
(1998) 2 ALD 14 : (1998) 1 ALT 516

Andhra Pradesh High Court

Case No: Writ Petition No"s. 359 of 1996 and Batch

Y. Venkata Rama Rao
and Another

APPELLANT

Vs

Dy. Registrar of
Co-operative Societies,
Nuzvid, Krishna Dist.
and Others

RESPONDENT

Date of Decision: Nov. 3, 1997

Citation: (1998) 2 ALD 14 : (1998) 1 ALT 516

Hon'ble Judges: Y.V. Narayana, J; B. Subhashan Reddy, J

Bench: Division Bench

Advocate: Mr. M.V. Durga Prasad, for the Appellant; Government Pleader for Cooperation and Mr. D.V. Bhadram, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

B. Subhashan Reddy, J.

These three writ petitions have been heard together and are being disposed of together as common questions of law are involved revolving around the provisions contained u/s 34 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short "the Act") and its related provisions, regarding the supersession of the Managing Committee and effects thereof. There is already a decision of the learned single Judge (Justice S.R Nayak) reported in [Adapa Goverdhana Rao Vs. Deputy Registrar of Co-operative Societies and Others](#), which when cited in WPNo.359 of 1996, another learned single Judge, Justice G. Bikshapathy, had referred the writ petition to Division Bench in view of the important point involved having regard to the co-operative movement and that is how these cases have come-up before this Division Bench.

2. In Writ Petition No.359/1996, the 1st Petitioner is the President of Pallertamudi Chittaranjan Primary Agricultural Co-operative Society while the 2nd Petitioner is a

Member of the Managing Committee. They were elected as such by the General Body on 26-5-1995. In Writ Petition No.8201/1997, the sole petitioner is the President of Peddapalem Primary Agricultural Co-operative Society, Atchampet Mandal, Guntur District, having been elected as such on 31-7-1995. In the last writ petition i.e. WP No.8614 of 1997, the sole petitioner who is also the petitioner in the earlier writ petition i.e. WP No.8201/97 questions the order of supersession dated 17-4-1997 while in the first writ petition, what was questioned was the acceptance of resignation by the 1st Respondent on 3-2-1997. Writ Petition Nos.8201/1997 and 8614/1997 both relate to Peddapalem Primary Agricultural Co-operative Society. The strength of the Managing Committee of the said society is 12 apart from the President. The strength of the Managing Committee of Pallerlamudi Agricultural Co-operative Society is also 12 apart from its President. Here also, the order of supersession u/s 34(1) of the Act is questioned. There is a difference in the mode of supersession, as in WP No.359/1996, the order of supersession u/s 34(1) of the Act dated 13-1-1996 in RC No.2339/95-C was passed on the ground of mismanagement of the society resulting in the business of the society becoming standstill. Insofar as the other two writ petitions are concerned, it was on account of the 11 members resigning and then consequently there being no quorum to transact.

3. The Andhra Pradesh Co-operative Societies Act, 1964 underwent several amendments and hitherto the mode of election of the President was by the elected members of the Managing Committee, the President being one of such elected members. Thereafter, amendment was brought forth incorporating a provision for moving No Confidence Motion against the President and No Confidence Motion could be carried out by majority among the members of the Managing Committee. Section 34A was incorporated with 13 sub-sections by A.P. Amending Act No.21 of 1985 in that regard. The Act was further amended by A.P. Act No. 1 of 1987 by which sub-section (14) was inserted into Section 34A making the provisions contained in sub-sections (1) to (13) of Section 34A inapplicable in respect of President of any Co-operative Society elected by the members of the general body from among themselves. By this, it is clear that the Legislature thought that instability with regard to the post of President should be removed and made the post of the President stable so that there is no horse-trading among the members of the Managing Committee to dislodge him according to the whims and fancies of the majority of members, as, if there is a majority, the No Confidence Motion will be carried out without there being any rhyme or reason. The Legislature thought that power of supersession reserved u/s 34(1) of the Act is sufficient to meet a situation of mismanagement by the President when the President has got a role to play in such mismanagement. The Members of the Managing Committee have been directly elected by the General Body and so also the President as the President of the Society but not as a Member of the Managing Committee, which is in a marked contrast with the earlier mode of election, as already stated above. During pre 1995 period, if a member was superseded and he was a President, as he was losing the membership, he was automatically losing the Presidentship also. But, we cannot read the amended provision

in the same manner for the reason that President is directly elected and has got no connection with the election of the Managing Committee. The President presides over the Managing Committee and functions as a President of the Society having been directly elected. If the Committee as a whole is liable for mismanagement, the President cannot plead separate treatment. He is liable for supersession along with other members of the Managing Committee. We are not acceding to the arguments advanced by the learned Counsel for the petitioners that inasmuch as the President is separately elected by the General Body, the Managing Committee is also separately elected, Section 34(1) of the Act has got no application and that whatever may be the reason, only the Managing Committee may be superseded and that the President functions de hors the supersession of the Managing Committee. The reason is that even though President is elected separately than the Managing Committee, he is a part of the Managing Committee while discharging the functions as a President and as such he is liable for the commissions and omissions of the Committee, being party to the actions of the Committee. That is the essence of democratic polity, as otherwise, there is no meaning in co-operative movement. The co-operative movement cannot disassociate the President from the members and the President is an integral part of the Managing Committee insofar as the functioning is concerned and if there is any malfunctioning on account of mismanagement or wilful disobedience of lawful directions given by the authorities, not only the Committee but the President also gets superseded as a body whole and there cannot be any dissection between the President and the Managing Committee and it could have never been the intention of the Legislature that even in the case of mismanagement or mal-administration or wilful disobedience of lawful directives, to which President is a party, the President can be spared from supersession and that only Managing Committee can be superseded.

4. Hence, we hold that in the case of mismanagement of the affairs of the society or mal-administration thereof or wilful disobedience of lawful direction by the statutory authorities, the supersession of the Committee includes the President and there is no escape for the President from the said supersession. The case dealt by our brother, S.R. Nayak, J., in *A. Govardhana Rao v. Dy. Registrar of Co-op. Societies*, (supra) is one of such cases of mismanagement resulting in action u/s 34(1) of the Act for supersession. The learned Judge has correctly held that in such cases of mismanagement, the President being the constituent of the Committee, is bound by the actions of the Committee.

5. But, the situation will be entirely different, if the President is not at all a party to the acts of the members and he and other members cannot be superseded merely because the other members of the Committee resign either individually or en masse. Such a power of exercise of supersession cannot be read into Section 34(1) of the Act. It is applicable only when there is a finding of stigma against the functioning of the society. If we were to read that the members can get elected any time they want and then resign according to their whims and fancies in order to cause supersession of the Managing Committee, then it will

only lead to mockery of co-operative movement. It has to be borne in mind that for conducting elections, lot of public exchequer is spent so as to see that the Managing Committee functions for the fixed tenure and had the Legislature intended that resignation of majority members of the Committee should perse result in supersession of the Committee, then the Legislature would have certainly made it express and specific. The very purpose of introducing sub-section (14) to Section 34A is to see that there is a stability to the post of President who is directly elected by the General Body making a vital distinction from the President elected from among the members of the Managing Committee after he is firstly elected as Member of that Committee. When majority members in the Managing Committee are not permitted by the statute to throw away the President by the No Confidence Motion, the legislative intention is implicit that the majority members of the Committee cannot achieve the said purpose of throwing away the directly elected President by indirect and surreptitious method of resignations. This is the fairest and harmonious interpretation which this Court has to give in giving effect to an enactment of this nature. The co-operative movement should be beyond all party affiliations and work only in the directions of collective participation. We may also further add that as the elections are conducted by spending public exchequer, the elected members of the Managing Committee and even the President, if they resign, shall not be entitled to contest again during the tenure of the unexpired period of the term, as by the said resignations, either the President, Vice-President or the members, as the case may be, are presumed to be not willing to act as such, which if it cannot be stretched too far a period, can reasonably be stretched to the extent of the unexpired term of the Committee. The other reason that public exchequer cannot be charged for such whims and fancies of such persons is also relevant. We hope that such a provisions of disqualification is also inserted in all the electoral laws including that of Representation of Peoples Act.

6. In view of what is stated supra, we hold as follows :

(1) That the President and Members of the Managing Committee are separate entities drawing their power by virtue of their direct election from the General Body and are entitled to function during their tenure unless interrupted by the action of the statutory authorities under the Act.

(2) That the President gets superseded if he is a party to the mismanagement or mal-administration of the affairs of the society or to the wilful disobedience of the directives of the statutory authorities.

(3) That if the supersession is to be on the ground of lack of quorum because of resignation of majority of the members, the President does not get superseded and for the lack of quorum, such constituencies whose members resigned shall alone be subjected to election of the members for the unexpired tenure of the said Committee.

(4) The members who resigned shall not be eligible to recontest the election for the said unexpired period.

7. In view of what is stated supra, Writ Petition No.359/1996 is allowed for the reason that the ground is want of quorum and so far as the allegations are concerned, they are vague and no enquiry has been conducted.

8. With regard to WP No.8201/1997, we do not see any grounds to interfere as the members were free to resign but are not free to again contest as already stated supra. Hence, this writ petition is dismissed.

9. The other writ petition i.e. WP No.8614/1997 is allowed as the supersession is on account of resignation of 11 members of the society.

10. In WP No.359/1996, it shall be open to the authorities to issue a fresh show-cause notice with specific allegations so as to enable the petitioners to file an effective reply and if reply is filed seeking opportunity of enquiry, the same be given and a reasoned order be passed.

11. Insofar as WP No.8614/1997 is concerned, the proper authority among the respondents shall, within a period of three months from the date of receipt of a copy of this order, hold elections to the 11 constituencies whose members have submitted resignations and their tenure will be for the unexpired period co-terminus with the period of the President and also the one remaining member who did not resign.

12. There shall be no order as to costs.