
(1982) 11 AP CK 0033
In the Andhra Pradesh High Court
Case No : Writ Appeal No. 642 of 1982

R. Venkata Rangareddy and Another	Vs	APPELLANT
N. Muralidhar Rao and Others		RESPONDENT

Date of Decision : 25-11-1982

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : AIR 1983 AP 83

Hon'ble Judges : K. Madhava Reddy, Acting C.J.; Ramaswamy, J

Bench : Division Bench

Advocate : K. Pratap Reddy, for the Appellant; V.R. Reddu and Government pleader for Food and Agriculture, for the Respondent

Judgement

K. Madhava Reddy Actg. C.J.

1. This writ appeal is by respondents in writ petition No. 4676 of 1982 which was allowed by the learned single Judge. The writ petitioner a member of the Agricultural Development bank, Wanaparthi sought a writ of certiorari or any other appropriate writ, directions or order to quash the notice No. 1268/82-C dated 6-7-1982. Issued by the Divisional co-operative officer, primary Agricultural Development Bank, Wanaparthi (hereinafter referred to as the Bank) convening a meeting to be held on 15-7-1982 at 2 Pm. For electing the office bearers of the said committee the writ petition came to be filed in the following circumstances.

Elections to the managing committee of the Bank were held on 6-11-1981. For the purposes of this election, the area of operation of the Bank was divided into 11 constituencies as provided under the Andhra Pradesh co-operative societies Act and the Rules made thereunder and 11 persons were to be elected as members of the managing committee. The petitioner and respondents 4 and 5 are, among the eleven members of the managing committee elected that day. The office bearers of the said committee could not however be elected that day the office bearers of the said committee could not however be elected that day

owing to some interlocutory orders made by this Court pending the disposal of the writ petitions Nos. 8749 of 1981 and 8102 of 1981 questioning the said election. It is unnecessary for the purpose of this writ appeal to notice in detail the grounds on which the election was questioned in those writ petitions. Suffice to note that some members of the Bank questioned the legality and propriety of the election officer holding the elections and sought stay of the elections. The Court while admitting the writ petitions, did not stay the election of the members but only stayed the declaration of the results. Both these writ petitions were however later dismissed. These orders were communicated to the Election officer on 14-4-1982. On 17-4-1982 the collector asked the election officer to declare the result and proceed with the election of the office bearers. While so, an unsigned representation dated 18-4-1982 in the name of one of the petitioners in the above mentioned writ petitions was sent to the district collector alleging that the respondents 5 and 6 had committed default in payment of the amounts due to the Bank and had thereby become ineligible to continue as members of the managing committee. As this representation was not signed, it was returned. Another representation dated 30-4-1982 alleging the same disqualification against respondents 5 and 6 this time signed by the writ petitioners, was sent to the district collector and the Election officer. The election officer by his letter dated 10-5-1982 thereupon sought a clarification from the district collector (co-operation) whether he could proceed with the election of the office bearers or initiate an enquiry into the alleged disqualification of respondents 5 and 6 and decide that issue before holding the election. The divisional co-operative officer-cum-election Officer received a letter from the Registrar of co-operative societies on 21-6-1982 that he should first proceed with the enquiry into the disqualification. But before any enquiry was held, the Registrar by a further communication clarified that as the election process had already commenced the Election officer should first proceed with the election and cannot proceed to hold an enquiry and hold-up the elections pending such enquiry. On receiving this clarification, the election officer issued the impugned notice dated 6-7-1982 calling upon the members of the managing committee to elect office bearers on 15-7-1982. The writ petition was filed on 14-7-1982 questioning the jurisdiction of the election officer to hold an election without first enquiring into the disqualification alleged to have been incurred by respondents 5 and 6. The Court while not staying the elections of office-bearers directed the results to be withheld. Accordingly, elections were held on 15-7-1982 but the results were withheld.

2. The main contention in the writ petition was that respondents 5 and 6 had become ineligible under S. 21-A (1-B) of the A.P. Co-operative societies Act (hereinafter referred to as the Act) to continue as members of the Managing committee on account of their default in payment of the amounts due to the Bank. According to them, this disqualification was incurred on 1-1-1982. On account of this disqualification, they ceased to be members of the Managing committee of the Bank and consequently were not eligible to participate and vote

at the election. When an allegation that a member of the managing committee had incurred disqualification is made, it is incumbent upon the divisional co-operative officer-cum-Election officer to enquire into that allegation and decide the question before holding the election. As the divisional co-operative officer-cum-election officer failed to make any enquiry and decide the issue of disqualification, a writ of certiorari or other appropriate direction is sought to quash the election notice itself.

3. The allegation that respondents 5 and 6 have incurred disqualification is stoutly denied. It was also pointed out that the petitioner failed to give the particulars of the alleged disqualification both in his representation to the district collector as well as in the writ petition. It was also contended that the Election officer is not competent to make an enquiry into the alleged grounds of disqualification and further before the management of the Bank is entrusted to the managing committee, in the eye of law, the Managing committee does not come into existence and as such no disqualification is incurred by any member of the Managing Committee under S. 21-A (1-B) of the Act.

4. Before our learned brother Rama Rao J., it was contended that the petitioner that under S. 21-A of the Act the cessation of membership of committee was automatic and that R. 24 (3), which contemplated an enquiry if considered as sine quo non for disqualification under S. 21 - A of the Act and hence R. 24 (3) is not ultra vires the S. 21- A of the Act." He further held that the assumption of office of the members of the Managing Committee is contemporaneous with the date of their election and rejected the contention that it commences after the election of its officebearers and enstrustment of the management of the society to that committee. Even while holding that once the election process commences, it should be proceeded with unhampered, he observed "holding of elections now on the basis of erroneous interpretation of s. 21-A thereby permitting two members of the committee who are prima facie disqualified or who were actually on the verge of disqualification in view of the report submitted to the deputy Registrar, results in manifest injustice and erosion of the object of S. 21-A and technical considerations highlighted by the learned counsel for the respondents recede to the background". In that view he quashed the impugned election notice and directed the deputy Registrar-2nd respondent in the writ petition to finalise the disqualification proceedings against respondents 5 and 6 u/s 21-A of the Act" and further directed the Divisional Co-operative officer-cum-election officer, Primary Agricultural Development Bank. 4th respondent herein, to hold elections of the officebearers after finalisation of hte disqualification proceedings by the 2nd respondent". The 5th and 6th respondents in the writ petition have preferred this appeal.

5. The impugned notice is issued by the election officer who was appointed to hold elections to the Managing committee of the Bank. There is no dispute that he was competent to issue the same, The notice is dated 6-7-1982 and as contemplated by R. 22 (9) it is addressed to the members elected to the

Managing committee of the Bank intimating them that the elections of the office-bearers will be held on 15-7-1982 at 2 p.m. in the premises of the Bank at Wanaparthy.

6. Sub-rule (9) of R.22 of the Rules in so far as it is relevant for our present purpose, reads as follows:

"(9). Election of office-bearers:- (a) (1) : As soon as the members of the committee of a society have been elected, the election officer referred to in sub rule (1) or the election officer appointed by the Government under sub-sec. (6) of S. 32 of the Act shall, notwithstanding anything contained in the bye-laws of the society specifying in the period of notice convene as specified in the election notification a meeting of the members of the committee for the purpose of election of the president, Vice-president, Treasurer, secretary and other office-bearers of the society by whatever name they are called and the members of the Executive committee, if any. The election officer shall preside over such meeting. The quorum for such meeting shall be the majority of the elected members of the committee. Of there is no quorum, the Election officer shall adjourn the meeting to the time and date to be fixed by him. In the adjourned meeting also if there is no quorum, the members present shall constitute the quorum"

The impugned notice is not shown to contravene any specific provision of the Act or the rules made thereunder or the bye-laws of the Bank.

7. Mr. V. Rajagopala Reddy learned counsel for the respondents however contends that since an allegation of disqualification is made against two of the newly elected members of the committee, it was incumbent upon the Election officer to first make an enquiry and pronounce upon the disqualification before holding the election. This objection has found favour with the learned single judge and he has issued a direction accordingly.

8. It may be noticed that the allegation of disqualification made by the petitioner against respondents 5 and 6 is denied. The allegation is that respondents 5 and 6 have become disqualified under S. 21 A (1-B) i.e., they have "committed default in payment of amount due in cash to the society for more than the period prescribed". The allegation having been denied, requires an enquiry. It is not a case wherein a certificate has been issued by the Bank that respondents 5 and 6 are defaulters and is produced before the election officer and any such certificate is declared by any law to be conclusive of the fact that that member is disqualified.

9. It is, therefore necessary to see if the election officer is competent to decide this objection and if so, at what stage. For this purpose it is necessary to read R. 22 (9) of the Rules in so far as it is relevant:

"22 (9) (a) (2) :- The election of officebearers of the society shall be by show of hands unless apoll is demanded in which case it shall be held by secreballot.

(3) the nomination of the candidates for election shall be made at such meeting.

The election officer shall decide the objections, if any, which may be made at the time to any nomination after making such summary inquiry as he thinks necessary and announce the names of valid nominations.

(4) (a) If, for any office for which election is to be held, the number of candidates in respect of whom valid nominations have been announced does not exceed the number of candidates to be elected for that office, candidates for whom valid nominations have been announced shall be deemed to have been elected for that office and the chairman of the meeting shall make a declaration to that effect. If the number of candidates in respect of whom valid nominations have been announced for any office exceeds the number of candidates to be elected, a poll shall be taken and the election officer shall read out the names of the contesting candidates for that office. He shall thereafter record the number of votes polled for each such candidate or the candidates as the case may be. The election officer shall announce the number of votes secured by each candidate and the result of elections shall also be recorded by him.

(b) xx xx xx

(c) The election officer shall, within a period of seven days, after election of the office-bearers, communicate, by registered post under his own seal and the seal of the society to the election officer and the secretary of the central society to which the society in which elections were held, is affiliated the name with specimen signatures of the president of such affiliated society. In the case of societies notified under the proviso to clause (b) of sub-sec. (1) of S. 31 of the Act, the election officer shall also communicate to the election officer and secretary of the concerned central society, a list of the names of members of the committee of the society belonging to scheduled castes scheduled Tribes and Backward classes".

10. It would be seen that R. 22 (9) empowers the election officer to adjourn the meeting of the elected members of the committee convened for the purpose of electing its office-bearers only if there be no quorum, the quorum being the majority of elected members of the committee. He is not empowered to adjourn the meeting on any other objection raised by the members. Nor is he empowered to adjourn it for the purpose of holding an enquiry into the alleged disqualification of an elected member to vote at the meeting. In fact, no power is vested in the election officer by the Act or the rules or the bye-laws to go into the qualification or disqualification of an elected member of the committee. He has to give notice to the elected members of the committee intimating the date and time of the meeting of the elected members of the committee for the purpose of electing the office-bearers. It is at such a meeting that nominations for election of office-bearers. It is at such a meeting that nominations for election of office-bearers i.e. president, vice-president, Treasurer, secretary and other office-bearers of the society, have to be received by the election officer. Under R. 22 (9) (3), after the nominations of the candidates for election are filed, if any objection is taken to any nomination, the election officer may make a summary

enquiry and decide the objection to the nomination. Even at that stage and for that purpose he is not empowered by the rules to adjourn the meeting or the election. After making such summary enquiry as he thinks necessary, he is required to announce the valid nominations. Elections are intended to be completed at the earliest. Wherever the legislature or the rule-making authority thought it advisable to empower the election officer to adjourn the meeting, they have specified so explicitly. The election officer is not empowered to decide about the qualification or disqualification of elected members of the society.

11. Out of the several elected members, only with respect to those that are nominated for being elected as officebearers for the society the election officer is vested with the jurisdiction to make a summary enquiry to decide the objections and proceed with the election. By authorising the election officer to make a summary enquiry without giving him the power to adjourn and decide the objection, the rule-making authority in our view, clearly intended that for the purpose of summary enquiry, the meeting should not be adjourned. The election should be proceeded with after deciding the objections to the nominations then and there. Further any objection to the nomination of a member of the committee could be taken only after the nominations are made and not before. The nominations have to be made at the meeting. Therefore, the convening of the meeting of the elected members itself cannot be held to be bad or in any way vitiated.

12. It may be here noticed that on 15-7-1982, pursuant to the notice dated 6-7-1982 impugned in this writ petition, the election officer held the election of the office-bearers but before the election officer communicated by registered post under his own seal and seal of the society the result of the election as contemplated by R. 22 (9) (4) (c), this Court issued an order staying all further proceedings. The declaration of the result of election has thus been held up. It is not stated by the petitioner in his affidavit filed in support of the writ petition that he has taken any objection at the meeting held on 15-7-1982 to the nomination of any person including that of respondents 5 and 6 that may have been nominated for election to the post of office-bearers of the committee. That affidavit in support of the writ petition was filed on 12-7-1982 and obviously this fact could not have been stated in that affidavit for the nominations to the election were made on 15-7-1982 at the meeting of the members of the committee convened for electing the officebearers under the impugned notice. No further affidavit has been filed stating that any objection to the nomination was taken after the nominations were filed and before the election was held. Even in his writ appeal, no further affidavit has been filed asserting that such an objection was taken after the nominations were filed. It would be seen that when it is alleged that a member of the committee is not eligible for being its member, the Act does not empower the election officer to decide this objection. On the other hand, it is the Registrar or the Arbitrator appointed under Ss. 61 and 62 of the Act that is competent in this behalf to enquire and decide.

13. On a reading of the provisions of the Act it would appear that while the cessation of membership of the committee is automatic, if a member becomes disqualified or not that allegation has to be enquired into after notice by the competent authority and a finding arrived at as to whether a particular member has become disqualified or not. Once a finding is reached and a decision is given by the competent authority that a member has incurred the disqualification no further action on the part of any authority is necessary in order that the cessation of membership may operate. Section 21-A of the Act declares that no person shall be eligible for being chosen as, and for being, a member of the committee if any of the contingencies mentioned in clauses (a) to (h) occur. Section 21-a only declares that if the disqualification mentioned therein is incurred by a member. It merely says that he shall not be eligible for being a member of the committee. Does it mean that he will cease to be a member of the committee when any member of the society alleges that the other members has incurred disqualification should not some authority decide upon the valuable right of the member to continue as a member of the committee before he is deprived of it on the ground of alleged disqualification? The answer cannot but be that a competent authority must pronounce upon the allegation after due enquiry observing principles of natural justice.

14. If ultimately there is a decision that a member has incurred a disqualification, the question would be from what date the member would cease to be a member. Is it from the date of the decision by the competent authority or from the date on which the disqualification is incurred, as found by the authority?

15, Rule 24 (3) of the A. P. Co-operative societies Rules, which declares when a disqualified member of the committee ceases to be a member, reads as follows:-

"If any person is or becomes disqualified to be a member of the committee, the registrar may on his own motion or on a representation made to him by any member of the committee of the said society or its financing bank, by an order in writing declare that he shall cease to be a member of the committee of the society concerned from the date of such disqualification. Before passing an order. The Registrar shall give such person an opportunity to state his objections, if any to the proposed action and if the person wishes to be heard, he shall be given an opportunity to be heard. The Registrar's decision shall be final and binding on the society and it shall not be called in question in any Court".

The rule empowers the registrar to Act suo motu or on the representation made to him by any member of the committee of the said society or its financing bank. It also empowers the registrar to declare by order in writing that the member who has incurred the disqualification shall cease to be a member of the committee of the society concerned from the date of such disqualification the rule enjoins the registrar to give such a person an opportunity to state his objections if any and if the person wishes to be heard, he shall be given an opportunity to be heard. The decision of Registrar is declared to be final and binding on the society and it shall not be called in question in any Court. While S.

21-A is silent. R. 24 (3) declares that the order of the Registrar declaring the member of the committee to have ceased to be a member, operates from the date of such disqualification. They envisage an order in writing by the Registrar. Of course once the order is made, the member shall cease to be a member of the committee from the date the disqualification is incurred and not from the date of the order. Sri V. Rajagopal Reddy learned counsel for the respondents (writ petitioners) points out that if such an interpretation is given, in most cases, the declaration of the disqualification would become otiose and redundant for any such disqualification would operate against a member only for a period of one year from the date of such cessation. But in our opinion the fact that such a consequence would result in some cases on account of the enquiry into the allegations extending over months cannot alter the legal position that the cessation of membership would operate from the date of disqualification and not from the date of the order of the Registrar. That is made clear by Rule 24 (3). That consequence follows not because of any defect in the Act or the rules but because of unduly long time taken by the authorities for pronouncing upon the allegation of disqualification. The election of a member to the managing committee, in whom the majority has reposed confidence, cannot be unseated upon a mere allegation of disqualification by any member of the committee of the society. Right of franchise and right to be elected is a valuable right conferred by the statute and when the majority of the members of the society have elected a person to be a member of the committee and as its office-bearer, it could never have been the intention of the Legislature that the cessation of his membership should operate on a mere allegation made by a member of the society. It is common knowledge that allegations of disqualification of the members are made on account of group rivalries in their societies. It would be wholly unsafe to hold that upon a mere allegation of disqualification, however much it may be supported by material cessation of membership operates and he is disabled from functioning as member of the managing committee. The allegation, unless admitted, would require an enquiry after notice; on enquiry it may be found to be baseless. The right acquired by a member on his being elected can only be set at naught by a decision rendered after enquiry by a competent authority. Any such enquiry must accord with principles of natural justice and also the requirement of Rule 24 (3). In our view, a member of the committee does not cease to be a member merely because an allegation under S. 21-A is made against him by another member of the society or of the committee. That allegation has to be enquired into in accordance with Rule 24 (3). Such a member becomes disqualified but such a disqualification operates as a cessation of his membership with effect from the date of the incurring of the disqualification. The apprehension expressed on behalf of the respondents that if such an interpretation is placed the proceedings of the committee passed by majority constituted by including such disqualified member, would be vitiated is, in our opinion, wholly unfounded. The acts of the society in such contingencies are saved by S. 127 of the Act, In view of S. 127, notwithstanding the fact that a member of the committee who has since been declared disqualified and such

disqualification operates from the date of incurring of disqualification as a cessation of his membership, his participation in the proceedings of the committee and any resolution recorded or action taken pursuant thereto would not be rendered invalid. Any other interpretation would throw open floodgates of allegations by the members of the society who have unsuccessfully contested the election. No committee can function if, upon a mere allegation, the elected members of the society are held to be disqualified from being members of the committee. Rival groups would trade disqualification freely and render functioning of the society impossible. Any such situation must be avoided.

16. It may also be noticed at this stage that whether the amount is due or not is a matter of contract. A contracting party may extend, obviously the amount cannot be treated as due and in such a case, the disqualification on the ground that the amount has not been paid on the date due as originally contracted, does not arise. It is stated that no notice of demand of any amount due was issued by the bank to respondents 5 and 6 much less was any notice informing them about their incurring the disqualification was served. On this question however it is asserted by the writ petitioner that notice has been issued while respondents 5 and 6 deny that any notice was served on them. No proof of service of any notice informing them of the disqualification has been placed before us. It is stated by the 6th respondent that he is not even a borrower and that he was merely a surety or co-obligant for some one else and unless the amount is due from the original borrower he would not be liable. It is not necessary for the purpose of this writ appeal to go into these allegations suffice to note that as discussed above this is a matter for enquiry by the appropriate authority. The disqualification alleged having been disputed seriously and on grounds which cannot be said to be frivolous or wholly unsustainable, calls for an enquiry after due notice to the persons against whom disqualification is alleged and after giving them proper opportunity. That has not been done so far by the competent authority. Respondents 5 and 6 who were admittedly elected, consequently continue to be members of the committee and as such entitled to participate in the election and also stand for any post of office-bearer of the committee. It is wholly inappropriate to interdict a committee constituted by elected members of the bank from electing its officebearers and functioning in accordance with the provisions of the Act, the rules and bye-laws. It may be relevant to note that under the unamended provisions of the Andhra Pradesh Gram panchayats Act. The cessation of membership of the Gram panchayat was automatic. In spite of that it was held by a Full bench of this Court in *M. Kista Reddy and Others Vs. Collector, Karimnagar Panchayat Wing and Others*, that:-

"Cessation u/s 25 (2) occurs automatically on the failure of the sarpanch to hold even a single meeting within a consecutive period of three months with effect from the date of expiration of that three months" period. Whenever the failure to hold such a meeting takes place, cessation also automatically occurs. Whether it has happened in the past or whether it occurs in the present or whether it may occur in the future is immaterial, since cessation is an automatic occurrence with

the failure to hold meetings".

The Court further proceeded to hold that:-

"Even in cases of cessation of office u/s 25 (2) it is conceivable that there may be instance, where doubts might arise, whether meetings were really held or not within a period of three months and whether cessation had actually taken effect. Even in such cases, even though cessation is an administrative event, it does not absolve the concerned authorities from observing ordinary rules it does not absolve the concerned authorities from observing ordinary rules of fair play. If an affected sarpanch seeks an opportunity, to satisfy the collector that he has in fact held a meeting within three months it is necessary according to the ordinary rules of fair play to give him that opportunity".

When this is the position even where there is no specific rule as regards enquiry into alleged disqualification or cessation of membership, much more so when the Act and the Rules envisage giving of a notice and holding of an enquiry, the cessation, though automatic, can occur only upon an enquiry and decision by the competent authority. Such cessation of membership would disqualify from being a member of the committee from the date of the incurring of that disqualification.

17. In *V. Raghava Reddy v. The district collector (co-operation), Warangal* 1973 APHC 245: (ILR (1974) AP 842) Kuppaswamy, J. (As he then was), has to consider the question whether under S. 61 of the A.P co-operative societies Act, an allegation that a member of the committee had incurred disqualification for the reason that he owes certain amount to the bank and defaulted in payment of that amount when it became due could be enquired into by the Arbitrator or whether the Registrar must decide the same; held that that dispute was one touching the management of the society and as such could be enquired into under s. 61 of the Act. While the Registrar has the discretion under Rule 24 (3) to make an order declaring that the member concerned ceased to be a member of the committee from the date of the disqualification u/s 61 of the Act it is incumbent upon him to decide the dispute that is not left to his discretion. It is incumbent upon him to decide the dispute that is not left to his discretion it is made obligatory. This decision of course does not deal directly with the question whether the election officer can decide such a dispute, but does declare that an allegation as to disqualification of the member of the committee raised by another member of the society is a dispute touching the business and management of the society and as such is matter covered by S. 61 of the Act or rules 24 (3) of the rules.

18. Another learned single Judge of this Court, Ramachandra Rao, J., in writ petn. No. 4240 of 1969 judgment dated 16-3-1970 considered the question whether a member of the committee of the hindupur co-operative Town Bank Ltd., hindupur had incurred the disqualification under Rule 24 (2) of the Rules read with S. 21-A of the A.P. Co-operative societies Act and bye-law 22 of the Bye-laws of the Bank as he had not attended the three consecutive meetings of

the Board of directors of the Bank and whether he became automatically disqualified or a declaration to that effect was necessary before he could be deemed to have been disqualified the learned judge observed:-

"It is unnecessary to go into the question whether the meetings convened on the three days mentioned above were validly convened or not. That is a matter which has to be decided by the proper authority after considering the relevant material available and with reference to the record. I am however, satisfied that the notice issued by the secretary itself cannot operate to disqualify the petitioner from membership of the committee. There is no provision either in the statute or in the rule or bye-laws which empowers the secretary to pass orders of disqualification of members of the society or members of the committee. The only section that deals with the disqualification for membership of the society is section 21 while section 21-A deals with the disqualification for membership of committee and section 21-B deals with the cessation of membership and reinstatement.....

Under Rule 24 (3) of the Rules framed under the Act, it is the registrar that has to pass an order in writing declaring a member of the committee after giving an opportunity to the person affected....., unless and until an enquiry is made by the Registrar and an order is passed in terms of Rule 24 (3) the petitioner cannot be treated as having ceased to be a member of the society. It is only when the enquiry is completed and the Registrar gives a decision under Rule 24 (3) that the disqualification or cessation of membership would come into force".

19. A similar view was taken by justice P.A. Choudary in writ petns Nos. 4149 of 1979 and 4059 of 1979 judgment dated 21-9-1979. There the allegation was that the petitioner therein a director of farmers service society, was disqualified as he did not pay the crop loan on the days due under the terms of the agreement. He had pleaded that he had applied for extension of time for repayment and the managing director had in view of the drought conditions prevailing extended the period for payment and that he had repaid the amount within the extended period for payment and that he had repaid the amount within the extended time but notwithstanding such repayment, the Deputy registrar of Co-operative societies had called upon the petitioner to show cause why he should not be disqualified for his default in not repaying the loan within the time stipulated under the agreement. The learned judge posed the question- When does a default occur? He held:

"Unless there is clear and compelling language expressing the intention of the law-maker disqualifying a person under stated circumstances, the Court by resorting to the method of analogous reasoning, that weakest techinc of the logician, should not extend the meaning of the words".

On the facts of that case the learned judge held:

"The beneficial power of the Managing committee to extend the period of payment taking into account the drought and cyclone cannot be stultified and

once the time for repayment is extended, disqualification is not incurred". This Judgment proceeds on the footing that there has to be an adjudication on the allegation of disqualification before a duly elected member is declared to have ceased to be a member of the committee on account of incurring a disqualification.

20. In *Anakapalli Appalaraju and Others Vs. Pentakata Siva Kondarao and Others*, in some what similar circumstances, a Division Bench of this Court, to which one of us (Acting chief Justice) was a party in regard to the contention that when an allegation that the persons nominated at the election had withdrawn their candidature and that the "Election officer is required to give a reasoned order rejecting the nominations" is made held with reference to Rules 11 and 13 of the A. P. Municipal councils (Conduct of Elections) Rules that "as there is no express provision to that effect in Rule 13 and as no summary inquiry can serve the aim of an inquiry it must be held that under Rule 13 the Election officer is under no legal obligation to hold even a summary inquiry. A summary inquiry would serve no purpose if it does not help to decide the real question, whether the signatures are voluntary or not. If the real question is to be decided by giving an opportunity all the witnesses such a protracted procedure would be inconsistent with the scheme of Rule 13".

21. On the same party of reasoning, any enquiry into the allegation of disqualification of a member of the committee, when the truth of that allegation is denied, the election officer cannot embark upon any enquiry consistent with the principles of natural justice and decide that question. When the Act and the rules envisage a particular procedure to be adopted in determining such dispute, it is that procedure alone that must be adopted and that too by that particular authority and none else.

22. The election process which has commenced should not be interfered with ordinarily by any Court In *Ram Pyare Chaudhary and Another Vs. State of Uttar Pradesh and Others*, with reference to the provisions of the U. P. Co-operative societies Act the Supreme Court held that "from the date of the poll. Until the results are finally declared, the entire process is an election process and ordinarily this process should not be interfered with by the courts". That being so where there is a mere allegation of disqualification against two of the eleven members if the election of the office bearers is stopped until the enquiry into the alleged disqualification is completed, which enquiry will not terminate with the order of the Registrar but invariably carried in appeal, revision and also brought to the High Court it would be wholly inappropriate to stay the election of the office bearers of the committee and make the functioning of the society impossible. Although it is contended that where the election officer is prima facie satisfied about the disqualification he can prevent the disqualification he can prevent the disqualified person from participating in the election, we find no warrant for holding so. In the matter of election of office bearers the question of considering the qualification of a member does not arise, as discussed above. The election office is required to decide only objections to the nominations

summarily. That stage arises after nominations are filed or made and objections are taken and not before. Only if an objection is taken to a nomination of a member for being elected as office-bearer, at that stage, that is the stage of nomination, the election officer may decide the objection as to the nomination, but that too after a summary enquiry into the allegation. But an allegation such as the one raised by the writ petitioner at that stage.....Calls for a regular enquiry. Any summary enquiry would not serve the purpose. If the principles of natural justice have to be observed by the election officer for deciding the objection such as the one raised by the writ petitioner, it would result in postponing the election for an indefinite period. We have therefore no hesitation in holding that the election officer was not competent to go into the question whether respondents 5 and 6 were disqualified even before they were nominated for being elected as officebearers at the meeting held on 15-7-1982.

23. It was argued by Sri. V. Rajagopal Reddy, learned counsel that if it were held that until R. 24 (3), the cessation of the membership would not occur even though the disqualification under S. 21-A (1-B) is incurred and if R. 24 (3) is given such an overriding effect it would necessarily follow. All that S. 21-A (1-B) declares is that if the amount due is not paid, a disqualification is incurred. Section 21-A itself does not provide as to who should deal with an allegation that a member of the committee has incurred disqualification and how it should be dealt with and decided. The Rule making power vested in the Government under S. 130 (1) of the Act empowers it to make rules for carrying out all or any of the purposes of the Act. Since the Act is silent as to how a disputed question of disqualification should be decided, the Government in exercise of decided, the Government in exercise of the rule making power has with a view to further the object of the Act, constituted an authority and laid down the procedure for deciding any dispute as to qualification or disqualification of a member of the committee. That Rule, in our opinion, is clearly within the ambit of the rule making power of the Government and in no way ultra vires of S. 21-A.

24. It was lastly contended that allowing the members like respondents 5 and 6 who according to the writ petitioner, are prima facie disqualified, would militate against the object of the provision for cessation of membership upon the incurring of disqualification which is intended to maintain purity of administration of the co-operative societies. The primary object of these provisions being that those entrusted with the management should not themselves be defaulters and should not have incurred any disqualification, allowing them to contest without enquiry into the allegations would defeat the purposes of the Act. The allegation of disqualification should therefore be first enquired into before they are permitted to be elected as office-bearers and assume the management of the Bank. In dealing with this contention, we cannot ignore the fact that the Act which lays down the procedure for enquiring into the disqualification. On any notions of equity that procedure cannot be ignore and the Court devises (sic) a procedure not envisaged by law to enquire into the disqualification; that too by an authority not specifically empowered in this behalf

and by adopting a procedure not consistent with the principles of natural justice we are therefore not persuaded by the contention that legalities apart, the order of the single judge is most equitable in the circumstances and must be maintained. We cannot issue a direction not envisaged by the Act and the rules.

25. On the other hand we are of the view that if the entire process of election of office-bearers which is set in motion by issuing a notice is to be stayed, then the entire business of the bank would come to a grinding halt. That in our opinion is not warranted. On enquiry by the competent authority if it is found that respondents 5 and 6 are disqualified to be on the committee, it is certainly open to them to hold fresh elections for such of the posts that may fall vacant upon the consequent cessation of membership.

26. Then remains the principal contention as to whether a member of the committee which has not assumed charge, could be said to have incurred disqualification under S. 21-A (1-B) and whether any enquiry could be taken up under R. 24 (3) and whether on that ground, he can be prevented from being elected as office-bearer of the committee. This was the aspect on which the election officer felt some doubt and referred the matter to registrar and the Registrar himself first directed stay of election and directed the sub-Registrar on 30-4-1982 to enquire and report and later being of the view that no disqualification is incurred by a member of the committee until the particular committee assumes office on 21-6-1982 clarified that the Election officer can go ahead with the election.

27. In view of the above discussion, this aspect does not really affect the conclusion we have reached above; but inasmuch as that was the ground on which the election of the office-bearers was initially stayed and later taken up pursuant to the clarification of the Registrar and that was the ground on which the writ petition was resisted and also the ground canvassed at length before us, we proceed to address ourselves to that question.

28. It is argued on behalf of the appellants that the question of enquiring into the allegation that respondents 5 and 6 are disqualified from being members of the committee does not arise until the committee assumes charge. The committee would come into existence only after the election of its office-bearers and after that committee is entrusted with the management. This argument is advanced having regard to the definition of "committee" contained in s. 2 (b) of the Act which reads as follows:

"Committee" means the governing body of a society by whatever name called, to a society by whatever name called, to which the management of the affairs of the society is entrusted".

The argument of the learned counsel Sri. K. Pratap Reddy proceeds as under:-

Section 21-A inter alia declares that "no person shall be eligible for being chosen as and for being a member of the committee if he is in default in the payment of

any amount due in cash or in kind to the society or any other society for such period as may be prescribed". Respondents 5 and 6 have already been chosen to be members of the committee. The committee, as defined, means the governing body of a society to which the management of the affairs of the society is entrusted. The committee does not come into existence merely upon the members being chosen for that committee; it comes into existence only upon the management of the affairs of the society being entrusted to the members so chosen and the management is not entrusted to it until after its office-bearers are elected. Only after the elected members become members of the committee, the question of their continuing as members of the committee arises. We are, however, unable to accept this contention. Once the members of the committee are chosen from among the several members of the society, they become eligible for being a member of the committee. The expression for being a member of the committee not only connotes that he is eligible to be elected as a member but also continue as a member. Once a member of the society is chosen to be a member of the committee, it is these members to which the management of the affairs of the society is entrusted under S. 31 (1) (a) of the Act, which so far as it is relevant for our present purpose, reads as follows:-

"31 (1) (a). The general body of a society shall constitute a committee in accordance with the bye-laws and entrust the management of the affairs of the society to such committee".

The committee is required to be constituted in accordance with the bye-laws and it is to such committee the management of the affairs of the society is entrusted. It is this committee that management of the affairs of the society is entrusted. It is this committee that has to elect the office-bearers. The term "officer" as defined in S. 2 (k) of the Act "includes a person elected or appointed by a society to any office of such society according to its bye-laws and a president, vice-president, chairman, vice-chairman, secretary, Assistant secretary Treasurer, Manager, Member of committee, liquidator or any other person elected or appointed under this Act. Rules or the bye-laws, to give directions in regard to the business of the society."

Office bearers of the committee are also thus officers of the society and are elected by the members of the committee Rule 22 (1) (a) of the Rules expressly lays down that "as soon as the members of the committee of a society have been elected, the election officer shall convene a meeting of the members of the committee for the purpose of election of the president, vice-president. Treasurer, secretary and other office-bearer of the society". Unless members of the society chosen first become and continue to be members of the committee they cannot elect the office-bearers of the committee. If the contention that unless the office-bearers are elected and the management of the society is entrusted, there is no committee and as such the question of any person not being eligible to be a member of the committee, does not arise (is accepted), then it would not be possible to elect the office-bearers at all for it is the members of the committee

that have to elect the office-bearers. That presupposes that no sooner than the member of the society is chosen as a member of the committee, the committee comes into existence and the member so chosen is and continues to be a member of the committee. It is in relation to such member of the committee that the disqualification mentioned in S. 21-A of the Act may also attach. An anomalous situation would also arise if it were to be held otherwise. While a member of the society may be disqualified from being chosen no sooner than he is chosen even if the disqualification continues until the office-bearers are elected and the office-bearers along with the members of the committee assume charge and the management of the affairs of the society is entrusted to them the disqualification would stand suspended and no authority is empowered to enquire into that disqualification and no sooner than the management is entrusted to the committee, the disqualification would again be revived and get attached to the member. There is no warrant for such a conclusion to be drawn from the wording of S. 21-A of the Act. The intendment of that provision, to our mind, is that a person who has incurred the disqualification referred to therein would neither be eligible for being chosen as a member of the committee nor to continue as a member of the committee if he continues to be so disqualified. However as discussed above, when an allegation that a member of the committee is disqualified is made, unless the competent authority enquires into it in accordance with the rules and other principles of natural justice and decides the valuable right acquired by him by virtue of his election to be a member of the committee and manage the affairs of the society, cannot be done away with. Only upon decision adverse to a member of the committee, he would become ineligible for being a member of the committee and the cessation of membership of the committee would come into operation. We, therefore reject the contention that no enquiry whatsoever can be made with regard to the alleged disqualification. However, we must make it clear (that) when the election of office-bearers is held there being no provision either in the Act or the rules or the bye-laws empowering any authority to withhold the declaration of the result of the said election, the respondents are bound to declare the results forthwith and the members of the managing committee and its office-bearers shall be entitled to manage the affairs of the committee. The appropriate authority may proceed with the enquiry into the alleged disqualification of respondents 5 and 6 unhampered by the fact that they have been elected as members of the committee or office-bearers of the committee.

29. In considering the issues raised in this writ appeal which relate to the election of office-bearers of a co-operative bank governed by the provisions of the A. P. Co-operative societies Act the rules made thereunder and the byelaws governing the particular society, any considerations of enquiry are out of place. The managing committee of the bank is to be elected in accordance with the provisions of the Act the rules and the bye-laws. The right given to a member of this bank to either vote and to be elected as office-bearer of the Managing committee is a right given by the statute. Election officer is not a Court and has

no inherent powers any power exercised by him must be found in the law governing the elections to the particular Bank. On any grounds of equity or principles of fair play and notions of good administration the Election officer cannot deviate from the procedure required by law to be followed for holding the elections. Elections must be held expeditiously and in accordance with the rules. The election process once commenced, cannot be impeded except under the orders of the Court and the Court would be reluctant except in exceptional circumstances to come in the way of holding of election to the co-operative bodies. We find no such exceptional circumstances in the present case warranting interference in the conduct of elections.

30. For the foregoing reasons we hold that the notice No. 1268/82 dated 6-7-1982 impugned in this petition is not liable to be quashed. There is no ground to withhold the declaration of the result of the election of the office-bearers held pursuant to the said notice the result of the said elections must be declared forthwith and elected managing committee and its office-bearers must be allowed to function leaving it open to the appropriate authority to proceed with the enquiry into the alleged disqualification of respondents 5 and 6 thereafter. The order of the learned single judge to the contrary now under appeal is therefore set aside. The interim directions are vacated and the respondents are directed to declare the result of the election of the office bearers and allow the elected members of the managing committee and its office-bearers to manage the affairs of the Bank.

31. The writ appeal is accordingly, allowed and the direction detailed above shall issue and the writ petition is dismissed. In the circumstances of the cases, we make no order as to cost. Advocate's fee Rs. 150/-

32. On pronouncement of the judgment, the learned counsel for the respondent Sri v. R. Reddy, sought leave to appeal to the Supreme Court and also for suspension of the judgment in the writ appeal.

33. We do not find that this case involves such substantial questions of law of general importance as require consideration by the Supreme Court or that it is otherwise a fit case for grant of leave to the Supreme Court.

34. Elections of the office-bearers have been held and only the result has to be declared. So that the elected managing committee may function. In these circumstances leave is refused. Request for suspension of the judgment in the writ appeal is also rejected.

35. Writ appeal allowed.