

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION Nos.469, 2131 & 2610 of 2015

COMMON ORDER:

All these three cases are being disposed of with the consent of parties after hearing them.

2. W.P.No.469 of 2015 is filed challenging the proceedings of the third respondent dated 13.01.2015 holding that the petitioner ceased to hold office as President of the fourth respondent Society under Section 21AA of the A.P. Cooperative Societies Act, 1964 (for short, the Act). W.P.No.2131 of 2015 is filed challenging the proceedings of the third respondent dated 17.01.2015 in removing the petitioner from the post of member of Managing Committee of the fourth respondent Society. W.P.No.2610 of 2015 is filed challenging the proceedings of the second respondent dated 02.02.2015 appointing an Election Officer for conducting election to the post of President of the fifth respondent Society as a consequence to the orders passed by the third respondent in W.P.Nos.469 and 2131 of 2015.

3. For convenience, the parties shall be referred to as they are arrayed in W.P.No.2610 of 2015.

4. The petitioner was elected as the President of the fifth respondent in the elections conducted in the month of February, 2013. While so, in November 2014, the Divisional Cooperative Officer, Bodhan, issued a notice framing the following two charges against the petitioner.

“1. The Motor Cycle No. AP 25 AN 4875, the own property of the society used by the president of the society to his personal works

2. The plot for 8 ¼ cents at Satyanarayanapuram village,

own property of the society is sold by the president without prior permission of the registrar.”

5. Based on the same, the third respondent ordered for an inquiry under Section 51 of the Act by proceedings dated 14.11.2014. The Inquiry Officer conducted the inquiry and submitted a report. Pursuant to the inquiry, the third respondent issued a show cause notice on 03.01.2015 and called for explanation from the petitioner. The petitioner submitted his explanation dated 10.01.2015 through the Divisional Cooperative Officer, Bodhan on 12.01.2015. After receipt of the explanation, the impugned order was passed by the third respondent.

“ORDER

In exercise of powers conferred on me under Section 21AA, sub-section 1 clause (b) of APCS Act 1964 read with G.O.Ms.No.19 Agril. & Cooperation (Coop-IV) Department, Dt:01-02-1995, I the District Cooperative Officer, Nizamabad hereby order that Sri N.Veera Raju, President of PACS Ltd., Varni is ceased to hold office as President of PACS Ltd., Varni forthwith for the residue of his term of office.

The Vice President of PACS Ltd., Varni shall discharge the duties of President until further orders or till the election to the post of President is held.”

6. As a consequence to the same, the third respondent passed another order on 17.01.2015 as follows:

“ In exercise of powers conferred on me under Section 21AA, sub-section 1 clause (b) of APCS Act 1964 read with G.O.Ms.No.34 Food & Agril (Coop-IV) Department, dt: 18.01.1989 and G.O.Ms.No.19 Agril & Coopn (Coop-IV) Dept. dt:01-02-1995, I the District Cooperative Officer, Nizamabad hereby order that Sri N.Veera Raju, President of PACS Ltd., Varni is ceased to hold office as Member of Managing Committee of PACS Ltd., Varni forthwith for the residue of his term of office.

The Vice President of PACS Ltd., Varni shall discharge the duties of President until further orders or till the election to the post of President is held.”

These two orders were challenged in W.P.Nos.469 of 2015 and W.P.No.2131 of 2015 respectively.

7. In W.P.No.2131 of 2015, a counter-affidavit is filed by the third respondent stating that after passing of the orders, the petitioner himself visited the Society on 17.01.2015 and handed over the charge to Vice-President. Further he stated that a typographical error was found in the proceedings of the third respondent dated 13.01.2015 and hence another order was passed on 17.01.2015 holding that the petitioner ceased to be a member of the Managing Committee instead of ceased to be President of the fifth respondent Society. He also stated that there is no recorded evidence like log book or any other record to show that the motor cycle was used for office purpose. Hence, the explanation of the petitioner was found to be not convincing and the impugned orders were passed.

8. W.P.No.2610 of 2015 arises out of a consequential order passed by the second respondent to conduct elections to the post of President which fell vacant consequent to the impugned orders passed by the third respondent in W.P.Nos.469 and 2131 of 2015.

9. It is an admitted case of the parties that an Inquiry under Section 51 of the Act was ordered and the Inquiry Officer submitted his report. Pursuant to the report submitted by the Inquiry Officer, a show cause notice was issued to the petitioner and the petitioner submitted his explanation. Basing on the explanation, the two impugned orders dated 13.01.2015 and 17.01.2015 holding that the petitioner ceased to be a member of the Managing Committee of the fifth respondent Society were passed. In the

counter-affidavit filed in W.P.No.2131 of 2015, the third respondent states that the order dated 13.01.2015 was passed under misconception and the order passed on 17.01.2015 alone should be taken into consideration.

10. Be that as it may, in the cases of an order passed under Section 21AA of the Act, an opportunity should be given to the person affected by that order and no such opportunity was given in the instant case. The learned Government Pleader admits that the Inquiry under Section 51 of the Act is different from a proceeding initiated under Section 21AA of the Act. In respect of Section 21AA, this Court feels that there is violation of principles of natural justice inasmuch as no enquiry was conducted and no finding was recorded while passing the orders by the third respondent.

11. In the circumstances, this Court is constrained to set aside the orders passed by the third respondent dated 13.01.2015 and 17.01.2015 by allowing W.P.Nos.469 and 2131 of 2015. In view of the allowing of above Writ Petitions, W.P.No.2610 of 2015 is also allowed as no vacancy is caused to the post of President and no election is required. However, it is open to the third respondent to follow the principles of natural justice and take necessary action, if he thinks it fit to take action against the petitioner under Section 21AA of the Act. No order as to costs. Miscellaneous Petitions, if any, pending in these Writ Petitions shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 23.06.2015
TJMR