

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.5607 of 2015

% 12-3-2015

R.Amber Singh

and another

... Petitioners

Vs.

\$ The Deputy Registrar of
Cooperative Societies,
Divisional Coop. Officer,
Bodhan, Nizamabad Dist.,;
and 4 others

... Respondents

! Counsel for the Petitioners: Sri Nandigam Krishna Rao

Counsel for the Respondents: Government Pleader for
Cooperation

< Gist:

> Head Note:

? Cases referred:

Nil.

HON'BLE SRI JUSTICE R.KANTHA RAO

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Writ Petition No.5607 of 2015

Date: 12-3-2015

Between

R.Amber Singh

and another

... Petitioners

and

The Deputy Registrar of
Cooperative Societies,
Divisional Coop. Officer,
Bodhan, Nizamabad Dist.;
and 3 others

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

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Writ Petition No.5607 of 2015

Order:

The 1st petitioner is the President and the 2nd petitioner is the Vice President of the Primary Agricultural Cooperative Society, Chandoor village, Varni Mandal of Nizamabad district. They were elected as members of the Society in the month of January, 2013 and thereafter, as President and Vice-President of the said Society. It is submitted by them that by reason of change in the political scenario in the State, the political party which is in power abducted certain members of the Society and kept them in a camp since 19-02-2015 and got issued a letter purportedly written by 10 members of the Society expressing their intention to move Motion of no-confidence against the petitioners on the allegations viz., that the activities of the Society are run by the petitioners without consulting the Managing Committee Members, that they are ill treating the Managing Committee Members and that they are ill treating the farmers and causing loss to the income of the Society. Subsequently, a notice dated 21-02-2015 was issued proposing to hold the meeting

of Motion of

no-confidence on 13-3-2015 at 10.30 a.m. in the office of the Society. But, the said Notice was served on the petitioners and other Managing Committee Members on 27-02-2015.

2. The contention of the petitioners is that the notice of Motion of no-confidence falls short of 15 days and therefore, not in accordance with Section 34-A of the Andhra Pradesh Cooperative Societies Act, 1964 (the APCS Act, for short) and the Rules framed thereunder.

They submitted that according to Section 34-A of the APCS Act, there must be 15 days clear time for the debate and holidays have to be exempted from the said period and that the Motion of no-confidence which was proposed on

13-3-2015 shall not be carried on. They also submitted that as per Rule 24-A of the Andhra Pradesh Cooperative Societies Rules, 1964 (the APCS Rules, for short),

it is mandatory to issue notice with copies to be affixed on the notice boards of the Society and the Gram Panchayat to which the operation of the Primary Agricultural Cooperative Society extends but no such notices have been affixed. Under the aforementioned circumstances, they filed the present writ petition invoking jurisdiction of this Court under Article 226 of the Constitution of India for a Writ of *mandamus* to set aside the proceedings dated 21-02-2015 duly served on the petitioners on 27-02-2015 proposing to hold meeting of Motion of no-confidence under the provisions of the Act.

3. The 1st respondent filed Counter Affidavit on behalf of the respondents contending *inter alia* as follows:

That 10 out of 13 members of the Managing Committee issued a notice dated 19-02-2015 to convene a meeting to move the Motion of no-confidence against the President and Vice President of the Society on 13-3-2015. Accordingly, the 1st

respondent issued notice dated

21-02-2015 proposing to hold a meeting of the Managing Committee for the purpose of discussion and voting on the proposed Motion of no-confidence on 13-3-2015 at

10.30 a.m. in the office of the Society. It is submitted by the respondents that the said notices dated 21-02-2015 were handed over to the Chief Executive Officer (CEO) of the Society with a direction to serve on all the 13 Managing Committee Members and also to affix the same on the Notice Boards of the Society as well as the Gram Panchayat concerned. They were affixed on the Notice Boards of the Society as well as the Gram Panchayat. Further, the CEO of the Society met the petitioners who are the President and the Vice President of the Society on 23-02-2015 and

24-02-2015 respectively around 6 p.m. at their respective residences and requested them to receive the notices.

Both of them received the notices, read the contents and returned them to the CEO asking him to come on the next day. Thereafter, it is said that the CEO met the President on 23-02-2015 and the Vice President on 24-02-2015.

Both of them had some internal discussions and refused to receive the notices. Thus, according to the respondents, the President and Vice President though did not acknowledge receipt of the notices on 23-02-2015 and 24-02-2015, they had perfect knowledge about the contents of the notice.

4. Nextly, it is submitted that as required under Section 24-A of the APCS Rules, the notices were also sent to the addresses of the President and the Vice President of the Society on 24-02-2015 by registered post. The letter sent to the President was returned on 24-02-2015 with

an endorsement that the addressee refused to receive the letter whereas the Vice President received the letter sent by Registered Post on 27-02-2015. Therefore, the version of the respondents is that both the President and the Vice President of the Society by a

calculated design having full knowledge about the notices made it to appear that they received the notices on 27-02-2014 for the purpose of showing that there is no 15 days' clear notice as contemplated under Section 34-A of the APCS Act.

It is asserted by the respondents that the President read the contents of notice on 23-02-2015 and the Vice President read the contents of notice on 24-02-2015 and therefore, their contention that they had no knowledge about the notice till 27-02-2015 is factually incorrect and it is

a deliberate, fabricated fact to suit their purpose in the present writ petition. It is the case of the respondents that as both of them had knowledge about the notice on the aforementioned dates respectively, the notice should be treated as deemed service on them and that they had clear notice of 15 days when the CEO had met them on

23-02-2015 and 24-02-2015 respectively and that they are fully aware of the fact that 10 out of 13 members of the Managing Committee have given a notice to move Motion of no-confidence against them, the chances of their survival in the face of Motion of no-confidence being lean, they came out with the invented and concocted story that there is no clear 15 days' notice from 27-02-2015 on which date they accepted the notice. Contending as above, the respondents sought to dismiss the writ petition.

5. I have heard Sri Nandigam Krishna Rao, learned counsel appearing for the petitioners and the learned Special Government Pleader for Cooperation appearing for the respondents.

6. The learned counsel appearing for the petitioners contends that the Registrar of Cooperative Societies shall give to the members of the Society notice of not less than 15 clear days of the meeting of Motion of no-confidence and the provision is mandatory. In the instant case, since there is no 15 clear days' of notice, the notice shall be declared as invalid.

7. On the other hand, the learned Special Government for Cooperation referring to the contentions urged in the counter argued that since the notice was tendered by the CEO of the Society to the petitioners 1 and 2 on 23-02-2015 and 24-02-2015 respectively, it is deemed that they had knowledge of the said notice and therefore, there is no substance in the contention that there is no 15 days' clear notice to the petitioners.

8. Section 34-A(3) of the APCS Act shall be read along with Rule 24-A of the APCS Rules. Sub-rules (2) and (3) of Rule 24-A of the APCS Rules lays down as follows:

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

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

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

(3) 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.”

The proviso reads as under:

“Provided that if the area of Society extends to more than one Panchayat or Mandal Office the notice shall be affixed in all Panchayat Offices or Mandal Offices”.

9. The version of the respondents is that they have complied with all the requirements of Rule 24-A of the APCS Rules. They asserted in the counter that the CEO of the Society personally gave the notice to the petitioners on 23-02-2015 and 24-02-2015 respectively. They have gone through the contents of the notice but asked him to come on a subsequent day. Therefore, the contention of the respondents is that the petitioners have knowledge of the Motion of no-confidence on the aforesaid two dates and the notice is in accordance with the

provisions of the APCS Act and the APCS Rules. This Court while exercising jurisdiction under Article 226 of the Constitution of India is not supposed to evaluate the evidence. However, after going into controversial facts, to arrive at a *prima facie* opinion, it can examine the facts asserted by both parties and also the material placed on record by them.

10. The learned Special Government Pleader for Cooperation furnished to this Court, the acknowledgements of the petitioners 1 and 2 and the envelope sent to the 1st petitioner. The envelope sent to the 1st petitioner shows that the addressee refused. The envelope also shows that it was despatched on 24-02-2015 and the Postal authorities approached the 1st petitioner on 25-02-2015. Therefore, the refusal of the 1st petitioner relates back to the date 25-02-2015 and the endorsement clearly shows that when the concerned person of the Postal Department approached the 1st petitioner, he did not accept the envelope and refused to take notice. Further, the acknowledgment of the 2nd petitioner also shows that the envelope was despatched to him on 24-02-2015, which is indicative of the fact that he must have also received the same on 27-02-2015 cannot be accepted. Further, there is an alternative efficacious remedy available to the petitioners by way of an appeal under Section 76 of the APCS Act if at all they wanted the evidence has to be meticulously examined. The petitioners without approaching the Cooperative Tribunal under Section 76 of the APCS Act by way of an appeal, approached this Court. This Court, however, examined the material placed by the respondents for arriving at the *prima facie* opinion as to when the notice was tendered to the petitioners in time. Either in Section 34-A of the APCS Act or in Rule 24-A of the APCS Rules, the expression used by the Legislature is by giving or tendering the notice. Nowhere the expression that the notice has to be actually served on the members of the Society is used. By placing relevant material, the respondents could be able to demonstrate before this Court that notice was tendered to the petitioners and there

was 15 days' clear notice to the petitioners of the Motion of no-confidence proposed to be moved against them on 13-3-2015.

11. The learned counsel appearing for the petitioners relied on some judgments of this Court to show that there must be 15 clear days of notice for moving Motion of no-confidence. There is no doubt about the proposition. But, in the instant case, as already said, the respondents could be able to establish that there was 15 days' clear notice as contemplated under the APCS Act to the petitioners.

12. For all these reasons, the writ petition fails and the same is dismissed without any order as to costs.

The miscellaneous petitions, if any, pending in this writ petition shall stand closed.

R.KANTHA RAO, J.

12th March, 2015.

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Note:-

L.R. Copy to be marked.

(B/o)

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.5607 of 2015

12th March, 2015.

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