

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
THE HON'BLE SMT JUSTICE KONGARA VIJAYA LAKSHMI

Writ Appeal No.632 of 2018

Judgment: (Per the Hon'ble The Acting Chief Justice Ramesh Ranganathan)

This appeal, under Clause 15 of the Letters Patent, is preferred by the 5th respondent in W.P. No. 11997 of 2018 aggrieved by the interlocutory order passed in I.A. No. 1 of 2018 dated 10.4.2018. Respondents 1 to 6 herein filed W.P. No. 11997 of 2018 seeking a mandamus to declare the memo of the Special Chief Secretary(FAC), Cooperation Department, State of Andhra Pradesh dated 3.4.2018 as illegal, arbitrary, colourable exercise of power, and *ultra vires* and contrary to Section 34-A of the A.P. Cooperative Societies Act, 1964.

Respondents 1 to 6 herein are the directors of Narsannapeta Cooperative House Building Society Limited, of which the appellant is the President. Respondents 1 to 6 herein moved a no confidence motion against the appellant on 6.3.2018 in Form – AAA. The Deputy Registrar of Cooperative Societies is said to have issued proceedings dated 21.3.2018 convening a meeting, with respect to the no confidence, on 2.4.2018. On 1.4.2018, he is said to have postponed the said meeting to 3.4.2018. He is also said to have authorized the Sub-Divisional Cooperative Officer, Narsannapeta, thereafter, to preside over the meeting as he was un-well. A meeting is said to have been convened by the Sub-Divisional Cooperative Officer, Narsannapeta on 3.4.2018, on which date a communication is said to have been received from the Special Chief Secretary (FAC), Cooperation Department staying the proposed no confidence motion against the appellant-5th respondent. Aggrieved thereby, respondents 1 to 6 herein filed the present Writ Petition

questioning the action of the Minister in staying the meeting scheduled to be held to decide on the no confidence motion moved against the appellant-5th respondent.

Before the learned Single Judge, reliance was placed by respondents 1 to 6 on the judgment of this Court in **B. Vijay Kumar Reddy vs. State of Telangana and Others**¹, wherein the learned Single Judge held that the Minister lacked jurisdiction to pass an order staying the motion of no confidence. Following the said order, the learned Single Judge granted interim suspension as prayed for. Aggrieved thereby, the present appeal.

Sri J. Prabhakar, learned counsel for the appellant-5th respondent, would question the order of the learned Single Judge on the following grounds. (1) that the interim order passed by the learned Single Judge amounts to allowing the Writ Petition itself, and such an order could not have been passed without putting the appellant-5th respondent on notice, and without giving him an opportunity of being heard; (2) though a caveat was lodged by the appellant, the order under appeal was passed without a set of papers being served on them; (3) since the appellant was appointed as the President of the Society in November, 2017, the motion of no confidence can only be moved one year after he had assumed office and, consequently, the very motion of no confidence instituted against the appellant is contrary to law, and is a nullity; (4) setting aside the order, impugned in the Writ Petition, would result in revival of the illegal motion of no confidence, and this Court should therefore refrain from interfering with such an order; and (5) the Cooperative Society, of which the appellant is the President and the respondent-writ petitioners are Directors, has not been arrayed as a respondent in the Writ Petition, and no order could have been passed behind the back of the said Cooperative Society.

¹ 2016(6) ALD 86

On the other hand, Smt. B. Vijaya Lakshmi, learned counsel for the respondent-writ petitioners, would submit that the order, impugned in the Writ petition, is the order passed by the Special Chief Secretary at the behest of the Minister; this order is subjected to challenge on the ground that it suffers from inherent lack of jurisdiction; the State of Andhra Pradesh has been arrayed as the 1st respondent in the Writ Petition; and as it is the order of the 1st respondent, which is impugned in the Writ Petition, failure to implead the Cooperative Society as a respondent is of no consequence. Learned counsel would further state that, in an intra-Court appeal, under Clause 15 of the Letters Patent, this Court would not, save patent illegality, interfere with the order under appeal; since the interim order of suspension of an order which is *ex-facie* without jurisdiction cannot be said to suffer from perversity, no interference is called for; no caveat was served either on the respondent-writ petitioners or on their counsel, even on the day on which the Writ Petition was listed; and while the appellant claims to have lodged a caveat, it is not known whether the said caveat was even registered by the Registry, or was returned to him.

The fact that the Minister lacks jurisdiction to pass an order, staying the no confidence motion, has not been disputed before us, nor is the validity of the law declared in **B. Vijaya Kumar Reddy**¹ put in issue. While, ordinarily, no interim order would be passed, which has the effect of allowing the Writ Petition itself, it is open to the learned Single Judge, in exceptional circumstances and for just and valid reasons, to pass an interim order which may amount to allowing the Writ Petition itself. While the order under appeal is, no doubt, cryptic, the learned Single Judge has observed that interim suspension was being granted in view of the law declared by this Court in **B. Vijaya Kumar Reddy**¹ holding that the

Minister lacks jurisdiction to interfere with the motion of no confidence. We see no reason, therefore, to fault the order of the learned Single Judge on this score.

With regards the contention that the order was passed even though a caveat was lodged, the affidavit filed in support of the WAMP does not reflect the actual date on which the caveat was lodged. Sri J. Prabhakar, learned counsel for the appellant, would submit that he has been instructed to state that the caveat was lodged on 6.4.2018. The Writ Petition was instituted on 9.4.2018, and Smt. B. Vijaya Lakshmi, learned counsel for the respondent-writ petitioners, would submit that neither was the Caveat Petition served on her, nor were the respondent-writ petitioners made aware that a caveat had been lodged. In the absence of sufficient particulars to show that a caveat was lodged and registered on 6.4.2018, and a copy of the notice in the caveat petition was served on the respondent-writ petitioners before the Writ Petition was filed, it would be wholly inappropriate for us to set aside the order under appeal on this score. Suffice it to make it clear that this order shall not disable the appellants from establishing, before the learned Single Judge, that the order under appeal was passed even though a caveat had been lodged, and for the learned Single Judge to consider whether, in such circumstances, the interim order under appeal should be continued or vacated.

We find considerable force in the submission of Smt. B. Vijaya Lakshmi, learned counsel for the respondent-writ petitioners, that, since the order under challenge in the Writ Petition was passed by the 1st respondent, failure to implead the Cooperative Society would not justify the Writ Petition being dismissed on the ground of non-joinder of

necessary parties. We see no reason, therefore, to interfere on this score also.

The contention, urged on behalf of the appellant that he was appointed as the President of the Society in November, 2017 and, therefore, a no confidence motion cannot be moved within one year, can also be raised before the learned Single Judge, and he can be requested to vacate the interim order. These factual aspects, as to whether the appellant was in fact appointed as a President in November, 2017 rendering the no confidence motion, moved against him in April, 2018, illegal are all factual aspects which must be examined by the learned Single Judge, in the first instance, before the jurisdiction of the Division Bench, under Clause 15 of the Letters Patent, can be invoked.

It is only if the motion of no confidence is held to be illegal, would the Court be required to examine whether setting aside the illegal order passed by the first respondent would result in revival of an earlier illegal order i.e the motion of no confidence. All these are matters which are required to be examined by the learned Single Judge, in the first instance, after the appellant-5th respondent files a counter-affidavit and seeks vacation of the interim order.

Sri J. Prabhakar, learned counsel for the appellant, would submit that, since the meeting is scheduled to be held on 23.4.2018, continuing the order under appeal would deny the appellant his right to question the motion of no confidence. The present appeal is preferred against the interlocutory order passed in a Writ Petition filed by the respondent-writ petitioners. It would be wholly inappropriate for us, in such a Writ Petition, to consider whether or not the motion of no confidence should be set aside. Suffice it to make it clear that the order passed by us shall not disable the appellant from availing all such legal remedies, as are available

to him in law, questioning the validity of the no confidence motion moved against him.

Subject to the aforesaid observations, the Writ Appeal fails and is, accordingly, dismissed. Miscellaneous Petitions pending, if any, shall also stand dismissed. There shall be no order as to costs.

(RAMESH RANGANATHAN, ACJ)

(KONGARA VIJAYA LAKSHMI, J)

20th April, 2018

Note:

Furnish c.c. by 23.4.2018

b/o

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**THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN
AND
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Date:20.04.2018

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