HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.No.41190 of 2017

ORDER:

Petitioners have filed this Writ Petition challenging proceedings in Rc.No.12901/2015/PE dt.13-07-2017 of the Commissioner for Cooperation and Registrar of Cooperative Societies, Andhra Pradesh, Guntur (2nd respondent) canceling orders in Lr.Rc.No.2577/2016-D (Co.Op) dt.15-06-2017 of the Managing Director of Cheepurupally Rural Electrical Cooperative Society Limited, Cheepurupally, Vizianagaram (3rd respondent Society) absorbing the petitioners as Junior Line Men in the said Society.

2. Petitioners were appointed as Village Electricity Workers on temporary basis by the 3rd respondent Society between 12-08-1996 and 16-10-2002. Later the said post was redesignated as Junior Line Man with effect from 01-09-2007 by 3rd respondent.

3. The emoluments payable to the petitioners, cadre strength and staffing pattern are subject to Section 116-C of the A.P. Cooperative Societies Act, 1964 (for short 'the Act') and Rule 36-B of the Rules framed thereunder.

4. The State Government issued G.O.Rt.No.619 Agriculture and Cooperation (Coop.I) Department dt.23-04-2013 invoking power under Section 123 of the Act exempting 3rd respondent society from

the operation of Section 116-C of the Act for a period of five years from 2012-13 to 2017-18.

5. Vide proceedings Rc. No.11640/2013/RECO dt.08-08-2013, the 2nd respondent had approved the Special Bye-laws relating to service conditions, cadre strength and staffing pattern as per Section 116-C of the Act. In this proceedings 48 posts of Junior Line Men were sanctioned apart from other posts also.

6. The 39 petitioners would therefore be working within the approved cadre strength of Junior Linemen posts sanctioned in the above proceedings dt.08-08-2013 of 2nd respondent.

7. Since the 3rd respondent was adopting and following policy decisions of the erstwhile A.P.State Electricity Board and its successor entities i.e. A.P. Transco/A.P.E.P.D.C.L. relating to the appointments and service conditions of its employees, and since the A.P.E.P.D.C.L. took a policy decision in 2004 to regularize the temporary Junior Line Men in the time scale 3965-75-4190-110-4740-145-5465-1860-6365 with usual allowances w.e.f. the date of joining in the posts of Line Men against the existing vacancies of Junior Line Men, petitioners submitted representation on 26-06-2014 to 3rd respondent to regularize their services as Junior Line Men as was done by A.P.E.P.D.C.L. since vacancies are available in the cadre of Junior Line Men, and since they were being made to work on meager

salary of Rs.6000/-. But no action was taken on the said representation.

8. Petitioners then filed W.P.No.3130 of 2015 in this Court to declare the action of the respondents in not regularizing their services in the cadre of Junior Linemen. They relied on proceedings dt.15-12-2015 of the Managing Director of the 3rd respondent addressed to the 2nd respondent seeking approval of the proposal for absorbing the petitioners in the existing Junior Line Men vacancies. On 12-07-2016 in W.P.M.P.No.4169 of 2015 and W.P.M.P.No.27816 of 2016 in that Writ Petition, this Court directed the respondents to consider the case of petitioners for regularization in the cadre of Junior Line Men in terms of the proceedings dt.15-12-2015 of the Managing Director of 3rd respondent.

9. Subsequently in its General Body Meeting conducted on 27-04-2017, the 3rd respondent-Society resolved to absorb petitioners in the cadre of Junior Line Man vide Resolution No.18 dt.27-04-2017.

10. Pursuant thereto, the Person-In-Charge Committee of the Society also resolved to comply with the resolution of the General Body and to absorb the petitioners as Junior Line Men vide Resolution No.2.

11. The Managing Director of 3rd respondent Society then addressed a letter dt.15-06-2017 to the 2nd respondent about the decision to absorb the petitioners as Junior Line Men in compliance

with the interim orders passed by this Court on 12-07-2016 in W.P.No.3130 of 2015.

12. But 2nd respondent issued the impugned proceedings informing the 3rd respondent-Society and its Managing Director that petitioners' appointments as Junior Line Men are not valid; that there is no competency to absorb or regularize petitioners' services as Junior Line Men; that as per Section 13 of A.P. (Regulation of Appointments to public services and rationalization of Staff Pattern and Pay Structure) Act, 1994 (Act 2 of 1994), any person or authority who contravenes the provisions of the Act is liable for imprisonment as well as fine; and so the orders of regularization issued on 15-06-2017 by the Managing Director of 3rd respondent society of the petitioners is cancelled.

13. Challenging the same this Writ Petition is filed.

CONTENTIONS OF COUNSEL FOR PETITIONERS

14. Sri D.Nagarjuna Babu, learned counsel for the petitioners contended that the impugned order was passed by the 2nd respondent without issuing any notice to the petitioners and is therefore violative of principles of natural justice; Act 2 of 1994 has no application to the appointments and service regulations of employees of Cooperative Societies after insertion of Section 116-A, 116-AA, 116-B and 116-C by Act 21/1985, A.P. Act 21/1998, 19/1976, 22/2001 which came into effect from 22-04-1985, 25-04-2001 etc; that the A.P. Cooperative

Societies Act, 1964 is a special enactment which will override Act 2 of 1994 which was a general enactment; that was why G.O.Rt.No.619 dt.23-04-2013 was issued exempting 3rd respondent-Society from the purview of Section 116-C under Section 123 of the Act; under Section 116-C Cooperative Societies have power to fix staffing pattern, qualifications, pay scales etc. with prior approval of Registrar of Cooperative Societies subject to limit of 2% of working capital or 30% gross profit whichever is less; and the 3rd respondent society has been constantly earning profits and there was no risk in carrying out its business activities if the petitioners are absorbed in the Junior Linemen posts.

15. It is further contended that even if Act 2 of 1994 applies, its provisions do not prohibit petitioners' absorption. It is also contended that the 2nd respondent has no power to pass the impugned order as the powers of the Registrar are delegated to 4th respondent, who is the functional Registrar of the 3rd respondent Society. It is contended that Kuppam Rural Electric Supply Cooperative Society, which is akin to 3rd respondent-Society had also regularized temporary Junior Line Men on permanent basis and the respondents cannot discriminate against the petitioners. Petitioners also placed reliance on proceedings dt.27-07-2018 of the A.P. Electricity Regulatory Commission declaring that employees of Rural Electric Cooperative Societies Limited cannot be discriminated in pay and allowances compared to employees of Discoms and recommends exemption to all

such societies including the 3rd respondent society from the operation of Section 116-C of the Act permanently. They also relied upon the balance sheet of the 3rd respondent society to show that the financial burden of absorption of the petitioners on the 3rd respondent society is only Rs.22,28,760/- per annum and that the said society has a net profit of Rs.2.375 crores in 2017-18 and a gross profit of Rs.7.33 crores. They also relied on the recommendation in proceedings dt.22-01-2018 of the Managing Director of 3rd respondent Society to the 2nd respondent Society that the Society is running on sound lines; that it had repaid all loans availed from Rural Electrification Corporation, New Delhi, as well as share capital to the Government of Andhra Pradesh *and* another letter dt.30-10-2018 of the 2nd respondent to the 1st respondent reiterating the same and further recommending exemption from the provisions of Section 116-C from 01-04-2018 to 31-03-2023. They therefore contend that the 2nd respondent could not have taken a different view in the impugned order.

COUNTER OF RESPONDENT Nos.3 AND 4

16. The 3rd respondent Society and its Managing Director (4th respondent) filed a counter-affidavit stating that the 3rd respondent was established under the Act in 1981 to make available electricity to consumers in its area of operation; that it adopted the service conditions, recruitment procedure and pay scales of erstwhile A.P.State Electricity Board (now A.P.Transco/Discoms) in respect of its employees; for purpose of its operations, it had engaged services of

Village Electricity Workers on temporary basis; that in the said Board, such Village Electricity Workers had been absorbed as Junior Lineman to the extent of available vacancies and balance were appointed as contract Junior Lineman; so a resolution dt.27-07-2007 was passed by the Board of Directors of 3rd respondent converting Village Electricity Workers employed by it as contract Junior Lineman; that it converted 48 existing Village Electricity Workers to contract Junior Lineman w.e.f. 01-09-2007; and in terms of Section 116-C r/w Rule 28 of the Act, procedure for recruitment, staffing pattern and service by-laws were placed before 2nd respondent and vide proceedings dt.08-08-2013, the same as well as the 48 Junior Lineman posts were approved while granting exemption from the operation of Section 116-C for a period of 5 years from 2012-13 to 2017-18.

17. It is stated that representation dt.26-06-2014 of the petitioners was considered and forwarded to the Registrar of Cooperative Societies as per procedure in vogue; that the General Body of the 3rd respondent in the meeting conducted on 27-04-2017 resolved to absorb contract Junior Lineman; but the 2nd respondent did not accept it in the impugned order dt.13-07-2017.

18. It is contended that as per Section 30 of the Act, the General Body is the ultimate authority and the person-in-charge Committee of 3rd respondent thought it fit to implement the General Body resolution dt.27-04-2017 and absorb the petitioners as Junior

Lineman; and the same was informed to 2nd respondent on 15-06-2017. It is stated that to provide better services to consumers, the 3rd respondent absorbed the contract Junior Lineman.

19. It is also contended that the 2nd respondent, having fixed the staffing pattern, had power to interfere with the process of appointment of employees while exercising overall supervision.

20. Sri N.Jayasurya, learned counsel appearing for respondent Nos.3 and 4 reiterated the said contentions but did not make any submissions on the applicability of Act 2 of 1994.

COUNTER-AFFIDAVIT AND ADDITIONAL COUNTER-AFFIDAVIT OF RESPONDENT Nos.1, 2 AND 5

21. It is the contention of 2nd respondent in the 1st counter-affidavit filed on 03-04-2018 that petitioners were appointed initially between 12-08-1996 to 16-10-2002 on temporary basis by the then Managing Committees, without following procedure and rule of reservation.

22. It is contended that as per Section 116-C, a Society shall have power to fix the staffing pattern, qualification, pay scales and other allowances for its employees with prior approval of the Registrar of Cooperative Societies subject to condition that expenditure towards pay and allowances of the employees shall not exceed two percent of the working capital or thirty percent of the Gross profit, in terms of actual in a year whichever is less. As per the

provisions of Rule 36-B of the Rules, any excess expenditure over and above the limits fixed by the Act shall be specifically pointed out by the Auditor and excess expenditure, if any, shall be a charge on the Managing Committee jointly and severally. Therefore the 3rd respondent Society after getting approval of staffing pattern and pay scales, has to appoint staff according to the procedure prescribed in the bye-laws of the Society, duly following rule of reservation and should also limit its expenditure towards pay and allowances of the employees within the said norms.

23. It is contended that 3rd respondent Society having exceeded the norms, sought exemption from the provisions of Section 116-C read with rule 36-B of the Act and with an assurance that the establishment cost of the 3rd respondent Society will fall down the future, and can run the society with less establishment cost besides earning sizeable profits by the Society. The 1st respondent has considered the request and issued G.O.Rt.No.619 dt.23-04-2013 accordingly exempting only the excess salaries incurred over and above the norms prescribed in the Act invoking the powers vested under Section 123 of the Act, and not for regularizing the services of temporarily appointed workers. It is contended that even though the nature of work is akin to the APEPDCL, the Rural Electric Cooperative Society (RECS) is registered as a Cooperative Society and the service conditions of the society will be in accordance with the provisions of the Act.

24. It is contended that the Contract Junior Line Men were appointed in violation of the Rules and Bye-laws, without permission of Government and RCS; the resolution for absorption was passed by the Non-Official In-Charge-Committee but not by the elected Board; and that the financial burden to the Society on the proposed absorption is Rs.46,61,700/- p.a. The appointments of Contract Junior Line Men were not made as per existing byelaws of the Society and also as per the Act 2 of 1994 (A.P.Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act, 1994 and the G.O.Ms.No.94 dt.28-03-2003 and will have serious consequences regarding irregular appointments in other Cooperative Societies and hence the impugned orders were issued by 2nd respondent canceling the orders issued by 4th respondent.

25. It is contended that the Rural Electric Cooperative Society draws subsidized power and also receives guarantees from the 1st respondent for the loans obtained from the Rural Electrification Corporation, New Delhi and as such is covered under Section 43 of the Act i.e. Societies categorized as receiving aid from the Government. Therefore Act 2 of 1994 is applicable to them and the 4th respondent has no competency for regularizing the services of temporarily appointed workers.

26. It is contended that 3rd respondent is the non-Official Person-In-charge Committee appointed by 1st respondent under Section 32(7)(a) of the Act and continued from time to time and

recently extension of Non-Official PIC was issued vide G.O.Rt.No.772 dt.05-12-2017 for a period from 07-11-2017 to 06-05-2018; as per the provisions of Section 32(b) of the Act, the persons or persons so appointed shall, subject to the control of the Government or as the case may be, of the Registrar and subject to such instructions or directions as they may issue, from time to time, have power to exercise all or any of the functions of the Committee or any Officer of the Society and to take all such actions as may be required in the interest of the Society; and therefore, neither the General Body nor the 3rd respondent Society can resolve for absorbing the petitioners and they are not supposed to take any policy decisions independently.

27. It is also contended that the allegation that the similarly placed RECS, Anakapalli and Kuppam are allowed to absorb the employees working on ahoc basis is false. The petitioners are aware that in case of Anakapalli RECS, number of cases were filed in this regard and in W.P.M.P.No.31965 of 2012 in W.P.No.25058 of 2012, stay was obtained and continuing in services and since case of Kuppam RECS was brought to the notice of these respondents, action will be initiated on such irregular absorption and the petitioners cannot claim for regularization basing on such grounds.

28. The 4th respondent is not Functional Registrar of the 3rd respondent Society and it is one of the Societies under the jurisdiction of 5th respondent and the respondent Nos.3 and 4 cannot take

independent policy decisions that will also have a bearing on the financial position of 3rd respondent Society.

29. Later an additional affidavit was filed by 2nd respondent on 28-11-2018 stating that 3rd respondent is drawing subsidized power and also receiving guarantees from the State Government for the loans obtained from Rural Electrification Corporation, New Delhi and is a Society covered under Section 43 of the Act and is to be treated as a State Aid Society. Consequently, Act 2 of 1994 is applicable.

30. It is also contended that the Government was paying huge amount towards quarterly interests on loans disbursed to the Societies like the petitioners to the Rural Electrification Corporation, New Delhi vide G.O.Rt.No.198, Energy (Power-III) Department dt.20-12-2011.

31. It is also stated that Government is paying tariff subsidy to A.P.Transco for favour of Rural Electric Cooperative Societies and it has been receiving subsidized power from A.P.E.P.D.C.L. It is stated that 3rd respondent Society was receiving subsidized power for which the Government is paying substantial amounts to the Discom. Consequently, the 3rd respondent Society is receiving State-aid substantially.

32. Reference is made to G.O.Ms.No.20 Energy (Power-III) Department dt.03-02-2012, proceedings Rc.No.7275/PR.IV/2006-66 dt.27-03-2014 and letter Rc.No.REC/CPL/ENG/RGGVY/Closure /

D.No.773/13-14 dt.25-03-2014 and it is stated that under the said proceedings, the 3rd respondent was enjoying guarantee by way of counter-signature of the 1st respondent for implementing schemes of Rural Electrification Corporation, New Delhi under which loans are provided.

33. Along with the same, copy of a tripartite agreement between the Rural Electrification Corporation Limited, New Delhi, Government of Andhra Pradesh and the 3rd respondent executed on 18-07-2016 is filed.

34. Though the learned Government Pleader for Cooperation made certain submissions when the matter was heard initially on 25-10-2018, 01-11-2018, 08-11-2018, 12-11-2018 and 14-11-2018, after filing of the additional counter-affidavit, when the Court put certain questions about the stand taken therein, he objected to the questions and declined to argue further. Therefore, on the basis of the submissions made earlier and the stand taken in the counter-affidavits, the matter is decided.

THE CONSIDERATION BY THE COURT

35. In view of the rival contentions, the question for consideration is :

(a) *Whether the 3rd respondent Society is a State-aid Society under Section 43 of the Act to which Act 2 of 1994 would apply ?*

(b) Whether the impugned order passed by 2nd respondent warrants any interference?

(c) To what relief?

36. Before I deal with the points, the admitted facts may be noted.

37. The 3rd respondent Society is a Cooperative Society governed by the provisions of the A.P.Cooperative Societies Act, 1964. Under Section 30 of the said Act, the ultimate authority of the Society vests in its General Body. Section 116-C deals with staffing pattern of Societies and states:

> *"116-C. Staffing Pattern of societies :- (1) A society shall have power to fix the staffing pattern, qualifications, pay scales and other allowances for its employees with the prior approval of the Registrar of Co-operative Societies subject to the condition that expenditure towards pay and allowances of the employees shall not exceed two per cent of the working capital or thirty per cent of the gross profit, in terms of accruals in a year whichever is less.*
>
> *(2) … …"*

38. Section 43 deals with State-aid to Societies and states:

" 43. State aid to Societies :- The Government may, subject to the rules,-

(a) give loans or advance money to a society;

(b) subscribe to the share capital of a society;

(c) provide moneys to a society-

(i) for the purchase of shares of other societies; or

(ii) to enable it to provide moneys to another society to purchase shares in other societies;

(d) guarantee the repayment of principal and payment of interest on debentures issued by a society;

(e) Guarantee the repayment of share capital of a society and dividends thereon at such rates as may be specified by the Government;

(f) Guarantee the repayment of principal and payment of interest on loans and advance of moneys to a society;

(g) Guarantee the repayment deposits received by a society and payment of interest on such deposits subject to such terms and conditions as may be laid down by the Government; and

(h) Give financial aid in any other form including subsidies to any society."

39. According to the counter-affidavit of the 3rd respondent, it was established under the Act in 1981 to make available electricity to consumers in its area of operation; that it adopted the service conditions, recruitment procedure and pay scales of erstwhile A.P.State Electricity Board (now A.P.Transco/Discoms) in respect of its employees; and for purpose of its operations, it had engaged services of Village Electricity Workers on temporary basis.

40. Petitioners had initially been engaged as Village Electricity Workers during the period 12-08-1996 to 16-10-2002 by the then Managing Committees of the 3rd respondent Society. Thus they had been working for almost 20 years or more in it.

41. A resolution dt.27-07-2007 was passed by the Board of Directors of 3rd respondent converting Village Electricity Workers employed by it as contract Junior Lineman and 3rd respondent converted 48 existing Village Electricity Workers to contract Junior Lineman w.e.f. 01-09-2007.

42. It is not in dispute that the State Government had issued G.O.Rt.No.619, Agriculture and Cooperation (Coop-I) Department dt.23-04-2013 stating that the expenditure of the 3rd respondent on establishment is exceeding the norms prescribed under Section 116-C since the salary structure of the employees of the Society is on par with the A.P.Transco/APEPDCL and so exemption was granted under Section 123 of the Act to the 3rd respondent Society from the operation of the provisions of Section 116-C of the Act for 5 years from 2012-13 to 2017-18. Thereafter the 2nd respondent had issued proceedings on 08-08-2013 sanctioning *inter alia* 48 posts of Junior Lineman in the 3rd respondent Society.

43. In terms of Section 116-C r/w Rule 28 of the Act, procedure for recruitment, staffing pattern and service by-laws were placed before 2nd respondent and vide proceedings dt.08-08-2013, the same as well as the 48 Junior Lineman posts were approved while granting exemption from the operation of Section 116-C for a period of 5 years from 2012-13 to 2017-18.

44. The General Body of the 3rd respondent in the meeting conducted on 27-04-2017 resolved to absorb contract Junior Line Men like petitioners as Junior Line Men; the person-in-charge Committee of 3rd respondent thought it fit to implement the General Body resolution dt.27-04-2017 and absorb the petitioners as Junior Line Men; the same was informed to 2nd respondent on 15-06-2017; but the 2nd respondent did not accept it in the impugned order dt.13-07-2017.

45. It is also not in dispute that Contract Junior Line Men in APEPDCL on completion of 2 years of service were converted as Junior Lineman and a time scale was given to them vide Memo No.DEE/O/VZM/ADM/JAO/ U1/D.No.59/2005 dt.06-01-2005.

46. Admittedly, the Managing Director of 3rd respondent addressed proceedings Rc.No.REC/CPL/ADM/EXEMPTION OF 116-C/D.No.28/2018 dt.22-01-2018 to 2nd respondent stating that the 3rd respondent was running on profits for the last 5 years; that *it had repaid all the loans availed from the Rural Electrification Corporation, New Delhi as well as Share capital to the Government of Andhra Pradesh* and sought further recommendation for exemption from Section 116-C of the Act for further period of 5 years from 31-03-2018.

47. The 2nd respondent himself had addressed proceedings Rc.No.4962-A/2007/PE dt.30-10-2018 stating that "*the Society is*

running on its own financial resources and there are no loans or advances pending outstanding for payment either to the Rural Electrification Corporation, New Delhi or to the Government"; and recommended for grant of exemption to 3rd respondent Society from the provisions of Section 116-C for the period from 01-04-2018 to 31-03-2023 also.

Point (a):

48. I will now consider the question:

(a) *Whether the 3rd respondent Society is a State-aid Society under Section 43 of the Act to which Act 2 of 1994 would apply ?*

49. Since the main objection of the respondent Nos.1, 2 and 5 for the action of the Managing Director in absorbing the services of the petitioners as Junior Lineman is violation of Act 2 of 1994, the same will be examined below.

50. The said statute is the Andhra Pradesh (Regulation of Appointments to public services and rationalization of Staff Pattern and Pay Structure) Act, 1994. It was enacted to regulate appointments and prohibit irregular appointments in offices and establishments under the control of the State Government, local authorities, Corporations owned and controlled by the State Government and other bodies established under a law made by the legislature of the

State of Andhra Pradesh and to rationalize the staff pattern and pay structure of employees and it came into effect on 25-11-1993.

51. Under Section 3, it prohibited appointment of any person in any *public service* to any post, in any class, category or grade without the prior permission of the competent authority.

52. Section (2)(vi) defined the term ‘public service’:

> *“Public Service” means service in any office or establishment of:*
>
> *(a) the Government;*
>
> *(b) a local authority;*
>
> *(c) a Corporation of undertaking wholly owned or controlled by the State Government;*
>
> *(d) a body established under any law made by the Legislature of the State whether incorporated or not, including a University; and*
>
> *(e) any other body established by the State Government or by a Society registered under any law relating to the registration of societies for the time being in force, and receiving funds from the State Government for its maintenance or any educational institution whether registered not but receiving aid from the Government.”*

53. Later an amendment was made to the said Act by Act 27 of 1998 called ‘Andhra Pradesh (Regulation of Appointments to public services and rationalization of Staff Pattern and Pay Structure) (Second Amendment) Act, 1998’ which added a proviso to Section 2(vi)(e) by Section 2 thereof. The said proviso stated:

> *“Provided that the services in any such body or society as specified in sub-clause (e), which is not receiving any funds or grants towards salaries of its employees from the State*

Government shall not be deemed to be 'public service' for the purpose of this Act".

54. There was a further amendment by Act 5 of 2004 called "Andhra Pradesh (Regulation of Appointments to public services and rationalization of Staff Pattern and Pay Structure) (Amendment) Act, 2004. Section 2 thereof substituted clause (vi) of Section 2 as under:

"*"Public Service" means service in any office or establishment of:*

(a) the Government;

(b) a local authority;

(c) a Corporation of undertaking wholly owned or controlled by the State Government;

(d) a body established under any law made by the Legislature of the State whether incorporated or not, including a University;

(e) a Co-operative Society registered under the Andhra Pradesh Co-operative Societies Act, 1964: and

(f) any other body established by the State Government or any a Society, other than the Society specified under sub-clause (e), registered under any law relating to the registration of societies for the time being in force, and receiving funds from the State Government either fully or partly for its maintenance or any educational institution whether registered or not receiving aid from the Government".

55. So, the question arises whether the 3rd respondent was such a body as is referred to in Section 2(vi)(e) or (f) as on the date of passing of the resolution by the General Body of the 3rd respondent Society i.e. 24-04-2017?

56. The learned Government Pleader contended that 3rd respondent Society is a State-aided Society and that was why Act 2 of 1994 would apply to it.

57. It is not in dispute that there was already an exemption granted under Section 123 of the Act to the 3rd respondent Society from the purview of Section 116-C vide G.O.Rt.No.619 Agriculture and Cooperation (Coop.I) Department dt.23-04-2013.

58. While the 3rd respondent is a body registered under the A.P.Cooperative Societies Act, 1964, it was running on its own financial resources and there was no loans or advances pending outstanding for payment either to the Rural Electrification Corporation, New Delhi or to the Government as admitted by 2nd respondent in his proceedings Rc.No.4962-A/2007/PE dt.30-10-2018 wherein he recommended further exemption from the provisions of Section 116-C from 01-04-2018 to 31-03-2023. All the share capital of the Government of Andhra Pradesh had also been paid back as can be seen from proceedings dt.22-01-2018 of the 3rd respondent addressed to the 2nd respondent.

59. In view of this admitted factual position, the 3rd respondent cannot be said to be falling in any of the categories specified in Section 43 of the Act i.e. it is not receiving any State aid as on 24-4-2017.

60. The plea taken in the additional counter-affidavit by the 2nd respondent that 3rd respondent Society is drawing subsidized power from APEPDCL cannot be accepted because it is the consumer who is being subsidized by the State pursuant to the tariff fixed by the A.P.Electricity Regulatory Commission, but not the 3rd respondent which is also a distributor of power like APEPDCL.

61. The other plea taken therein that it is receiving guarantees from the State Government for loans being obtained from Rural Electrification Corporation, New Delhi is also not tenable because all such loans have already been repaid according to Rc.No.4962-A/2007/PE dt.30-10-2018 of the 2nd respondent himself.

62. The 2nd respondent cannot rely on G.O.Rt.No.198 dt.20-12-2011 because it dealt with administrative sanction for payment of loans disbursed to A.P.Discoms and Rural Electric Supply Society including the petitioners for Rural Household Electrification under RGGVY Scheme payable to Rural Electrification Corporation, New Delhi. This event occurred 6 years prior to the passing of resolution by the General Body of 3rd respondent and will not have any relevance when the resolution was passed in 2017 when there were no loans to be repaid by 3rd respondent to Rural Electrification Corporation, New Delhi. In fact as per letter dt.27-03-2014 of the Special Secretary to Government, Energy Department, A.P.Secretariat, Hyderabad addressed to the Rural Electrification Corporation, the RGGVY Scheme itself was closed in 2014.

63. G.O.Rt.No.20 dt.03-02-2012 relates to sanction of money towards tariff subsidy for February, 2012 for 2011-12 to A.P.Transco in favour of A.P.Power Distribution Companies Pool Account and does not relate to the 3rd respondent Society at all.

64. Reliance by the learned Government Pleader on the tripartite agreement dt.18-07-2016 between Rural Electrification Corporation, New Delhi, Government of A.P. and 3rd respondent to state that there were still guarantees given by State Government for the benefit of 3rd respondent Society also, cannot be accepted. The said agreement states that that the Deen Dayal Upadhyaya Gram Jyothi Yojana, a National programme was sought to be implemented by the Government of Andhra Pradesh by nominating the 3rd respondent Society as its contractor to formulate, plan, design, engineer, develop and implement the said scheme and the projects thereunder; and for funds released by Rural Electrification Corporation, New Delhi to 3rd respondent, to implement the said scheme, the State Government gave a guarantee to repay the loan, interest accrued thereon and other charges to the said Corporation.

65. Thus, the guarantee is being given by the Government of A.P. not for running of the 3rd respondent Society but for the contracts being executed by the 3rd respondent Society for the Government of A.P. under the said scheme. This does not amount to granting any State aid to the 3rd respondent at all.

66. These documents filed by the 2nd respondent along with the additional affidavit do not in any way help the respondents and indicate an attempt by the respondents to mislead the Court.

67. I therefore hold on point (a) that at the time when resolution dt.24-04-2017 was passed by 3rd respondent Society to absorb the petitioners in the available Junior Lineman vacancies, it was not a State aided society, and that Section 43 of the Act had no application to it. Consequently, Act 2 of 1994 as amended from time to time also had no application to it. Point (a) is thus answered in favour of the petitioners and against respondents.

POINT (b)

68. I will now consider points (b):

> (b) *Whether the impugned order passed by 2nd respondent warrants any interference?*

69. It is important to note that in the impugned order it is merely stated that 3rd respondent had no competency to pass the resolution No.18 dt.24-04-2017 absorbing petitioners as Junior Lineman in the vacancies sanctioned vide proceedings of 2nd respondent in Rc.No.11640/2013/RECO dt.08-08-2013. Why the General Body of a Cooperative Society declared under Section 30 of the Act as the ultimate authority, has no competency, is not indicated in the impugned order.

70. Once the provisions of Section 116-C were exempted by G.O.Rt.No.169 dt.23-04-2013 from 2012-13 to 2017-18 by the 1st respondent and the financial position for the previous five years was very good and the 3rd respondent was making profits, the General Body was fully empowered to pass the said resolution.

71. It is not for the 2nd respondent to question the wisdom of the 1st respondent for granting such exemption or contend that other Rural Electric Cooperative Societies may face problems if the petitioners are absorbed as Junior Lineman in the 3rd respondent Society.

72. In fact in the impugned order he has merely referred to Section 13 of Act 2 of 1994 which provides punishment for violation of the provisions of the Act and has not given any finding whether the said Act applies to 3rd respondent Society at all or how it is violated, if it is applied to it.

73. Also no prior notice was given to petitioners who are affected by the decision of 2nd respondent by him. He has thus violated the principles of natural justice too.

74. Therefore, point (b) is answered against the respondents and in favour of the petitioners.

POINT (c)

75. Accordingly, resolution No.18 dt.24-04-2017 of the General Body of the 3rd respondent Society absorbing the petitioners as Junior Linemen in the sanctioned vacancies for the said posts in the said Society is held valid; the impugned order Rc.No.12901/2015/PE dt.13-07-2017 of the 2nd respondent is set aside; and the respondents are directed to approve the action of the 3rd respondent absorbing the petitioners as Junior Linemen in the sanctioned vacancies for the said posts in the said Society and give effect to the same forthwith. Consequently, the Writ Petition is allowed. No costs.

76. As a sequel, the miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 31-12-2018
Kvr/Vsv