
(2014) 07 AP CK 0100

In the Andhra Pradesh High Court

Case No : Writ Petition Nos. 14998, 15847 and 16247 of 2014

Kethireddy Jagan Mohan Reddy

APPELLANT

Vs

The State of Telangana

RESPONDENT

Date of Decision : 22-07-2014

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 32(7), 32(7)(1), 32(7)(a), 32(7)(b), 37(2)(a)
Andhra Pradesh Reorganisation Act, 2014 — Section 32(7)(1), 75, 79
Constitution of India, 1950 — Article 14

Citation : (2015) 1 ALD 88 : (2015) 3 ALT 326

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : A. Sarala, M. Karunasagar and V.B. Subrahmanyam, Advocate for the Appellant; S.S. Bhatt, M. Rama Rao, Koteswar Rao and Aravind Maturi, Advocate for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—The facts require to be considered in all these three writ petitions are identical and the issues involved for determination are also identical. Therefore, all the three writ petitions are disposed of by a common order.

2. The petitioners were appointed as unofficial persons-in-charge u/s 32(7)(a) of A.P. Co-Operative Societies Act, 1964 (for short the APCS Act). Their term has been extended from time to time by virtue of the said provision and they claim to be holding the said posts on the dates of the filing of the writ petitions. Whereas, the respondents contention is that they have been replaced by the official respondents by virtue of G.O. Rt. No. 400 Agriculture and Co-Operation (Coop. I) Department, dated 31.05.2014 whereunder the official respondents were directed by the Government to appoint themselves as the persons-in-charge of the 5th respondent Union. The said G.O. Rt. No. 400 is impugned in these writ petitions stating it to be illegal, arbitrary, contrary to the provisions of the

A.P.C.S. Act as well as the provisions of A.P. Reorganisation Act, 2014 (for short the APRO Act) and also in violation of the Article 14 of the Constitution of India.

3. u/s 32(7)(a) of the APCS Act, the government on their own can appoint a person or persons to manage the affairs of the society for a period six months, if there is no committee or in the opinion of the government or the Registrar, it is not possible to call for a general meeting for the purpose of conducting election of members of the committee for a period of six months, the government, however, can extend such period beyond six months but the aggregate period including the extended period, if any, shall not exceed three years.

4. Section 75 of the APRO Act, 2014 which came into effect from 02.06.2014 deals with continuance of facilities in certain State institutions. This provision lays down that the institutions specified in the Tenth Schedule of the Act, located in that State, shall continue to provide facilities to the people of the other State which shall not in any respect, be less favourable to such people than what were being provided to them before the appointed day, for such period and upon such terms and conditions as may be agreed upon between the two State Governments within a period of one year from the appointed day or, if no agreement is reached within the said period, as may be fixed by order of the Central Government. The A.P. Co-operative Union is included in the Tenth Schedule.

5. The version of the petitioners is that as per the memorandum of understanding which has to be entered into between the two States, the 5th respondent has to provide services to other State under the said MOU. Similarly, Section 79 of the APRO Act provides that every person who, immediately before the appointed day, is holding or discharging the duties of any post or office in connection with the affairs of the existing State of Andhra Pradesh in any area which on that day falls within one of the successor States shall continue to hold the same post or office in that successor State, and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or other appropriate authority in, that successor State.

6. The contention of the petitioners, therefore, is that in the light of the above referred provisions, they are entitled to continue in the posts of persons-in-charge till their extended period comes to an end. They submit that they have been effectively and efficiently discharging their functions during their period, and there are no irregularities or illegalities on their part, the issuance of the said G.O. Rt. No. 400 without assigning any reasons displacing them with the official persons-in-charge is therefore arbitrary, illegal and violative of Article 14 of the Constitution of India. They filed these writ petitions seeking a writ of mandamus to set aside the G.O. Rt. No. 400 Agriculture and Cooperation (Coop. I) Department, dated 31.05.2014 under which their period was extended by the government.

7. The contention of the respondents is that Section 37(2)(a) of the APCS Act

grants absolute power to government to appoint either an official persons-in-charge or non-official person in-charge to a Society as per the directions of the government. According to the respondents, the government both as appointing and controlling authority have every power, right and jurisdiction to issue appropriate orders, either to extend or cancel/rescind the orders earlier issued by it and thus, the government in view of the bifurcation of the State pursuant to the APRO Act, 2014 and to meet the eventualities after the said Act was passed, the G.O. Rt. No. 400 has been issued and the petitioners have no locus standi to question the said G.O.

8. It is further contended that from the appointed date i.e. from 02.06.2014 onwards the order issued by the authority in unified State is not applicable insofar as it relates to nominated non-officials as these persons are answerable to authorities under unified State of Andhra Pradesh u/s 32(7)(b) of the APCS Act which lays down that the person or persons so appointed shall subject to the control of the government or as the case may be of the Registrar and subject to such instructions or directions as they may issue, from time to time, have power to exercise all or any of the functions of the committee or any officer of the society and to take all such actions as may be required in the interest of society.

9. Nextly, it is contended that as per the provisions of APCS Act, the first respondent has got every power to issue appropriate orders at any point of time on administrative grounds without assigning any reasons. It is further contended that the principles of natural justice are not applicable as the appointment made by the government are discretionary and no rights accrue to the petitioners.

10. It is further contended by the respondents that the appointment of persons-in-charge would be in the discretion of the government and the persons-in-charge appointed have to act subject to the control of the government. The appointment of the petitioners according to the respondents is only on nomination basis and the governments power to appoint also includes power to remove or extend the term of a person-in-charge appointed by it or make a fresh appointment in the interest of the society concerned. Therefore, the respondents say that the petitioners have no enforceable right to claim for appointment as a person-in-charge, much less, continuation, and therefore, the impugned order does not suffer from any legal infirmity.

11. It is contended that the A.P. State Co-operative Union is listed as Sl. No. 1 of Schedule X of A.P. State Reorganisation Act. As per the provisions of the said Act, the apex HRD institution is ordained to provide services to both the States of Telangana and Andhra Pradesh for a period as agreed by both the State Governments through a memorandum of understanding. The present order is issued to facilitate smooth functioning of the union in view of reorganization of the State. It is submitted that that in respect of about 15 societies where the affairs are managed by non-official person-in-charge or where their term is coming to an end, the official persons-in-charge have been appointed. The orders were issued in view of reorganization of the State and for effective administration

of the union. The reasons are contained in the Government Orders itself and therefore, the petitioners cannot have legitimate grievance.

12. It is further contended that the writ petitions are not maintainable as the petitioners have not questioned the consequential orders of the third respondent appointing the official persons-in-charge of the society vide proceedings dated 31.05.2014.

13. Contending as above, the respondents sought to dismiss the writ petitions on the ground that they are not maintainable.

14. The question that arises for consideration in these writ petitions is whether the Government Orders issued by the government replacing the petitioners who are the non-official persons-in-charge is arbitrary, illegal and contrary to the provisions of the A.P. Cooperative Societies Act and A.P. Reorganisation Act, 2014 enabling the petitioners to continue in their respective posts till their extended period comes to an end.

15. Admitting that the government have the power u/s 32(7) of the A.P. Cooperative Societies Act either to appoint or remove the petitioners as the persons-in-charge of the societies, the petitioners specifically contended that such a power has to be exercised reasonably, objectively and for advancement of objectives under both the enactments but shall not be exercised illegally and arbitrarily. The version of the petitioners is that the impugned G.O. does not indicate any reasons for passing the said G.O. and in the absence of any reason showing that the G.O. was brought into existence to further the objectives of A.P. Co-Operative Societies Act and the A.P. Reorganisation Act, the G.O. is liable to be set aside as it offends Article 14 of the Constitution of India and principles of natural justice.

16. Para 2 of the G.O. Rt. No. 400 Agriculture and Cooperation (Coop. I) Department, dated 31.05.2014 reads as under:

After careful examination Government hereby decided to rescind the orders issued nominating non-official PICs functioning under 32(7)(a)(i) of APCS Act, 1964 by RCS/Government, due to bifurcation of the state. In effect, they cease to be PICs with immediate effect.

17. Obviously, therefore, the impugned G.O. has been passed to meet the eventualities arising out of the bifurcation of the State but not for any other reason.

18. Reliance is placed by the learned counsel appearing for the petitioners on Kumari Shrilekha Vidyarthi And Others v. State of U.P. and Others wherein the Hon"ble Supreme Court has laid down that arbitrary, unreasonable or irrational State action against the persons holding the posts of public nature is sufficient to attract power of judicial review for testing validity of the action on the anvil of Article 14 of the Constitution of India.

The Hon'ble Supreme Court was of the view that conferment of the power together with the discretion which goes with it to enable proper exercise of the power is coupled with the duty to shun arbitrariness in its exercise and to promote the object for which the power is conferred, which undoubtedly is public interest and not individual or private gain, whim or caprice of any individual. All persons entrusted with any such power have to bear in mind its necessary concomitant which alone justifies conferment of power under the rule of law.

19. In the instant case, however, the petitioners have to establish that there is arbitrary exercise of power on the part of the government in issuing the G.O. Rt. No. 400, more particularly the petitioners who seek a writ in the nature of mandamus have to primarily establish the existence of a legal right in themselves and corresponding legal duty on the respondents.

20. The respondents on the other hand in support of their contention that the petitioners have no legal right to continue in the posts of persons-in-charge and they cannot complain any violation of such right relied on the judgment in K. Somasekhar Rao v. District Co-Operative Officer/Joint Registrar of Cooperative Societies, Nizamabad District, Nizamabad and Others wherein the learned single Judge of this Court held as follows:

On the bare reading of Section 32(7)(a) of Act, it does not laid down nor pin point against any person to be appointed as persons-in-charge and in fact it confers ample powers on the part of the authorities for appointing a person to manage the affairs of the society. There is no restriction much less any preference provided thereunder for claiming for appointment as a persons-in-charge. In the circumstances, even by bare look at the provisions, it cannot be said that any person including the petitioners have any enforceable right to claim for appointment as a persons-in-charge, but it is totally well within the exclusive parameters of discretion vested with such authority.

In the circumstances, it is to be held that the petitioners have no locus standi and cannot make any grievance against appointment of official persons-in-charge, more so in view of the statement made in the counter-affidavit on behalf of the respondents herein that the government is keen on conducting elections on finalizing and implementing the proposed action plan to make the cooperatives healthy and viable latest by 31.03.2005 and every effort is being made to conduct elections even earlier.

21. Dealing with similar situation, a Division Bench of this Court in Elakolanu Primary Agricultural Cooperative Credit Society Ltd. Elakolanu and Others v. Government of A.P. and Others held as follows:

A bare perusal of the aforementioned provision would clearly show that even assuming that the appellants herein do not stand disqualified, the same by itself cannot be a ground for their appointment as persons-in-charge. A writ in the nature of mandamus can be issued provided the writ petitioner establishes the existence of a legal right in himself and a corresponding legal duty in the

respondent Section 32(7) of the Act does not envisage that only the erstwhile members of the cooperative society would be appointed as persons-in-charge. Section 32(7) confers discretion upon the appropriate authority to appoint persons-in-charge. It is not the case of the appellants that such a discretion has been arbitrarily exercised or is abused by the respondents herein. In such a situation, we are of the opinion that in the absence of the plea of malice-in-law, the Court shall not issue any directions which run contrary to the discretionary power conferred upon the appointing authority in terms of the aforementioned clause.

22. The issue involved in the present batch of writ petitions has to be decided in the light of the principles laid down in the aforementioned judgments.

23. Though, the petitioners contended that the issuance of G.O. Rt. No. 400 by the government is arbitrary and illegal, they did not attribute any mala fides to the issuing authority. What all they say is that their period was extended by virtue of the provisions of Section 32(7)(1) of the A.P. Co-operative Societies Act and they are entitled to continue till the date of termination of the extended period. Apart from relying on the aforesaid provision, they also want to take shelter u/s 75 of the A.P. Reorganisation Act, 2014 which lays down that the institution to which they have been appointed as persons-in-charge is obliged to provide facilities to the people of the other State and also u/s 79 of the A.P. Reorganisation Act, 2014 which provides that they shall continue to hold the same post or office in that successor State and shall be deemed, on and from that day, to have been duly appointed to the post or office by the Government of, or other appropriate authority in, that successor State. Sections 75 and 79 of the A.P. Reorganisation Act, 2014 are enabling provisions which were made to meet the contingencies on account of the bifurcation. The petitioners basically came to hold their respective posts by virtue of Section 32(7)(1) of the A.P. Cooperative Societies Act, unless they are able to show that they have legal right to hold the post, they cannot take shelter under Sections 75 and 79 of the APRO Act.

24. The foregoing discussion on the scope of Section 32(7) of the APCS Act clearly goes to show that the petitioners have no vested right to continue in the office and their continuance would depend on the discretion exercised by the government. Moreover, the said G.O. Rt. No. 400 itself lays down that the said G.O. came to be issued only to meet the eventualities consequent upon the bifurcation of the State under the A.P. Reorganisation Act, 2014. Therefore, it is not possible to accept the contention that there is any illegality or arbitrariness in issuance of the said G.O. As already said, the petitioners did not attribute any mala fides to the authorities issuing the said G.O.

25. Further, the proviso to Section 79 of the A.P. Reorganisation Act, 2014 enables the competent authority to discontinue any person from continuing in any such post or office. The proviso reads as under:

Provided that nothing in this section shall be deemed to prevent a competent

authority, on and from the appointed day, from passing in relation to such person any order affecting the continuance in such post or office.

26. Therefore, the proviso confers absolute power on the competent authority or government to pass any order directing discontinuance of any person in any post or office in connection with the affairs of the existing State of Andhra Pradesh pursuant to coming into force of A.P. Reorganisation Act, 2014.

27. In view of the above, firstly, the petitioners have no vested right to continue in the offices as the persons-in-charge/Directors by virtue of Section 32(7) of the A.P. Cooperative Societies Act, 1964, secondly, that the proviso to Section 79 of A.P. Reorganisation Act, 2014 invests the authorities concerned with absolute power to pass any order directing discontinuance of a person in the post or office in respect of the post he was holding in the State of Andhra Pradesh prior to the Reorganisation Act, 2014.

28. For the foregoing reasons, I am of the considered view that there are no merits in the writ petitions and they are not maintainable and accordingly all the three writ petitions are dismissed. There shall be no order as costs. Miscellaneous petitions, if any, filed in these writ petitions shall stand closed.