THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION NO.39368 OF 2018

Dated 1st November 2018

Between:

1. Dasari Dali Naidu, S/o.Late Chinna Appanna
And one other.

...Petitioners

And

1. The State of Andhra Pradesh, rep.by its Principal Secretary, Industries & Commerce Department, Secretariat at Velagapudi, Amaravati, Guntur District and eight others.

...Respondents

The Court made the following:

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ORDER:

This Writ Petition is filed seeking a writ of mandamus declaring the action of the first respondent in issuing G.O.Ms.No.126 Industries & Commerce (Prog.II) Department, dated 29.10.2018 appointing the unofficial respondents 5 to 9 as members of the fourth respondent-Society, as arbitrary and illegal.

2. By order dated 29.10.2018, the Government constituted a fresh Board considering the cases of the same nine persons included in G.O.Ms.No.168 dated 29.11.2017 as an interim alternative arrangement.

3. Heard the learned counsel for the petitioners and the learned Government Pleader for Industries and Commerce and Revenue for the respondents. Having regard to the issue involved, learned counsel for the petitioners as well as the learned Government Pleader agreed for disposal of the Writ Petition at the stage of admission.

4. Sri V.V.Narayana Rao, learned counsel representing Sri A.P.Reddy, learned counsel for the petitioners, contends that the said order of the Government is contrary to the provisions contained in Section 32(7) of the A.P. Co-operative Societies Act, 1964 ("the Act" for brevity) and, therefore, it is *ex facie* illegal.

5. According to the petitioners, no elections were held from the year 2005 to the fourth respondent-Society; Section 32(7) of the Act imposed a maximum period of conducting affairs of the Society

by a person in-charge as six months and in no circumstance, it can go beyond three years. Therefore, the present action of the Government in extending the tenure of the person in-charge by another six months is *ex facie* illegal and therefore, it is liable to be set aside on that ground alone.

6. Learned Government Pleader sought to justify the decision to issue the orders for the reasons recorded in paragraph-8. According to the learned Government Pleader, the fourth respondent incurred huge losses year after year for the past several years and the accumulated losses of the Society are about Rs.40.20 crores as on 31.03.2017 and therefore, the Society is not in a position to bear the expenditure even to conduct elections due to financial stringency and hence, the same was not included in the agenda items of General Body meeting held on 26.09.2017. It is further contended that the sugarcane production in the area of the Society is reduced drastically, as the farmers are not coming forward to grow sugarcane.

7. The only issue for consideration is whether the order constituting the Board for the fourth respondent-Society is valid.

8. In paragraph-9 of the order, the Government constitutes the Board to the fourth respondent for a period of six months, considering the cases of nine persons under Section 32(7)(a) read with Section 123 of the Act.

Section 32(7)(a) of the Act reads as under.

> "If there is no committee or in the opinion of the Government or, the Registrar, it is not possible to call a general meeting for the purpose of conducting election of members of the committee, the Government, in respect of

> such class of societies as may be prescribed and the Registrar in all other cases may appoint a person or persons to manage the affairs of the society for a period not exceeding six months and the Government may, on their own and the Registrar with the previous approval of the Government, extent from time to time, such period beyond six months, so however that the aggregate period include the extended period if any, shall not exceed three years."

9. It is not in dispute that the tenure of the executive committee ended in the year 2005 and since then no elections are held and the affairs of the Society are being conducted by way of other arrangements.

9.1. Section 123 of the Act vests powers in the Government to exempt the operation of the provisions of the Act to any Society. It reads as under:

> "**Section 123. Power of exempt class of societies** :- The Government may, by general or special order and for reasons to be recorded therein, exempt any society or any class of societies from any of the provisions of this Act."

10. In paragraph-8 of the G.O., the Government assigned reasons why the elections could not be conducted. It cannot be said that the reasons assigned are not valid. Thus, Section 123 of the Act is attracted to the case on hand. Though, there is a reference to Section 32(7)(a) in the impugned Government Order along with Section 123 of the Act, in the facts of this case, it has to be assumed that it would not vitiate the decision when a specific power is available to the Government under Section 123 of the Act and such power is invoked.

11. It is not in dispute that in terms of Section 32(7)(a) of the Act maximum period of tenure of the person in-charge is three years and therefore, a person in-charge cannot conduct affairs of the Society beyond three years. Thus, the provision in Section 32 of the Act is only with regard to the persons in-charge to run the affairs of the Society in the normal circumstances whereas Section 123 is an overarching provision vesting power in the Government to exempt operation of any of the provisions of the Act to a Society. Once this power is exercised, the limitation imposed by Section 32 of the Act is not attracted and once that provision gets excluded, the power to run the affairs of the Society by a committee validly constituted by Government cannot be held as invalid. Thus, there is no merit in the contentions urged by the learned counsel for the petitioners.

12. The Writ Petition is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(P.NAVEEN RAO, J)

1st November 2018
RRB