

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.19393 of 2008

ORDER:

1. The petitioners pray for Writ of Certiorari to call for the records leading up to and inclusive of order, dated 28.08.2008 in O.A.No.46 of 2007 on the file of A.P.Co-operative Tribunal, Visakhapatnam (for short 'the Tribunal') and quash the same as illegal, arbitrary, null and void.

2. The circumstances relevant for the disposal of writ petition are as follows:-

The respondent is one of the members of Animal Husbandry Department Employees Co-operative House Building Society, Old Dairy Farm, Visakhapatnam, Visakhapatnam District. On 04.09.2006, the President/2nd petitioner issued show-cause notice to respondent to show cause why the respondent be removed or expelled from the membership of the Society. According to petitioners, the respondent did not submit explanation till 12.10.2006. The respondent, however, got a lawyer's notice issued together with his explanation, dated 28.10.2006 and according to petitioners, the explanation submitted on 28.10.2006 is not satisfactory. The admitted circumstance is that the agenda item of expulsion of respondent was placed in the General Body Meeting held on 31.03.2007 and a unanimous decision was taken to expel the respondent from the primary membership of the Society. The decision was communicated through letter, dated 03.04.2007 and the operative portion reads as follows:-

"As already intimated to you, the entire matter was placed

before the General Body held on 31-03-2007 for taking decision on your expulsion from the Society. 170 members have attended to the General Body and all the 170 members have unanimously accepted and opted for expulsion of your membership from the Society. As per the unanimous decision of the General Body, it is decided to remove and expel your membership from the Society. Hence you are hereby expelled from the Membership of the Society under the provisions of Bye-law No.16 of the Bye-laws of the Society and under Section 23 of the APCS Act 7 of 1964.

I am herewith sending Rs.530/- (Rupees five hundred and thirty only) by means of bankers cheque bearing No.001483 dated 03-04-2007 drawn from the District Co-operative Central Bank Ltd., Visalakshinagar Branch, Visakhapatnam drawn in favour of yourself (paid by you to the Society previously towards Share Capital, Thrift Deposit and Admission Fee). A copy of the minutes of the General Body Meeting of the Society held on 31-03-2007 is also enclosed herewith for favour of information.”

The respondent filed O.A.No.46 of 2007 before the Tribunal. The Tribunal upon considering the procedure of expelling a member from the primary membership of a Society under Section 23 of the A.P.Co-operative Societies Act, 1964 (for short ‘the Act’) and also the procedure followed by the Society in the instant case, recorded the following findings:-

“13. To support his claim appellant relied on *Krishnappa vs. Bangalore co-operative bank* AIR 1954 MYS 59 in this judgment it was held that for removal of a member it is necessary that there should be imputation of something definite to indicate that he is unfit to be a member or his membership is detrimental to the Society and the member concerned should be afforded opportunity to refute the charge before he is sent out. When the resolutions do not allege any specific acts or particular grounds against the member service of notice on him cannot be regarded as sufficient compliance with necessary formalities.

14. In *Konda Seetharamulu and others Vs. The Mahendra Bamboo workers Industrial Co-operative Society Limited, Edlapadu and another*. It was held that under Sec.23(2) the requirement of opportunity of making representation is a mandatory requirement, representation is to be made by the member concerned to the general body. The opportunity which is to be given to the member under sub section (2) of Section 23 should be adequate and reasonable both as regards time and as regards content.

15. Both the judgments enumerated essential guidelines that are

to be followed while expelling member from the Society. The facts in the present case, in terms of the charges and providing opportunity does not contemplate with these guidelines.

In the facts and circumstances of the case, we are of the opinion that prima facie, the society has failed to prove the damage caused to the society by the actions of the appellant and his continuance of membership is detrimental to the society. Further it is not proved that the general body discussed the issue of expulsion and opportunity was provided to the appellant to make his representation before the general body. Thus the mandatory requirements prescribed under Section 23 of APCS Act, are found lacking during the course of action by the society. For these reasons the expulsion order passed by the society does not merit any consideration. Thus, the expulsion order passed by the Society dated 3.4.2007 is liable to set aside and the society is directed to consider the membership of the appellant as is prior to the proceedings of expulsion.”

Hence, the writ petition.

3. Mr.Kameshwar Rao, learned counsel appearing for the petitioners vehemently challenges the findings recorded by the Tribunal by contending that the observation that no notice to respondent was issued is incorrect and from the material available on record the same cannot be accepted and once this explanation is accepted by this Court, the solitary ground on which the expulsion is set aside by the Tribunal cannot be sustained before this Court. He further submits that the respondent has been indulging in activities, which are detrimental to the larger interest of members of the Society and if these activities go uncontrolled, the very purpose of forming the Cooperative Society is lost and defeated and there is justification for expelling the respondent and prays for allowing the writ petition.

4. Sri Veera Raju, learned counsel appearing for the respondent contends that the chronology of dates and events in the case on hand would go to show that the order of expulsion by the General Body in its

meeting held on 31.03.2007 is contrary to Section 23 of the Act and at any rate, the issue of show-cause notice by the 2nd petitioner and the explanation submitted by the respondent on 28-10-2006 could not cure the statutory requirement of affording opportunity before the General Body. In support of his contention that the General Body must give opportunity and that the Registrar must approve the expulsion, learned counsel relies upon the decision of the Hon'ble Apex Court in ***Md.Mounuddin V. Commissioner of Co-operation and Registrar of Co-operative Society***^[1] as well as this Court in ***Konda Setharamulu V. M.B.W.Industrial Co-op. Society Limited***^[2]. He relies upon the findings recorded by the Tribunal and prays for dismissal of the writ petition.

5. Now the point for consideration is whether the order of the Tribunal dated 28.08.2008 in I.A.No.46 of 2007 suffers from illegalities and irregularities or not.

6. The chronology of dates and events are already adverted to in the preceding paragraphs. To avoid repetition, I am not proposing to refer to the dates and events once again. The summary of happenings is that the 2nd petitioner issued show-cause notice on 04.09.2006 calling upon the respondent to give his explanation against the alleged activities of respondent which are detrimental to the Society. On 28.10.2006, the respondent along with lawyer's notice submitted his explanation. The General Body was convened and held on 31.03.2007. According to Section 23 of the Act, the petitioners herein ought to make out a case of expulsion for consideration by the general body, and the general body takes the decision on expulsion after affording opportunity. At that stage, and if this item i.e. to expel a

member is included in the general body, a notice is issued to that effect, the member sought to be expelled from the Society is afforded an opportunity and appropriate resolution is passed. Admittedly, in the case on hand, the procedure followed to expel the respondent from the society does not satisfy the requirement of Section 23 of the Act and the findings recorded by the Tribunal do not suffer from infirmities or illegalities.

7. Keeping in mind the scope of judicial review of this Court under Article 226 of the Constitution of India, particularly in a Writ of Certiorari, even by considering the bare details admitted by the parties, I am satisfied the petitioners failed to make out any case. The writ petition fails and is dismissed. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:16-03-2016

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[\[1\]](#) AIR 2014 SUPREME COURT 2680

[\[2\]](#) AIR 1991 ANDHRA PRADESH 163