

HONOURABLE SRI JUSTICE P. NAVEEN RAO

WRIT PETITION No. 42289 of 2018

Date: 3.12.2018

Between:

Bandaru Vijay Kumar, S/o Sri B China Venkata Swamy,
Aged 49 years. Occ: Business, R/o H.No.315/1, Main Road,
Lakkavaram Village, Malikipuram Mandal, East Godavari
District, Andhra Pradesh.

.....Petitioner

And

The State of Andhra Pradesh, rep. by its Principal Secretary,
Cooperation Department, A P Secretariat, Velagapudi,
Amaravathi, Guntur District, A.P., & others

.....Respondents



The Court made the following:

HONOURABLE SRI JUSTICE P. NAVEEN RAO**WRIT PETITION No. 42289 of 2018****ORAL ORDER:**

Heard learned counsel for petitioner Sri K Chidambaram, learned Government Pleader and learned counsel for unofficial respondents Sri Ramgopal.

2. Notice dated 02.11.2018 in Form-AAA requesting Deputy Registrar of Co-operative Societies informing him that the 9 members of the credit society resolved to move motion of no confidence against the President and requested him convene meeting of the society. Motion dated 02.11.2018 against President signed by nine members of the respondent society was enclosed. The said letter was delivered to the Deputy Registrar of Cooperative Societies/2nd respondent. In response to the said notice, the Deputy Registrar issued notice on 12.11.2018 under Section 34 A(3) of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, the Act) fixing 03.12.2018 as the date to hold the meeting of the society to consider the motion of no-confidence.

3. Challenging the said notice dated 12.11.2018, this writ petition is filed.

4. According to learned counsel for petitioner, motion of no-confidence is vitiated on the ground that it was not properly drafted and the resolution of the members to request for convening the special session to consider the motion of no-confidence was not served on the petitioner along with notice dated 12.11.2018. It is further contended that as per Section 34 (A) (2) read with (3) of the Act, the meeting to consider the motion of no-confidence has to be held within 30 days from the date on which the requisition was served on the Deputy Registrar,

whereas, 30 days time lapsed by 03.12.2018, therefore, the notice convening the meeting of the society on 03.12.2018 is ex-facie illegal.

5. Sri Ramgopal, learned counsel appearing for learned counsel for respondents 3 to 11 would submit that notice in Form-AAA along with copy of resolution was delivered to the Deputy Registrar on 03.11.2018; that the period of 30 days prescribed in Section 34 (A) (3) of the Act, has to be computed after excluding the date of delivery of motion of no-confidence along with requisition on the Deputy Registrar. According to learned counsel, if that date is excluded, the date fixed by the Deputy Registrar is within the time prescribed and is therefore not vitiated.

6. Learned Government Pleader while supporting this contention of Sri Ramgopal, would also submit that along with notice dated 12.11.2018 the copy of motion was also enclosed and same was acknowledged by the petitioner.

7. The only issue for consideration is whether while computing 30 days to convene meeting to consider the motion of no-confidence against President as required by Section 34 (A) (3) of the Act, the date on which notice was delivered on the Deputy Registrar should be excluded ?

8. Section 34 (A) (2) and (3) of the Act read as under:

“34A. Motion of no-confidence in the President and Vice-President of the committee: – (1).....

(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.”

9. A plain reading of Sub-section (3) makes it clear that it prescribes 30 days time within which meeting of the society should be held to consider the motion of no confidence and in computing 30 days the day on which notice was delivered on the Deputy Registrar also to be counted. Thus, the Deputy Registrar is mandated to convene meeting within 30 days including the day on which notice in Form-AAA was delivered on him. The record placed before this Court does not disclose date of delivery of notice. Ordinarily, it can be presumed to have been delivered on the same day. However, according to learned counsel appearing for respondents 3 to 11, the notice was delivered to the Deputy Registrar on 03.11.2018. Even if that date is taken, the meeting to consider the motion ought to have been held within 30 days from that date, whereas it was convened on 03.12.2018, which is outside the time limited prescribed in Section 34(A)(3) of the Act.

10. When statutory provision is clear and unambiguous fixing time frame to convene meeting of the society to consider the motion of no confidence, the Deputy Registrar erred in fixing the date of such meeting after expiry of 30 days.

11. The impugned notice is *ex facie* illegal without jurisdiction and competence and is liable to be set aside. In view thereof, the consequential steps taken by the Deputy Registrar are not valid.

12. The impugned notice is set aside and Writ Petition is allowed. However, it is made clear that this order does not come in the way of members of the society exercising their right to initiate fresh motion of no-confidence, if it is otherwise permissible. No costs. Miscellaneous petitions, if any pending, are closed.

P NAVEEN RAO,J

DATE: 3-12-2018
TVK



HONOURABLE SRI JUSTICE P. NAVEEN RAO



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