

(1995) 11 AP CK 0093

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 22167 and 23149 of 1995

TCS Kosgi Group

APPELLANT

Vs

Prohibition and Excise Superintendent and Others

RESPONDENT

Date of Decision : 17-11-1995

Acts Referred:

Andhra Pradesh Co-operative Societies Act, 1964 — Section 34, 34(1), 76
Andhra Pradesh Excise Act, 1968 — Section 31
Constitution of India, 1950 — Article 226

Citation : (1995) 3 ALT 760

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : V. Eswariah, for the Appellant; A.G., Government Pleader and P. Sri Raghu Ram, for the Respondent

Final Decision : Allowed

Judgement

G. Bikshapathy, J.—As both the Writ Petitions are inter-connected and the learned counsel for the petitioner as well as the learned Government Pleader submitted that the full length arguments have been advanced at the time of considering the application for the vacating the interim orders, and they requested this Court to pass final orders in both the Writ Petitions. Accordingly, these two Writ Petitions are dealt with finally.

W.P.No.23149 of 1995:

2. The facts in W.P.No.23149 of 1995 would be relevant for proper appreciation of the entire case. The Writ Petition is filed by the Tappers Co- operative Society, Kosgi, Mahabubnagar District represented by its President, Chimanbavi Venkataiah. In the said Writ Petition, the proceedings of the 1st respondent - Prohibition and Excise Superintendent, Mahabubnagar in RC No.A7/4367/93 dated 11-10-1995 are challenged, wherein the Persons Committee was constituted by the 1st Respondent by virtue of powers vested in him u/s 34(1) of the Co-operative Societies Act.

3. The Excise authorities had granted licence for 1994-95 to the TCS Kosgi in the name of President M. Chandraiah, who was the President of the Society at the relevant time. The deponent Sri Chimanbavi Venkataiah, the present President was elected as a President of TCS Kosgi on 27-5-1995 for a period of three years. The election was conducted by the excise authorities. The society has 24 members on its rolls. After Sri Venkataiah was elected as President, the name of the President was not changed in the Excise Licence already issued for 1994-95 to the TCS Kosgi. The licence expired on 30-9-1995. The necessary licence fees and other charges were paid by the society through its President and all the formalities as required under the Rules were complied. An advance payment of rental amounting to Rs. 26,073/- was paid through challans. However, the excise authorities did not renew the licence on the ground that the criminal case in COR No. 118/94-95 dated 9-3-1995 is pending. At that point of time W.P.No. 22167/95 was filed for direction to renew the licence without reference to the pendency of the criminal case. When the matter came up for orders on interim application on 12-10-1995 it was brought to the notice of the counsel for the petitioner that the licensing authority had rejected the renewal application on 4-10-1995 and the appeal filed before the Dy. Commissioner (Appellate Authority) was also dismissed on 10-10-1995. It was also brought to the notice of the counsel on 12-10-1995 that the managing committee of TCS Kosgi was superseded by persons committee appointed by the 1st respondent in proceedings dated 11-10-1995 and an objection was sought to be placed by the counsel taking notice on behalf of the persons committee stating that in view of the supersession, no relief can be granted in W.P.No.22167 / 95. Therefore implead petitions and petition for amendment of prayer filed in W.P. No. 22167/95 (were filed) and the said petitions were allowed on 13-10-1995. Interim direction was also issued to the respondents to renew the licence of the TCS Kosgi without reference to the pendency of the criminal case. Simultaneously W.P.No.23149/95 was heard on 13-10-1995 and interim suspension of the proceedings dated 11-10-1995 was granted by this Court. The petitioner in W.P.No.23149/95 submits that no notice was issued to the petitioner before the impugned orders are passed with the grounds mentioned in the impugned supersession order dated 11-10-1995 that the Society is not functioning properly and they have not given any benefits to the members (which) are absolutely incorrect. Therefore, the appointment of the Respondents No. 2 to 4 as persons committee is illegal and without jurisdiction. It was submitted that the official respondents created ante-dated proceedings at the instance of the local M.L.As and the higher authorities. The 2nd respondent is appointed as Chairman of the committee, he was also one of the directors of the erstwhile managing committee which was elected on 27-5-1995.

4. It was also the case of the petitioner in W.P.No.23149 of 1995 that the impugned notice was never served on the petitioner, which was only addressed to S. Venkataiah and two other members of the persons committee. Thus, the impugned order itself is not properly served on the petitioner. The petitioner was

given the copies of the orders dated 10-11-1995 (sic. 11-10-1995) and also 30-9-95 (show cause notice) in this Court on 12-10-1995 when the W.P.No.22167/95 came up for orders on the Interlocutory Applications. Therefore, the petitioner submits that the impugned orders dated 10-11-1995 (sic. 11-10-1995) are wholly illegal, mala fide and without jurisdiction. While admitting the Writ Petition on 13-10-1995 this Court granted interim suspension of the orders of the supersession dated 11-10-1995. However, it appears that the 1st Respondent renewed the licence of TCS Kosgi on 13-10-1995 in the name of persons committee and a contempt case has been filed by the petitioner in this regard which is subject matter in the said case. Again another Contempt Case was filed alleging violation of orders of interim directions in W.P.No.22167/95 dated 13-10-1995. Thereafter the 1st respondent filed counter affidavits in both the Writ Petitions and sought for vacation of the interim orders granted by this Court on 13-10-1995.

5. In counter affidavit filed by the 1st respondent, it was stated that the petitioner had completed all the formalities required for the renewal of the licence for the year 1995-96, but as the criminal case was pending its request for renewal was rejected. The 2nd Respondent who is also one of the directors of T.C.S. Kosgi and others submitted a petition to the 1st respondent alleging that the deponent has not been distributing the profits to the members and not maintaining the accounts (and) on the said petition enquiry was ordered. After receipt of enquiry report the 1st Respondent issued show cause notice dated 30-9-1995, since the petitioner refused to receive the notice, the same was affixed to the door of house of the deponent and the statements of C. Balakistaiah and Kavalkers of Kosgi village were recorded by the Excise Sub-Inspector. Therefore, the impugned order appointing Three men committee u/s 34(1) of the Act was passed. Since the petitioner/deponent has been acting contrary to the interest of the members and deliberately refused to receive the show cause notice, they disobeyed the order of the 1st Respondent. Therefore, there is no illegality or irregularity in the impugned order and the same (sic. petition) is liable to be dismissed.

6. The point that arises for consideration is whether the proceedings issued by the 1st Respondent No.A7/4367/95 dated 11-10-1995 are valid and legal. In the said proceedings the 1st Respondent purporting to exercise the power u/s 34(1) of the A.P. Co-operative Societies Act constituted the following persons as persons committee to TCS Kosgi for a period of six months from the date of notice or till the elections are conducted whichever is earlier, thereby superseding the earlier management committee:

1. S. Venkataiah s/o Balaiah
2. Baswapur Chandraiah s/o Dasthaiah
3. Baswapur Chinna Bheemaiah s/o Balaiah

From among the above three persons Sri S. Venkataiah has been designated as

Chairman of the persons committee. The said S. Venkataiah was also a director in Managing Committee which was constituted on 11-10-1995.

7. The learned counsel for the petitioner submits that the constitution of the persons committee is wholly illegal and contrary to law.

He contends that no notice as required u/s 34 has been issued to the President and the Managing Committee members and their representation was not received.

Secondly, he submits that, no enquiry was conducted by the Excise Sub-Inspector, Kodangal.

Thirdly, the report of the Enquiry Officer was not furnished to the petitioner or to any of the members of the managing committee.

Fourthly, he also submits that a representation alleged to have been received by the 1st respondent companion (sic. complaining) about the activities of the President Ch. Venkataiah has also not been furnished to the petitioner. Therefore, the entire proceedings are illegal and violative of principles of natural justice.

8. The learned Advocate General on behalf of the 1st Respondent submitted that a complaint was made by Respondents No. 2 to 4 and others against the President on 20-9-1995, (and) upon the said complaint the Excise Sub-Inspector, Kodangal was directed to conduct enquiry. The said Sub-Inspector of Excise conducted enquiry and submitted report on 25-9-1995. The report (as per the counter) contained that the profits are not being distributed among the members and the affairs (sic. accounts) of the TCS Kosgi are not maintained properly and recommended for appointment of three men committee to look after the affairs. Therefore, basing on the report of the enquiry officer, a show cause notice was issued on 30-9-1995 calling upon the explanation of the petitioner as to why the committee of petitioners society should not be appointed u/s 34 of the Co-operative Societies Act. As the petitioner refused to receive the notice, a panchanama was conducted in Kosgi village and therefore the show cause notice is deemed to have been served on the petitioner. He also submits that the Petitioner and the other directors have refused to take the show cause notice. The proceedings were issued on 11-10-1995 to prevent the petitioner from further exploitation. I have called for the original records and the same have been placed before this Court. I perused the complaint which was received by the Excise authorities on 20-9-1995. The said complaint has been signed by 34 members out of whom S. Venkataiah, who was the director of the erstwhile managing committee and Chairman in persons committee is also a signatory. In the said complaint it is stated that for the last two years Sri Mukundam Goud has been illegally conducting the business and admitted some more members and he is not giving any profits to the members and the accounts are also not being made known to them. Adulteration cases have been booked against Mukundam Goud, M. Chandraiah and Hussainappa. Therefore, they requested that the President should be removed and three-men committee should be constituted.

9. It is pertinent to note that the name of the President Mr. Ch.Venkataiah is nowhere mentioned in the said complaint. No illegal acts have been alleged against him. The Excise Sub-Inspector is understood to have conducted enquiry on 25-9-1995. I do not find any record to show that a notice has been issued to the managing committee consisting of President Ch. Venkataiah and four directors. However, in the report of the Excise Sub-Inspector dated 25-9-1995 he had stated that he requested the President of the society to produce accounts books, but the president did not co-operate. It is not known as to which president he requested to produce the records, no name has been mentioned in the said report. The said Sub-Inspector found that the society was having only 24 members. The Enquiry Officer did not record the statements of any members and virtually proceeded on mere surmises. He stated in his report that in the absence of the records, he cannot arrive at a definite conclusion on the issue, but over all picture of the affairs of the society gives doubt about the proper running of the society. Therefore, pending detailed enquiry into the affairs of the society, he recommended supersession of the managing committee. On the basis of the said report, the 1st Respondent issued proceedings dated 30-9-1995. A note was submitted by the Sub-Inspector of Excise, Kodangal to the 1st Respondent stating that the show cause notice was refused by the President. A panchanama dated 1-10-1995 was recorded by the Excise Sub-Inspector, Kodangal stating that at about 10-30 on the request of the Sub-Inspector, the panchas were called to the house of Ch. Venkataiah at Masaipally village. The Sub-Inspector stated that he came to serve the show cause notice on Ch. Venkataiah and that he refused to receive the notice and that he has pasted the said notice to the house of Sri Ch. Venkataiah in their presence. One of the signatories to the panchanama is C.Balakistaiah, who has signed in English, while the other two panchas affixed their thumb impressions. Thus, I find the Excise Sub-Inspector conducted a perfunctory enquiry without giving any proper opportunity to the concerned persons. Such an enquiry is no enquiry in the eye of law. Even the 1st Respondent did not either examine the procedure adopted by the Excise Sub-Inspector on the report in proper perspective. He appears to have proceeded mechanically by taking recourse to Section 34 of the Act.

10. The notices which are to be served on the President of the society are required to be served at the place of the business. It is nowhere mentioned in the Act or the Rules that the notices should be affixed to the house of the President. There is no material to show that the Sub-Inspector had visited the shop, where the business being conducted and tried to serve notice to the president Ch. Venkataiah and other directors. Only in respect of Ch. Venkataiah, the panchanama has been recorded and it is not known as to what action was taken by the Sub-Inspector to serve the notices on the other members of the managing committee. It has been mentioned in the show cause notice clearly that the same has to be served to the President and other four directors through the E.S.I. Kodangal. Whether the pasting of the notice to the door of the house of Ch. Venkataiah is a proper service will be considered later. But the fact

remains that the show cause notice has never been served on the other four directors. Even as per the panchanama it is nowhere stated that what type of notice has been pasted to the door of the President. The original notice issued by the 1st Respondent dated 30-9-1995 is still available in the file. The notice which is marked to the President is the original notice and the fact that it is still lying in the record would clearly establish that no such notice has been pasted on the door of the President's house. Thus, I find that the show cause notice has never been served on the President of the TCS Kosgi and also on the Directors of the society.

11. The learned counsel for the petitioner relies on the judgment of this Court in *K.Narayana v. Superintendent of Excise* 1971 ALT 496 (Sic. 1979 (2) An.W.R. 496). while dealing with the cancellation of the licence under the Excise Act, the learned Judge held that though there is no specific Rule or provision in the Act regarding service of notices and orders of cancellation or suspension, it is implicit in the very nature of things that the order of cancellation or supersession (sic. suspension) must be served on the petitioner especially in view of the fact that there is a right of appeal under the Act. The valuable right to do business is affected if the licence is cancelled and the said cancellation has not been served. The learned Judge further held that normally, the notice has to be sent by post and if the addressee is not found the notice should be effected by substituted service either by pasting it on the door of the residence of the person. In cases of the orders which are subject to appeal they have to be necessarily sent by Registered Post or they should be served on one of his authorised agents where the business is being carried on. In the instant case, the records do not show that the Excise Sub-Inspector had made any attempt to serve the show cause notice at the place of business or it was sent by Registered Post etc. In view of this pronouncement and the fact that the show cause notice was not served on the President and on other Directors of the Committee, the consequential effect has to be considered.

12. u/s 34 of the Co-operative Societies Act, it is open for the Registrar of Co-operative Societies to appoint a committee to manage the affairs of the Society but before such notification is issued he is required to give the committee an opportunity of making representation. The relevant provisions u/s 34 of the Act, are extracted below:

"34. Supression (sic, supersession) of the Committee:- (1) If in the opinion of the Registrar, the Committee is not functioning properly or wilfully disobeys or fails to comply wilfully 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 (hereafter referred to as the special officer) or a committee to manage the affairs of the society for a period, not exceeding two years, specified in the order which period may, at the discretion of the Registrar, be extended from time to time, so however, that the aggregate period shall not

exceed three years.

(2) Such order shall take effect from the date specified therein unless it is stayed by the Government. Where such order is reserved (sic. reversed) by the Government, the special officer or the managing committee shall forthwith handover the management of the society to the Committee.

(3) The special officer or the managing committee shall subject to the general control of the Registrar and to such directions as he may, from time to time, give, have power to exercise all or any of the function of the committee or of any officer of the Society.

13. The learned Advocate General submits that what is contemplated u/s 34 is the opportunity to the committee and since the committee is represented by the President, no individual notices are necessary to the other directors, who are forming part of the managing committee.

14. Admittedly, in the instant case the managing committee consists of one President and four Directors. Even the show cause notice, it has been clearly marked to the President and four directors. Therefore, the requirement of service of notice on the President of the managing committee cannot be construed as a notice on the committee. Further the committee is defined u/s 2(b) of the Co-operative Societies Act. Committee means the governing body of a society by whatever name called to which the management of the affairs of the society is entrusted.

15. The learned Advocate General could not refer to any decision where the service on the President would be a service on the managing committee itself. In view of the fact that a notice is required to be given to the Committee and the Committee is the governing body of the society, each and every member of the committee i.e. the President and Directors forming part of the managing committee are required to be given notice. Otherwise, the very purpose of giving a reasonable opportunity is frustrated. The 1st Respondent also appears to have considered the provisions in a similar manner inasmuch as he marked the show cause notice to all the directors and also to the President.

16. Under these circumstances, I hold that service of notice on the President alone cannot be construed as a service on the committee and all the members of the committee are required to be served, so that the representation of the members could be considered. In the instant case, there is total violation of the provisions of Section 34(1). The Directors of the managing committee have not been served at all. Further, the notice on the President Ch. Venkataiah alleged to have been served is not established for the reasons stated above. Thus, it is to be held that no opportunity has been provided to the committee and accordingly the impugned order issued by the 1st Respondent is wholly illegal and gross contravention of principles of natural justice.

17. It has now been held, even in the administrative actions also which have

effected on civil consequences, the principles of natural justice would come into play and consequently the Courts have held that the affected party is entitled for an opportunity. But in the instant case, the requirement has been provided in the statute itself, u/s 34 and violation of statutory provision would nullify the consequential proceedings.

18. Under these circumstances, I hold that the impugned orders dated 11-10-1995 are wholly illegal and are invalid.

19. The learned counsel for the petitioner also submitted that when the committee was constituted u/s 34 of the Co-operative Societies Act duly superseding the earlier managing committee, it would not be open for the 1st Respondent to induct the members of the erstwhile managing committee in the persons committee constituted by the 1st Respondent. Admittedly in the instant case Sri S. Venkataiah who was a director in the erstwhile managing committee is also appointed as a member of the committee and he was designated as Chairman. It is very much doubtful whether any such person can be again appointed as a member or as a Chairman in the persons committee constituted by the 1st respondent. But, however, I am not inclined to go into such aspect inasmuch as I held that the impugned orders as illegal on a separate ground mentioned supra.

20. It is urged by the learned Advocate General that the petitioner is having effective and alternative remedy by way of appeal u/s 76 of the Co-operative Societies Act, he ought not to have approached this Court under Article 226 of the Constitution of India. Inasmuch as there is a gross violation of principles of natural justice which has serious consequences, the Writ Petition cannot be thrown out on the ground of availability of alternative remedy. As already held, the very show cause notice itself is improper and the same has not been served on the petitioner and the members of the managing committee. No useful purpose will be served by filing an appeal. I also find that the Excise Sub-Inspector did not conduct any enquiry worth the name and no opportunity was given to the members of the managing committee, such report can not be relied upon by the 1st respondent. Even the defective report was not furnished to the petitioners. The scope of enquiry is also quite different from the allegations made in the complaint. Thus, the proceedings create serious suspicion about its bona fide nature. Thus, viewed from any angle, the entire proceedings are liable to be set aside.

21. For these reasons, the Writ Petition is allowed, the impugned order is quashed. Consequently, there shall be a direction to the 1st Respondent to renew the licence of TCS Kosgi for the year 1995-96 in the name of the President Chimanbavi Venkataiah, who was elected in the election conducted by the Excise authorities on 27-5-1995.

W.P.No. 22167/95:

22. Coming to the facts in the Writ Petition, the application for renewal of licence

was returned by the licensing authority and appellate authority. The renewal was refused on the sole ground that the Criminal Case is pending. The order was suspended by the Court on 13-10-1995. It has been held by this Court that the renewal application cannot be rejected on the mere ground of pendency Criminal Case in *Mallaiah v. Superintendent of Excise* 1988 (1) ALT 603 : 1988(1) APLJ 278.

23. The learned Government Pleader could not dispute the proposition. Hence, under the circumstances the Writ Petition is liable to be allowed.

24. Accordingly, the Writ Petition is allowed and the Respondents are directed to renew the licence of the petitioner society for 1995-96 without reference to the pendency of criminal case.

25. In the result, both the Writ Petitions are allowed. No costs.