

(2011) 08 AP CK 0050

In the Andhra Pradesh High Court

Case No : Writ Petition No: 4389 of 2011

Nutulapati Naga Basweshwara Rao

APPELLANT

Vs

The Joint Registrar / District Cooperative Officer, Nizamabad
District and The Primary Agricultural Cooperative Society
limited

RESPONDENT

Date of Decision : 30-08-2011

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 50, 51, 52, 53, 59

Citation : (2011) 6 ALD 422

Hon'ble Judges : L. Narasimha Reddy, J

Bench : Single Bench

Advocate : Sri. Nandigam Krishna Rao, for the Appellant;

Judgement

Hon"ble Sri Justice L. Narasimha Reddy

1. The Petitioner is employed as a Secretary of Primary Agricultural Cooperative Society Limited, Minarpally Village, Nizamabad District, Respondent No. 2 herein. An A.C.B. raid was conducted in his house on 20.12.2010. Alleging that the Petitioner possessed movable and immovable properties disproportionate to his known sources of income, they registered a case and arrested the Petitioner. The Joint Registrar/District Cooperative Officer, Respondent No. 1 herein, addressed a letter, dated 20.12.2010, to Respondent No. 2, in exercise of powers u/s 59 of the A.P. Cooperative Societies Act, 1964 (for short "the Act") requiring it to place the Petitioner under suspension pending enquiry. In compliance with the same, Respondent No. 2 passed a resolution, dated 21.12.2010, placing the Petitioner under suspension. The Petitioner challenges the order, dated 20.12.2010, passed by Respondent No. 1 and the consequential resolution.

2. The Respondents filed a counter-affidavit stating that the suspension of the Petitioner was warranted on account of the fact that he was arrested by the A.C.B. It is stated that Respondent No. 1 is competent to pass orders u/s 59 of the Act.

3. Sri Nandigam Krishna Rao, Learned Counsel for the Petitioner, submits that Section 59 of the Act confers power upon the Registrar only when any serious defect or dereliction on the part of an employee of the Society is noticed in the course of audit, inspection or inquiry under the relevant provisions of the Act and that in the instant case, no such steps have ensued. The Learned Counsel further submits that the order, dated 20.12.2010, passed by Respondent No. 1 is absolutely without jurisdiction. He also submits that Respondent No. 2 has clearly stated in its resolution that there are no allegations against the Petitioner and that on account of his having been placed under suspension, the Society is facing serious hardship.

4. The learned Government Pleader for Cooperation, on the other hand, submits that Section 59 of the Act confers power upon Respondent No. 1 to require the Society to place an employee under suspension and the arrest of an employee by the A.C.B. does provide a valid ground for exercise of that power.

5. It is not in dispute that the Petitioner was arrested by the A.C.B. by alleging that he possessed movable and immovable properties disproportionate to his known sources of income. The Service Rules framed by the Government for different categories of employees and those framed by various agencies contain the provisions to the effect that whenever an employee is arrested on account of involvement in a criminal case, suspension must invariably be ordered. This is so even if the allegations against an employee in the criminal case are totally unrelated to the discharge of his functions in the employment. Such a provision does not exist in the byelaws framed by Respondent No. 2-Society. Obviously, situations of this nature were not contemplated.

6. Section 59 of the Act confers power upon Respondent No. 1 to require a society to place an employee under suspension. The provision reads as under:

Suspension of officer or servant of Society: (1) Where in the course of an audit u/s 50 or an inquiry u/s 51 or an inspection u/s 52 or Section 53, it is brought to the notice of the Registrar that a paid officer or servant of a society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society, the Registrar may, if in his opinion there is prima facie evidence against such paid officer or servant and the suspension of such paid officer or servant is necessary in the interests of the society, direct the committee pending the investigation and disposal of the matter, to place or cause to be placed such paid officer or servant under suspension from such date and for such period as may be specified by him, but not retrospectively.

(2) On receipt of such direction, the committee shall, notwithstanding any provision to the contrary in the bye-laws, place or cause to be placed the paid officer or servant under suspension forthwith.

(3) The Registrar may direct the committee to extend, from time to time, the period of suspension and the paid officer or servant suspended shall not be

reinstated except with the previous sanction of the Registrar.

7. It is no doubt true that a reference is made to the proceedings under Sections 50 to 53 of the Act. If one places a literal and grammatical interpretation on the provision, it may not empower Respondent No. 1 to require a society to place an employee under suspension on the basis of arrest made by the A.C.B. However, if one takes into account the fact that the basis for the exercise of powers u/s 59 of the Act is the allegation as to misappropriation, breach of trust or other offences in relation to the society, the arrest of an employee by the A.C.B. in relation to his service can certainly be brought under the purview of the provision.

8. The arrest of an employee unrelated to his service conditions may stand in a different footing. It is not in dispute that the arrest of the Petitioner in the instant case was on the allegation that he owned properties disproportionate to his known sources of income i.e. salary from the society. Therefore, it cannot be said that the order passed by Respondent No. 1 on 20.12.2010 is ultra vires Section 59 of the Act.

9. Respondent No. 2 suspended the Petitioner in obedience to the order passed by Respondent No. 1. Even where provisions exist for automatic suspension of employees on account of their arrest in A.C.B. cases, the Government issued circulars for review of such cases periodically. The disposal of criminal case would naturally take some time. The continued suspension of an employee may not be in the interest of the organisation, particularly in case of an organisation, such as society where the man-power itself is limited. The parties concerned have to take into account the progress in the criminal case, the necessities of the organisation and review the case, duly incorporating necessary conditions.

10. Hence, the writ petition is disposed of, directing Respondent Nos. 1 and 2 to review the case of the Petitioner as regards his suspension, duly taking into account the progress that has made so far in the criminal case and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. There shall be no order as to costs.