

(1984) 07 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 8285 of 1983

Pamarthy Veeraswamy

APPELLANT

Vs

The Collector (Co-operation), Krishna District at Chilakalpudi
and Others

RESPONDENT

Date of Decision : 18-07-1984

Acts Referred:

Citation : AIR 1986 AP 134

Hon'ble Judges : P.A. Choudary, J; Lakshmana Rao, J

Bench : Division Bench

Advocate : V. Jaganadha Rao, for the Appellant; N. Subbareddy, Govt. Pleader,
for F and A and E. Ayyapureddy, for the Respondent

Judgement

P.A. Choudary, J.—The Nuzvid Agricultural Development Bank, Nuzvid is a Co-operative Society. Its managing committee consisting of 11 members in all was elected by the General Both on 6-11-1981. The elections to those bodies are rarely held on principles of co-operation. The 11 members of the Managing Committee were divided into two warring factions. The division was of course based on no principle. Both the majority and the Minority were equally anxious to manage the funds and the affairs of the society. As a part of this internal strife raging among the Directors defection were organised. The minority succeeded. Seven directors of the minority group were joined by the defecting two of the majority group and had together resigned their membership as Directors of the Managing Committee. This was on 21st September , 1983. The idea was to create a stalemate in the administration of the affairs of the Society. The idea had succeeded. These resignations had admittedly crippled the quorum for the meetings of the Managing Committee was fixed by the rules as six. After seven members out of 11 of the total strength of the committee had resigned, there were only four members left in the managing committee, that number was short by two members for providing the required quorum. In those circumstances the managing committee could not transact any business. It could not even accept the resignations. There was complete stalemate in the running of the society.

Now it was from this situation the Registrar of the Co-operative Societies had concluded that there was no managing committee at all within the meaning of sec. 32 of the Co-operative Societies Act. Where there was no committee. The Registrar u/s 32 of the Act can appoint a person in charge.

2. The Registrar equated the Managing Committee of the society which was not functioning with a managing committee that does not exist at all. Where there is no committee at all the matter has to be dealt with under Sec. 32 of the Act while a committee that is in existence but is not functioning should be dealt with under Sec . 34 of he Act . The Registrar acting under Sec. 32(7) of the Act appointed a Divisional Co-operative Officer on 29.9.1983 as the person-in-charge of Nuzvid Agricultural Development Bank, Nuzvid, Krishna District. A Person-in-charge if appointed validly will have the power of management. It is the validity of this order of the Registrar that is questioned in this Writ Petition by two of the Directors of the aforesaid Agricultural Development Bank.

3. We think we need not refer to the arguments of counsel because we are of the opinion that this Writ Petition has to be allowed for reasons other than those raised and urged by the petitioner. We are of the clear opinion that the Registrar had erred in invoking his powers under Sec. 32 (7) of the Act. We are of the opinion that Sec.32(7) has no application to the present situation and that it is Sec. 34 of the Act that should govern the matter.

4. The order passed by the Registrar appointing the person-in-charge reads thus:-

"Whereas, the Secretary, Nuzvid Co-operative Agricultural Development Bank Lt., Nuzvid reported that the following seven Directors out of 11 tendered their resignation on 21-9-1983 and it is not possible to convene Board meeting with the remaining 4 Directors.

1. Sri Cherukuri Kutumbarao.
2. Sri Guduru Sambasiva Rao.
3. Sri Tummalapalli Laminarayana.
4. Sri Pinniboina Malikarjunarao.
5. Sri Devineni Umamaheshwararao.
6. Sri Palaballa Venkiah.
7. Sri Banavathu Chinabichchalu.

And whereas in the letter read second above, the Deputy Registrar for Agricultural Development Banks, Vijayawada has reported that he also received the resignation letters on 24-9-83 from the same 7 Directors of the nuzvid Agricultural Development Bank and that he had satisfied himself about the genuineness of the resignations.

And whereas it is concluded that there is no possibility to convene the Board Meeting as the rest of 4 Directors cannot constitute quorum for the meeting either to accept the resignations or to transact business of the Bank.

And whereas, there is no committee in the bank, as the remaining 4 directors cannot constitute quorum and cannot discharge the functions of the committee, as required under the provisions of the Act and as such there is no valid committee in the eye of the law. In the absence of any valid committee in the eye of the law. In the absence of any valid committee it is found necessary to provide management to run the business of the Nuzvid Co-operative Agricultural Development Bank;

Now therefore by virtue of powers vested in the me under Sec. 32(7) (a) of the A.P.C.S. Act, 1964 I hereby appoint the Divisional CO-operative Officer, Nuzvid as part time person-in-charge of the Nuzvid Agricultural Development bank for a period of six months from the date of assumption of charge by the person-in-charge or till an elected Board of Directors assumes charge, whichever is earlier.

The part time person-in-charge so appointed shall work subject to the control of the undersigned and to such instructions or directions as the may issue from time to time, have power to exercise all or any of the functions of the Board of Directors and to take all such actions as may be required in the interest of the Bank."

5. A perusal of the aforesaid order passed by the Registrar would show that it was made on the basis on an assumption that there was no committee and that there was no possibility to convene the Board meeting after the resignations of the 7 directors and transact any business because the remaining four Directors could not constitute quorum of the meeting either to accept the resignations or to transact business of the Bank. It must be noted that the conclusion of the Registrar that there was no committee of the bank was an inference drawn by him from the fact that the remaining four Directors of the Committee could not constitute a quorum and could not therefore discharge the functions of the committee as required under the provisions of the act. It is for that reasons that he thought that there was no valid committee in the eye of the law. It was on that basis that he invoked Sec. 32(7) of the Act. The question thus arises whether this reasoning of the Registrar and this inference of the Registrar on the basis of which the impugned order had been made could be sustained. It is somewhat strange to say that a committee elected for a fixed period of three years was thought to have disappeared with the resignation of a few members. This reasoning did not take note of the continued resignation. In the Act we find no warrant equating a non-functioning committee with a non-existing committee. A non-functioning committee exists but does not function whiles question of its functioning well or ill cannot arise. Clearly in this case there was a committee without quorum. We cannot therefore agree with the conclusion of the Registrar that there was no committee at all . In our view, only correct way of describing the situation is to say that there was a committee but it does not and could not

function. If that were to be so Sec. 32(7) can have no application to such a situation. Section 32(7) will have application only when there is no committee. There are two provisions of the Co-operative Societies Act which deal separately with the two different types of situations above mentioned. Sec. 32(8) deals with committee at all while Sec. 34(1) deals with that situation when there is a non-functioning committee. These provisions which deal with two different situations should not be compared with one another. Where the affairs of the society had fallen by the way side due to the inept handling and improper functioning of the managing committee which is existing the Act holds such a committee responsible for mal-administration and provides for the exercise of correctional jurisdiction by the Registrar under Sec. 34(1) of the Act. The exercise of that correctional jurisdiction calls for giving of a notice and hearing to the committee. When the committee is held in such an inquiry guilty of malfunctioning the Act provides for supersession of such a committee. But where there is no committee at all and consequently the question of functioning well or ill cannot arise. Section 32(7) provides for the appointment of a person-in-charge in place of the Committee. In such a situation there can arise no question of notice or hearing being given to the committee. It is a pure question of filling up of a vacuum. These are two separate and distinct situations and are dealt with by two provisions which are separate and distinct. Section 34(1) provides for supersession of an existing committee and Sec. 32(7) provides for appointing some one in the place of the committee. The Registrar clearly erred in overlooking these two situations; Section 30(1) (a) of the Act vests the ultimate authority of a Society in the general body. Under Sec. 31 the general body of the society constitutes a committee in accordance with the bye-laws and entrusts the management of the affairs of the society to such a committee. A committee so constituted in accordance with the bye-laws by the general body acquires authority to manage the affairs of the society for a term. Now that collegiate body once elected and called into being continues irrespective of the changes that it may undergo in its composition some other. These various provisions would show that under the Act the existence of a committee is dependant upon act of entrustment of management by the general body and not upon the exercise of the authority by the committee. A non-functioning Government is also a Government. It has the right to manage the affairs of the society during the term of its office. In this case the term of the members is three years. If they do not exercise the powers during these 3 years the committee for that reason cannot be said to have ceased to exist. It only means the committee is not functioning properly. Then the committee may be liable to be superseded under S. 34(1) of the Act. But a person-in-charge could not be appointed under S. 32(7) of the Act. These provisions have been enacted on the faith that those who have been elected to the committee as members would discharge their powers and perform their duties in good faith and act according to the letter and spirit of A.P. Co-operative Societies Act. When they betray that faith and confidence reposed in them, the Act provides for taking correctional disciplinary action under S. 34(1). The Section says:

"If in the opinion of the Registrar the Committee is not functioning properly or wilfully disobeys or wilfully fails to comply with any lawful order or direction issued by the Registrar under this Act or the rules, he may after giving the committee an opportunity of making its representation, by order supersede the committee from a specified date; and appoint either a person (herein after referred to as the special Officer) or a committee of two or more persons (hereinafter referred to as the managing committee) to manage the affairs of the society for a period, not exceeding two years."

6. Under that Section both for their commissions and commission the members of the committee are made to suffer the penalty of removal. It is for that reason the Registrar is given power to supersede the Committee and power to cut into the term of the validly elected committee. But all this is for reasons of bad behaviour of the members of the Committee. That is why the statute provides that before superseding such an elected body for reasons of misbehaviour for Registrar should give an opportunity to the Managing Committee. The Registrar should set out his reasons in the notice and call upon the committee to explain. The committee may be able to explain its failure to function properly. The Registrar should consider such explanation offered by the committee and then take appropriate action. The essence of the whole matter is that no action can be taken by the Registrar under S. 34(1) except for the behavioural reasons of the Committee. But the type of situation which is dealt with under S. 32(7) deals with a situation when there is no committee at all. When there is no committee the question of its behaviour being good or bad cannot arise at all. A non-existing body cannot function either well or ill. Now the question of giving any notice to the Committee cannot arise in that situation. Under S. 32(7) the Registrar is therefore given power to appoint a person or persons to manage the affairs of the society for a period not exceeding six months and fill up the vacuum created by the non-existing committee. This power is to be used only if there is no committee and if in the opinion of the Registrar it is not possible to call a general meeting for the purpose of conducting elections of the members of the committee. The power under S. 32(7) cannot be exercised if elections to the committee can be conducted.

That shows that there is no committee. If there is a committee no question of holding elections can arise. This is clearly conclusive of the matter. It is therefore clear that the situation sought to be repaired under S. 32(7)(a) which empowers the Registrar to appoint a person to manage the affairs of the Society is one where there is no elected committee which is in existence but is not functioning properly. This language difference in our opinion is decisive in showing that the Registrar has acted in the present case wrongly under S. 32(7) of the Act. The words "if there is no committee" would only mean and can only mean that there is no legally constituted committee. Those words cannot mean that there is no properly functioning committee. A committee which is not properly functioning does not cease to exist. Unfortunately a bad man does not cease to exist. In other words under S. 32(7)(A) the Registrar cannot appoint a person to manage

the affairs of the society on the ground that a validly constituted committee which is in existence is not capable of functioning properly. Such a situation when a committee which is in existence is not capable of functioning properly. Such a situation when a committee which is in existence is not functioning properly can only be dealt with under S.34(1) of the Act. As giving of notice to the committee in existence is condition precedent for the exercise of this power under S. 34(1) of the Act and as it is not done here, the order has to be set aside. Mr. Subba Reddy did not seriously dispute this. But he argued that the procedure under S. 34 is rather dilatory and cumbersome as it requires notice to be given. But the entire working of democracy is rather slow and sometimes cumbersome. It involves wide consultations with different interests and different views. That is one of the reasons which the dictators give out for its overthrowal. But democracy is a way of life with us and an article of faith, our constitutional creed. Further the termination of the term of an elected body of persons on the grounds peculiar to its functioning is such a serious matter for the principles of natural justice to be held by judicial interpretations to be inapplicable. Such drastic powers cannot be allowed to be exercised following any should circuit methods. As a fact it does not appear to us to be correct either that resorting to the procedure prescribed under S. 34(1) would involve such long delay. In view of the above, we hold that the Registrar of co-operative Societies acted in this case without notice to the committee. The order cannot be supported. The observations made by a Division Bench of this Court consisting of Madhava Reddy C.J. and Upendralal Waghray J. In W. A. Nos. 1045 and 1037 of 1983 dated 11-11-1983 though made in an appeal arising against a Miscellaneous Order and therefore may not be regarded as decisive fully support this view of ours. But the Judgment of Kondaiah J. (As he then was) reported in Syed Qutbuddin Qudri v. State of Andhra Pradesh, 1971 2 Andh WR 172 clearly took a contrary view from the one which we have taken. Kondaiah, J. Equated a non-functioning committee with non committee, Kondaiah, J. Examined the matter from a pragmatic view. He held from a practical point of view that there is no difference between a non-functioning committee and no committee. This may be partly true. We find that only in the matter of non-functioning there is similarity between the two situations. Beyond that there are vital differences between the situations. In concept and consequence the two situations are clearly different. We agree that a statute should not be interpreted without reference to its consequences. But we think conveniences and consequences alone should not determine the meaning which we should attribute to the plain words used in a statute. Particularly where the statute deliberately enacts two different sections and adopts two different modes to deal with two different situations and the language used for that purpose is rather clear, we cannot over look these differences. In this case the statute draws a distinction between the situation dealt with under S. 34(1). The conclusion of Kondaiah, J. Overlooks these distinctions and renders S. 34(1) almost purposeless. Not only the consequences that flow from the applications of the different sections are different but the nature of the rights effected and the persons whose rights are to be affected are

also different. Considering the fact the we are dealing with the rights of an elected body and considering that the rights of such an electoral body and considering expressly dealt with under S. 34(1) of the Act and believing that over interpretation is no less pragmatic we venture to disagree with Kondaiah, J. The Judgment of Kondaiah, J. Does not take note of these different statutory schemes at all. Kondaiah, J. Does not take account of the fact that this reasoning would permit the over throw of the rights of the elected member s of the Managing Committee without any notice. Such a situation should normally call for prior notice. See *Durayappan v. Fernando*, 1967 2 All ER 152. That is why the Act provided for it by S. 34(1) of the Act. For these reasons we hold *Syed Qutbuddin Qudri v. State of Andhra Pradesh*, (1971-2 Andh WR 172) (*supra*) case is wrongly decided.

7. For the above reasons we set aside the impugned order and allow this Writ Petition. No costs. Advocate's fee Rs. 250/-.

8. Petition allowed.