
(1997) 11 AP CK 0027

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23695 of 1997

Kollipara Toddy Tappers Co-op. Society Ltd.

APPELLANT

Vs

Prohibition and Excise Superintendent, (Functional Registrar)
and Others

RESPONDENT

Date of Decision : 10-11-1997

Acts Referred:

Citation : (1997) 6 ALT 773

Hon'ble Judges : M.H.S. Ansari, J

Bench : Single Bench

Advocate : E. Ella Reddy, for the Appellant; P.S. Narayana, for the Respondent

Final Decision : Allowed

Judgement

M.H.S. Ansari, J.—The petitioner in the above writ petition is a Toddy Tappers Co-operative Society and has questioned the directions (issued to it by the 1st respondent herein i.e., Prohibition and Excise Superintendent (Functional Registrar) dated 2-11-1996 to enroll 35 persons whose names are specified in the impugned proceedings as members of the petitioner society, as otherwise action would be taken for superseding the Managing Committee u/s 34 of the Act.

2. The foremost contention of Sri E. Ella Reddy, learned Counsel for the petitioner-Society is that the Prohibition and Excise Superintendent who issued the impugned proceedings has no jurisdiction for directing admission of Members.

3. The 3rd respondent is one of the persons whose name is specified for being admitted as member in the impugned proceedings. Sri P.S. Narayana, learned Counsel for the 3rd respondent relying upon the averments made in the affidavit of the 3rd respondent, submitted that the petitioner-Society erroneously and illegally refused the application made by the 3rd respondent and 34 others for admission as Members in spite of the said 35 persons being fully eligible to be enrolled as Members and who had submitted their applications in accordance with law complying with all requirements including submission of share capital

and entrance fee. In view of the illegal action of the petitioner society, the said 35 persons were constrained to approach the 1st respondent (Excise Superintendent) who having satisfied himself of the eligibility of the said 35 persons to be enrolled as Members issued the impugned proceedings.

4. It was the submission of Sri P.S. Narayana, learned Counsel for the 3rd respondent that the Functional Registrar is empowered to issue the impugned proceedings. Reliance was placed for the said submission on a judgment of the Supreme Court in A. Nandamuni and Ors. v. Prohibition and Excise Commissioner, Nampally, Hyderabad and Ors., 1997 (2) APLJ 31 . Sri P.S. Narayana, learned Advocate, further referred to and relied upon an unreported judgment of a learned single Judge of this Court in Amaravathi Toddy Tappers Co-operative Societies Limited v. The Assistant Commissioner of Prohibition and Excise Guntur District and Ors., W.P.No.3865 of 1997, dated 23-4-1997.

5. Sri E. Ella Reddy, learned Counsel for the petitioner referred to and relied upon the various provisions of the A.P. Co-operative Societies Act, 1964 and the Rules made thereunder as also to the powers delegated under the various provisions of the Act and submitted that the Excise Superintendent has not been delegated/ conferred with the power of admitting members u/s 19 of the Act and in support of his contention referred to and relied upon an unreported judgment of another learned single Judge in W.P.No.26874 of 1996, dated 17-12-1996.

6. Section 19 of the A.P. Co-operative Societies Act, 1964 deals with the eligibility of Membership and sub-section (2-A) of Section 19 deals with the power of the Registrar to admit Members. Sub-section (2-A) reads as under:-

"2-A. Any person duly qualified for admission as a member under provisions of this Act, the rules and the bye-laws, may apply through the Registrar for membership of such societies and in such forms as may be prescribed and such person shall be deemed to have been admitted as a member of the society from the date of receipt of the application in the office of the society."

7. A plain reading of the said sub-section (2-A) shows that power has been conferred on the Registrar to admit members. Any person who is qualified for admission as a Member can apply for Membership through the Registrar. The authority to admit members is thus conferred on the Registrar by the Act u/s 19(2-A).

8. The question, however, is whether the Prohibition and Excise Superintendent, sometimes also referred to as Functional Registrar can exercise the powers which have been conferred on the Registrar by the Act.

9. Power is vested in the Government u/s 3 of the Act to appoint a Registrar of Co-operative Societies for the State and as many other persons as the Government thinks fit for the purpose of the Act. Under sub-section (2) of Section 3, it is laid down that every other person appointed under sub-section (1) shall exercise under the general superintendence of the Registrar, such

powers of the Registrar under the Act as the Government may from time to time confer on him. Admittedly, the Excise Superintendent is not the Registrar appointed u/s 3 of the Act to be the Registrar of Co-operative Societies. He comes within the definition of "other persons" appointed under sub-section (1) by virtue of the powers delegated to him under sub-section (2) thereof and can exercise such powers of the Registrar under the Act as the Government may from time to time confer upon him. The powers so conferred on the Excise Superintendent in so far as Toddy Tappers Co-operative Societies are concerned, are those that they have been specified in G.O.Ms. No. 234, F & A (Co-op. IV) Department, dated 3-4-1979. It might be relevant and useful to extract the extent of powers so conferred upon the Excise Superintendent under the Act and the Rules made thereunder by virtue of the said G.O.Ms. No. 234, dated 3-4-1979. They are as under:

"Powers under the following Sections of the Act: 4, 6, 7, 8, 10, 11, 12, 13, 15, 16, 22, 23, 31(2)(b), 32, 34, 51, 52, 54, 59, 60, 61, 62, 64, 65, 68, 69, 70, 73, 74, 83 and 117.

Powers under the following Rules: 3, 6, 7, 8, 9, 11, 20, 23-A, 24, 39, 47, 49-A, 50, 51, 52, 53, 54 and 55."

It is significant to note that the Excise Superintendent by virtue of the said powers conferred on him can perform the functions of Registrar under the various Sections of the Act and Rules referred to supra but he has not been conferred the powers of the Registrar u/s 19 of the Act. It is, however, relevant to note that the Excise Superintendent has been conferred the powers under Rule 20 of the Rules.

10. Rule 20 of the A.P. Co-operative Societies Rules, 1964, deals with removal of Members. It lays down that if any person who is admitted as a member of the society becomes disqualified u/s 21 to continue as such, the Registrar may on his own motion or on a representation made to him by any member of the society or its financing bank by an order in writing, declare that he shall cease to be a member of the society from the date of such disqualification. Under sub-rule (2) of Rule 20, the decision of the Registrar shall be final, and binding on the society. It is thus apparent that the Excise Superintendent (Functional Registrar), though vast powers have been conferred upon him does not have the power to admit members u/s 19 of the Act. He is, however, empowered to perform the functions of Registrar under Rule 20 to disqualify any person as member of the society and when such power is exercised by the Excise Superintendent in writing such person shall cease to be the member of the society.

11. A learned single Judge of this Court in *Toddy Tappers Co-operative Society, Osman Shahi Toddy Shop, Hyderabad v. The Prohibition and Excise Superintendent/Functional Registrar of Toddy Tappers Co-operative Societies, Hyderabad District at Narayanguda*, W.P.No.26874 of 1996, dated 17-12-1996 had occasion to consider a similar contention as in the above writ petition with

regard to the power of Excise Superintendent (Functional Registrar) to admit certain persons as members of the Society. After referring to the powers conferred under G.O. Ms. No. 234, dated 3-4-1979 upon the Excise Superintendent, it was held as under:

".....But the power u/s 19 of the Andhra Pradesh Co-operative Societies Act is not delegated to the Functional Registrar under G.O. Ms. No. 234, dated 3-4-1979. Therefore, the action of the respondent directing the petitioner-Society to admit certain persons as its members should be held to be one without jurisdiction."

12. In the light of the above discussion and the judgment of the learned single Judge referred to above, it has to be held that the Excise Superintendent (Functional Registrar) has not been conferred the powers of Registrar u/s 19 of the Act by virtue of G.O. Ms. No. 234, dated 3-4-1979. The impugned proceedings of the Functional Registrar - 1st respondent herein directing admission of certain persons as members of the society have therefore, to be held to be one without jurisdiction.

13. Now, let us consider the judgments relied upon by Sri P.S. Narayana, learned Counsel for the 3rd respondent.

14. In *A. Nandamuni and Ors. v. Prohibition and Excise Commissioner, Nampally, Hyderabad and Ors. (supra)*, the Supreme Court was dealing with the question of disqualification of Members. The only question for consideration before the Supreme Court was as follows:

"2. The only question for consideration for our consideration is: Whether the Superintendent of Excise who is also Registrar for certain purposes of Andhra Pradesh Co-operative Societies Act, 1964 (for short "the Act") has the power to disqualify an existing member of the Srikalahasthi Toddy Tappers Co-operative Society?"

The contention before the Supreme Court was in the following terms:

"3. It was contended that the Registrar (Superintendent of Excise) has no power to remove them from membership of Society".

The Supreme Court held that the Superintendent of Excise has the power under Rule 20 to consider the ineligibility of a person to be a Member of the Society and for removing him from the Membership of the society.

15. The said judgment in *A. Nandamuni's* case (*supra*) is an authority for the proposition that the Excise Superintendent (Functional Registrar) is empowered to consider the ineligibility of any Member and to disqualify him from the Membership of the Society. Such power is traceable to Rule 20, reference to which has been made *supra*. It would not be appropriate to read certain observations made in the said judgment with regard to powers of the Functional Registrar u/s 19. The Supreme Court as already noticed above, was only considering the question with regard to the power of the Superintendent of

Excise, to disqualify an existing member of the Society.

16. Next, Sri P.S. Narayana, learned Counsel for the 3rd respondent relied upon a judgment of another learned single Judge in W.P.No.3865 of 1997 (supra 2 cited). A perusal of the said judgment shows that the Court in that case was concerned with the question whether the Registrar should also forward the original applications with his order to admit the applicants as Members of the Society. The learned Judge held that sending the applications along with the order of Registrar is a mere formality. It was further held that Section 19(2-A) is clear that once the Registrar receives the applications and sends them to the society for the applicants being taken into the society, no option is left to the society except to admit the said persons. The question as to whether the Excise Superintendent has the powers to admit members did not fall for consideration nor was the said question decided or adjudicated upon.

17. The judgments relied upon by Sri P.S. Narayana, learned Counsel for the 3rd respondent do not support the contention of the learned Counsel for the 3rd respondent that the Excise Superintendent (Functional Registrar) is conferred with the power to admit members to the society u/s 19.

18. In the result, the above writ petition has to be allowed and is accordingly allowed. A Writ of Mandamus shall issue declaring the impugned proceedings Rc.No.707/96/B5, dated 2-11-1996 passed by the 1st respondent as one without jurisdiction and therefore illegal. Consequently, the impugned proceedings be and are hereby directed to be set aside.. There shall, however, be no order as to costs.