

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

WRIT PETITION No. 37628 OF 2015

Between:

The Fishermen Co-operative Society Ltd.,
Cheruvumadharam, Nelakondapally Mandal,
Khammam District, rep. by its
President

.....

PETITIONER

VERSUS

Paltya Kotya and 13 others

....

RESPONDENTS

JUDGMENT PRONOUNCED ON : 21.03.2017

HON'BLE SRI JUSTICE : C. PRAVEEN KUMAR

1. Whether Reporters of Local : Yes/ No
newspapers may be allowed to see
the Judgment ?
2. Whether the copies of judgment may : Yes/ No
be marked to Law Reporters/ Journals
3. Whether Their Ladyship/ Lordship wish : Yes/ No
to see the fair copy of judgment

JUSTICE C. PRAVEEN KUMAR

THE HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 37628 OF 2015

ORDER :

%Dated 21.03.2017

# The Fishermen Co-operative Society Ltd., Cheruvumadharam, Nelakondapally Mandal, Khammam District, rep. by its President		PETITIONER
	VERSUS	
\$ Paltya Kotya and 13 others		RESPONDENTS

! Counsel for Petitioner : Sri T.Sudhakar Reddy

^ Counsel for Respondents : G.P.For Fisheries (TG)

G.P.for Co-operation

Sri Kowturu Pawan Kumar



< GIST :

> HEAD NOTE :

? Cases referred :

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No. 37628 of 2015

ORDER:

1) Assailing the order, dated 05.11.2015, in I.A.No.55 of 2015 in CTA No.12 of 2015, on the file of the Court of the Chairman, Telangana Co-operative Tribunal, Warangal, the present writ petition came to be filed.

2) The circumstances which led to filing of the writ petition are as under:

As respondent Nos.1 to 11 herein along with others illegally got their names entered in the petitioner-society without following norms fixed by the Commissioner of Fisheries as well as the Government, a General Body meeting was held on 31.05.2015 to weed out illegal members from the society. In the said General Body meeting, respondent Nos.1 to 11 and others were also present and a resolution, dated 31.05.2015, came to be passed in the presence of respondent Nos.1 to 11. Aggrieved by the said resolution, the respondent Nos.1 to 11 preferred an appeal, vide CTA No.12 of 2015, before the respondent No.12 on 28.09.2015. On receipt of the notice from the Tribunal in C.T.A., the petitioner herein filed I.A.No.55 of 2015 raising preliminary objection with regard to numbering of the appeal since the same was not filed within the period prescribed under Section 76 (3) of the Andhra Pradesh Co-operative Societies Act, 1954 (for short

“the Act”) and Rule 10 (b) of the Andhra Pradesh Co-operative Tribunal (Procedure) Rules. After considering the rival objections raised, the Tribunal rejected the said objection of the petitioner on the ground that the appeal was numbered in view of the directions given by the Hon’ble High Court in W.P.No.29630 of 2015, wherein this Hon’ble Court, by its order, dated 11.09.2015, directed the petitioners therein to file an appeal before the competent Tribunal, within a period of fifteen days from the date of receipt of a copy of the said order. Since the appeal came to be filed within fifteen days, the Tribunal numbered the appeal and issued notice to the respondents. Challenging the same, the present writ petition came to be filed.

3) Learned counsel for the petitioner mainly submits that even though the Hon’ble High Court directed the petitioners in W.P.No.29630 of 2015 to file an appeal within fifteen days from the date of receipt of a copy of the said order, but, however, did not condone the delay in preferring the appeal before the Tribunal. Hence, it is urged that the Tribunal erred in numbering the appeal without an application for condoning the delay. He further submits that since the respondent Nos.1 to 11 failed to comply with the mandatory requirement of Section 76 (3) of the Act, numbering of the appeal is incorrect. The same is opposed by the learned counsel for the respondent Nos.1 to 11 stating that in view of the orders of the Hon’ble High Court, the Tribunal numbered the appeal and it cannot be said that the Tribunal committed a mistake, while numbering the appeal.

4) It is not in dispute that the parties are required to file an appeal within a period of 60 days, as contemplated under Section 76 (3) of the Act. Without filing an appeal within the time stipulated, respondent Nos.1 to 11 herein preferred W.P.No.29630 of 2015 before this Court seeking to declare the resolution, dated 31.05.2015, as illegal and void. Since an alternate remedy was available, this Court refused to entertain the said writ petition, but, however, disposed of the same giving liberty to the petitioners therein to file an appeal before the competent Tribunal, within a period of fifteen days from the date of receipt of a copy of the order in the said writ petition. It is also to be noted that though the resolution is dated 31.05.2015, W.P.No.29630 of 2015 came to be filed on 11.09.2015, which is beyond the period of 60 days. The record shows that pursuant to the order of the High Court, respondent Nos.1 to 11 herein filed an appeal before the respondent No.12-Tribunal. The Tribunal took the case on file, numbered it as C.T.A.No.12 of 2015 and then issued notice to the petitioner-society. On receipt of the notice, the petitioner herein filed I.A.No.55 of 2015, under Order VII Rule 11 (d) read with Section 151 of C.P.C., seeking rejection of the appeal.

5) Admittedly, there was a delay in preferring the appeal and the same was filed without any application to condone the delay. The reason being, the direction given by the High Court in W.P.No.29630 of 2015, wherein respondent Nos.1 to 11 herein were directed to file an appeal within fifteen days.

6) It is well established principles of law that any order passed by any Court cannot be run contrary to the statute or the law made thereunder. In the instant case, statute provides filing of an appeal within a period of 60 days from the date of receipt of the order. Therefore, even if there is a direction from the High Court, directing the parties to file an appeal within 15 days, the same cannot be contrary to a provision. In fact, this Hon'ble Court, while disposing of the writ petition has neither condoned the delay nor directed the Tribunal to number the appeal. Section 76(3) of the Co-operative Societies Act, postulates that if an appeal is preferred after the expiry of 60 days, the Tribunal may admit an appeal, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the said period. Therefore, if an appeal is preferred beyond the period of 60 days, the same shall be accompanied by an application giving reasons as to why appeal could not be filed within the prescribed period. The consequence would be that even if an appeal is preferred pursuant to a direction given by a higher court, the same should be accompanied by a necessary application giving reasons for the delay in filing the appeal. However, the period for which the proceedings were pending before the High Court and the directions, if any, given by the High Court can be taken into consideration, while considering the delay application. Hence, the order under challenge is *set aside*, giving liberty to the respondents 1 to 11 herein to present the appeal afresh along with

an application seeking to condone the delay in filing an appeal, in which event, the same shall be dealt with in accordance with law.

7) With the above direction, the writ petition is disposed of.

8) Consequently, miscellaneous petitions, if any, pending in this Writ Petition shall stand closed. There shall be no order as to costs.

JUSTICE C. PRAVEEN KUMAR

21.03.2017

Note: L.R. Copy to be marked.

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