

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

WRIT PETITION No.3475 OF 2017

ORDER:

This writ petition is filed, under Article 226 of the Constitution of India, for the following relief:

“to issue any Writ, order or direction more especially one in the nature of Writ of Mandamus declaring the Impugned Proceedings of the 3rd Respondent in Rc.No.42/2017-C, Dt.12-01-2017 where by proposed to convene the Managing Committee Meeting on 03-02-2017 without compliance of the Provisions of Section 34-A (3) of A.P.C.S Act 1964 r/w.Rule 24-A (2) of the Rules as illegal, arbitrary, against the Principles of natural Justice and consequently by setting aside the Impugned Proceedings of the 3rd Respondent, Dt.12-01-2017 declare that the Managing Committee Meeting proposed to be held on 03-02-2016 for taking up the No-confidence Motion against the Petitioner as illegal and contrary to the Provisions of the A.P.C.S Act for its non-compliance.”

2. Heard Sri C.Hari Preeth, learned counsel for the petitioner, learned Special Government Pleader attached to the office of the learned Advocate General, Sri S.Sharath and Sri B.Thimothi, learned counsel for the 5th respondent, apart from perusing the material available before the Court.
3. According to the petitioner, the official respondents herein failed to adhere to the mandatory provisions of Section

34-A of the Telangana State Co-operative Societies Act, 1964 and Rule 24-A of the Telangana State Co-operative Societies Rules, 1964, while giving effect to the motion of no confidence against the petitioner, who got elected as President of the 4th respondent- Society in the elections held on 31.01.2013. It is the submission of the learned counsel for the petitioner that the service of notice, said to have been effected, is not in accordance with the above said provisions of law. To bolster his submissions and contentions, the learned counsel for the petitioner places reliance on the judgment of this Court in **Vancha Veera Reddy and another Vs. District Co-operative Officer, Nalgonda, Nalgonda District and Others¹**.

4. Refuting the said stand of the learned counsel for the petitioner, learned Special Government Pleader and Sri B.Thimothi, learned counsel for the unofficial respondent herein have maintained that there is absolutely no illegality nor there exists any procedural infirmity in the impugned action and the action under challenge is as per the above said provisions of law. Learned Government Pleader, in support of his submission and contentions, places reliance on the judgment of the Hon'ble Apex Court in **Madan and Company Vs. Wazir Jaivir Chand** and orders of this Court in the cases of **R Amber Singh Vs. Deputy Registrar of Cooperative Societies, Divisional Coop Officer, Bodhan,**

¹ 2010 (3) ALD 526 (DB)

Nizamabad District and R.Narsimhulu Vs. The State of Telangana. It is also submitted on behalf of the respondents that as per the provisions of Section 34-A of the Telangana Co-operative Societies Act, 1964, the period of fifteen days as contemplated therein is required to be reckoned from the date of sending of the notice, not from the date of service of notice. It is also the submission of the Special Government Pleader that in view of the availability of alternative remedy of appeal under the provisions of Section 76 of the Telangana Co-operative Societies Act, 1964, to the Tribunal, the present writ petition is not maintainable. It is further submitted that on 03.02.2017, motion of no confidence was moved, dislodging the petitioner from the office of the President and to the said effect, the Deputy Registrar of Cooperative Societies, issued proceedings vide Rc.No.42/2017-C, dated 03.02.2017.

5. For resolving the controversy involved in the present writ petition, it would be apposite and appropriate for this Court to refer to the relevant provisions of the Co-operative Societies Act and the Rules framed thereunder. Section 34-A of the Cooperative Societies Act, 1964, 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,

(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.

(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.”

6. Rule 24-A (1) to (3) of the Cooperative Societies Rules, 1964, read as under:

“24-A. Meeting after receipt of no confidence notice:

(1) As soon as the notice along with a copy of the motion expressing no confidence is received, the Registrar shall, notwithstanding anything in the bye-laws, convene a meeting of the committee.

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

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

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

(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:

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.”

7. Now, in the instant case, it is required to be examined as to whether the official respondents herein have acted as per the above said provisions and in accordance with the law laid down by the Hon'ble Apex Court and this Court in the judgments referred to supra.

8. A reading of Section 34-A of the Telangana State Cooperative Societies Act, 1964, in clear and vivid terms, shows that it is obligatory on the part of the Registrar to give notice to the members not less than fifteen days of the meeting. Rule 24-A of the Telangana State Cooperative Societies Rules, 1964, prescribes the mode and manner in which the service of notice needs to be effected on the members.

9. According to the learned Special Government Pleader, the notice containing the motion of no confidence was delivered on 16.01.2017 and in support of the same, he has placed on record the track report of the postal department. In furtherance of the same, the learned Special Government Pleader has also placed on record the delivery slip of the registration department, which shows that the cover was acknowledged by one Mr.B.Mohan. According to the

learned advocates for the respondents, the said person is no other than the servant of the petitioner herein and only on the instructions of the petitioner, the cover was delivered to the said Mohan.

10. According to the learned counsel for the petitioner, the said Mohan is not a worldly wise man and petitioner never instructed the postman to deliver the letter to the said Mohan. In support of his submission, learned counsel for the petitioner has placed on record a medical certificate issued by Mahatma Gandhi Memorial Hospital, Warangal, to show that the said Mohan, to whom the service of notice was said to have been effected, is suffering from temporary disability. In fact, a letter dated 10.02.2017, addressed by the postman of Sub-post Office, Thorur, addressed to the Superintendent of Post Offices, Warangal Division, is also placed on record by the learned Special Government Pleader, wherein it is stated that on instructions of the petitioner, the letter was delivered to said Mohan.

11. In this context, it may be appropriate to refer to the judgments cited by the learned Special Government Pleader. In the case of **Mandan and Company Vs. Wazir Jaivir Chand**, the Hon'ble Apex Court, while dealing with the aspect of service by the postal department, held as under:

“The Indian Post Office Rules do not prescribe any detailed procedure regarding the delivery of such

registered letters. When the postman is unable to deliver it on his first visit, the general practice is for the postman to attempt to deliver it on the next one or two days also before returning it to the sender. However, he has neither the power nor the time to make enquiries regarding the whereabouts of the addressee; he is not expected to detain the letter until the addressee chooses to return and accept it; and he is not authorised to affix the letter on the premises because of the addressee's absence. His responsibilities cannot, therefore, be equated to those of a process server entrusted with the responsibilities of serving the summons of a Court under Order V of the C.P.C. The statutory provision has to be interpreted in the context of this difficulty and in the light of the very limited role that the post office can play in such a task. If we interpret the provision as requiring that the letter must have been actually delivered to the addressee, we would be virtually rendering it a dead letter. The letter cannot be served where, as in this case, the tenant is away from the premises for some considerable time. Also, an addressee can easily avoid receiving the letter addressed to him without specifically refusing to receive it. He can so manipulate matters that it gets returned to the sender with vague endorsements such as "not found", "not in station", "addressee has left" and so on. It is suggested that a landlord, knowing that the tenant is away from station for some reasons, could go through the motions of posting a letter to him which he knows will not be served. Such a possibility cannot be excluded. But, as against this, if a registered letter addressed to a person at his residential address

does not get served in the normal course and is returned, it can only be attributed to the addressee's own conduct. If he is staying in the premises, there is no reason why it should not be served on him. If he is compelled to be away for some time, all that he has to do is to leave necessary instructions with the postal authorities either to detain the letters addressed to him for some time until he returns or to forward them to the address where he has gone, or to deliver them to some other person authorised by him. In this situation, we have to choose the more reasonable, effective, equitable and practical interpretation and that would be to read the words "served" as "sent by post", correctly and properly addressed to the tenant, and the word "receipt" as the tender of the letter by the postal peon at the address mentioned in the letter. No other interpretation, we think, will fit the situation as it is simply not possible for a landlord to ensure that a registered letter sent by him gets served on, or is received by, the tenant."

12. In the case of **R Amber Singh Vs. Deputy Registrar of Cooperative Societies**, this Court, at paragraph No.9, held as under:

"9. The learned Special Government Pleader for Cooperation furnished to the Court, the acknowledgments 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.”

13. In the above case, this Court also categorically held that there is an effective alternative remedy available to the petitioners therein by way of appeal under Section 76 of the Cooperative Societies Act, in the event of the petitioner therein wanted the evidence to be examined meticulously.

14. In the case of **R.Narsimhulu Vs. The State of Telangana**, at paragraphs 6, 7 and 10, this Court held as under:

“6. On the other hand, the learned Government Pleader contends that the officials of the respondent-Bank tried to serve notice in person on the petitioner, but as he was not found, a copy of the notice was affixed on the front door of the house of the petitioner. It is further contended that notice by registered post as contemplated under the aforementioned rule was sent to the petitioner on

05.03.2015 and, therefore, there is enough compliance of Rule 24-A(2) of the Rules and the writ petition is liable to be dismissed. Before proceeding to adjudicate the issue, it is relevant to extract Rule 24-A(2) of the Rules, which is as follows:

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

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

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

According to the above mentioned provision, the notice has to be served on the members of the Managing Committee by giving or tendering it to such person or by sending it by registered post to their address.

7. Since the expression or is used, the notice can be given in either of the modes mentioned in (a) or (b) of Sub Rule 2 of Rule 24-A of the Rules. As regards the service of notice in person to the petitioner, the learned single Judge of this Court in *Gaaddampalli Jagpal Reddy and others Vs. District Collector, Nalgonda and others*, took the view that service of notice on the wife of the member of the Managing Committee is not in accordance with the Rule 24-A(2) of the Rules, as the Rule contemplates that the notice has to be tendered or given to the member of the Managing Committee, but not to his family members. The Division Bench of this Court in *Vancha Veera Reddy and another Vs. District Co-operative Officer, Nalgonda and others*, took the same view. But in the above two judgments, this Court has not examined the issue as to giving notice by the registered post. A plain reading of the Rule clearly shows that the intention of the

legislature is certainly not that a notice has to be actually served on the members of the Managing Committee. Therefore, the legislature has used the expressions namely that notice to be given directly to the person or sending by registered post. Therefore, it is not open for the member of the Managing Committee to contend that the notice is not actually served on him and, therefore, the impugned notice in relation to no confidence motion has to be set aside.

10. 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.”

15. Coming to the judgment cited by the learned counsel for the petitioner, in the case of **Vancha Veera Reddy and another Vs. District Co-operative Officer, Nalgonda, Nalgonda District and others**, this Court while interpreting the above provisions of law, at paragraphs 39 and 40 found as follows:

“39. Section 34-A Sub-Section (2) of the Act requires a written notice of intention to make the motion of no confidence to be in the prescribed form and Sub-Section (3) prescribes convening of meeting to be within thirty days from the date on which such notice under Sub-Section (2) was delivered to the Registrar, who shall give to the members notice of not less than fifteen clear days of such meeting in such manner as may be prescribed. Under Rule 24-A (2) of the Rules, the mode of service of notice was prescribed in the alternative by giving or tendering the notice to the member or by sending it by registered post to the address of the member,

but in no other manner. In so far as the prescription of the written notice of intention to make a motion of no confidence being in the prescribed form and the duty of the Registrar to give to the members notice of not less than fifteen clear days of the meeting for consideration of the motion in such manner as may be prescribed are concerned, the provisions under consideration in K. Sujatha v. State (3 supra) are identical, while the mode of delivery or service of notice prescribed by Rule 24-A of the Rules is restricted only to two ways unlike the rule under consideration in K. Sujatha v. State (3 supra) providing four alternatives. Without replicating all over again the same reasons forming the basis for the conclusion of the Full Bench, it can be straight away stated with reference to the principles referred to in various precedents cited that an identical conclusion has to be reached herein on the same logic. Consequently, it has to be concluded that the requirement of a written notice of the intention to make the motion of no confidence being in the prescribed form and such notice along with a copy of the proposed motion expressing no confidence having to be served on the members concerned with a notice of not less than fifteen clear days of such meeting in the manner prescribed, are mandatory in nature and any breach of either of the conditions would make the meeting as well as the proceedings taken therein invalid. However, if the date of despatch of the notice along with the motion expressing no confidence for service on the members is in compliance with the requirement of availability of fifteen clear days between the date of notice and the date of proposed meeting (with both

the said dates being excluded in computing such period of fifteen clear days), any shortfall in the period of notice of meeting than fifteen clear days from the date of receipt of notice will make the meeting or the proceedings taken thereunder invalid only if some prejudice to such member is probablised by the facts and circumstances of the case. In other words, the mere fact of shorter period of notice than fifteen clear days from the date of receipt of the notice in respect of any member will not per se make the meeting and the proceedings taken thereunder null and void without proof of some prejudice caused by such shortfall to such member.

40. *The manner of service of such notice, however, shall be only as prescribed by Rule 24-A of the Rules and any violation of Rule 24-A of the Rules in this regard shall result in concluding absence of sufficient service of notice. Any resort to affixture of the notice or tendering or serving the notice on a member of the family of the member and the like will invalidate such notice as held in Gaddampalli Jagpal Reddy v. District Collector, Nalgonda (1 supra). Therefore, non-compliance with the manner of service of notice as prescribed by Rule 24-A of the Rules also vitiates the notice and consequently, the meeting and the proceedings thereunder as service of notice in the manner prescribed has also to be considered mandatory like serving the notice in the prescribed form and despatching the notice within the required time frame.”*

16. Yet another submission made by the learned Special Government Pleader is with regard to the presumption as stipulated under Section 27 of the General Clauses Act. In the instant case, the above narration shows that the official respondents herein sent the notice by registered post to the known address and it was received by one Mr.B.Mohan.

17. It is the case of the petitioner herein that the petitioner did not instruct the postman to deliver the envelope to said Mohan. It is also not the case of the petitioner that said Mohan did not receive. It is very much evident from the above narration that the official respondents herein issued notices by adopting the mode as prescribed under Rule 24-A of the Telangana Cooperative Societies Act, 1964. Therefore, the presumption as stipulated under Section 27 of General Clauses Act would definitely enure to the respondents.

18. In view of the above observations and having regard to the law laid down by the Hon'ble Apex Court, the judgment on which learned counsel for the petitioner seeks to place reliance would not render any assistance in the facts and circumstances of the case. It is also made clear that the alleged disability of said Mohan cannot be gone into in the present writ petition, as the evidence requires to be examined in appropriate proceedings.

19. For the aforesaid reasons, this writ petition is dismissed. However, this order will not preclude the petitioner herein from availing the alternative remedy of appeal under the provisions of Section 76 of the Telangana Cooperative Societies Act, 1964, if he is advised to do so.

20. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence. No order as to costs.

14.02.2017
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A.V.SESHA SAI, J

