

* HON'BLE SRI JUSTICE R.KANTHA RAO

+ Writ Petition No.444 of 2015

% 08-4-2015

Velivela Sivanand

and 8 others

... Petitioners

Vs.

\$ Deputy Registrar of Coop. Societies,

Govt. of AP at Machilipatnam;

and 7 others

... Respondents

! Counsel for the Petitioners: Sri R.Raghunandan,

Senior Counsel,

Rep. Sri M.Karuna Sagar

Counsel for Respondents 1 to 4: Government Pleader

for Cooperation

Counsel for Respondents 5 to 8: None appeared

< Gist:

> Head Note:

? Cases referred:

Nil.

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.444 of 2015

Date: 08-4-2015

Between

Velivela Sivanand

and 8 others

... Petitioners

and

Deputy Registrar of Coop. Societies,

Govt. of AP at Machilipatnam;

and 7 others

... Respondents

HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.444 of 2015

Order:

The petitioners are President, Vice President and Directors of Primary Agricultural Cooperative Credit Society Limited (PACS), Bantumilli, Krishna district, the

5th respondent herein. They were elected in the elections held for the 5th respondent-Society in January, 2013.

It is submitted that they are the sympathisers of the erstwhile ruling party and due to political rivalry at the instance of the politicians of the ruling party and also some of the members of the Society, who are unhappy with the election of the petitioners as Directors, the official machinery was incited to find ways and means to supersede the petitioners by one method or the other. In furtherance of the said *mala fide* intention, the 1st respondent visited the office of the 5th respondent on 10-7-2014, verified the books, bundled all the records of the 5th respondent-Society including the minutes book of its

committee meetings, General Body meetings, cash book etc., took them away without even issuing any receipt to the office-bearers of the Society.

2. Thereafter, the 1st respondent issued a show cause notice dated 16-8-2014 to all the petitioners stating that the perusal of the books of the Society revealed that meetings of the Managing Committee held on 23-8-2013 and 25-02-2014 were not closed and meetings held on 15-5-2014, 21-5-2014 and 30-6-2014 had no *quorum* and were not closed and also stating that the General Body meeting of the Society which was to be held for the 2nd half year ended on 31-3-2014 was also not held.

On the aforesaid grounds mentioned in the notice, the 1st respondent sought explanation from the petitioners and other directors as to why the Managing Committee should not be superseded under Section 34(1) of the Andhra Pradesh Cooperative Societies Act, 1964 (the APCS Act, for short).

3. On receiving the said notices, it is said that the petitioners by letters dated 02-9-2014 requested the 1st respondent to furnish them the copies of the records which were taken away by the 1st respondent during the inspection so that the petitioners can file their reply after perusing the documents. They also made representations to the 4th respondent setting out the factual circumstances under which the 1st respondent issued the show cause notice. They also made applications under the Right to Information Act relating to the conduct of inspection and seizure of all the records by the 1st respondent.

4. It is submitted by the petitioners that while they were waiting for the copies of the records to be furnished to them, a copy of the

order dated 05-9-2014 was left in the office of the 5th respondent-Society, which indicated that the petitioners did not file their objections to the show cause notice on or before 04-9-2014 as directed, their request for furnishing copies of the minutes book of the Society is for the purpose of dragging on the issue and for fabricating the records and therefore, the 1st respondent arrived at the opinion that the Managing Committee of the 5th respondent-Society was not functioning properly and deserved invocation of Section 34(1) of the APCS Act. Accordingly, the 1st respondent vide order dated 05-9-2014 superseded the elected Managing Committee of the 5th respondent-Society and appointed a Special Officer, who was directed to take charge of the 5th respondent-Society.

5. Challenging the order, dated 05-9-2014, superseding the elected committee of the 5th respondent-Society, the petitioners filed W.P.No.26431 of 2014 with a prayer to restore the Managing Committee of the 5th respondent-Society with the petitioners and others, who were duly elected directors by setting aside the order passed by the 1st respondent.

6. Initially, this Court granted interim order suspending the order dated 05-9-2014, however, after hearing both parties, disposed of the writ petition by order dated 13-10-2014 directing the 1st respondent to furnish the photo copies of the documents required by them and thereafter to pass an appropriate order considering the objections of the petitioners and to intimate the same to them.

7. After furnishing the required information by the 1st respondent, it is submitted that the petitioners filed their detailed objections to the show cause notice dated 16-8-2014 and requested the 1st respondent either to withdraw the show cause notice or to constitute an enquiry committee under

judicial monitoring and probe the root cause of the order superseding the Society.

8. In the objections, the petitioners have explained in detail as to the irregularities and lapses pointed out in the show cause notice and contended that there were no lapses on the part of the Managing Committee, the causes were invented with a view to supersede the Managing Committee and accordingly requested to drop any proposed action.

9. Next, it is submitted by the petitioners that without considering their explanation in a proper perspective, the 1st respondent passed the impugned order dated 12-01-2015 superseding the Managing Committee of the 5th respondent-Society and appointed a Special Officer Committee to take over the affairs of the Society. According to the petitioners, the impugned order is passed with a *mala fide* intention to somehow or other supersede the Managing Committee of the Society without proper enquiry and also without there being any evidence supporting the allegations mentioned in the show cause notice.

10. It is submitted by the petitioners that all the meetings mentioned in the show cause notice and the impugned order were held and the persons attended the meetings also signed in the register containing the agenda of the General Body meeting. As far as the minutes of the meeting are concerned, it is submitted that they would be normally recorded by the Secretary of the 5th respondent-Society and that there is some delay on the part of the Secretary to record the meetings but the 1st respondent did not bother to enquire any of the members of the Society to verify whether the meeting of the General Body was in fact held on 30-3-2014 or not. As to the allegation that the petitioners subsequently manipulated the records, it is submitted by them that as the records were taken away by the 1st respondent in

the absence of the petitioners, absolutely there was no scope for them to manipulate the records. There were no over-writings of dates in the agenda book as alleged. The 1st respondent did not consider the pleas of the Chief Executive Officer (CEO) whose responsibility is to prepare agenda and minutes.

11. It was alleged in the show cause notice that it is mentioned in the report that there were over-writings at pages 84 and 85 in respect of the date on which the General Body meeting was proposed to conduct on 30-3-2014.

As to this, the explanation offered by the petitioners was that the agenda was noted well before 15 days of conduction of General Body meeting and therefore, the over-writing was not done subsequently.

12. As to the allegation that from page 46 to 51 of the General Body meeting book, which shows the attendance but does not show that whether the General Body meeting was conducted, whether there was quorum or whether it was concluded, it is submitted by the petitioners that the signatures of all the members would be taken only when the General Body meeting is conducted and in the top it is clearly stated that the meeting was conducted under the leadership of the Chairman of the 5th respondent-Society on 30-3-2014.

13. It is further submitted that the CEO mentioned in the minutes book that he could not complete the minutes at the time of General Body meeting itself reveals that though the General Body meeting was conducted, it was not recorded due to pressure of work and Samaikhyandhra Agitation. According to the petitioners, this is a clinching evidence which shows that the General Body meeting was conducted on 30-3-2014 and the 1st respondent overlooked the said fact while passing the impugned order.

14. As to the allegation that the vouchers submitted pertaining to the expenses on 30-3-2014 seem to be bogus, it is submitted by the petitioners that advance expenses were booked on 13-3-2014 itself in respect of the expenditure to be incurred for the meeting to be proposed on 30-3-2014 and duplicate copy of the same was sent to the Krishna District Central Cooperative Bank Limited (the KDCC Bank, for short) on the same day. Therefore, they submit that merely because a small arithmetical or clerical correction is existing, it cannot rule out the genuineness of the vouchers since the duplicate copy (carbon copy) was sent to the KDCC Bank on the same day when they were drawn.

15. It is further submitted that in the day book at page 24, there are no corrections and the expenses for the General Body meeting on 30-3-2014 were clearly written. According to the petitioners, since the carbon copies were sent to the KDCC Bank much prior to the visit of the predecessor of the 1st respondent, it is impossible to tamper the cash book and day book since already carbon copies of the same were sent to the KDCC Bank long prior to the visit of the 1st respondent's predecessor. Therefore, it is submitted by the petitioners that even though there is clinching evidence showing that the General Body meeting was conducted on 30-3-2014, the 1st respondent did not take into consideration such evidence and passed the impugned order.

16. It is further submitted by the petitioners that the 1st respondent while passing the impugned order, did not follow the directions issued by this Court in the earlier writ petition and passed the order in a mechanical way and the order being arbitrary, biased and illegal is liable to be set aside in the present writ petition.

17. It is further submitted that no reasons have been set out in the impugned order, it is a non-speaking order and it has been

passed in violation of the principles of natural justice. Under the aforementioned circumstances, the petitioners filed the present writ petition seeking a Writ of *mandamus* declaring the order dated 12-01-2015 passed by the 1st respondent as illegal, arbitrary, discriminatory, biased and violative of Articles 14, 19 and 21 of the Constitution of India and consequently to set aside the same.

18. The respondents 1 to 4 filed counter affidavit contending as follows:

The CEO of Bantumilli PACS Ltd., made a request on 28-6-2013, 22-7-2013 under a copy to petitioner No.1 to file execution petitions against the legal heirs of the delinquent members who misappropriated an amount of Rs.25,92,930/- but the CEO of the Society did not take any steps to file the execution petitions. Thus, the petitioners failed to take necessary action for filing the said execution petitions and also they have not taken any action against the CEO of the Society for not filing the execution petitions for recovery of the amounts of the Society misappropriated. The fact that the records were taken away by the

1st respondent without any information to the office-bearers of the Society is denied. It is submitted that the records were seized from the CEO of the Society on 12-7-2014 by the 1st respondent. It is further submitted that in the inspection, a cash deficit of Rs.4,36,362/- was found in respect of the conduct of business of fertilisers. It is further submitted that it was noticed in the inspection that the Managing Committee of the Society failed to conduct General Body meeting in the 2nd half year of 2013-14, the Managing Committee meetings were not closed, there was no *quorum* for the meetings conducted by the Managing Committee of the 5th respondent-Society. Therefore, according to the respondents, the above irregularities attract the provisions of the APCS Act which provide for supersession of the Managing Committee of the 5th respondent-Society.

19. Next, it is submitted that the impugned order superseding the Managing Committee of the Society was passed strictly in accordance with the order passed by this Court in W.P.No.26431 of 2014. It is submitted that the

1st respondent initiated enquiry under Section 51 of the APCS Act into the affairs of the 5th respondent-Society by appointing Sri Abdul Hadi, Sub Divisional Cooperative Officer, Avanigadda and on receiving the enquiry report, the 1st respondent obtained objections from the petitioners, called for the original records, recorded the statements of the petitioners and the CEO of the Society and in consideration thereof, the 1st respondent passed the impugned order superseding the Managing Committee of the 5th respondent-Society and appointed Special Officer

(3-men Committee). It is further submitted that the

1st respondent verified the records of the 5th respondent-Society and found that there is *prima facie* evidence in respect of misappropriation of the funds of the Society and also noticing that the minutes of the General Body meetings of the Managing Committee were not conducted as per the provisions of the APCS Act and the Rules made thereunder, passed the impugned order which does not require any interference in the present writ petition.

20. Further, it is contended that there were no entries made in the Society Register showing that the meeting was conducted on 30-3-2014 or no *quorum* or not conducted or postponed at the closure of the attendance register and therefore, the contention of the petitioners that the explanation of the CEO is the only evidence regarding the conduct of General Body meeting cannot be accepted. It is further contended that the entries in the cash book on 31-3-2014 at pages 33 and 34 were altered changing the total amount, the evidence submitted by the petitioners was verified with the original records and thereafter it was concluded that after the closure of cash book, the entries were incorporated to create bogus expenditure.

21. It is contended that the Managing Committee of the 5th respondent-Society itself agreed that there is no resolution recorded in the minutes book but they submitted that the payment of salary to Mrs. Jaya Lakshmi of an amount of Rs.3,900/- which was recorded in the cash book on 31-3-2014 is proof regarding the conduct of General Body meeting cannot be accepted. Thus, according to the respondents, the vouchers and agenda book are not the proof for conducting General Body meeting and therefore, the objections raised by the petitioners were rejected. Contending as above, the respondents sought to dismiss the writ petition.

22. I have heard Sri R.Raghunandan, learned Senior Counsel representing Sri M.Karuna Sagar, learned counsel for the petitioners and the learned Government Pleader for Cooperation appearing for the respondents 1 to 4.

23. The learned Senior Counsel for the petitioners submits that on trivial allegations in respect of which there is no proof, the 1st respondent passed the impugned order superseding the Managing Committee of the 5th respondent-Society under Section 34 of the APCS Act at the behest of the political rivals of the petitioners, there are no circumstances warranting supersession of the committee, the order impugned is prompted by *mala fides* and being illegal, is liable to be set aside in the present writ petition.

24. On the other hand, the learned Government Pleader for Cooperation would contend that the 1st respondent arrived at an appropriate opinion that the committee is not functioning properly and the decision taken by the 1st respondent, which is passed on enough material, does not require any interference in the present writ petition.

25. If the circumstances which prompted the supersession of

the Managing Committee of the

5th respondent-Society are examined, it has to be noticed in the first instance that even though the petitioners requested the 1st respondent to furnish the copies of the documents basing on which the action is proposed, the 1st respondent initially passed an order superseding the committee refusing the request of the petitioners on the ground that they made the request for furnishing copies of documents only to protract the issue. Only when this Court by order dated 13-10-2014 interfered in W.P.No.26431 of 2014 and directed the 1st respondent to furnish the copies, the copies were furnished and the very same order was again passed superseding the committee.

26. One of the grounds on which the order of supersession is passed is that an amount of Rs.4,36,362/- became due to be recovered from some of the members who misappropriated the amounts of the Society and the CEO of the Society failed to file the execution petitions.

The 1st respondent expressed the view that the President and the members of the Managing Committee failed to instruct the CEO of the Society to file execution petitions against the individuals who misappropriated the amounts of the Society and this was considered as one of the grounds for superseding the committee. The situation is not that the recovery of the amount was time-barred on account of non-filing of execution petitions. Merely because there is some delay on the part of the CEO which was explained by him as well as the petitioners, it cannot be one of the grounds for superseding the elected committee.

27. The other ground on which the impugned order was passed is that the General Body meetings of the Managing Committee were not conducted as per the provisions of the APCS Act and also as per

the bye-laws of the Society. As to this, the contention of the petitioners is that they conducted General Body meetings and merely because the CEO of the Society failed to record the same in the minutes book, it cannot be said that the General Body meetings were not conducted. The version of the petitioners is that the other records of the Society clearly indicate that the General Body meetings were conducted but the

1st respondent did not take into consideration the said evidence which is borne out by the records and also the evidence of the CEO and passed the impugned order in an arbitrary manner.

28. The book relating to minutes of the General Body meetings disclose that the General Body meetings were conducted till 22-9-2014 and the same has been duly recorded in the minutes book. The contention of the respondents is that perusal of the minutes book relating to the General Body meetings of the committee held on 23-8-2013 and 25-02-2014 were not closed and meetings held on 15-5-2014, 21-5-2014 and 30-6-2014 had no *quorum* and were not closed and therefore, it is an irregularity which can form one of the grounds for superseding the committee. The aforementioned meetings were recorded in the minutes book but the CEO failed to mention the aforementioned aspects in the minutes book. Merely because there are some omissions on the part of the CEO, it cannot be said that the General Body meetings were not properly conducted and the same cannot be said to be one of the grounds for superseding the committee.

29. The main ground on which the committee was superseded is that the General Body meeting of the Society which was to be held for the 2nd half year ended on 31-3-2014 was not held. As to this, the contention of the petitioners is that the General Body meeting was held on 30-3-2014 and the same was recorded in the minutes book on 30-3-2014, which contains the

signatures of the members who attended the meeting. The statement of the petitioners that all other records such as cash book and vouchers would clearly indicate that the expenses were drawn for the General Body meeting and the General Body meeting was held but the 1st respondent failed to consider the aforesaid records and also the evidence of the CEO who clearly stated before him that the General Body meeting was held on 30-3-2014.

30. In this connection, it would be necessary to refer to the day book of the Society, original of which is placed before the Court at the time of hearing of the writ petition. The day book clearly shows that it contains the expenditure incurred in connection with the General Body meeting held on 30-3-2014. The details of the items which were purchased in connection with conducting the General Body meeting were mentioned in the day book. The same was not accepted by the 1st respondent on the ground that there was a correction in the total amount mentioned in the day book. Perusal of the day book clearly shows that the correction has nothing to do with the details of the expenditure mentioned in the day book. It would clearly appear that without considering the total expenditure under different heads which was incurred for the purpose of conducting General Body meeting on 30-3-2014 which is reflected in the day book, the 1st respondent without any basis arrived at the conclusion that the said entries were manipulated. Perusal of the day book does not reveal the manipulation of the entries and it shows that the day book contains the details of expenditure which was incurred at the time of General Body meeting.

31. The cash book also shows on 31-3-2014 an amount of Rs.3,900/- was paid towards the salary of one Mrs. Jaya Lakshmi on 31-3-2014. The 1st respondent however erroneously took the view that the cash vouchers and agenda book are not proof for conducting the General Body meeting. I absolutely see no basis for the conclusion reached by the 1st respondent that

the vouchers and the entries in the cash book were incorporated to create bogus expenditure.

32. The minutes of the General Body meeting shows the attendance of the members but the CEO failed to mention as to whether there was any *quorum* or whether the General Body meeting was concluded or not. The version of the petitioners is that signatures of all the members were taken only at the time when the General Body meeting was conducted and at the top it is clearly mentioned that

a meeting was conducted under the leadership of the Chairman of the 5th respondent-Society which is evident from the minutes book. The CEO mentioned therein that he could not complete the minutes book at the time of General Body meeting. Therefore, the contention of the petitioners is that the above situation clearly demonstrates that the General Body meeting was conducted but the same was not properly recorded due to pressure of work on account of Samaikhyandhra Agitation. Further, the petitioners could be able to show that the advance expenses were booked on 13-3-2014 itself for the purpose of conducting General Body meeting on 30-3-2014 and the duplicate copy of the same was sent to the KDCC Bank on the same day and thus, according to the petitioners, merely because there is small arithmetical correction made in the minutes book it cannot rule out genuineness of the vouchers since the duplicate copy (carbon copy) was sent to the KDCC Bank on the same day. They also pointed out that even in the day book at page 24 there were no corrections and the expenses for conducting the General Body meeting on 30-3-2014 were clearly written and

a carbon copy of which was also sent to the KDCC Bank. They asserted that these carbon copies were sent to the KDCC Bank much prior to the visit of the 1st respondent's predecessor and therefore, it was impossible to tamper with the cash book and day book since already carbon copies of the same were sent to the KDCC Bank long prior to the visit of the 1st respondent's predecessor, which clearly goes to show that the General Body

meeting was conducted on

30-3-2014. Similarly, salary of Mrs. A.Jaya Lakshmi was to be paid in advance and as such the said item was kept in the agenda which was to be discussed in the General Body meeting and therefore, the same was entered in the cash book as debit entry.

33. Thus, the petitioners could be able to demonstrate that the General Body meeting of the 5th respondent-Society was held on 30-3-2014 and also on the earlier dates.

Their version is that merely because there are some lapses on the part of the CEO in the matter of making entries,

it cannot be said that no General Body meetings were held. Upon perusing the material available on record, which was in the knowledge of the 1st respondent while passing the impugned order, I am of the view that there is enough evidence showing that the General Body meetings were conducted. But, the 1st respondent brushed aside all the evidence on flimsy grounds and recorded a finding that the General Body meetings were not conducted by the Managing Committee and passed the impugned order mainly on the ground that the General Body meetings were not conducted as contemplated under the APCS Act. Merely because the minutes of the meetings were not properly recorded, it cannot be said that the Managing Committee did not conduct the General Body meetings at all. This fact has been overlooked by the 1st respondent while passing the impugned order.

34. The supersession of the elected Managing Committee of the Society cannot be resorted to whenever there is a minor lapse on the part of the CEO or even on the part of the members of the Managing Committee in conducting the business of the society. Before passing the orders of supersession, the Registrar has to be thoroughly satisfied that the Committee is not functioning properly or wilfully disobeyed direction under the Act or Rules.

The order of supersession cannot be passed in a routine manner by

pointing out some defects or lapses. Dislodging the elected Managing Committee can be resorted to only when the Registrar arrives at a definite opinion that the Managing Committee is not functioning properly.

35. In the instant case, the 1st respondent only pointed out certain minor lapses and arrived at the conclusion that the meetings of the Managing Committee were not conducted at all as per the provisions of the APCS Act.

This decision has been arrived at by the 1st respondent in clear disregard of the evidence available on record.

This Court is, therefore, of the considered view that there were no circumstances warranting supersession of the Managing Committee of the 5th respondent-Society in the instant case. The reasons assigned by the 1st respondent are not sufficient to pass the impugned order under Section 34 of the APCS Act. While passing the impugned order, the 1st respondent did not make any endeavour to examine any of the members of the Managing Committee and also failed to take into consideration the evidence given by the CEO of the Society before him. The impugned order, therefore, is unwarranted and also it is not in accordance with Section 34 of the APCS Act.

36. This Court is of the opinion that the 1st respondent ought not to have resorted to dislodge the elected Managing Committee on flimsy grounds. The impugned order in Rc.No.1167/2014/D, dated 12-01-2015, passed by the

1st respondent is therefore set aside. The Managing Committee of the 5th respondent-Society is hereby restored. The writ petition therefore succeeds and accordingly the same is allowed. The miscellaneous petitions, if any, pending in this writ petition shall stand closed. No costs.

R.KANTHA RAO, J.

08th April, 2015.

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Note:-

L.R. Copy to be marked.

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HON'BLE SRI JUSTICE R.KANTHA RAO

Writ Petition No.444 of 2015

08th April, 2015.

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