar under this section is a dispute touching the constitution, management or the business of a society, such question shall be decided by the Registrar.

(3) Every dispute relating to, or in connection with, any election to a committee of a society shall be referred for decision to the Tribunal having jurisdiction over the place where the main office of the society is situated, whose decision thereon

shall be final.

(4) Every dispute relating to, or in connection with, any election 224[shall be referred under] sub-section (3) only after the date of declaration of the result of such election.

S.62. (1) The Registrar may, on receipt of the reference of a dispute under section 61-

(a) elect to decide the dispute himself; or

(b) transfer it for disposal to any person who has been invested by the Government with powers in that behalf; or

(c) refer it for disposal to an arbitrator.

(2) Where the reference relates to any dispute involving immovable property, the Registrar or such person or arbitrator, may order that any person be joined as a party who has acquired any interest in such property subsequent to the acquisition of interest therein by a party to the reference and any decision that may be passed on the reference by the Registrar, or the person or the arbitrator aforesaid, shall be binding on the party so joined as if he were an original party to the reference.

(3) The Registrar may, by order for reasons to be recorded therein, withdraw any reference transferred under clause (b) of sub-section (1) or referred under clause (c) of that sub-section and may elect to decide the dispute himself or transfer it to any other person under clause (b) of sub-section (1) or refer it to any other arbitrator under clause (c) of that sub-section.

(4) The Registrar, such person or arbitrator shall decide the dispute in accordance with the provisions of this Act and the rules and bye-laws and such decision shall, subject to the provisions of section 76, be final. Pending final decision on the dispute, the Registrar, such person or arbitrator, as the case may be may make such interlocutory orders as he may deem necessary in the interest of justice."

19. Whenever, the Registrar opines that there is a need to conduct enquiry into functioning of the Society, more so, when complaints are received from the members of the Society, he may order enquiry into functioning of the Society and or its Executive Committee/Board of Directors. The Inquiring authority is required to conduct detailed enquiry and submit report to the Registrar. Section 51 vests such power in the Registrar. After the report is received from the Inquiring authority, the same shall be communicated to the Managing Committee of the Society to be placed before the General Body or Special General Body convened for this purpose. Section 51 also fixes time frame of one month within which the report has to be placed before the General Body/Special General Body.

20. As is seen from the proviso appended to Section 51, notwithstanding the result of the General Body meeting, it is for the Registrar to take appropriate

action on the findings recorded in the enquiry report and the decision of General Body has no legal consequence. On a careful reading of Section 51, having regard to the words employed in the principal provision and the content of proviso, it is apparent that placing report of enquiry before the General Body is only for the purpose of information to all the members of the Society to enable them to know what is happening in the Society. It does not impinge the powers of the Registrar to take appropriate action based on the findings in the inquiry. Therefore, the apprehension expressed by the petitioners that if report is placed before the General Body presided by the Managing Committee, against whom serious allegations are levelled, and the General Body takes decision to nullify the findings of enquiry it may prejudice the entire action and impinge the very objective of raising complaints and conducting enquiry, is misplaced.

21. Once enquiry is conducted under Section 51 of the Act, 1964 and the report of enquiry points out grave illegalities, it is for the Registrar to take further course of action, as warranted by law. Section 60 of the Act, 1964 envisages initiation of surcharge proceedings based on the report of enquiry. The Act, 1964 vests enough powers and safeguards in the Registrar to supervise the functioning of the Executive Committee and if warranted to supercede/to suspend.

22. A Society is a body formed with common objective and purpose. It is a democratic body like any other social structure. It governs its affairs through General Body of all the members of the Society. For convenience of managing day to day affairs, it can form an Executive Committee/Governing Body/Board of Directors. This Committee/Body is elected by the General Body for a specified term. The By-laws/Regulations, the Act, 1964 and the Rules made there under regulate the functioning of the Society. All the affairs of the Society have to be managed internally on their own free will and there can be no external interference whatsoever. However, in order to ensure that Societies do not cross Lakshmana Rekha and affect other social groups or individuals and/or the governing Body/Committee do not indulge in illegalities affecting the rights of individual members, statutory authorities are formed to monitor such actions and to deal with complaints of grave illegalities.

23. The scheme of the Act, 1964 makes it very clear that it gives complete independence to the Society to administer its affairs and minimal control is vested in the statutory authorities. They are required to intervene only when grave illegalities are noticed and not to poke into day to day affairs of the Society. However, in a given case, it is always open to the statutory authority to intervene and to protect the interests of the members of the Society. The Society is required to function like any other democratic body. Chapter-IV of the Act, 1964 deals with management of the Societies, while Section 30 delineates the powers exercisable by the General Body. The General Body is the Supreme Body of the Society and is competent to take all decisions affecting the affairs of the Society. Section 31 provides for constitution of Committee to entrust the management of the Society. Section 31-A provides wide array of powers and

functions of the Managing Committee. The Executive Committee is the executive authority of the Society requiring to handle all the affairs of the Society. Clause 9 of this Section deals with conducting general meetings of the General Body. Clause 13 deals with placing the report of enquiry under Section 51 before the General Body. Clause 14 deals with rectification of defects pointed out in the report under Section 51. Section 32 deals with general meetings and committee meetings. According to sub-section (1), the Committee is required to call for at least two general meetings of the Society in a cooperative year with at least one meeting to be held in each half year. Sub-section (2) mandates that the Committee should convene a general meeting within 30 days of date of requisition in writing from the Registrar (Chapter IV). Non-compliance of this requirement can result in penal consequences to the Committee in office.

24. Having regard to mandate of Section 51 and Section 32(2)(iv) whenever, the Registrar requests the Managing Committee to place the report of enquiry before the General Body, it is the bounden duty of the Managing Committee to convene a meeting of the General Body within 30 days of such direction. In view of the letter addressed by the District Cooperative Officer on 31.07.2021 to place the report of enquiry under Section 51 of the Act, 1964 before the General Body, it is mandatory for the Executive Committee to convene a meeting before expiry of 30 days. Thus, the decision of the Managing Committee to convene a General Body Meeting on 29.08.2021 is in compliance with statutory mandate. Placing report of enquiry before the General Body is only for information and any decision taken by the General Body has no legal significance nor takes away the power of the Registrar in any manner. Thus, even if, the Executive Committee members persuade the members of the General Body to take a decision to nullify the report of enquiry, it cannot take away the power of Registrar to take further action on the findings recorded in the report of enquiry. As there is no legal consequence of the ultimate result of resolution of the General Body, the apprehension expressed by the petitioners that General Body may take decision to nullify the report of enquiry is misplaced.

25. Learned counsel for the petitioner in W.P.No.20367 of 2021 also raised a plea that the Executive Committee comprising of members against whom grave allegations are made, ought not to have presided the meeting of General Body to discuss several other items which include the termination of membership. As noticed above, Section 31-A vests wide power in the Executive Committee which is entrusted with the power to manage affairs of the Society. As long as a duly constituted Executive Committee is in office, the Court cannot direct the said Committee not to convene the meeting of the General Body and not to preside over the meeting. Such course subverts the spirit underlying the co-operative movement.

26. Chapter-VIII of the Act, 1964 deals with settlement of disputes. Section 61 is very elaborate and encompasses all aspects of disputes concerning the affairs of a Society. It is very wide and covers the grievance ventilated by the petitioners in

the writ petitions. The disputes as sought to be urged herein can be placed before the Registrar for his consideration and the decision. Further, as per sub-section (2) wide power is vested in the Registrar to resolve any controversy, touching upon constitution, management or business of the Society and his decision is final. On such reference, according to Section 62, it is competent for the Registrar to elect to decide the dispute himself or transfer for disposal to any person, who is vested with power by the Government or refer the dispute to Arbitrator. The Act, 1964 is comprehensive and takes care of all aspects concerning the Societies.

27. If petitioner in W.P.No.20367 of 2021 has any grievance on the Executive Committee taking a decision to terminate his membership, or the General Body accepts the proposal placed before it by the existing Executive Committee to terminate the membership of the petitioner, enough safeguards are provided to seek redress to the petitioner under Section 61 of the Act. When statutorily engrafted redressal mechanism is provided on wide spectrum of issues concerning a Society, the Court should not entertain the writ petition and decide upon issues concerning the affairs of the Society including a possible termination of membership even before decisions are made by the General Body of the Society, more so, when Section 31-A vests wide powers in the Executive Committee and far wider powers in the General Body under Section 30.

28. Any decision by this Court on the aspects urged herein would only undermine the statutory scheme. The writ Court should not entertain the writ petitions and choke enforcement of the statutory scheme.

29. For the afore stated reasons, the Writ Petitions are dismissed. Pending miscellaneous petitions, if any, shall stand closed.