



IN THE HIGH COURT OF ANDHRA PRADESH

W.P.No.21690, 23302, 24841 & 26668 of 2022

W.P.No.21690/2022

BETWEEN:

- # 1. Veeram Rama Krishna, S/o. Nageshwara Rao, R/o. Nakkapalli Village, Nakkapalli Mandal, Anakapalli District, (erstwhile Visakhapatnam District)
2. A. Bangaru Raju, S/o. Chinna Lakshmi Peddi Raju, R/o. Vempadu Village, Nakkapalli Mandal, Anakapalli District, (erstwhile Visakhapatnam District)
3. Podagatla Papa Rao S/o. Nooka Raju, R/o. Uddandapuram Village, Nakkapalli Mandal, Anakapalli District, (erstwhile Visakhapatnam District).

... Petitioner

AND

- \$ 1. The State of Andhra Pradesh, Agriculture & Cooperation Department, Secretariat, Velagapudi, Amaravathi, rep. by its Principal Secretary.
2. The Commissioner for Cooperation and Registrar of Cooperative Societies, Government of Andhra Pradesh, Guntur District.
3. The District Cooperative Officer, Anakapalli,
4. The Deputy Registrar Cooperative Societies, Yelamanchili Division, Anakapalli District, (erstwhile Visakhapatnam District.)
5. The Nakkapalli Primary Agriculture Cooperative Society (PACS), Nakkapalli, Anakapalli District, rep. by its Secretary.

... RESPONDENTS

Date of Judgment pronounced on : 30.09.2022

HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

1. Whether Reporters of Local newspapers : Yes/No
May be allowed to see the judgments?
2. Whether the copies of judgment may be marked : Yes/No
to Law Reporters/Journals:
3. Whether The Lordship wishes to see the fair copy : Yes/No
Of the Judgment?



***IN THE HIGH COURT OF ANDHRA PRADESH AT AMARAVATI**

***HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO**

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! Counsel for Petitioner : Sri V.V.N. Narayana Rao
K. Rama Mohan Mahadeva

^Counsel for Respondent : G.P. for Cooperation



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>HEAD NOTE:

? Cases referred:

1. 1991 (2) ALT 532
2. AIR 1989 AP 81
3. 1991 (3) ALT 433 (D.B)
4. 1978 (1) APLJ 347
5. 2001 SCC Online AP 868 : 2003 (6) ALT 274 (DB)
6. 2015 (1) ALD 88 = 2015 (3) ALT 326
7. AIR 1991 All 114 = 1991 SCC Online All 63
8. AIR 1993 Mad 1 = 1991 SCC Online Mad 479

**HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO****W.P.No.21690, 23302, 24841 & 26668 of 2022****COMMON ORDER:**

As all these cases raise the same issues, they are being disposed of by way of this common order.

2. The provisions of A.P. Cooperative Societies Act, 1964 (for short 'the Act') require management of every cooperative society to be vested with the managing committee, which is an elected body. These elections are to be held periodically. However, on some occasions, when elections could not be held for any reason and the term of the previously elected body expires, Section 32 (7)(1) of the Act empowers the State Government to appoint a person in-charge or a committee of persons in-charge to manage the affairs of the society, till an election for constituting the next managing committee can be held. The provisions of Section 32(7)(a) is as follows:

Section 32(7)(a)(i) 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, extend, 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.

(ii) Notwithstanding anything contained in this Act, in the special circumstances and for the reasons to be recorded, if in the opinion of the Government, it is not possible to hold the elections to the societies or class of societies, the Government may, by order, extend the term of the person or the persons appointed to manage the affairs of the society or class of societies beyond three years but not exceeding, six years in aggregate.

(b) -----

(c) -----

(d) -----

3. It appears that the term of the elected management committees in Cooperative Societies across the State has expired some time back and elections to a large number of these societies had not been conducted. The Government, invoking the power under Section 32(7), and the Registrar in some cases, had appointed either a single person in-charge committee or a three member person in-charge committee for all such societies. In that process, the petitioners in these writ petitions who were either members or part of the erstwhile managing committees of the societies were appointed as persons in-charge of their respective societies.



4. After their term as persons in-charge had expired the Government/ Registrar had either appointed other persons as persons in-charge or the petitioners have not been continued as persons in-charge and the petitioners apprehend that other persons would be appointed as persons in-charge in their place. On the basis of this apprehension or on the basis of their replacement by other persons, the petitioners have approached this Court by way of the present set of writ petitions.

5. The challenge of the petitioners, in these cases, is twofold. Firstly, the language of Section 32(7)(a) of the Act has to be interpreted to mean that once a person in-charge has been appointed, the appointing authority can, at best, extend the term of such a person and no power is available to the appointing authority to change the person, who has initially being appointed as the person in-charge. Secondly, the said Rule read in conjunction with the other provisions of the Act, require the appointing authority to appoint only the members of the society or the erstwhile management of the society as persons in-charge and no outsider can be appointed unless it is shown that the earlier management had mismanaged the affairs of the society or misappropriated the funds of the society.

6. Sri V.V.N. Narayana Rao, and Sri K. Rama Mohan Mahadeva, learned counsel appearing for the petitioners rely, in support of the first ground, upon the judgment of a learned Single Judge of the erstwhile High Court of Andhra Pradesh in **Gottipati Ramarao and ors., vs.**



Special Cadre Deputy Registrar of Co-operative Societies APDDCF, A.P. Rashtra Karshaka Parishad, Hyderabad and ors.,¹;

and a judgment of the learned Single Judge of this Court dated 30.10.2019 in W.P.No.12031 of 2019 and batch. The learned Government Pleader relies upon the judgment of the erstwhile High Court of A.P., in **M. Ranga Reddy vs. State of A.P., and anr.,²** and **B. Kota Mallaiah vs. Commissioner and Registrar of Cooperative Societies³** pronounced by a Division Bench of the Hon'ble High Court.

7. The learned Government Pleader for Cooperation would submit that the language of Section 32(7)(a) does not preclude the Government for making fresh appointments by replacing the existing persons in-charge and relies upon the judgment of the Division Bench of the erstwhile High Court of A.P. in **The Deputy Registrar, Cooperative Societies, Bhongir and anr., vs. K. Gandaiah and ors.,⁴** and contends that the subsequent judgments of the learned Single Judge in **Gottipati Ramarao and ors., vs. Special Cadre Deputy Registrar of Co-operative Societies APDDCF, A.P. Rashtra Karshaka Parishad, Hyderabad and ors.,** which had been passed without the said judgments being brought to their notice, would not be applicable. As far as the question whether only the members of the society / erstwhile managing committee of the society should be appointed as person in-

¹ 1991 (2) ALT 532

² AIR 1989 AP 81

³ 1991 (3) ALT 433 (D.B)

⁴ 1978 (1) APLJ 347



charge is concerned, the learned Government Pleader submits that there is no such restriction on the discretion vested with the Government and relies upon the judgment of a Division Bench of the erstwhile High Court of A.P., in the case of **Elakollanu Primary Aagricultural Co-op. Credit Society Ltd., and Ors., vs. Government of Andhra Pradesh and Ors.**⁵ , and a judgment of a learned Single Judge reported in **Kethireddy Jagan Mohan Reddy vs. The State of Telangana**⁶.

Consideration of the Court:

8. The question – whether the language in Section 32(7)(a) of the Act does not permit the appointing authority to change the person in-charge and that the only discretion available with the appointing authority is to take a decision as to whether the term of the initially appointed person in-charge can be extended or not, came up before a learned Single Judge of the erstwhile High Court of A.P. The learned Single Judge took the view that Section 32(7)(a) of the Act only granted power to extend the term of the initially appointed person in-charge and that the said provision does not extend to authorise the appointing authority to change the person in-charge. On appeal against this order a Division Bench of the erstwhile High Court of A.P., in **The Deputy Registrar, Cooperative Societies, Bhongir and anr., vs. K. Gandaiah and ors.**, reversed this judgment by holding thus:

⁵ 2001 SCC Online AP 868 : 2003 (6) ALT 274 (DB)

⁶ 2015 (1) ALD 88 = 2015 (3) ALT 326



11. The contention of the learned counsel for the petitioners in all the writ petitions is that once the Registrar has exercised the power to appoint a person or persons to manage the affairs of the society for a particular period not exceeding six months he can only extend the period but he cannot effect any changes with regard to the person or persons appointed to manage the affairs of the society.....

12. What is contemplated by Clause (a) of Section 32(7) of the Act is only the extension of the period beyond six months. The expression, "such period" refers to the period for which the initial appointment of a person or persons in-charge was made. Clause (a) does not impose any condition or restriction that the period of extension should be of the person or persons previously appointed to manage the affairs of the society. If the Legislature intended that the extension of the period should be with reference to the period of the previously appointed person or persons in-charge, nothing could have been easier than to have provided in the clause (a) that the Registrar may extend such period of such person or persons. In the absence of any such provision in the clause (a) we do not think, it is possible to accept the contention of the learned counsel for the petitioners that the Registrar has no power under Section 32(7)(a) of the Act except to extend the term of the previously appointed person or persons in charge.

16. In W.P. No. 3675/1973 (The Committee of persons-in-charge of the Co-operative Central Bank Ltd., *Ramachandrapuram v. The Registrar of Co-operative Societies, the Government of Andhra Pradesh, Hyderabad*), the question arose whether the person-in-charge appointed under section 32(7)(a) of the Act, had any legal right to be continued until elections were held to the Managing Committee. One of us in the judgment dated 23-10-73 in



that Writ Petition (Obul Reddi J., as he then was) observed as follows:—

“The term of appointment of the petitioners was only for a period of six months. After the expiry of that period, they automatically cease to function. There is nothing in the language of Section 32(7)(a) or (d) to indicate that a person so appointed shall, as a matter of right, be entitled to be continued subject to the approval of the Government. The Government is not bound to approve the recommendation of the Registrar for extension of any person appointed as the person in-charge. That being the Case, the petitioners cannot claim any vested right for extension”.

17. This view of the learned Judge was upheld on appeal in W.A. No. 934/1973, dated 22-4-1974 (The Committee of persons in-charge of the *Co-operative Central Bank Ltd., Ramachandrapuram v. The Registrar of Co-operative Societies, Government of Andhra Pradesh, Hyderabad*), Gopal Rao Ekbote, C.J. held as follows:—

“Relying upon clause (a) of sub-section (7), the argument was that the petitioners, who were appointed, would cease to manage the affairs of the society only when the new committee enters office. And since elections have not been held, the petitioners were entitled to continue and the power which was given to the Registrar was only to extend the time with the permission of the Government and not to change the persons. We do not think there is any substance in this contention. Sub-section (7) nowhere says that a person or persons once appointed can never be removed or they shall be continued till the new committee after the election enters upon its office. There are no words in sub-section (7) which confer any right upon the person or persons appointed to manage the affairs to continue till the elections are held. They can, in our opinion, be changed



even in a case where time is extended. Section 14 of the General clauses Act empowers the authority to exercise such power of appointment of other person or persons under sub-sec. 7(a)".

18. In view of the clear language of Section 32(7)(a) of the Act and in view of the Bench decision referred to above, we are not inclined to agree with the contention of the learned counsel for the petitioners.

9. Subsequently, this issue was again raised before a learned Single Judge in **Gottipati Ramarao and ors., vs. Special Cadre Deputy Registrar of Co-operative Societies APDDCF, A.P. Rashtra Karshaka Parishad, Hyderabad and ors.** However, the aforesaid judgment in **The Deputy Registrar, Cooperative Societies, Bhongir and anr., vs. K. Gandaiah and ors.,** was not placed before the learned Single Judge, who went on to hold that Section 32(7)(a) only permits extension of the initially appointed person in-charge.

10. In view of the judgment of the Division Bench in **The Deputy Registrar, Cooperative Societies, Bhongir and anr., vs. K. Gandaiah and ors.,** the judgment of the learned Single Judge in **Gottipati Ramarao and ors., vs. Special Cadre Deputy Registrar of Co-operative Societies APDDCF, A.P. Rashtra Karshaka Parishad, Hyderabad and ors.,** would have to give way.

11. This Court is bound by the ratio and judgment in **The Deputy Registrar, Cooperative Societies, Bhongir and anr., vs. K. Gandaiah and ors.,** and accordingly holds that no restriction on the



discretion of the appointing authority to appoint persons other than the initially appointed person in-charge can be read into the language of Section 32 (7) (a) and the contention of the petitioners in this regard has to be rejected.

12. The question – whether non-members or the officials of the cooperative department can be appointed as persons in-charge under Section 32(7), came up before a Division Bench of the erstwhile High Court of A.P., in **M. Ranga Reddy vs. State of A.P., and anr.**, wherein the Division Bench had in unequivocal terms castigated the policy of the Government in appointing officials of the cooperative department or non-members while ignoring the erstwhile management of the society and the members of the society.

13. The same issue again came up before the another Division Bench of the erstwhile High Court of A.P., in **B. Kota mallaiah vs. Commissioner and Registrar of Co-op Societies**, in which the Division Bench agreeing with the view of the Court in, **M. Ranga Reddy vs. State of A.P., and anr.**, had set aside the appointment of a large number of non-members/officials as persons in-charge of various societies on the ground that the appointing authority, should have first considered the members of the society, for appointment as persons in-charge, before appointing non-members / officials to such posts.

14. This issue again came up before the another Division Bench of the erstwhile High Court of A.P., in **Elakollanu Primary**



Aagricultural Co-op. Credit Society Ltd., and Ors., vs. Government of Andhra Pradesh and Ors., wherein the Division Bench held that the language of Section 32(7) permitted the appointing authority to appoint any person and that there could be no restriction on the discretion of the appointing authority in this regard. This judgment was followed by a learned Single Judge in the case of **Kethireddy Jagan Mohan Reddy vs. The State of Telangana**. However, the earlier two judgments of the Division Benches of the erstwhile High Court of A.P., were not placed before the subsequent Division Bench or the learned Single Judge.

15. In view of the conflicting views of two Division Bench judgments on the one side and one Division Bench judgment and the judgment of a learned Single Judge on the other, the question that would arise is – as to which judgment is to be followed. This question had been answered by a Division Bench of our High Court in **SRI PANDURANGA TRADERS VS. SBI 2000 (2) ALT 511**, following the judgments in **Ganga Saran vs. Special Judge, Muzaffarnagar and ors.**⁷ and **Seethalakshmi Ammal v. State of Tamil Nadu**⁸. The ratio set out in these judgments was that, in the event of a conflict of judgments between two coordinate benches, of the Hon'ble Supreme court, it would be appropriate to follow the judgment of the Division Bench which sets out better reasons. The same principle can be applied to the present case also.

⁷ AIR 1991 All 114 = 1991 SCC Online All 63

⁸ AIR 1993 Mad 1 = 1991 SCC Online Mad 479



16. The Division Bench in **Elakollanu Primary Aagricultural Co-op. Credit Society Ltd., and Ors., vs. Government of Andhra Pradesh and Ors.**, after considering the provisions of Section 32 held that the said provision confers discretion of the appropriate authority to appoint persons in-charge and that a mandamus cannot be issued, unless existence of a legal right in the petitioner and a corresponding legal duty for the respondent is established, and that no directions running contrary to the discretionary power, conferred upon the appointing authority, could be issued. Strictly speaking, the Division Bench in this judgment did not go into the question whether the members of the society / erstwhile management of the society should be first considered before non-members/officials of the department are considered for such appointment.

17. On the other hand, the Division Bench in **M. Ranga Reddy vs. State of A.P., and anr.**, went into this specific question and held as follows:

13. The learned Advocate-General conceded that the spirit and scheme of the Act requires elections to be held before the term of the incumbent committee expires. He agreed that appointing the official persons in charge and keeping them in office for long periods as a general rule is equally contrary to the spirit and scheme of the Act. We are saying this because on earlier occasions the Government and its advocates have been arguing which argument has sometimes found acceptance with one or the other Judges of this Court that once the term of an elected committee is over, it has no right to continue in office, and that it is



perfectly legitimate for the Registrar to appoint such persons as he thinks appropriate as persons in charge. Such an argument, we must say, adopts a wholly untenable and unjustifiable approach. The angle from which the matter should be approached is not whether the elected committee has a right to continue in office beyond its term. The proper approach is whether it is permissible for the Government not to hold elections and appoint persons in charge for long periods, we are told that because the officials of the Co-operative Dept. were not sufficient, the officials of other departments were also indented for to act as persons in charge of thousands of co-operative societies. Such postponement of elections is itself contrary to the scheme of the Act. The appointment of persons in charge provided by S. 32(7) was conceived to meet a limited situation; it was never intended as a substitute for elected committees. Further, whenever elections are postponed for unavoidable reasons, the elected committee should be continued in office (if necessary, by recording reasons therefor) provided the committee is not guilty of any irregularities or other malpractices. Only where the committee is guilty of irregularities and/or malpractices would it be not in the interest of the society to continue such committee. The interest of the society demands that an elected committee should manage its affairs rather than a puisne officer of the Co-operative Department nominated by the Registrar. The basic idea underlying a co-operative society is that the members should themselves manage their own affairs and improve their economic lot in such mariner as they think appropriate subject, of course, to the relevant laws. An official person in charge is the last person to be contemplated for achieving the said purpose. We hope and trust that the Government shall not hereafter contend that once the term is over, the elected committee, even if it is not



guilty of any irregularities and/or malpractices, has no right to continue in office and that they can appoint any one they like as person in charge. Indeed, this is the principle affirmed by a Full Bench of this Court in *M. Gidda Reddy v. Deputy Registrar, Kurnool* AIR 1977 Andh Pra 274 (FB).

18. The Division Bench in the subsequent judgment in **B. Kota Mallaiah vs. Commissioner and Registrar of Co-op Societies**, also considered this issue and had held that non appointment of existing persons in management as persons in charge would not be appropriate.

19. In that view of the matter this Court deems it appropriate to follow the ratio of the judgment in **M. Ranga Reddy vs. State of A.P., and anr.**, and **B. Kota Mallaiah vs. Commissioner and Registrar of Co-op Societies**.

20. Apart from this, a learned Single Judge of this Court in W.P.No.12031 of 2019 and batch dated 30.10.2019 had followed **M. Ranga Reddy vs. State of A.P., and anr.**, and **B. Kota Mallaiah vs. Commissioner and Registrar of Co-op Societies**, to hold that the appointment of official persons in-charge without considering the suitability of members of society or the erstwhile management of the society, was impermissible and had set aside such appointments.

21. This judgment was the subject matter of the writ appeal before a Division Bench in W.A.Nos.467 of 2019 and batch, which came to be disposed of on 15.04.2020. The Division Bench while refusing to



interfere with the order of the learned Single Judge had upheld the order of appointment of persons in-charge for different reasons.

22. The learned Government Pleader has also placed before this Court the order of stay granted by the Hon'ble Supreme Court in S.L.P.(C).Nos.10437 – 10438 of 2020 dated 27.10.2020 staying the operation of the judgment of the Division Bench in W.A.No.467 of 2019 and batch.

23. It is settled law that it is only suspension of a judgment that would keep the ratio of the judgment in abeyance, while stay of a judgment, by a superior Court, would only stay the operation of the judgment to the extent of the parties to the said judgment and the ratio laid down in the judgement under appeal would continue to operate. In the circumstances, it must be held that the ratio laid down by the learned Single Judge and the Division Bench in the above cases continues to operate.

24. In the present set of cases, it is not the case of the respondent authorities that they had considered the suitability of the members of the society or the members of the erstwhile management of these societies before deciding to appoint other persons as persons in-charge. The contention of the respondents has been that they have the discretion to appoint any person and such discretion is not restricted by the requirement of having to consider the suitability of the members of the society or erstwhile management of the society before considering the



appointment of any other person. This contention of the respondents is clearly not in accordance with law declared and decided by the Division Benches of the erstwhile High Court of A.P., and as such it must be held that non-appointment of a person in-charge would require the appointing authority to first consider the suitability of the cooperative society or the erstwhile management of the cooperative society before appointing any non-member or official of the cooperative department as a person in-charge.

25. In W.P.No.21690 of 2022 and W.P.No.23302 of 2022, the petitioners have approached this Court with the apprehension that the persons, who are not members of the society / members of the erstwhile management of the society, would be appointed on the recommendation of the local representative of the people. In that view of the matter, these two writ petitions are disposed of with a direction to the respondents therein to consider the suitability of the members of the society / erstwhile management of the society, including the petitioners, before considering appointment of any non-member or official of the cooperative department while appointing the person in-charge.

26. In W.P.No.24841 of 2022 the petitioners challenge the appointment of respondents 6 to 8 as persons in-charge of the cooperative society, in which they are members by replacing the petitioners as persons in-charge, by way of G.O.Rt.No.492 dated 01.08.2022. As held above, the appointing authority would have to first



consider the suitability of the existing members before looking outside the society for choosing a person in-charge. The difficulty in the present case is that neither the petitioners nor respondents 6 to 8 have stated whether respondents 6 to 8 are members of the cooperative society.

27. In the circumstances, this writ petition is dismissed holding that respondents 6 to 8 may continue as members of the person in-charge committee, if they were members of the committee by the time they were appointed as persons in-charge, and in the event of these respondents not being the members by then, their appointment as members of the person in-charge committee, by virtue of G.O.Rt.No.492 dated 01.08.2022, is set aside and all consequential proceedings under which the said respondents took charge would also have to be set aside and the appointing authority shall undertake a fresh exercise in terms of this judgment.

28. In W.P.No.26668 of 2022, the petitioner, who was earlier working as chair-person of the person in-charge committee has been made a member of the person in-charge committee under G.O.Rt.No.492 dated 01.08.2022 with another person, arrayed as the 7th respondent, being appointed as chair-person. In view of the above discussion, there is no vested right in the petitioner to continue as a chair-person of the person in-charge committee and he would, at best, be entitled for being considered in the first instance for appointment as a member of the person in-charge committee, and nothing more. In the circumstances, W.P.No.26668 of 2022 is closed.



29. Accordingly, W.P.No.21690 of 2022 and W.P.No.23302 of 2022 are disposed of; W.P.No.24841 of 2022 is dismissed and W.P.No.26668 of 2022 is closed. There shall be no order as to costs.

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

R. RAGHUNANDAN RAO, J.

30th September, 2022.
Js.



HON'BLE SRI JUSTICE R. RAGHUNANDAN RAO

W.P.No.21690, 23302, 24841 & 26668 of 2022

30th September, 2022

Js.