

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH

[Special Original Jurisdiction]

TUESDAY THE TWENTYNINETH DAY OF MARCH
TWO THOUSAND AND SIXTEEN

PRESENT
HONOURABLE SRI JUSTICE S.V. BHATT

WRIT PETITION NO. 19063 OF 2007

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Between:

The Temburu Primary Agricultural
Co-operative Society at Lattigam,
Nandigam [M] Srikakulam district
Rep. by its President,
Kaniti Makanna

... Petitioner

V/s.

The Government of Andhra Pradesh
Rep.by its Secretary,
Co-operation Department,
Secretariat, Hyderabad & Ors.

... Respondents

Counsel for the Petitioner : Sri K. Chidambaram

Counsel for the Respondents: GP for Co-operation
Sri B.Prayaga Murthy

The Court made the following: [order follows]

HONOURABLE SRI JUSTICE S.V. BHATT

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WRIT PETITION NO. 19063 OF 2007
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ORDER :

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Temburu Primary Agricultural Co-operative Society challenges Proceedings Rc.No.813/07-C dated 10/7/2007 as illegal, arbitrary, violative of principles of natural justice and contrary to Section 15-A of A.P. Co-operative Societies Act, 1964 [for short 'the Act'].

2. The first respondent, through impugned proceedings issued under section 15-A of the Act ordered merger of PACs Dimidijola, Temburu, Madigapuram and Haridasupuram with PACs Penturu. The operative portion of the order to appreciate the legal objection raised by the petitioner is excerpted and reads thus:

“Since the Hon'ble High Court set aside the impugned proceedings dated 25/7/2005 of the Collector [Coopn] Srikakulam, the undersigned in abrogation of the impugned proceedings dated 25/7/2005 and by virtue of powers conferred on him under Section 15 [A] [2] of the APCS 7 of 1964 read with G.O.Ms.No.82 F & A [Coopn.IV] Deptt. dated 16/2/1987 hereby orders for merger of [1] PACS Dimidijola [2] PACS Temburu [3] PACS Madigapuram and [4] PACS Haridasupuram with PACS

Penturu in consonance with the preliminary notification originally issued by the Collector [Coopn] Srikakulam in Rc.No.1125/2005/C/21/37 Nandigam, dated 21/6/2005.”

3. Section 15-A of the Act, reads as follows:

Section 15-A Identification of viability of societies and consequences thereof:

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(1) Notwithstanding anything in this Act or the rules made thereunder or the bye-laws of the society concerned, if the Registrar is of the opinion that [in respect of a society or societies in receipt of State aid as specified under section 43 of the Act] it is necessary to amalgamate or merge any society with any other such society or to liquidate a society for any of the following purposes, namely:- (emphasis added)

- (a) for ensuring economic viability of any or all the societies concerned; or
- (b) for avoiding overlapping or conflict of jurisdictions of societies in any area; or
- (c) for securing proper management of any society; or
- (d) in the interest of the co-operative movement in general and of co-operative credit structure in particular in the State taken as a whole; or]
- (e) for any other reason in the public interest.

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(2) The Registrar may, after having considered the matter in the light of any suggestions or objections which may be received by him within the period specified in sub-section (1) and after making if necessary, such modification in the proposal as he may deem fit, make an order and publish it in the prescribed

manner;

4. The admitted circumstances are that on 21/6/2005 the second respondent issued notification under section 15-A of the Act to consider the proposed scheme of merger of Dimidijola, Temburu, Haridasapuram and Madigapuram with Penturu PACS. But on 25/7/2005 the second respondent ordered for merger of these PACS treating Temburu as focal society for merger of rest of PACs [Dimidijola, Haridasapuram, Madigapuram with Penturu]. Proceedings dated 25/7/2005 were challenged in WP.No.20084 of 2005. For the purpose of disposing of the instant writ petition reference to the common order dated 13/6/2006 is contextual.

“But in the preliminary/proposals both societies must find place. Otherwise such modification is not valid. In this case, admittedly, as noticed above in the final proceedings altogether a different modification was made ordering merger of the petitioners’ society with a society which does not find place in the preliminary/proposed notification. Such a modification can not be said to be a valid modification under section 15-A [2] of the Act. Therefore, issuance of the impugned proceedings is contrary to the provisions of Section 15-A of the Act and illegal. Since the petitioners were not put on notice as to the amalgamation as contemplated in final proceedings, the impugned orders are liable to be set aside and accordingly set aside and the respondents are directed to proceed with the matter as per law and pass appropriate orders after putting the petitioners all concern in notice as to the amalgamation. In all the writ petitions the preliminary notification and final notification are different.”

5. The second respondent thereafter issued impugned proceedings ordering merger of PACS Dimidijola, PACS Temburu, PACS Madigapuram and PACS Haridasapuram with PACS Penturu. Hence, the writ petition.

6. Sri K. Chidambaram appearing for petitioner-society contends that the impugned proceedings ordering merger of petitioner-society with PACS Penturu suffers from non-application of mind, for according to him PACS Penturu ceased to be in existence and there is no wherewithal and consequently there cannot be any merger in terms of Section 15-A of the Act. He further contends that the second respondent has jurisdiction to order for merger of one society with another by forming opinion on one or the other contingencies referred in sub-section 1 of Section 15-A of the Act. To illustrate his submission he contends that from a bare reading of the impugned proceedings, it is evident that the second respondent did not order for merger of the society for ensuring economic viability of the petitioner-society or the other societies and the order of merger cannot be stated to avoid overlapping or conflicting jurisdiction of the societies. Likewise it is

not intended for securing proper management of petitioner society and there is nothing to suggest that the order of merger is passed in the interest of co-operative movement in general and co-operative credit structure in particular in the State. At any rate, it is not the case of the respondents that the merger is ordered in the public interest. Therefore, from the above illustration, he contends that while exercising the power under sub-section 2 of Section 15-A of the Act, ***sine-qua-non*** i.e., forming opinion as required by sub-section 1 of Section 15-A of the Act is not complied with and he prays for setting aside the impugned proceedings on the ground of non-conforming with the statutory requirement and also non-application of mind. The third submission is that the second respondent did not follow the direction of this Court in WP.No.20084 of 2005 read with WP.No.17180 of 2005 dated 13/6/2006. He prays for setting aside the impugned proceedings.

7. The Assistant Government Pleader contends that the first submission of the petitioner that Penturu Society is not in existence is without basis and liable to be rejected, for the proceedings dated 25/7/2005 were challenged in WP.No.20084 of 2005. On 15/6/2006 the writ petition was allowed and the

proceedings dated 25/7/2005 were set aside. By virtue of the order dated 15/6/2006 in WP.No.20084 of 2005, he contends that ***statusquo*** prior to 25/7/2005 is restored and the second respondent is justified in merging four societies with Penturu PACS which was identified as the focal society for merger in the notification dated 21/6/2005. Adverting to second contention, the Assistant Government Pleader contends that the order is passed under sub-section 2 of Section 15-A of the Act and the impugned proceedings satisfy the requirement of sub-section 2 of Section 15-A of the Act. On the contention that the impugned proceedings were passed without issuing notice to the society, the Assistant Government Pleader relies upon the averments in paragraph No.6 of the counter-affidavit which are to the effect that the Chief Executive Officer of PACS Temburu [petitioner-society] convened General Body Meeting on 23/6/2007 and the members were given opportunity on the proposed order of merger and the members no doubt have resolved to continue to retain PACS Temburu. Hence, it cannot be contended that no notice was issued to the society and he prays for dismissing the writ petition.

8. I have perused the material available on record and noted the submissions of learned counsel appearing for the parties.

9. Now the point for consideration is “whether the impugned proceedings satisfy the statutory requirement of Section 15-A of the Act and the orders of this Court in WP.No. 20084 of 2005?”

10. The admitted circumstances which are referred to in the preceding paragraphs, for brevity are not reiterated. The contention of the petitioner is that as on the date of proceeding dated 10/7/2007 Penturu PACS is not in existence, and therefore, the impugned order of merger into a non-existing society is incorrect and liable to be set aside. The first contention is merely noted only to be rejected. This Court has already referred to the dates and events chronologically. In the first round, on 21/6/2005, notice for merger was issued by the second respondent which resulted in issuance of proceedings dated 25/7/2005. The petitioner challenging the proceedings filed WP.No. 20084 of 2005 and was successful in getting the proceedings dated 25/7/2005 set aside through order dated 15/6/2005. Once the proceedings dated 25/7/2005 ordering merger are set aside by this Court, I am of the

view that not only Penturu PACS is revived but also the other four PACS for which order of merger was passed are automatically revived. Therefore, the second respondent can certainly consider exercising his jurisdiction under Section 15-A of the Act as all the societies are individually in existence. Therefore, this contention of the petitioner fails and accordingly rejected.

11. The second contention is that Section 15-A of the Act [1] enables the second respondent to form opinion for merger of societies on one or the other circumstances referred therein and merger of one PACS with another PACS is ordered either for ensuring economic viability; avoid overlapping or conflict of jurisdiction of societies; secure proper management of society; in the interest of the co-operative movement in general and in the interest of co-operative credit structure in particular and in public interest. If the impugned proceedings are tested from the above statutory requirement what can be concluded without much discussion is that the second respondent refers to proceedings dated 25/7/2005 and the order of this Court dated 15/6/2006 and without consideration or forming any opinion on the necessity to merge one society with another directed merger of the petitioner-

society with Penturu PACS. The order of merger no doubt need not contain elaborate reason or appear to be resolving a dispute between two PACS but the order of merger cannot be so short that merger is ordered without forming any opinion at all. In the considered view of this Court, the impugned proceedings are contrary to Section 15-A [1] of the Act and also the order of this Court in earlier Writ Petitions. The impugned proceedings were stayed by this Court on 7/9/2007 and the interim order is subsisting till date and thereby the entity of Temburu Primary Agricultural Co-operative Society as a society under the Act is continued. Therefore, in the interest of fair play the impugned proceedings are set aside and the matter is remanded to second respondent for passing orders afresh in accordance with law.

Sri K. Chidambaram, at this stage, submits that with the passage of time there might be substantial change in the working of the societies and the societies may be given an opportunity to file detailed representation before the second respondent after remand on the necessity or need of continuing merged proposals. The impugned proceedings are set aside, the matter is remanded to second respondent. The petitioner-society is given eight weeks'

time from the date of receipt of a copy of this order to make representation to the second respondent on the proposed merger in terms of notification dated 21/6/2005 and the second respondent is directed to consider the issue in the light of requirement of law and take appropriate decision.

12. The writ petition is allowed. No order as to costs.

13. As a sequel, miscellaneous petitions if any, pending in this writ petition shall stand closed.

JUSTICE S.V. BHATT

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