

*** THE HON'BLE SRI JUSTICE R. KANTHA RAO**

+ WRIT PETITION No.7776 of 2015

% 25-03-2015

R. Narsimhulu S/o. Balaiah.

....Petitioner

And

\$ The State of Telangana, Rep. By its Prl. Secretary, Cooperative Department,
Secretariat, Hyderabad and others

.... Respondents

! Counsel for the Petitioner: Sri L. Venkateshwar Rao

^ Counsel for the Respondents: Government Pleader for Cooperation

<Gist :

>Head Note:

? Cases referred:

1. 2008 (3) ALT 236
2. 2010 (3) ALT 761 (DB)
3. AIR 1989 SC 630

-
-
-
-

THE HON'BLE SRI JUSTICE R. KANTHA RAO

-

WRIT PETITION No.7776 of 2015

ORDER:

This writ petition is filed seeking a Writ of Mandamus declaring the action of the 2nd respondent in issuing notice in Rc.No.469/2015-C, dated 04.03.2015, informing the members of DCCB Bank, Medak District at Sangareddy about motion of No Confidence against the President of DCCB Limited, Medak under Section 34-A(2) of A.P. Cooperative Societies Act, 1964 moved by respondent Nos.3 to 16 as illegal, arbitrary and against the principles of natural justice and consequently to set

aside the same.

2. Heard the learned counsel appearing for the petitioner and the learned Government Pleader for Cooperation.

3. The matter came up for hearing on 24.03.2015 and was adjourned for today. The respondents have not filed any counter. However, the learned Government Pleader produced the relevant records and submitted his arguments. Since, the No Confidence Motion is scheduled to be held on 26.03.2015, this Court took up the hearing of the writ petition for the purpose of final disposal.

4. The brief facts necessary for considering the writ petition may be stated as follows:

The petitioner is a member of the Managing Committee of the District Cooperative Central Bank Limited (DCCB Bank), Medak. The Managing Committee comprises of the President, Vice President and 19 Directors. The 3rd respondent, who is the Vice President and 13 other Directors gave a notice to the Registrar expressing their intention to move a motion of No Confidence against the President-Mr. M.Jaipal Reddy and the no confidence motion is schedule to be held on 26.03.2015.

5. It is submitted by the petitioner that he suffered from eye infection and consulted the Doctors on 07.03.2015 and on their advice, he was admitted in Sarojini Naidu Eye Hospital, Hyderabad on 13.03.2015 and the Doctors operated his eye and he was discharged from the Hospital on 17.03.2015. He took rest for 3 days and came to his native place at Kohir Village and Mandal on 20.03.2015. After arriving at his place, he came to know that the unofficial respondents are moving No confidence motion against the President of DCCB Limited, Medak. On further enquiry, he came to know that no notice was served upon him either by hand or by Registered Post informing about the motion of no confidence scheduled to be held on 26.03.2015. Thereafter, he requested one of the Directors who received the notice to supply a copy of the no confidence motion and accordingly, he received the impugned notice dated 04.03.2015.

6. The contention of the petitioner in the present writ petition is that under Rule 24-A(2) of A.P. Cooperative Societies Rules, 1964 (for short 'the Rules'), a notice has to be tendered to him in person or sent by Registered Post. But, no such notice was

given to him as contemplated under the aforementioned rule and, therefore, the impugned notice proposing no confidence motion on 26.03.2015 is liable to be set aside.

7. The learned counsel appearing for the petitioner submits that as the mandatory requirement under Rule 24-A(2) of the Rules has not been complied with, the impugned notice proposing no confidence motion on 26.03.2015 is liable to be set aside in this writ petition.

8. On the other hand, the learned Government Pleader contends that the officials of the respondent-Bank tried to serve notice in person on the petitioner, but as he was not found, a copy of the notice was affixed on the front door of the house of the petitioner. It is further contended that notice by registered post as contemplated under the aforementioned rule was sent to the petitioner on 05.03.2015 and, therefore, there is enough compliance of Rule 24-A(2) of the Rules and the writ petition is liable to be dismissed.

9. Before proceeding to adjudicate the issue, it is relevant to extract Rule 24-A(2) of the Rules, which is as follows:

“(2) The service of notice may be effected in any of the following ways, namely:—

(a) by giving or tendering it to such person ; or

(b) by sending it by registered post to their address.”

According to the above mentioned provision, the notice has to be served on the members of the Managing Committee by giving or tendering it to such person or by sending it by registered post to their address.

10. Since the expression or is used, the notice can be given in either of the modes mentioned in (a) or (b) of Sub Rule 2 of Rule 24-A of the Rules. As regards the service of notice in person to the petitioner, the learned single Judge of this Court in **Gaaddampalli Jagpal Reddy and others Vs. District Collector, Nalgonda and others**, took the view that service of notice on the wife of the member of the Managing Committee is not in accordance with the Rule 24-A(2) of the Rules, as the Rule contemplates that the notice has to be tendered or given to the member of the Managing Committee, but not to his family members. The Division Bench of this Court in **Vancha Veera Reddy and another Vs. District Co-operative Officer,**

Nalgonda and others, took the same view. But in the above two judgments, this Court has not examined the issue as to giving notice by the registered post. A plain reading of the Rule clearly shows that the intention of the legislature is certainly not that a notice has to be actually served on the members of the Managing Committee. Therefore, the legislature has used the expressions namely that notice to be given directly to the person or sending by registered post. Therefore, it is not open for the member of the Managing Committee to contend that the notice is not actually served on him and, therefore, the impugned notice in relation to no confidence motion has to be set aside.

11. The question which requires determination in the present writ petition is whether there is enough compliance of the provision i.e., Rule 24-A(2) of the Rules by the Registrar.

12. The petitioner filed certain documents showing that he was hospitalized, his eye was operated upon during the relevant period and therefore, he has no knowledge about the notice. This Court is not inclined to examine the truth or correctness of the said documents, because this Court wishes to adjudicate the issue on the supposition that the petitioner was in fact is not aware of the notice of no confidence motion on account of his non-availability in the village. In this context, it would be necessary to peruse the judgment of the Supreme Court in **Madan and Company Vs. Wazir Jaivir Chand**, wherein the Supreme Court dealing with a notice calling upon to pay arrears of rent and also terminating the tenancy, took the view that where the Act provides for the service of the notice, by post, when once the notice is sent by post and the notice is delivered to the post office, the person who sent the notice has no control over it. It is to be presumed to have delivered to the addressee under Section 27 of the General Clauses Act. The Supreme Court further viewed that to interpret the provision, as requiring that the letter must have been actually delivered to the addressee, would be virtually rendering it a dead letter. The Supreme Court further explained that a landlord must be held to have complied with the statutory requirement by sending a notice correctly addressed to the tenant by registered post. Though, the Supreme Court was interpreting a provision in a different enactment, the ratio laid down by the Supreme Court will equally apply to the facts of the present case, while interpreting Rule 24-A(2) of the Rules.

13. The learned counsel appearing for the petitioner filed a document obtained from

internet and tried to demonstrate before the Court that even by 19.03.2015, the impugned notice sent by registered post was not served on the petitioner. But the very same document shows that the notice was sent on 05.03.2015. The learned Government Pleader filed the receipts, which show that the notices were sent to all the members of the Managing Committee on 05.03.2015. The learned counsel appearing for the petitioner submits that though the said receipt shows that the notice was sent to the petitioner on 05.03.2015, the receipt does not contain the address of the petitioner and, therefore, the respondents have to establish that notice was sent to the correct address of the petitioner.

14. In the instant case, there is no ambiguity with regard to the address of the petitioner. The only contention raised by the petitioner in this writ petition is that during the relevant period, he was in the hospital for the purpose of eye operation. Moreover, while exercising jurisdiction under Article 226 of Constitution of India, this Court is not supposed to evaluate the evidence adduced by both parties. However, this Court for the purpose of arriving at an opinion has to examine the material placed by both parties and has to arrive at a prima facie opinion as to the contentions raised by the either of the parties.

15. Therefore, meticulous examination of evidence is not required while disposing of this writ petition. As already stated that by enacting Rule 24-A, certainly it is not the intention of the Legislature that notice has to be actually served on the members of the Managing Committee. The Rule only mandates giving of notice by tendering it in person or by sending by registered post. The provision also provides for affixing the notice on the notice board of the society and also on the notice board of the Office of the Registrar. The provision further provides that if the area of the society extends to more than one Panchayat or Mandal Office, the notice shall be affixed in all Panchayat Offices or Mandal Offices. Thus, the Legislature took care of the absence of service of notice so as to enable the members to know about the proposed no confidence motion. Since the official respondents could be able to demonstrate before the Court that the notices were sent to all the members of the Managing Committee by post and produced receipts, this Court is of the considered view that the impugned notice cannot be set aside as there is enough compliance of Rule 24-A(2) of the Rules by the Registrar.

16. For the foregoing reasons, this writ petition fails and accordingly, the same is dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in this writ petition shall stand closed.

R. KANTHA RAO, J

Date: 25.03.2015

Note: L.R. Copy to be marked

(B/o)

ska