
(1991) 01 AP CK 0005

In the Andhra Pradesh High Court

Case No : Writ Petition No. 11084 of 1990

Konda Sethramulu and others

APPELLANT

Vs

The Mahendra Bamboo Workers Industrial Co-operative
Society Limited, Edalapadu, and another

RESPONDENT

Date of Decision : 22-01-1991

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1991 AP 163 : (1991) 1 ALT 486

Hon'ble Judges : Parvatha Rao, J

Bench : Single Bench

Advocate : Ghanta Rama Rao, for the Appellant; The Govt. Pleader for Co-op. and C. Obulapathi Chowdary and Smt. K. Seshrajyam, for the Respondent

Judgement

1. This Writ Petition is filed by 15 petitioners for quashing the resolution of the genera] body of the 1st respondent-cooperative Society dated 2-4-1990, approved by the 2nd respondent herein, expelling them from the membership of the 1st respondent-society and the consequential proceedings dated 24-7-1990 of the 1 st respondent society.

2. One of the contentions raised in this Writ Petition is that the impugned expulsion of the petitioners was effected without giving them an opportunity to make their representations and that therefore the impugned expulsion was in violation of sub-s. (2) of S. 23 of the Andhra Pradesh Co-operative Societies Act", 1964 (hereinafter referred to as "the Act") and therefore is liable to be set aside. It is specifically alleged in the affidavit of the 13th petitioner in support of the Writ Petition that the petitioners were not served with any notice asking for their explanation prior to the impugned expulsion and that no opportunity was given to them for submitting their explanation. It is stated that they only received a copy of the resolution of the executive committee of the 1st respondent dated 21-3-1990 resolving to convene a general body meeting of the 1st respondent-society on 2-4-1990 to consider the expulsion of the petitioners for their

activities against the interests of the 1st respondent-society. It is also stated that immediately after receiving a copy of the resolution dated 21-3-1990, they sent a registered notice on 28-3-1990 stating that they were never involved in any activity against the interests of the society and that no notice was issued to them but only the minutes of the executive committee. It is also alleged that the 1st respondent avoided to receive the said registered notice till 3-4-1990 intentionally i.e., till after the date of the meeting of the general body.

2A. In the counter affidavit filed on behalf of the 1st respondent, it is stated in para 4 that it was false to say that the 1st respondent passed the resolution expelling the petitioners from the society without any notice. It is stated that notices were issued to every one of the petitioners under certificate of posting and all of them received the said notices and they were present at the time of the discussions of the resolution. But it transpires from para 5 of the counter affidavit that the notices that were served on them were only notices of the meeting of the general body. It is also stated in the counter affidavit that having received the said notices of the meeting and having attended the meeting it was improper on the part of the petitioners to state that they were not served with any notice with regard to the alleged activities warranting expulsion. From this it is sought to be concluded that the petitioners were given the opportunity but that they did not send their explanation within time so as to reach the 1st respondent-society before the concerned meeting.

3. The learned counsel for the 1st respondent was required by this Court to produce the records of the 1st respondent-society relating to the meeting of the general body held on 2-4-1990 and also to produce a copy of the notice served on the petitioners. But the learned counsel did not produce the records nor a copy of the said notice. The averment in para 4 of the affidavit in support of the Writ Petition that the petitioners were served only the minutes of the executive committee resolving to convene a meeting of the general body on 2-4-1990 was not denied. In the circumstances, it follows that except sending the notice of the meeting of the general body by communicating the minutes of the executive committee dated 21-3-1990, no other notice was given to the petitioners by the 1st respondent. The question that therefore arises is whether-such a notice would satisfy the requirements if sub-s. (2) of S. 23 of the Act.

4. The learned counsel for the petitioners contends that intimation of the resolution of the executive committee dated 21-3-1990 did not satisfy the requirement of giving opportunity of making representation as contemplated by sub-s. (2) of S. 23 of the Act. He also contends that the said resolution of the executive committee did not inform each of the petitioners of the activities indulged individually by each of them which were adverse to the interests of the society and did not call upon them to make their representations and did not specify to whom the representations, if any, should be made and within what time.

5. In support of his contention, the learned counsel for the petitioners relies on

the decision of the Supreme Court in Chintapalli Agency Taluk Arrack Sales Cooperative Society Ltd. and Others Vs. Secretary (Food and Agriculture) Government of Andhra Pradesh and Others, . The Supreme Court in that case dealt with sub-s. (2) of S. 77 of the Act providing for revision, which is as follows:--

"(2) No order prejudicial to any person shall be passed under sub-s. (1) unless such person has been given an opportunity of making his representation".

In that case no notice whatever was given by the Government to the affected party before exercising the powers of revision u/ S. 77. The Supreme Court observed as follows (at page SC 2318; AIR 1977:--

"As mentioned earlier in the judgment the Government did not give any notice communicating to the appellant about entertainment of the application in revision preferred by the respondents. Even though the appellant had filed some representations in respect of the matter, it would not absolve the Government from giving notice to the appellant to make the representation against the claim of the respondents. The minimal requirement u/S. 77(2) is a notice informing the opponent about the application and affording him an opportunity to make his representation against whatever has been alleged in repetition. It is true that a personal hearing is not obligatory but the minimal requirement of the principles of natural justice which are ingrained in S. 77(2) is that the party whose rights are going to be affected and against whom some allegations are made and some prejudicial orders are claimed should have a written notice of the proceedings from the authority disclosing the grounds of complaint or other objection preferably by furnishing a copy of the petition on which action is contemplated in order that a proper and effective representation may be made. This minimal requirement can on no account be dispensed with by relying upon the principle of absence of prejudice or imputation of certain knowledge to the party against whom action is sought for.

It is admitted that no notice whatever had been given by the Government to the appellant. There is, therefore, clear violation of S. 77(2) which is a mandatory provision. We do not agree with the High Court that this provision can be bypassed by resort to delving into correspondence between the appellant and the Government. Such non-compliance with a mandatory provision gives rise to unnecessary litigation which must be avoided at all costs.

The impugned order of the Government is invalid being in the teeth of S. 77(2) of the Act and in violation of the principles of natural justice and the High Court should have quashed the same under Art. 226 of the Constitution."

6. I am of the view that the above decision of the Supreme Court squarely applies to the facts of the present case. S. 23 of the Act which deals with expulsion of members, reads as follows:--

"23. Expulsion of Members:-- (1) Any member who has acted adversely to the

interests of the society may be expelled upon a resolution of the general body passed at its meeting by the votes of not less than two-thirds of the number of the members present and voting at the meeting.

(2) No member shall be expelled u/sub-s. (1) without being given an opportunity of making his representation and until the resolution referred to in that sub-section is approved by the Registrar. A copy of the resolution expelling the member as approved by the Registrar shall be communicated to the members."

The opportunity contemplated u/sub-s. (2) of S. 23 is similar to the opportunity that is contemplated u/sub-s. (2) of S. 77. As the Supreme Court observed in the case of sub-s. (2) of S. 77 so also in the case of sub-s. (2) of S.23, the requirement of opportunity of making representation is a mandatory requirement and in the absence of such an opportunity explicitly being given to each of the members expulsion of the members is vitiated and is liable to be set aside.

7. The language of sub-s. (2) of S. 23 of the Act is similar to the first proviso to S. 36 of the Gujarat Co-operative Societies Act, 1962 considered by the Supreme Court in the Balasinor Nagrik Cooperative Bank Ltd. Vs. Babubhai Shankerlal Pandya and Others, . The said S. 36 is as follows (at page.SC 851; AIR 1987):-

"36. Expulsion of members:--

(1) A society may, by resolution passed by three-fourths majority of all the members present and voting at a general meeting of members held for the purpose, expel a member for acts which are detrimental to the proper working of the society:

Provided that, no resolution shall be valid, unless the member concerned is given an opportunity of representing his case to the general body, and no resolution shall be effective unless it is submitted to the Registrar for his approval and approved by him:

Provided further, that the approval or disapproval of the Registrar shall be communicated to the society within a period of three months from the date of such submission, and in the absence of such communication the resolution shall be effective."

Dealing with the said Section, the Supreme Court observed as follows :--

"The exercise of the power of expulsion of a member for his acts which are detrimental to the interests of the society conferred by sub-s. (1) of S. 36 is made subject to the fulfilment of the conditions prerequisite, namely, it has to be by resolution passed by three-fourths majority of all the members present and voting at a general meeting of members held for that purpose. There is no doubt or difficulty as to the precise function of the two provisos appended to sub-s. (1) of S. 36 of the Act. The power of expulsion of a member by a society u/sub-s. (1) of S. 36 is made subject to a defeasance clause engrafted in the first proviso. It interdicts that: (1) no such resolution for expulsion of a member passed u/

sub-s. (1) of S. 36 of the Act shall be valid unless the member concerned is given an opportunity of representing his case to the general body, and (2) unless it is submitted to the Registrar for his approval and approved by him. Condition No. 2 keeps the resolution for expulsion of a member in abeyance."

The Supreme Court further observed that the first proviso construed in the context of the substantive provision contained in sub-s. (1) of S. 36 of the Act was meant to accept or qualify the power of expulsion of a member conferred in the main enacting part.

8. In the light of the above referred decisions of the Supreme Court, I am satisfied that on the facts of the present case, the mandatory requirement in sub-s. (2) of S. 23 of the Act that an opportunity of making representation should be given to the member is contravened because opportunity as contemplated by sub-s. (2) of S. 23 of the Act was not given to each of the petitioners before the impugned resolution was passed by the 1st respondent-society. The notice issued to the petitioners, as already stated above, was only communication of the resolution passed by the executive committee of the 1st respondent at its meeting held on 21-3-1990 wherein it was resolved to convene general body meeting of the 1st respondent on 2-4-1990. The impugned resolution dated 2-4-1990 ennume-rates 12 charges against the 15 petitioners and recites that no explanation was received from the petitioners till the date of passing of the impugned resolution dated 2-4-1990. But the petitioners were never informed of the said 12 charges nor were they asked to submit their representations to them at any time. It is stated in the affidavit in support of the Writ Petition that the petitioners are all bamboo workers eking out their livelihood by engaging themselves in the said profession and that they have no other source of income. It is also stated that in accordance with the existing procedure, each member of the 1st respondent-society is entitled to receive prescribed number of bamboos from the Government on controlled price and if they are expelled from the society, they will have to purchase the bamboos in open market at a high price and that thus their livelihood would be affected. The right to membership of a co-operative society is a valuable right. That is the reason why S. 23 of the Act provides for procedure to be followed by a co-operative society for expulsion of members. The said procedure is mandatory and non-observance of it will vitiate the expulsion. One of the mandatory requirements imposed by the said Section is that no member shall be expelled without being given an opportunity of making his representation. Sub-s. (2) of S.23 does not specify to whom the representation should be made unlike the first proviso to S. 36 of the Gujarat Co-operative Societies Act, 1962 wherein it is specified that opportunity is to be given to the member concerned to represent his case to the general body. In the context, it is obvious that in the case of sub-s. (2) of S. 23 also the representation is to be made by the member concerned to the general body. The opportunity which is to be given to the member u/sub-s. (2) of S.23 should be adequate and reasonable both as regards time and as regards content. It will be reasonable in content only if the various charges or allegations against the

member because of which his expulsion is contemplated are communicated to the concerned member with full particulars so as to enable him to meet them and answer them fully. Reasonable time also has to be given to the concerned member to give his explanation. On the facts of the present case, I am satisfied that adequate and reasonable opportunity was not given to the petitioners for making their representations as contemplated by sub-s. (2) of S. 23 of the Act. The impugned expulsion of the petitioners from the 1st respondent-society is therefore, liable to be set aside. In that view of the matter, it is not necessary to deal with the other contentions sought to be raised by the learned counsel for the petitioners.

9. In the circumstances, the Writ Petition is allowed. This does not preclude the 1st respondent from taking appropriate action against the petitioners herein, if so advised, in accordance with the mandatory requirements of S. 23 of the Act. No costs.

10. Petition allowed.