

THE HON'BLE SRI JUSTICE R.KANTHA RAO

WRIT PETITION NOs.35831 OF 2014 AND 3963 OF 2015

COMMON ORDER:

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

The parties are referred to as they are arrayed in W.P.No.35831 of 2014.

The petitioner is the President of Primary Agricultural Cooperative Society, Tandur ("Society" for short). Respondent No.3 is the Secretary and respondent Nos.4 to 15 are the directors of the said society.

The second respondent issued notice dated 19.07.2014 under Section 34-A of the Andhra Pradesh Co-operative Societies Act, 1964 ("the Act" for brevity) and the same is served on the petitioner on 29.07.2014. In the said notice, a no confidence motion as contemplated under Section 34-A of the Act was proposed to be moved on 15.07.2014. Aggrieved by the said notice, the petitioner filed W.P.No.22585 of 2014 stating that there was no 15 days clear notice to him proposing no confidence motion and therefore, the same cannot be sustained in law. Before the learned Single Judge, learned Government Pleader for Cooperation fairly conceded that the notice was short of 15 days. Thereafter, the learned Single Judge allowed W.P.No.22585 of 2014, however, directing the respondents therein to move fresh no confidence motion giving a 15 days clear notice contemplated under Section 34-A(3) of the Act.

It is submitted by the petitioner in the present Writ Petition that another notice dated 03.11.2014, proposing to conduct no confidence motion, was served on the petitioner only on 12.11.2014 and that he was absent from the village on account of ill-health from 05.11.2014 to 12.11.2014. Thus, according to the petitioner, again there was no valid notice as it was short of 15 clear days as mandated under Section 34-A(3) of the Act.

Earlier, another learned Single Judge, before whom the matter came up for hearing, heard both sides and passed an order directing the respondents to proceed with the no confidence motion but not to declare the results. Accordingly, no confidence motion was moved against the petitioner, but the results were not declared. The respondents filed a petition to vacate the orders passed earlier restraining the respondents from declaring the results.

W.P.No.3963 of 2015 is filed seeking to declare the action of the first respondent in not taking steps for effective functioning of the Society after 26.11.2014 as illegal and in violation of the provisions of the Act and consequently, to direct the second respondent to take steps for effective functioning of the Society by vesting the power on the first respondent in taking decision. Learned counsel appearing for the petitioner in W.P.No.3963 of 2015 submitted that disposal of W.P.No.22585 of 2014 would also decide the result of W.P.No.3963 of 2015 and therefore, separate adjudication of W.P.No.3963 of 2015 is not necessary. Thus, both the Writ Petitions came up for adjudication this day before the Court.

Reliance is placed by the learned counsel appearing for the petitioner on Section 34-A(3) of the Act, which lays down that the Registrar shall give to the members notice of no confidence motion of not less than 15 clear days of the meeting. Similarly, as per the corresponding Rule 24-A of the Andhra Pradesh Co-operative Societies Rules, 1964 ("the Rules" for brevity), the service of notice may be effected either by giving or tendering it to such person or by sending it through registered post and a copy of the notice shall also be affixed on the notice board of the society and also on the notice board of the Office of the Registrar.

Learned counsel, basing on the aforementioned provisions, argued that since the notice was neither actually served on the person nor sent through registered post and it came to his notice only on 12.11.2014, which is short of 15 clear days, it is not valid notice and

basing on it no confidence motion cannot be carried on.

Learned Government Pleader for Cooperation brought to the notice of this Court the material contentions urged in the counter affidavit in paragraph No.6, wherein it is stated that as per the order of this Court, the first respondent issued notice on 03.11.2014 for conduct of no confidence motion meeting on 26.11.2014 as per 34-A(3) of the Act and that he has given 18 clear days notice except public holidays. It is further stated in the affidavit that the petitioner and another Director, Sri Isa, have intentionally avoided taking of notice and that as per the letter and panchanama, the officials of respondents pasted the notice on the main portion of the petitioner's house and that the petitioner's son removed the notice of no confidence motion from the wall on the same day. It is further stated that the Deputy Registrar also convened a Press Meet on 06.11.2014 informing the public of conduct of meeting and also intimated the fact that the subordinates have pasted the notice of no confidence motion on the wall of society on the same day i.e., on 06.11.2014.

Nextly, respondents 4 to 15 have filed no confidence motion in Form AAA dated 14.07.2014 and the copy of the same was sent to all the members of the Managing Committee of the Society, as per the directions of this Court. It is further submitted that a copy of the notice was also affixed on the Society as per Rule 24-A(3) of the Rules.

Learned Government Pleader for Cooperation contended that in fact, the petitioner had notice of no confidence motion but he avoided to receive the same, on that it was affixed on the conspicuous portion of his house in the presence of his son, who removed it and hence, it cannot be said that there is no valid notice under Section 24 of the Act and therefore, the Writ Petition is liable to be dismissed.

In view of the rival contentions, the only issue, which requires determination in the present Writ Petitions is whether the impugned notice is valid and in accordance with the provisions of Section 34-A of the Act and Rule 24-A of the Rules. A copy of the panchanama

attested by the Sarpanch of Tandur is made part of the record of the Writ Petition, which clearly shows that when on 06.11.2014, the notice of no confidence motion was sought to be served on the petitioner, he was very much present in the village and conveyed the information to the officials that he was not present in the village and on that the notice was affixed on the front portion of the house of the petitioner and also on the notice board of the office of the Society. Another copy of the panchanama dated 06.11.2014 attested by the Divisional Cooperative Officer and another clearly shows that when the notice was sought to be served on the petitioner, the petitioner's son came and informed that his father was not in the house and the notice was affixed on the gate of the house and soon thereafter, the petitioner's son, in the presence of the officials, tore away the notice.

Even though the aforementioned provisions of the Act and Rules are silent about refusal of the notice, it is settled legal preposition that whenever a notice is refused, no further steps regarding service of the notice need be taken.

Therefore, in the instant case, there is no force in the contention of the learned counsel that a notice of no confidence motion fell short of valid notice as contemplated under Section 34-A of the Act. The contention urged by the petitioner in the present Writ Petition is unsustainable, as this Court considers that there is valid service of notice of no confidence motion. Thus, the results of the no confidence motion, which had already been carried, can now be announced. Consequently, the respondents are permitted to declare the results of the no confidence motion, which was held on 26.11.2014.

W.P.No.35831 of 2014 is, accordingly, dismissed. Since no further orders are necessary, W.P.No.3963 of 2015 stands closed. There shall be no order as to costs. Miscellaneous petitions, if any, pending in both the Writ Petitions shall stand dismissed.

(R.KANTHA RAO, J)

9th March 2015
RRB