

(2010) 03 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 14870 and 22836 of 2009 and WPMP No. 32419 of 2009 in Writ Petition No. 22836 of 2009

Vancha Veera Reddy and Bolla Narsi Reddy

APPELLANT

Vs

The District Cooperative Officer, Nalgonda and Others

Vallakonda Narasinga Rao Vs The District Cooperative Officer,
Karimnagar and Others

RESPONDENT

Date of Decision : 12-03-2010

Acts Referred:

Andhra Pradesh General Clauses Act, 1891 — Section 21, 6, 7
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 3A(1)

Citation : (2010) 03 AP CK 0018

Hon'ble Judges : P.S. Narayana, J;G. Bhavani Prasad, J

Bench : Division Bench

Advocate : Bobba Vijayalakshmi, for the Appellant; GP for Cooperation for Respondent Nos. 1 to 3, G. Anandam, for Respondent Nos. 3 to 6 in WP. No. 14870 of 2009, P. Pratap Reddy, in WP. No. 14870 of 2009 and P. Giri Krishna, for Respondent Nos. 4 and 5 in Writ Petition No. 22836 of 2009 and WPMP No. 32419 of 2009, for the Respondent

Final Decision : Allowed

Judgement

G. Bhavani Prasad, J.—Writ Petition Nos. 14870 and 22836 of 2009 arise out of a challenge to the respective notices issued u/s 34A of the Andhra Pradesh Co-operative Societies Act, 1964 (for short "the Act").

2. The petitioners in W.P. No. 14870 of 2009 contended that respondents 3 to 6 therein and the petitioners were elected as Directors with the 1st petitioner being further elected as the President of the Primary Agricultural Co-operative Society, Renikunta, Nalgonda District on 23-10-2005. Respondents 3 to 5 were claimed to have absented themselves for three consecutive meetings of the Managing Committee, while the 6th respondent was claimed to have become a defaulter in respect of two loans in spite of demand notices. The petitioners claimed respondents 3 to 6 to have been, therefore, disqualified to hold the offices under

Sections 21B and 21A of the Act respectively, which was brought to the notice of the District Co-operative Officer and Deputy Registrar of Co-operative Societies by the 1st petitioner-President. The resolution of the Managing Committee, dated 30-06-2009 removing respondents 3 to 6 from the Managing Committee, as they ceased to hold the office, and filling up the vacancies through cooption by a majority of eight Directors, was also communicated for necessary action. The petitioners stated that due to the disputes between the 1st petitioner, the President and the 7th respondent, the Vice-President, a letter appeared to have been given by five Directors along with respondents 3 to 6 u/s 34A of the Act on 09-07-2009 proposing to move a no confidence motion against the 1st petitioner. The Deputy Registrar of Co-operative Societies issued a notice, dated 09-07-2009 u/s 34A(3) of the Act read with Rule 24A of the Andhra Pradesh Co-operative Societies Rules, 1964 (for short "the Rules") convening a meeting of the Managing Committee on 30-07-2009, which was served on persons related to the petitioners on 22-07-2009. The notice was not served on the petitioners and no enquiries were made about the availability of the petitioners apart from the copy of the proposed no confidence motion not being enclosed to the notice. The service of notice was in violation of the minimum period of fifteen clear days prescribed by Section 34A(3) of the Act and any service or tender of a notice to the relatives or family members is no service and no confidence motion cannot be sustained, as respondents 3 to 6 ceased to hold office, though it was held in *Gaddampalli Jagpal Reddy and Others Vs. District Collector and Others*, that disqualification or cessation is not automatic, but is subject to a decision by the General Body of the society. Hence, the petitioners sought for setting aside the issuance of the notice u/s 34A of the Act as illegal, arbitrary and in violation of the principles of natural justice.

3. This Court passed an interim order on 24-07-2009 in W.P.M.P. No. 19521 of 2009 permitting the proposed meeting to go on to discuss the no confidence motion but directing that the decision that will be taken in the meeting shall not be given effect to.

4. The official respondents 1 and 2 claimed the letters about the disqualification of respondents 3 to 6 under Sections 21B and 21A of the Act respectively to have been received only on 14-07-2009 by the 2nd respondent who referred the same to the Sub-Divisional Cooperative Officer, Bhongiri for enquiry. Claiming to have received the letter proposing to move a no confidence motion on 09-07-2009 and to have issued the notice in question in consequence, it was stated by respondents 1 and 2 that the notices of the petitioners were served on a relative of the 1st petitioner and brother of the 2nd petitioner on 23-07-2009 respectively, as the petitioners were unavailable. While claiming the notice to be as per the Statute and the Statutory rules, respondents 1 and 2 claimed the copies of the notice to have been affixed on the notice boards of the society, the Registrar's Office and the Mandal Development Office. Respondents 3 to 5 were learnt to have not been given any opportunity of being heard and the 6th respondent was learnt to have not been subjected to any action in respect of his default and

hence, respondents 1 and 2 sought for the dismissal of the writ petition.

5. Respondents 3 to 6 contended that not impleading the other Directors makes the petition bad for non-joinder of necessary and proper parties and they denied absenting themselves for any meetings of the Managing Committee and claimed the 6th respondent to have not been subjected to any order of adjudication by any competent authority concerning any default. In any view, respondents 3 to 6 claimed to have a right of reinstatement on notice from the competent authority and to have not been served with any such notice. They claimed the notice of no confidence to suffer from no error of law or fact and the receipt of notice with knowledge of the contents of the same to be amounting to waiver. Respondents 3 to 6 claimed that they are entitled to participate in the process of no confidence and desired the writ petition to be dismissed with exemplary costs.

6. The 7th respondent's case is that the 2nd respondent did not initiate any action so far on the alleged disqualification of respondents 3 to 6, which is not automatic, but has to be dealt with by the General Body. The 7th respondent claimed that the petitioners and 11 other Directors attended the meeting on the motion of no confidence on 30-07-2009 and the motion was carried by a majority of the Managing Committee members making the 1st petitioner not entitled to continue as the President.

7. W.P. No. 22836 of 2009 was filed by the President of the Primary Agricultural Co-operative Society, Sirisilla, Karimnagar District, claimed to have been elected as such on 23-10-2005, who claimed to have come to know about the convening of a meeting to consider a no confidence motion moved by some of the members of the Managing Committee by a letter, dated 30-09-2009 through Asani Parasuram Reddy, a Director of the society, who was served with notice of the meeting convened on 26-10-2009 for the purpose by the Deputy Registrar of Co-operative Societies, Jagityal. The notice u/s 34A(3) of the Act was claimed to have been not served on the petitioner as per Rule 24A of the Rules either personally or through registered post. Claiming that the notice, dated 01-10-2009 was not served on him in spite of his availability with any clear gap of 15 days as prescribed by the statutory provision, the petitioner desired the issuance of notice to be struck down.

8. This Court passed an interim order on 26-10-2009 directing that the no confidence motion may go on but the decision need not be given effect to until further orders.

9. In addition to the official respondents, the Vice-President and a Director of the society desired to be impleaded as respondents 4 and 5, claiming in W.P.M.P. No. 32419 of 2009 that 11 Directors including the petitioners submitted a no confidence motion letter on 30-09-2009, on which the Deputy Registrar of Co-operative Societies issued personal notice to all the members of the Managing Committee on 01-10-2009, which was received by the writ petitioner on 03-10-2009. They claimed that the writ petitioner conveniently waited till

23-10-2009 and made a false allegation about coming to know about the meeting through another Director only three days prior to the writ petition. The result of the no confidence motion was not declared due to the interim orders of the Court, though the motion was passed by 11 Directors.

10. The official respondents 1 to 3 did not file any counter and no document/material/evidence has been placed before the Court by any of the respondents to probablise that the writ petitioner received the notice of the meeting convened on 26-10-2009, on 03-10-2009.

11. When W.P. No. 14870 of 2009 came up for hearing before one of us (Hon''ble Sri Justice P.S. Narayana) on 20-10-2009, it was considered that it will be just and proper for a Division Bench to decide whether Gaddampalli Jagpal Reddy v. District Collector, Nalgonda (supra) has to be affirmed in the light of the language of Rule 24B of the Rules and whether the deletion of Rule 24B by G.O.Ms. No. 37, Agriculture and Cooperation (Coop.IV) Department, dated 28-01-2002 has to be approved or disapproved, as it was a mere executive order and also whether 15 days clear notice is mandatory or directory and whether any element of prejudice would alter the situation. The controversy about automatic cessation was also noted with reference to Kadavakollu Ramulu and Another Vs. Commissioner for Co-operation and Registrar of Cooperative Societies, A.P., Hyderabad and others, The nature of requirement of fifteen days clear notice and the principle laid down in K. Sujatha Vs. Government of Andhra Pradesh and Another, were referred to and consequently, the matter was referred in toto to be decided by a Division Bench and is hence, before us.

12. W.P. No. 22836 of 2009 was directed to be listed along with the above writ petition as involving a similar question.

13. Smt. Bobba Vijayalakshmi, learned Counsel for the writ petitioners, Sri A. Jayasurya, learned Government Pleader for Cooperation, Agriculture and Marketing for the official respondents in both the writ petitions, Sri G. Anandam, learned Counsel for respondents 3 to 6 in W.P. No. 14870 of 2009, Sri P. Pratap Reddy, learned Counsel for the 7th respondent in W.P. No. 14870 of 2009 and Sri P. Giri Krishna, learned Counsel for the petitioners in W.P.M.P. No. 32419 of 2009 are heard at length and the provisions and the precedents referred to by them will be appropriately referred in due course.

14. Before going into the questions in controversy, it has to be noticed that the petitioners in W.P.M.P. No. 32419 of 2009 in W.P. No. 22836 of 2009 being the Vice-President and Director of the society in question are, undoubtedly, interested and proper parties and hence, their request for being included in the writ petition has to be positively considered, more so in the absence of any serious opposition for their request from the parties to the writ petition. Accordingly, W.P.M.P. No. 32419 of 2009 is allowed and the petitioners therein are impleaded as respondents 4 and 5 in W.P. No. 22836 of 2009.

15. Though the deletion of Rule 24B from the Rules by G.O.Ms. No. 37,

Agriculture and Cooperation (Co-op. IV) Department, dated 28-01-2002 was suspected to be through a mere executive order, while rendering the order of reference, the copy of the Rules Supplement to Part II Extraordinary of the Andhra Pradesh Gazette, dated 12-02-2002, in which the said Government Order was notified and published, shows that the Government Order was issued in exercise of the powers conferred by Sub-Section (1) of Section 130 of the Act by the Governor, making amendments to the Statutory Rules of 1964. The amendment was specified to be coming into operation from the date of notification and Section 130 Sub-section (1) of the Act clearly empowers the Government to make the rules by notification published in the Andhra Pradesh Gazette. A reference to Sections 6, 7 and 21 of the Andhra Pradesh General Clauses Act, 1891 would show the amendments to be duly made and the publication in the official Gazette of the amendments purporting to have been made in exercise of the rule making power under a notification shall have to be considered as conclusive proof that the amendments to the rules were duly made and must be deemed to be duly made.

16. Para 18 of the amendments under the said Government Order notified and published in the Andhra Pradesh Gazette directed that Rule 24B of the Rules shall be omitted and hence, the said Rule 24B must be deemed to have been omitted with effect from 12-02-2002 and the question (b) referred to the Division Bench has to be answered accordingly.

17. That leaves the remaining two questions to be decided about the nature and manner of cessation of membership on the ground of disqualification and the nature and manner of the notice required by Rule 24A of the statutory Rules.

18. Coming to the second question first, Rule 24A of the Rules about the meeting after receipt of no confidence notice was added to the original rules of 1964 by G.O.Ms. No. 102 (Co-op.IV), dated 27-02-1986 prescribing by Sub-Rule (2) the service of notice to be effected either by giving or tendering it to such person or by sending it by registered post to their addresses. Sub-Rule (1) prescribed a copy of the motion expressing no confidence to be enclosed to the notice and Sub-Rule (3) mandated that copies of notice shall be affixed on the notice boards of the society, the office of the Registrar, Panchayat offices and/or Mandal offices.

19. This Rule has to be traced to be arising out of Section 34A of the Act dealing with motion of no confidence in the President and Vice President of the Committee, Sub-Section (3) of which prescribes that the Registrar shall give to the members notice of not less than fifteen clear days of such meeting in such manner as may be prescribed. Even for an adjourned meeting under the Proviso to the said Sub-Section (3), such fifteen clear days notice was prescribed. The manner of service of such notice under Sub-Section (3) was, thus, prescribed by Rule 24A Sub-Rules (1) and (2) of the Rules.

20. While considering whether the relevant provisions of Section 34A of the Act and Rule 24A of the Rules are mandatory or directory, a learned Judge of this

Court considered them to be mandatory in *Gaddampaili Jagpal Reddy v. District Collector, Nalgonda* (supra). The learned Judge referring to the contention that the President refused to receive the notice resulting in affixture on the door, noted that such affixture of notice was not contemplated under Rule 24A(2) of the Rules and opined that the manner of service must be by giving or tendering it to such a person or by sending it by registered post to his address. The learned Judge concluded that if such a person refused to take notice when tendered, the only course left open is to send such notice by registered post. Hence, it was concluded that affixture of notice on the door is not sufficient service unless it is sent by registered post. The learned Judge also noted that the rule contemplates that the notice has to be given or tendered to the member alone but not to a family member of a member of the Managing Committee and service of notice on the wife or son of the member is also not in accordance with Rule 24A(2) of the Rules. Further, as in the case before the learned Judge, the notice of no confidence motion was not served on a member giving fifteen clear days notice as contemplated u/s 34A(2) of the Act read with Rule 24A(2) of the Rules, the learned Judge set aside the said notice and held that the meeting for consideration of motion of no confidence pursuant to such notice cannot be held.

21. Similar provisions under the Andhra Pradesh Panchayat Raj Act, 1994 were under consideration of a Full Bench of this Court in *K. Sujatha v. State* (supra). The statutory provision prescribed further action on a notice of a motion of no confidence to be in accordance with the procedure prescribed and the relevant statutory rules prescribing the manner and method of such motion and notice stipulated notice of not less than fifteen clear days excluding the date of notice and the date of proposed meeting in the prescribed form by giving or tendering such notice to the member or if such member is not found, by leaving such notice at his last known place of residence or business or by giving or tendering the same to some adult member or servant of his family or by sending it through registered post with acknowledgement due in case of outside residential address being known or where none of the earlier means is available or if the member or adult member of his family or servant of his family refused to receive the notice, by affixing the same at some conspicuous part of his place of residence or business. The same is the procedure for a notice even for an adjourned meeting.

22. The Full Bench referred to *K. Narasimhiah Vs. H.C. Singri Gowda*, wherein the Supreme Court considered mere despatch of the notice to the address of the person not to be complete giving or tendering of the notice and that the requirement of the rule should ordinarily mean that it must reach the hands of the person to whom it has to be given, even if the person to whom it is tendered refuses to accept it. The Supreme Court also held that any irregularity in complying with the provision of three clear days notice will make the proceedings invalid only when the proceedings were prejudicially effected by such irregularity. The conclusion was with reference to the other relevant provisions of the Statute throwing light on the intention of the Legislature.

23. The Full Bench then considered a Full Bench decision of Karnataka High Court in C. Puttaswamy, etc. Vs. Smt. Prema, etc., wherein also a similar prescription of fifteen clear days notice in respect of a motion of no confidence under the State Legislation concerning Panchayats, was under examination. The provisions of Karnataka and Andhra Pradesh Legislations were noted to be in pari materia and the Full Bench of Karnataka High Court following the ratio of the Supreme Court in Karnal Leather Karamchari Sanghatan (Regd.) Vs. Liberty Footwear Company (Redg.) and others, concluded serving of notice with not less than fifteen clear days before the meeting to be mandatory.

24. The Full Bench also referred to the Full Bench decision of Orissa High Court in Sarat Padhi Vs. State of Orissa and Others, considering a similar provision of Orissa Panchayat Legislation, wherein it was held that the duty to issue the notice and margin of fifteen clear days are mandatory, while any non-compliance with the requirement of mode of service or failure of any member to receive the notice was held to be only directory. It should be noted that the relevant statutory provision clearly provided that the proceedings of a meeting shall not be invalid merely on the ground that the notice has not been received by any member.

25. The Full Bench then referred to Sri Challapureddy Venkata Rao v. Revenue Divisional Officer, Vizianagaram and Anr. 1997 (6) ALD 514, wherein a learned Judge of this Court held the requirement of fifteen clear days notice to be not mandatory and unless real prejudice is demonstrated, the meeting is not vitiated by any inadequacy in the period of notice. It was also concluded that the period of notice has to be taken from the date of despatch and it is immaterial when it is served upon the members.

26. The Full Bench further referred to Yeni Reddy Raghava Reddy Vs. Government of A.P., Secretary, Panchayat Raj Department Secretariat, Hyderabad and others, rendered by a Division Bench of this Court, wherein the notice was considered to be only directory and it was opined that mere use of the word "shall" cannot make it mandatory especially when no consequence of non-compliance has been provided by the Legislature.

27. In B. Ananda Reddy v. The Revenue Divisional Officer, Jagtial W.A. Nos. 1755 and 1579 of 2003, dated 16-10-2003 that led to the reference to the Full Bench, service of fifteen days clear notice was held mandatory and insufficiency of the notice in the prescribed form annexed to the rules was held to make the meeting and the proceedings thereunder a nullity.

28. The Full Bench on an analysis of the rules in the background of the precedential law found that it must be held that the officer concerned must give and is bound to give notice of motion to every member in a requisite form annexed to the rules, which requirement is mandatory. The second portion of the rule that there should be fifteen clear days available between the two relevant dates i.e. the date of notice and the date of proposed meeting, was also held

mandatory, inasmuch as the concerned officer cannot act in a manner of even issuing notice of a period of less than fifteen clear days. It was, hence, concluded that breach of these two mandatory conditions would make the meeting as well as the proceedings taken therein invalid. Dealing with different modes of delivery of notice, the Full Bench held that the purpose and object of giving notice is only to give due intimation to the members and unless it is shown that the shortfall in the period of notice of the meeting has caused some prejudice to the member, neither the meeting nor the proceedings taken thereunder would be said to be invalid. Therefore, it was concluded that the decision of the Division Bench in *B. Ananda Reddy v. The Revenue Divisional Officer, Jagtial* (supra) is incorrect.

29. It should be noted that under Rule 24A of the Rules herein, the alternative modes of delivery of notice by leaving such notice at the last known place of residence or business of the member or by giving or tendering the same to some adult member or servant of his family or in case of the refusal of the member or the adult member of his family or servant of his family to receive the notice, by affixing the same at some conspicuous part of his place of residence or business, are not available like under the rule under consideration of the Full Bench. It should also be noted that the learned Single Judge deciding *Gaddampalli Jagpal Reddy v. District Collector, Nalgonda* (supra) had specifically noticed that any delivery or service by affixture of notice is not contemplated by the statutory rule and similarly it also did not contemplate any service of notice on a family member of the member. Non-compliance with Rule 24A of the Rules was, hence, concluded with reference to the specific language of the rule as to the mode of delivery of notice and in the absence of the delivery of the notice by any of the specified modes. It was further held that fifteen clear days notice prescribed by Section 34A(2) of the Act read with Rule 24A(2) of the Rules was violated. Thus, the decision of the learned Single Judge is in consonance with *K. Sujatha v. State* (supra) by the Full Bench (though it was not brought to the notice of His Lordship), which laid down with reference to comparable provisions that giving notice of motion to every member in the requisite form annexed to the rules with fifteen clear days available between the date of notice and the date of proposed meeting, is mandatory, while it is only any shortfall in the period of notice in spite of adopting the prescribed modes of delivery, that was considered directory, which would make the meeting or the proceedings taken thereunder invalid only on proof of some prejudice.

30. Precedents are further cited by the learned Counsel for the parties to throw light on the principles of interpretation of statutes in such situations.

31. In *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, the Supreme Court pointed out that the use of the word "shall", prima facie, indicates that it is mandatory, but the Court may ascertain the real intention of the Legislature by carefully attending to the whole scope of the Statute, the nature and the design of the Statute and the consequences which would follow from construing it one way or the other, the impact of the other provisions

whereby the necessity of complaint with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.

32. The Apex Court held in *State of Uttar Pradesh Vs. Jogendra Singh*, that the word "may" generally does not mean "must" or "shall". But where a discretion is conferred upon a public authority coupled with an obligation, the word "may" which denotes discretion should be construed to mean a command.

33. Considering the mandatory or directory nature of a statutory provision in *Ganesh Prasad Sah Kesari and Another Vs. Lakshmi Narayan Gupta*, the Apex Court reiterated the principle laid down by it earlier in *Govindlal Chhaganlal Patel Vs. The Agricultural Produce Market Committee, Godhra and Others*, by approving the following passage in Crawford on "Statutory Construction". "The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also while considering its nature, its design and the consequences which would follow from construing it the one way or the other."

34. In *State of M.P. and Another Vs. Pradeep Kumar and Another*, the Apex Court reiterated the same passage and its approval in *Govindlal Chhaganlal Patel v. Agricultural Produce Market Committee, Godhra (supra)* and opined that the use of the word "shall" in the context of Order XLI Rule 3A Sub-Rule (1) of the CPC need be interpreted as an obligation cast on the appellant without making its non-compliance punitive.

35. *Topline Shoes Ltd. Vs. Corporation Bank*, also laid down that too technical a construction of procedural sections that leaves no room for reasonable elasticity of interpretation should, therefore, be guarded against, provided always that justice is done to both sides, lest the very means designed for the furtherance of justice be used to frustrate it. A provision fixing time limits for filing replies under the Consumer Protection Act, 1986 was, hence, held to be directory and not mandatory.

36. *Kailash Vs. Nanhku and Others*, also laid down that merely because a provision of law is couched in a negative language implying mandatory character, the same is not without exceptions and keeping in view the entire context in which the provision came to be enacted, the same may be directory though worded in the negative form. The law stated in *Topline Shoes Ltd. v. Corporation Bank (supra)* was approved.

37. In *Deewan Singh and Others Vs. Rajendra Pd. Ardevi and Others*, the Apex Court noted the principle that where literal interpretation shall give rise to an anomaly or absurdity, the same should be avoided and while noting the necessity

to take recourse to harmonious construction, the need for a statutory authority to act within the four corners of the Statute was reiterated, while the Court shall not take recourse to a principle which would render the acts of a Statutory authority void in law.

38. While these principles of Statutory interpretation are unexceptionable, comparable provisions of the Panchayat laws were the subject of such interpretative process with particular reference to such well settled principles in *K. Sujatha v. State* (supra) and the law laid down by the Full Bench with regard to the provisions in *pari materia* is not only persuasive but also binding in interpreting the present rules.

39. Section 34A Sub-Section (2) of the Act requires a written notice of intention to make the motion of no confidence to be in the prescribed form and Sub-Section (3) prescribes convening of meeting to be within thirty days from the date on which such notice under Sub-Section (2) was delivered to the Registrar, who shall give to the members notice of not less than fifteen clear days of such meeting in such manner as may be prescribed. Under Rule 24A(2) of the Rules, the mode of service of notice was prescribed in the alternative by giving or tendering the notice to the member or by sending it by registered post to the address of the member, but in no other manner. In so far as the prescription of the written notice of intention to make a motion of no confidence being in the prescribed form and the duty of the Registrar to give to the members notice of not less than fifteen clear days of the meeting for consideration of the motion in such manner as may be prescribed are concerned, the provisions under consideration in *K. Sujatha v. State* (supra) are identical, while the mode of delivery or service of notice prescribed by Rule 24A of the Rules is restricted only to two ways unlike the rule under consideration in *K. Sujatha v. State* (supra) providing four alternatives. Without replicating all over again the same reasons forming the basis for the conclusion of the Full Bench, it can be straight away stated with reference to the principles referred to in various precedents cited that an identical conclusion has to be reached herein on the same logic. Consequently, it has to be concluded that the requirement of a written notice of the intention to make the motion of no confidence being in the prescribed form and such notice along with a copy of the proposed motion expressing no confidence having to be served on the members concerned with a notice of not less than fifteen clear days of such meeting in the manner prescribed, are mandatory in nature and any breach of either of the conditions would make the meeting as well as the proceedings taken therein invalid. However, if the date of despatch of the notice along with the motion expressing no confidence for service on the members is in compliance with the requirement of availability of fifteen clear days between the date of notice and the date of proposed meeting (with both the said dates being excluded in computing such period of fifteen clear days), any shortfall in the period of notice of meeting than fifteen clear days from the date of receipt of notice will make the meeting or the proceedings taken thereunder invalid only if some prejudice to such member is probablised by the

facts and circumstances of the case. In other words, the mere fact of shorter period of notice than fifteen clear days from the date of receipt of the notice in respect of any member will not per se make the meeting and the proceedings taken thereunder null and void without proof of some prejudice caused by such shortfall to such member.

40. The manner of service of such notice, however, shall be only as prescribed by Rule 24A of the Rules and any violation of Rule 24A of the Rules in this regard shall result in concluding absence of sufficient service of notice. Any resort to affixture of the notice or tendering or serving the notice on a member of the family of the member and the like will invalidate such notice as held in *Gaddampalli Jagpal Reddy v. District Collector, Nalgonda* (supra). Therefore, non-compliance with the manner of service of notice as prescribed by Rule 24A of the Rules also vitiates the notice and consequently, the meeting and the proceedings thereunder as service of notice in the manner prescribed has also to be considered mandatory like serving the notice in the prescribed form and despatching the notice within the required time frame.

41. Coming to the first question, it is to be noted that Section 21AA of the Act providing for cessation of membership of the committee is followed by Section 21B of the Act providing for cessation of membership and reinstatement, while Section 21A of the Act provides for various disqualifications for membership of Committee. Though a member of the committee shall cease to hold office as such in the event of the contingencies provided by Section 21AA or Section 21B of the Act, he has a right to be considered for reinstatement in the manner prescribed once during the term of the committee. Rule 24B of the Rules was originally providing for the procedure for such reinstatement requiring information from the President/Secretary to the Registrar, information from the Registrar to the member and the society and the liberty to the member to apply for reinstatement in case of the specified cessation. This rule was omitted from the rules under G.O.Ms. No. 37 with effect from 12-02-2002 the date of publication of the notification in the Gazette. Similarly, Rule 24(3) of the Rules originally provided for an order in writing by the Registrar declaring cessation of membership from the date of disqualification (under Section 21A) after an opportunity to state his objections and to be heard to the member.

42. A Division Bench of this Court in *R. Venkata Rangareddy and Another Vs. N. Muralidhar Rao and Others*, interpreting Section 21A of the Act and Rule 24(3) of the Rules (as they were then), held that they envisage an order in writing by the Registrar and 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. The Division Bench after referring to the earlier decisions on the aspect concluded that 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 and only upon the decision adverse to a member of the committee, he would become ineligible for being a member of the committee and the cessation of the membership of the committee would come into operation.

43. While dealing with a statutory rule under the Karnataka Societies Registration Act providing for automatic loss of membership on the ground of default in payment of annual subscription within the prescribed period, in *Hyderabad Karnataka Education Society Vs. Registrar of Societies and Others*, the Apex Court read down the rule to enable the member concerned to apply to the society by raising a dispute about automatic cessation of his membership, the acceptance of which by the society will entitle him to be not treated as dismembered.

44. *Kadavakollu Ramulu and Another Vs. Commissioner for Co-operation and Registrar of Cooperative Societies, A.P., Hyderabad and others*, was decided with reference to Section 21B of the Act and Rule 24B of the Rules as in existence then and referring to *Katakam Venkateswarlu and Another Vs. Asst. Director, Handlooms and Textiles and Others*, it was noted that who is the authority to declare the cessation of membership on failure to attend three consecutive meetings, was not prescribed, while under Rule 24B of the Rules, information from the President/Secretary to the Registrar, information from the Registrar to the member and the society, an order by the Registrar and a right to the member to apply for reinstatement, are prescribed. Therefore, the learned Judge held that there will not be any cessation of membership, unless an order is passed by the Registrar in terms of Rule 24B of the Rules.

45. The question was considered also in *Gaddampalli Jagpal Reddy v. District Collector, Nalgonda (supra)*. The learned Judge referred to Section 31A of the Act dealing with powers and functions of the committee including its power to recommend to the General Body for removal of any committee members disqualified u/s 21A, Section 21AA and Section 21B of the Act. The General Body has to take a decision when the recommendations of the Managing Committee are placed before it in terms of Sections 30 and 31 of the Act, due to which the learned Judge held that unless the cessation is reported to the Managing Committee and the Managing Committee passes a resolution recommending for removal of the ceased members and the General Body deals with the matter and passes a resolution, the disqualification or cessation is not automatic though such cessation may be ultimately from the date of disqualification. In the light of Section 31A and Section 30 of the Act referred to by the learned Judge, the disqualification or cessation cannot be considered to be automatic, the omission of Rule 24B of the Rules making no difference in this regard, more so, in the light of the right to be considered for reinstatement being preserved in the statute.

46. The insertion of Section 31A of the Act and the substitutions and additions made in Section 30 of the Act by A.P. Act 22 of 2001, dated 25-04-2001 obviously replaced the statutory procedure governing such situations u/s 21AA

and Section 21B of the Act and Rule 24B of the Rules. The omission of Rule 24B from the Rules under G.O.Ms. No. 37 with effect from 12-02-2002 was only consequential and either then or now the provisions of the Act and the Rules made thereunder, thus, do not make any cessation of membership automatic. Rule 24 of the Rules also was substituted with a new Rule 24 about disqualification for membership of Committee by G.O.Ms. No. 37 and apart from addition of some more disqualifications, the new rule, in tune with the other statutory changes, makes the cessation of membership of the Committee to be only on declaration by a resolution of the General Body, though from the date of the disqualification itself.

47. Therefore, the reference has to be answered that,:

(a) G.O.Ms. No. 37, Agriculture and Co-operation (Coop. IV) department, dated 28-01-2002 is not a mere executive order, but duly amended the rules in exercise of the statutory rule making power through the statutory notification duly published in the Andhra Pradesh Gazette.

(b) u/s 34A of the Act read with Rule 24A of the Rules, service of the notice of the meeting along with a copy of the motion expressing no confidence in the prescribed form, despatch of such notice for service with a gap of not less than fifteen clear days between the date of despatch of the notice and the date of meeting (with such date of despatch and date of meeting being excluded in computing the gap period) and such despatch for service of notice only in any of the alternatives prescribed by Sub-Rule (2) of Rule 24A and in no other manner, are mandatory and any violation of any of such mandatory requirements will make any such meeting or the proceedings thereunder invalid and illegal,

(c) However, if there is only shortfall in the period from the date of service of notice on a member as prescribed and the date of meeting, the meeting or the proceedings thereunder will become invalid only on some prejudice to such member being proved, and

(d) Any cessation of membership u/s 21A or Section 21AA or Section 21B of the Act is not automatic, but is subject to the decision of the General Body of the society on the recommendations of the Managing Committee, though any resolution of the General Body in favour of cessation of membership will take effect from the date of disqualification or cessation.

48. As the entire subject matter of the writ petitions was referred to the Division Bench, they have to be decided in the light of the above answers to the reference.

49. In W.P. No. 14870 of 2009, admittedly, notices were served on the relatives of the petitioners (as stated in the counter affidavit of the official respondents 1 and 2) and not the petitioners themselves in violation of Rule 24A of the Rules and even such service on the family members was only on 22/23-07-2009 in respect of the meeting on 30-07-2009 in violation of the prescription of fifteen clear days notice. Though no automatic cessation of membership of respondents

3 to 6 can be considered to have vitiated the notice of the proposed meeting, in the light of the violation of the mandatory requirement of Section 34A of the Act read with Rule 24A of the Rules, the meeting and the proceedings thereunder have to be considered invalid.

50. As already stated, in so far as W.P. No. 22836 of 2009 is concerned, the claim that there was no service of notice in any manner on the petitioner, is not contradicted by any material on record, though the impleaded respondents claimed that the writ petitioner also received the notice on 03-10-2009 about the meeting on 26-10-2009. In the absence of proof of issuance or service of notice as prescribed, the writ petition has to succeed.

51. Thus, due to violation of Section 34A of the Act and Rule 24A of the Rules to the extent their requirements are mandatory, the writ petitions have to succeed, but in the circumstances without costs.

52. The writ petitions are allowed accordingly without costs while clarifying that the quashing of notice in W.P. No. 14870 of 2009 is not due to any automatic cessation of membership of respondents 3 to 6 therein.

That Rule Nisi has been made absolute as above.

Witness the Hon''ble Sri. Nisar Ahmad Kakru, The Chief Justice on this Friday the Twelfth day of March, Two Thousand and Ten.