

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.1637 of 2017

O R D E R:

Validity of a notice issued by the Special Cadre Deputy Registrar of Cooperative Societies, Khammam-3rd respondent herein vide proceedings Rc.No.1328/2016-D dated 9.1.2017 under Section 34-A of Telangana State Cooperative Societies Act, 1964 is under challenge in the present writ petition.

2. Petitioner herein is the President of Telangana Non-Gazetted Officers House Building Cooperative Society Ltd., Khammam. On the basis of a letter of motion of no confidence moved by five out of seven members of the Managing Committee, earlier the 3rd respondent herein issued a notice vide proceedings Rc.No.1328/2016-D dated 24.11.2016, fixing the date of meeting of the no confidence motion as 14.12.2016. Assailing the said notice, petitioner herein approached the State Government by way of a representation. The State Government by way of Memo bearing No.4782/Coop.II(2)/2016-2 dated 13.12.2016, granted stay of notice dated 24.11.2016 of the 3rd respondent herein. Challenging the validity of the said order, the unofficial respondents herein filed W.P.No.46686 of 2016 before this Court and this Court, after hearing all the parties, passed an order on 5.1.2017 in W.P.M.P.No.57505 of 2016, staying the memo issued by the State Government dated 13.12.2016. Thereafter, the 3rd respondent herein issued the impugned notice of motion of no confidence vide proceedings dated 9.1.2017, fixing the date of meeting of motion no confidence as 27.1.2017. Validity and legal sustainability of the said notice dated 9.1.2017 is under challenge in the present writ petition.

3. Heard Sri Kowturu Pavan Kumar, learned counsel for the petitioner, learned Government Pleader for Cooperation for Respondents 1 to 3 and Sri P.V.Ramana, learned counsel for unofficial respondents, apart from perusing the material available before the Court.

4. Following are the submissions/contentions of the learned counsel for the petitioner:

- (1) In view of pendency of W.P.No.46686 of 2016, the 3rd respondent herein ought not to have issued the impugned notice dated 9.1.2017, fixing the date of consideration of motion of no confidence and ought to have awaited the outcome of the said writ petition.
- (2) The impugned notice is invalid as the same does not provide for 15 clear days from the date of service to the date of meeting as mandated under Rule 34-A of Telangana State Cooperative Societies Act, 1964 and the period of 15 days needs to be reckoned from the date of receipt of the notice.
- (3) Since the meeting involves debate, the judgments cited by the unofficial respondents would not render any assistance to the unofficial respondents in view of the judgment of the Full Bench of this Court in *K.Sujatha V.S Government Of Andhra Pradesh And Another*¹.

Learned counsel relies on the judgment of this Court in *Gaddampalli Jagpal Reddy and others v. District Collector and others*².

5. On the contrary, the learned Government Pleader, appearing official respondents strenuously contends that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and the notice impugned is in accordance with the rules and except the petitioner, all other members received notice on 9.1.2017 itself and as the petitioner evaded to receive the impugned notice, the respondents herein sent the notice by registered post with acknowledgement due on 10.1.2017 and the petitioner received the same on

¹ 2004 (4) ALD 1 (FB)

² 2008(2) ALD 616

16.1.2017 and the service of notice was also effected by affixture in addition to the registered post.

6. While totally supporting the submissions of the learned Government Pleader, the learned counsel appearing for unofficial respondents Sri P.V.Ramana contends that the contentions of the learned counsel for petitioner are neither sustainable nor tenable in the eye of law. It is further contended that pendency W.P.No.46686 of 2016 cannot be a ground to defer no confidence motion and the contention contra advanced by the learned counsel for petitioner is untenable. It is also further argued that the impugned notice is strictly in accordance with the provisions of law and the contention that the period of 15 days needs to be reckoned from the date of receipt of the notice is untenable and that out of seven members, five members signed the motion. In support of his submissions/contentions, the learned counsel places reliance on the judgment of the Hon'ble Apex Court in *State Through Central Bureau of Investigation v. Parameshwaran Subramani and Another*³ and the judgments of this Court in *R.Narsimhulu v. State of Telangana, represented by its Principal Secretary*⁴ and *R.Amber Singh and another v. Deputy Registrar of Cooperative Societies and others*⁵.

7. In the above backdrop, the issues that emerge for consideration of this Court in the present writ petition are;

- (1) Whether the pendency of W.P.No.46686 of 2016 is a ground for the petitioner to request to defer the no confidence motion ?
- (2) Whether the impugned notice dated 9.1.2017 is in accordance with law ?

³ (2009) 9 SCC 729

⁴ 2015(4) ALT 517

⁵ 2015(6) ALD 153

8. Issue No.1

Earlier, on the basis of a notice issued by the unofficial respondents, 3rd respondent herein issued notice dated 24.11.2016, fixing the date of meeting of motion of no confidence as 14.12.2016. Assailing the said notice, petitioner herein filed a representation before the State Government and the State Government vide Memo dated 13.12.2016 stayed the said meeting and challenging the validity of the said order, the unofficial respondents herein filed W.P.No.46686 of 2016 before this Court and after extensively hearing all the stakeholders, this Court granted stay of the impugned memo dated 13.12.2016. Since the earlier notice could not be carried out to its logical end, the 3rd respondent herein issued the present impugned notice dated 9.1.2017. The pendency of W.P.No.46686 of 2016, by any stretch of imagination, in the absence of any order in favour of petitioner herein, cannot be a ground to restrain the respondents from proceeding further by issuing the present notice. Therefore, Issue No.1 is answered in favour of the respondents herein and against the petitioner herein, holding that the pendency of above said writ petition does not debar the respondents from issuing the impugned notice.

9. Issue No.2

Yet another contention of the learned counsel for petitioner is that the notice impugned does not fulfill the mandatory requirements of Section 34-A of Telangana State Cooperative Societies Act, 1964. In order to resolve this issue, it may be apt and appropriate to refer to Section 34-A of the Act, which reads as under:

“34-A. Motion of no-confidence in the President and Vice-President of the committee:

(1) A motion expressing want of confidence in the President or the Vice-President of a Committee may be made in accordance with the procedure laid down in the following sub-sections. (2) A written notice of intention to make the motion, in such form as may be prescribed, signed by not less than one-half of the total number of members of the

Committee together with a copy of the proposed motion shall be delivered in person, by any two of the members signing the notice, to the Registrar having jurisdiction over the Society.

Explanation:- For the removal of doubts, it is hereby declared that for the purposes of this section, the expression “total number of members of the Committee” shall mean the total number of elected members inclusive of its President and Vice-President but irrespective of any vacancy existing in the office of member at the time of meeting.

(3) The Registrar shall then convene a meeting for the consideration of the motion at the office of the society on a date appointed by him which shall not be later than thirty days from the date on which the notice under sub-section (2) was delivered to him. He shall give to the members notice of not less than fifteen clear days of such meeting in such manner as may be prescribed : Provided that where the holding of such meeting is stayed by an order of a Court the meeting shall be adjourned, and the Registrar shall hold the adjourned meeting on a date not later than thirty days from the date on which he received the intimation about the vacation of stay, after giving to the members notice of not less than fifteen clear days of such adjourned meeting.

(4) The quorum for such a meeting shall be majority of the total number of members of the Committee and the Registrar shall preside at such meeting. If within half an hour after the time appointed for the meeting the Registrar is not present to preside at the meeting, the meeting shall stand adjourned to the next day. (5) If the Registrar is unable to preside at the meeting he may after recording his reasons in writing adjourn the meeting to the next day to be presided over either by himself or by an officer authorised by him in his behalf. The person authorised under this sub-section shall be deemed to be the Registrar for purposes of sub-sections (7), (10) and (11).

(6) Save as provided in sub-sections (3), (4) and (5) a meeting convened for the purpose of considering a motion under this section shall not for any reason be adjourned. (7) As soon as the meeting convened under this section commences the Registrar shall read to the Committee the motion for the consideration of which the meeting has been convened and declare it to be open for debate, 1. Inserted by Act No. 21 of 1985, w.e.f. 3-6-1985. A.P. Cooperative Laws A.P. Cooperative Societies Act 1964 (8) No debate on the motion under this section shall be adjourned. (9) Such debate shall automatically terminate on the expiration of two hours from the time appointed for the commencement of the meeting if it is not concluded earlier. On the

conclusion of the debate or on the expiration of the said period of two hours, whichever is earlier, the motion shall be put to vote. (10) The Registrar shall not speak on the merits of the motion and he shall not be entitled to vote thereon. (11) If the motion is carried 1[with the support of not less than two thirds of the total number of members] of the Committee, the Registrar shall by order remove the President or, as the case may be, the Vice-President and the resulting vacancy shall be filled in the manner prescribed. (12) If the motion is not carried by such a majority as aforesaid or if the meeting could not be held for want of a quorum, no notice of any subsequent motion expressing want of confidence in the same President or, as the case may be, the Vice-President shall be made until, after the expiration of the one year from the date of the meeting. (13) No notice of a motion under this section shall be made within one year of the assumption of office by a President or the Vice-President. 2[(14) The provisions of this section shall not apply in respect of President of any co-operative society elected by the members of the general body from among themselves.]”

10. In the instant case, admittedly notice dated 9.1.2017 was sent to the petitioner by the office of 3rd respondent on 10.1.2017 by registered post with acknowledgement due, which is one of the modes as per Rule 24-A of the Telangana State Cooperative Societies Rules. There is absolutely no dispute as to the reality that the petitioner herein received the same on 16.1.2017 as per the acknowledgement enclosed. While referring to the same, it is the contention of the learned counsel for the petitioner that in the absence of gap of 15 clear days between the date of receipt by the petitioner i.e. on 16.1.2017 and the date of proposed meeting i.e. on 27.1.2017, the impugned notice is invalid. In this context, it may be appropriate to refer to the judgments cited by the learned counsel for respondents.

11. In *R.Narsimhulu v. State of Telangana, represented by its Principal Secretary* (3 supra), this Court at paragraphs 12 to 15, held as under:

“12. The petitioner filed certain documents showing that he was hospitalized, his eye was operated upon during the relevant period and therefore, he has

no knowledge about the notice. This Court is not inclined to examine the truth or correctness of the said documents, because this Court wishes to adjudicate the issue on the supposition that the petitioner was in fact is not aware of the notice of no confidence motion on account of his non-availability in the village. In this context, it would be necessary to peruse the judgment of the Supreme Court in *Madan and Company v. Wazir Jaivir Chand*, wherein the Supreme Court dealing with a notice calling upon to pay arrears of rent and also terminating the tenancy, took the view that where the Act provides for the service of the notice, by post, when once the notice is sent by post and the notice is delivered to the post office, the person who sent the notice has no control over it. It is to be presumed to have delivered to the addressee under Section 27 of the General Clauses Act. The Supreme Court further viewed that to interpret the provision, as requiring that the letter must have been actually delivered to the addressee, would be virtually rendering it a dead letter. The Supreme Court further explained that a landlord must be held to have complied with the statutory requirement by sending a notice correctly addressed to the tenant by registered post. Though, the Supreme Court was interpreting a provision in a different enactment, the ratio laid down by the Supreme Court will equally apply to the facts of the present case, while interpreting Rule 24-A(2) of the Rules.

13. The learned counsel appearing for the petitioner filed a document obtained from internet and tried to demonstrate before the Court that even by 19.03.2015, the impugned notice sent by registered post was not served on the petitioner. But the very same document shows that the notice was sent on 05.03.2015. The learned Government Pleader filed the receipts, which show that the notices were sent to all the members of the Managing Committee on 05.03.2015. The learned counsel appearing for the petitioner submits that though the said receipt shows that the notice was sent to the petitioner on 05.03.2015, the receipt does not contain the address of the petitioner and, therefore, the respondents have to establish that notice was sent to the correct address of the petitioner.

14. In the instant case, there is no ambiguity with regard to the address of the petitioner. The only contention raised by the petitioner in this writ petition is that during the relevant period, he was in the hospital for the purpose of eye operation. Moreover, while exercising jurisdiction under Article 226 of Constitution of India, this Court is not supposed to evaluate the evidence adduced by both parties. However, this Court for the purpose of arriving at an opinion has to examine the material placed by both parties and has to arrive at a prima facie opinion as to the contentions raised by the either of the parties.

15. Therefore, meticulous examination of evidence is not required while disposing of this writ petition. As already stated that by enacting Rule 24-A, certainly it is not the intention of the Legislature that notice has to be actually served on the members of the Managing Committee. The Rule only mandates giving of notice by tendering it in person or by sending by registered post. The provision also provides for affixing the notice on the notice board of the society and also on the notice board of the Office of the Registrar. The provision further provides that if the area of the society extends to more than one Panchayat or Mandal Office, the notice shall be affixed in all Panchayat Offices or Mandal Offices. Thus, the Legislature took care of the absence of service of notice so as to enable the members to know about the proposed no confidence motion. Since the official respondents could be able to demonstrate before the Court that the notices were sent to all the members of the Managing Committee by post and produced receipts, this Court is of the considered view that the impugned notice cannot be set aside as there is enough compliance of Rule 24-A(2) of the Rules by the Registrar.”

12. In *R.Amber Singh and another v. Deputy Registrar of Cooperative Societies (4 supra)*, this Court at paragraph 10 held as under:

“The learned Special Government Pleader for Co-operation 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 24.2.2015 and the Postal authorities approached the 1st petitioner on 25.2.2015. Therefore, the refusal of the 1st petitioner relates back to the date 25.2.2015 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 24.2.2015, which is indicative of the fact that he must have also received the same on 27.2.2015 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 Co-operative 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."

13. In the case of *K.Sujatha* (supra 1), the Full Bench of this Court, at paragraphs 27 and 28, held as follows:

"27. The ordinary meaning of the word 'notice' is knowledge, information or announcement. Therefore, the purpose and object of issuing the notice is to give due intimation of the proposed meeting of No-confidence mention to all the members of the Panchayat or Mandal Parishad or Zilla Parishad and to make it possible for the members to adjust their work in such a manner so as to enable them to attend the proposed meeting of No-confidence Motion, Once the member receives intimation, he is not required to make any further preparation for the purpose of meeting except by making himself available in the meeting. Rule 8 says that the proposed Motion will be put to vote without any debate and voting would be by show of hands. In case no preparation is required to be made by the member for the meeting except by presenting himself in the meeting, whether the member gets shorter period of time than fifteen days or not is irrelevant and meaningless. Had some discussion to take place or debate to follow, the matter would have been slightly different. Even the submission that holding the rule to be mandatory might lead to a situation of certain members interested scuttling the purpose is of no relevance inasmuch as in case a section of members is interested to scuttle the Motion, the purpose can be served differently. Mere causing delay in accepting the notice within the requisite period of fifteen days is not the only mode of scuttling the meeting. Such section of the members can , conveniently avoid attending the meeting so as to ensure that quorum is not complete when meeting is called to order, because as per Rule 7 of the rules if within two hours there is no quorum, the notice shall stand lapsed.

28. The purpose and object of giving notice of consideration of No-confidence Motion is only to give due intimation to the members or information of the proposed meeting. Therefore, the fact that a member has got a shorter period of notice than fifteen clear days from the date of receipt of the notice would not matter. When notice is sent by post and the law permits the date of sending of notice to be treated

as the date of delivery in that case obviously the period available to the member will be shorter than fifteen clear days from delivery to meeting, therefore, there is no reason why the Rule 3 be held to be mandatory as regards the service of notice. Unless it is shown that the shortfall in the period of notice of the meeting has caused some prejudice to the member, neither the meeting nor the proceedings taken thereunder would be said to be invalid. It is only in the eventuality of prejudice being shown that the meeting or the proceedings taken thereunder can said to be invalid. The Legislature has rightly not provided in the rule that non-compliance of any shortfall in the notice would render the meeting or the proceedings taken thereunder to be invalid. Had that been the intention, the Legislature, obviously, would have provided since the law had been clearly settled by the time the Act was enacted and the Rules were framed by the judgment in Narasimhaiah's case (supra). In that view of the matter, we are of the opinion that the ratio of the judgment of the Division Bench of this Court laid down in Anandareddy's case (supra) that non-service of notice of fifteen clear days would make the meeting and the proceedings taken thereunder null and void cannot be said to be the correct law."

14. In the case of *State Through Central Bureau of Investigation v. Parameshwaran Subramani and Another*⁶, the Hon'ble Apex Court, at paragraphs 18 and 19, held as follows:

"18. It is settled law that where there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the court to undertake any exercise to read something into the provisions which the legislature in its wisdom consciously omitted. Such an exercise if undertaken by the courts may amount to amending or altering the statutory provisions.

19. In a plethora of cases, it has been stated that where, the language is clear, the intention of the legislature is to be gathered from the language used. It is not the duty of the court either to enlarge the scope of legislation or the intention of the legislature, when the language of the provision is plain. The court cannot rewrite the legislation for the reason that it had no power to legislate. The court cannot add words to a statute or read words into it which are not there. The court cannot, on an assumption that there is a defect or an omission in the words used by the legislature, correct or make up assumed deficiency, when the words are clear and unambiguous.

⁶ (2009) 9 SCC 729

Courts have to decide what the law is and not what it should be. The courts adopt a construction which will carry out the obvious intention of the legislature but cannot set at naught legislative judgment because such course would be subversive of constitutional harmony [See: Union of India & Anr. Vs. Deokinandan Aggarwal²].”

15. It is very much evident from the law laid down in the above referred judgments that the contention of the learned counsel for the petitioner that 15 clear days period is to be counted from the date of receipt of notice by the petitioner cannot be sustained and in fact, the above referred judgments declined to accept the said contention. In these circumstances, this Court has no scintilla of hesitation to hold that the impugned action is in accordance with law. As such, Issue No.2 is also answered in favour of respondents and against the petitioner. The judgment cited by the learned counsel for petitioner in *Jagpal Reddy v. District Collector* (2 supra) would not render any assistance to the petitioner herein in the facts and circumstances of the case.

16. For the aforesaid reasons, the writ petition is dismissed. As a sequel, the miscellaneous petitions, if any shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 25.1.2017
DA/grk

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.1637 of 2017



25.1.2017

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