

(2014) 10 AP CK 0006

Andhra Pradesh High Court

Case No: Writ Petition No. 26431 of 2014

Velivela Sivanand

APPELLANT

Vs

The Deputy Registrar of
Co-Operative Societies

RESPONDENT

Date of Decision: Oct. 13, 2014

Acts Referred:

- Andhra Pradesh Co-operative Societies Act, 1964 - Section 34(1)

Citation: (2015) 3 ALD 76

Hon'ble Judges: C.V. Nagarjuna Reddy, J

Bench: Single Bench

Advocate: R. Raghunandan, Senior Counsel for M. Karuna Sagar, Advocate for the Appellant; A. Prabhakar Rao Yadav, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

C.V. Nagarjuna Reddy, J.

This Writ Petition is filed for a Mandamus to set aside proceedings in Rc. No. 1167/2014/D, dated 05.09.2014, of respondent No. 1.

2. I have heard Sri R. Raghunandan, learned senior counsel for the petitioners, learned Assistant Government Pleader for Co-Operation of Government of Andhra Pradesh for respondent Nos. 1 to 5 and Sri A. Prabhakar Rao Yadav, learned counsel for respondent No. 6.

3. Petitioner No. 1 is the President, petitioner No. 2 is the Vice-President and petitioner Nos. 3 to 9 are the Directors of respondent No. 6-society.

4. On 10.07.2014, respondent No. 2 has visited the office of respondent No. 6-society and seized the records. Following the same, respondent No. 1 has issued proceedings in Rc. No. 1167/2014/D, dated 16.08.2014, purportedly under Section-34(1) of the Andhra Pradesh Co-Operative Societies Act, 1964 (for short the Act),

wherein he has alleged that respondent No. 2, during his inspection, has found that the Managing Committee of respondent No. 6-society has failed to conduct the General body meeting in the second half year of 2013-14 (from 01.10.2013 to 13.03.2014) and that in respect of some of the meetings held by them, the quorum was not shown. Respondent No. 1 has, therefore, provisionally concluded that the Managing Committee of respondent No. 6-society was not functioning properly and accordingly, the petitioners were called upon to show cause why the Managing Committee shall not be superseded under Section- 34(1) of the Act. The petitioners were given time till 04.09.2014, to submit their objections. On receipt of the said show cause notice, all the petitioners have submitted identical replies, wherein they have stated that in order to send their explanations, they may be provided with certified copies of the Minutes Book and granted 20 days time, from the date of supply of such copies, for sending their explanations. Without furnishing such copies, respondent No. 1 has passed the impugned order, whereby he has superseded the Managing Committee of respondent No. 6-society in purported exercise of his power under Section- 34(1) of the Act and appointed the President of Bantumilli Primary Agricultural Co-Operative Society, Bantumilli Mandal as Special Officer to manage the affairs of respondent No. 6-society for a period of six months or until further orders, whichever is earlier. Feeling aggrieved by this order, the petitioners filed this Writ Petition.

5. A detailed counter-affidavit is filed by respondent No. 1 and a reply-affidavit is also filed by the petitioners.

6. In his counter-affidavit, respondent No. 1 has, inter alia, stated that the petitioners have not approached respondent No. 2 by enclosing copying fees challan to supply the photo copies of the Minutes Book; that after filing of the Writ Petition, the petitioners once again requested for supply of photo copies of the Minutes Book without enclosing challan of copying fees; and that the petitioners were addressed on 09.09.2014, informing that the photo copies of the Minutes Book may be taken on payment of copying fees of Rs. 2/- per page.

7. In the impugned order, respondent No. 1 has, inter alia, stated that petitioner No. 1 has submitted a letter by himself and also the letters of nine other Managing Committee members on 02.09.2014, i.e., two days before the due date for submission of their explanations, with a request to accord 20 days time for filing objections after providing the true copy of the Minutes Book of respondent No. 6-society; and that the petitioners desire to drag on the issue and fabricate the record.

8. It is trite that the offices of the President, Vice-President and the Managing Directors are elective ones and the elected persons can be dislodged from such elective offices only by strictly following the procedure under law.

9. The gravaman of the allegations against the petitioners is that they have not held the General body meeting in the second half year of 2013-14 and also held certain Managing Committee meetings without quorum. The initial burden, therefore, heavily lies on the authority who made such allegations.

10. An order of supercession of an elected Managing Committee results in serious adverse consequences of dislodging the elected Managing Committee and appointing a Person-in-charge in its place. Such an order is not expected to be passed in a light hearted manner based on unilateral conclusions. The words after giving the committee an opportunity of making its representation under Section 34(1) of the Act will be rendered nugatory, if the material on which the authority concerned is seeking to place reliance is not furnished to the office bearers of the Managing Committee. It is not disputed that on receipt of the show cause notices, all the petitioners have requested for furnishing the photo copies of the Minutes Book of the meetings in order to enable them to submit their explanations.

11. From the observations of respondent No. 1 in the impugned order, viz., that representations have been received from the petitioners just two days before the due date for submission of explanations; and from the presumption, drawn from the said fact, that the petitioners are seeking to drag on the issue further, it is reasonable to presume that respondent No. 1 seems to be in a great hurry to pass an order adverse to the interests of the petitioners. Such an approach by respondent No. 1 exposes lack of rational approach on his part and his anxiety to pass an order in a haste without giving the petitioners proper opportunity of representing their case.

12. The reason given by respondent No. 1 that the petitioners have not enclosed challan for coping fees payable for supply of photo copies of the Minutes Book appears jejune for, it is not his case that at any point of time before the impugned order was passed, he has called upon the petitioners to pay such fees.

13. In a matter involving supercession of an elected Managing Committee, non-payment of fees for supply of photo copies of the Minutes Book constitutes too trivial a reason for withholding supply of relevant material and passing an order of supercession. Without affording the petitioners a fair chance of meeting the allegations relating to non-conduct of General body meeting in the second half year of 2013-14 and also the alleged improper conduct of certain Managing Committee meetings, respondent No. 1 passed the impugned order.

14. The observation of respondent No. 1 in the impugned order that the petitioners have made a request for furnishing photo copies of the Minutes Book with a view to tamper the record is far fetched for the reason that, admittedly, the original records are with respondent No. 1 and there can be no scope for the petitioners to tamper such record which is in the custody of respondent No. 1.

15. For the above-mentioned reasons, the impugned order of respondent No. 1 is set aside. Respondent No. 1 is directed to intimate the petitioners the charges payable by them for furnishing photo copies of the Minutes Book. Within one week from the date of receipt of such intimation, the petitioners shall pay the required charges. Thereupon, respondent No. 1 shall furnish photo copies of the Minutes Book to the petitioners. Within two weeks from the date of receipt of photo copies of the Minutes Book, the petitioners shall submit their explanations. Thereafter, respondent No. 1 shall pass an appropriate order and intimate the same to the petitioners.

16. Subject to the above directions, the Writ Petition is allowed to the extent indicated above.

17. As a sequel to disposal of the Writ Petition, interim order, dated 09.09.2014, in WPMP. No. 33062 of 2014 is vacated and WPMP. No. 33062 of 2014 filed by the petitioners for interim relief is disposed of as infructuous.