

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

WRIT PETITION No.5219 of 2015

Between:

G.V.Suryaprakash Reddy

....Petitioner

and

The State of Andhra Pradesh,
Represented by its Secretary to Government,
Agriculture and Cooperation Department,
Secretariat, Hyderabad,
And others.

....Respondents

JUDGMENT PRONOUNCED ON : 07.09.2015

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THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

1. Whether Reporters of Local newspapers : Yes
may be allowed to see the Judgments?
2. Whether the copies of judgment may be : Yes
Marked to Law Reporters/Journals?
3. Whether His Lordship wishes to : Yes
see the fair copy of the Judgment?

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

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Counsel for petitioner: Sri N.Jayasurya

Counsel for the Respondents : GP for Cooperation
Sri K.Rathanga Pani Reddy

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> Head Note:

? CITATIONS:

1. 1998 (1) ALT 467
2. 2000 (1) An.W.R. 82
3. (2011) 9 SCC 573

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

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ORDER:

The petitioner is the President of fourth respondent Society. While so, some of the members of the Managing Committee sent a requisition proposing to move no-confidence motion against the petitioner under Section 34-A of the Andhra Pradesh Cooperative Societies Act (for short, the Act). Pursuant to the said representation, the third respondent issued proceedings on 05.08.2014 proposing to move the meeting of no-confidence on 28.08.2014. Challenging the said proceedings, the petitioner approached the Government under Section 77 of the Act. The Government, vide its Memo No.6976/Coop.IV/2014, dated 27.08.2014, though granted stay of all further proceedings, later on vacated the same by order dated 21.02.2015. Challenging the same, the present Writ Petition is filed.

The Government filed a counter affidavit admitting that the petitioner was elected as the President of the Society and further stating that ten members of the Managing Committee submitted an application in Form AAA under Section 34-A(2) of the Act to the third respondent expressing want of confidence in the petitioner. After verification of records, the third respondent issued a notice to all the 13 elected

members of the Managing Committee on 05.08.2014 for convening the meeting of the Managing Committee on 28.08.2014. When the petitioner approached the first respondent, the first respondent issued an order of stay on 27.08.2014 until further orders keeping in view the interest of the Society pending receipt of report/records from the Registrar of Cooperative Societies/DCO, Kurnool. The elections to the District Cooperative Central Bank Limited, Kurnool, were held on 18.02.2013 and the petitioner was elected as the Vice President of the Bank. The President of the Bank tendered his resignation on 28.11.2014 and the powers and functions of the President were devolved on the Vice President till the elections to the post of President were held. Subsequently, the President was elected on 08.04.2015. It is also further stated that an appeal is covered under Section 76(1) of the Act on the decision passed or order made under Section 34-A of the Act, and the Andhra Pradesh Cooperative Tribunal is competent to entertain such appeal. In those circumstances only, the first respondent vacated the stay orders by Memo dated 21.02.2015. The petitioner was also informed of the said rule position by the first respondent by letter dated 21.02.2015 and he was advised to avail the opportunity under Section 76(1) of the Act. Instead of availing such remedy, the petitioner approached this Court.

This Court, while issuing notice to respondent No.4 on 03.03.2015, granted interim suspension of the impugned notice and also granted stay of all further proceedings in connection with no confidence motion against the petitioner for a period of six weeks, and it was later extended for a period of two weeks on 16.04.2015. The case came up for consideration on 06.08.2015 when the order of stay was not in operation. The Government filed the counter affidavit along with W.V.M.P.No.2283 of 2015. The impleaded respondent also filed W.V.M.P.No.1245 of 2015. Accordingly, the Writ Petition is taken up for consideration.

Learned Counsel for the petitioner submitted that the action of the

first respondent in vacating the stay granted earlier without issuing any notice is bad in law and is, accordingly, liable to be set aside and sought remand of the matter to the first respondent.

Learned Government Pleader, on the other hand, submitted that since the Government felt that it has no jurisdiction, it vacated the stay and the petitioner was also informed of the rule position by letter dated 21.02.2015 stating that the Andhra Pradesh Cooperative Tribunal is competent to entertain such appeal against the representation submitted by the petitioner and advised him to avail the said opportunity. The papers also show that Memo No.2192/Coop.IV/2015, dated 05.05.2015, was issued to the Commissioner for Cooperation & Registrar of Co-operative Societies, Hyderabad that this Court in W.P.No.18096 of 2014, in the case of Gollapalem PACS in Guntur District suspended the stay orders issued by the Government as there is an appeal provision existing in Section 76 of the Act and informed him that in order to avoid further litigation in the matter, the stay orders issued on 11.08.2014 were vacated and the petitioner was also informed to avail the available remedy.

When this Court pointed out to the learned Counsel for the petitioner with regard to the jurisdiction of the first respondent to entertain the so-called representation submitted by the petitioner, the learned counsel for the petitioner is unable to point out the jurisdiction of the first respondent. On the other hand, learned Government Pleader produced before me a copy of the order of this Court in **V.S.Mukthar v. Principal Secretary to Government**^[1], wherein it was clearly held that the Government has no power to interfere in the process of no confidence motion. In another decision in **Toddy Tappers Co-operative Society v. Government of Andhra Pradesh**^[2], this Court held that when the representation of the petitioner was entertained, the respondents/members, who moved no confidence motion alone are aggrieved and they should be put on notice, but, since the representation

was wrongly entertained, the Government can vacate the stay earlier granted on mistaken impression of the provisions of law. This Court considered the scope of Section 77 of the Act and held as follows:

“Applying the principle laid down in the two judgments quoted above, it becomes abundantly clear that the writ petitioners were given an opportunity of making a representation. In fact, they had moved the Government and they had filed a petition. After they filed a petition in writing the requirement of Section 77(2) got complied with. It was only the respondents who had to be notified and who had to be given a right to represent but not the petitioners who had been given a chance to represent. The learned Counsel for the petitioners has not been able to show a single authority which would suggest that a personal hearing of the petitioners was needed when the case finally decided by the Minister. The Minister while deciding the revision had before him the revision which was made by way of revision by the petitioners and on the basis of which he had exercised his jurisdiction. Section 77 makes it clear that the Minister or the Registrar, as the case may be, can exercise his powers of revision either *suo-motu* or on motion by anybody. Since in this case the revisional powers were exercised on the basis of application moved by the writ petitioners, therefore, sufficient opportunity had been given to the petitioners to make a representation against the order which was impugned.”

Though the learned Government Pleader relied on **Pratap Chandra Mehta v. State Bar Council of India**^[3], it is a case dealing with the existence of the power to move the no confidence motion and it is not applicable to the present facts of the case, where the revisional power of the Government is under challenge.

Though the petitioner was advised on 21.02.2015 to avail the remedy of appeal, the petitioner did not choose to avail such remedy and approached this Court.

In the circumstances, the Writ Petition is liable to be dismissed, and the same is, accordingly, dismissed. The miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

(A.RAMALINGESWARA RAO, J)

07.09.2015

VS

[\[1\]](#) 1998 (1) ALT 467

[\[2\]](#) 2000 (1) An.W.R. 82

[\[3\]](#) (2011) 9 SCC 573