

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO

WRIT PETITION No. 7759 OF 2015

ORDER:

The petitioner herein is employed as the Chief Executive Officer and Secretary of the Primary Agricultural Cooperative Society, Thimmapuram. He now seeks a writ of mandamus for declaring the action of the 2nd respondent Commissioner for Cooperation and Registrar of Cooperative Societies, State of Telangana, Hyderabad in issuing the proceedings, dated 17.11.2014 ordering a second inquiry and then issuing the consequential proceedings, dated 16.02.2015 directing the 3rd respondent, the District Cooperative Officer, Nalgonda District, to take civil, criminal and institutional actions against the petitioner holding him also responsible for the irregularities committed in disbursement of loans along with the Branch Manager and the Presidents of various Agricultural Cooperative Societies, even though the Inquiry Officer has not found him as responsible for any of the irregularities committed, as illegal.

It appears, certain serious allegations have surfaced with regard to the gross irregularities committed in conducting the affairs of various societies, in particular relating to disbursal of large sums of money towards loans. Seven Primary Agricultural Cooperative Societies are adversely reported in that regard. Therefore, the Registrar of Cooperative Societies has ordered an inquiry to be conducted under Section 51 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act') and appointed the District Cooperative Officer, Nalgonda as an Inquiry Officer. The said Inquiry Officer drew up his report and submitted it on 20.10.2014. Thereafter, the Registrar of Cooperative Societies, according to the learned counsel for the petitioner Sri M. Rama Rao, ordered for a second inquiry, by his proceedings, dated 17.11.2014. Such a measure adopted by the Registrar of Cooperative Societies is clearly illegal and contrary to the provision contained under Section 51 of the Act and also the ruling of this Court rendered in ***Cooperative Electric Supply Society Limited (CESS) v. State of Andhra Pradesh***. It is further contended by Sri Rama Rao, learned counsel that in spite of the inquiry report submitted on 20.10.2014, not attributing any specific allegations of commission of irregularities by the petitioner, but nonetheless, in his report, dated 02.02.2015 in the second inquiry, the District Cooperative Officer, unnecessarily tried to implicate the petitioner as

well. Not satisfied and content with the illegalities committed so far, according to the learned counsel for the petitioner, the Registrar of Cooperative Societies, through his proceedings, dated 16.02.2015, has directed the 3rd respondent District Cooperative Officer, Nalgonda to initiate civil, criminal and institutional actions with regard to the irregularities allegedly committed by the petitioner and submit the developments of the cases from time to time to him. Thus, gross injustice is committed by the Registrar of Cooperative Societies in conducting not only the second inquiry but also ordering for civil, criminal and institutional actions to be initiated against the petitioner herein. Hence, this Writ Petition.

Before proceeding any further, it would be more appropriate to take into account the provision contained under Section 51 of the Act. It enabled the Registrar of Cooperative Societies, either on his own motion and shall, on the application of a society to which the society concerned is affiliated, or at the request of not less than one-third of the members of the Committee of the society concerned, or at the request of one-fifth of the total number of members of the society, to hold an inquiry or direct some person authorized by him in that behalf to hold an inquiry into the constitution, working and financial condition of a society. Such inquiry shall also be required to be completed within a period of four months and thereafter, the report of the inquiry along with the findings of the Registrar thereon shall be communicated to the Managing Committee of the society concerned, which shall place the inquiry report before the General Body or Special General Body of the society convened for the purpose of its information within a period of one month from the date of communication of the inquiry report by the Registrar of the Cooperative Societies. If, for any reason, the Managing Committee of the society fails to initiate the appropriate action, as desired by the Registrar, Section 51 of the Act further enabled the Registrar of Cooperative Societies to take the necessary action by convening a general body meeting of the society. The proviso added thereafter holds the key to the present controversy and hence, it is appropriate to consider it in detail. It reads as under:

“ Provided that notwithstanding anything contained in this Act and the Rules made thereunder, the bye laws of a society and the action of the society in placing the inquiry report along with the findings of the Registrar, the Registrar shall not be precluded from taking follow up action as may be required on the basis of inquiry report:

Provided further that such action shall not be nullified even if the General Body of the Society passes a resolution negating the findings of the inquiry:

Provided also that the Registrar may for reasons to be recorded in writing extend the period of four months for completion of inquiry for a further period not exceeding two months.”

The proviso has been couched in very wide language and it has also begun with a *non-obstante* clause setting out that the Registrar shall not be precluded from taking follow up action as may be required on the basis of the inquiry report. The next proviso added to Section 51 insulated the action initiated by the Registrar in that regard by setting out that the general body of the society cannot nullify the action of the Registrar by passing a resolution negating the findings of the inquiry.

To my mind therefore, the provision contained under Section 51 of the Act is a complete code in itself and has far-reaching effect and ramifications. Whenever the Registrar of Cooperative Societies receives any information about the serious irregularities committed with regard to the affairs of any society, he has the competence to order for an inquiry under Section 51 of the Act and such an inquiry can be conducted either by himself or by authorizing any other person in that behalf.

In the instant case, the Registrar of Cooperative Societies has appointed the District Cooperative Officer, Nalgonda to conduct the inquiry under Section 51. That Inquiry Officer summed up his report and submitted the same to the Registrar of Cooperative Societies on 20.10.2014. At that stage, the Registrar of Cooperative Societies was required by Section 51 to examine the report of the inquiry and then, firm up his findings thereafter. After examining the inquiry report submitted under Section 51 of the Act, the Registrar of Cooperative Societies has entertained certain doubts and hence, through his proceedings, dated 17.11.2014, addressed to the District Cooperative Officer-cum-Inquiry Officer, under Section 51, solicited certain clarifications. The District Cooperative Officer, the Inquiry Officer was asked to concentrate on some of the aspects, which are forming part of his earlier report dated 20.10.2014. For instance, the Inquiry Officer, in his report, dated 20.10.2014, has returned a finding that Sri B. Ramayya, Branch Manager, Nalgonda District Cooperative Central Bank, Devarakonda Branch, though denied the allegations of irregularities committed by him, was held to have committed the alleged financial irregularities in collusion with the Chief Executive Officers of the Primary Agricultural Cooperative Societies and he has also violated the loan policy intentionally and a total amount of more than Rs.8.58 crores has been misappropriated in disbursement

of the loans between the years 2010-11 and August, 2013. Therefore, the Registrar of Cooperative Societies, in his communication, dated 17.11.2014, specifically directed the Inquiry Officer to re-examine his finding in this regard and make a specific recommendation as to whether the responsibility has to be fixed only on Sri Ramayya, Branch Manager or both the Branch Manager and the Chief Executive Officers concerned of the Primary Agricultural Cooperative Societies. To my mind, the proceedings, dated 17.11.2014 of the Registrar of Cooperative Societies is not a case of ordering for a re-inquiry or a second inquiry. It is, in fact, a continuation of the inquiry ordered by him earlier under Section 51. Since the findings of the Inquiry Officer are some what opaque; in that he has not named the other players, who colluded with Sri Ramayya, the necessary clarifications have got to be called for. Therefore, the action, which resulted in the proceeding, dated 17.11.2014 of the Registrar of Cooperative Societies, is in conformity with and within the four corners of Section 51 itself. When once Section 51 required the Registrar of Cooperative Societies to record his findings upon the Inquiry Officer's report, it pre-supposes that the Registrar of Cooperative Societies is required to apply his mind and give specific findings. Hence, the proceedings, dated 17.11.2014 of the Registrar is in conformity and well within the limits specified under Section 51 of the Act. I have therefore, no hesitation to reject the contention canvassed by the learned counsel Sri Rama Rao that it amounted to a second inquiry.

Now turning our attention to the proceedings dated 02.02.2015 submitted by the District Cooperative Officer, Nalgonda to the Commissioner of Cooperation-cum-Registrar of Cooperative Societies, it is in fact, in response to the clarifications sought for by the Registrar of Cooperative Societies on 17.11.2014. Therefore, even this proceedings, dated 02.02.2015 of the District Cooperative Officer does not amount to a second inquiry report. It is in fact, an extension of the report submitted earlier by him on 17.10.2014 and clarifying the gray areas pointed out in his report by the Registrar of Cooperative Societies. Clearly, the principle enunciated by this Court in ***Cooperative Electric Supply Society Limited's*** case (cited supra) is not attracted.

This apart, the copies of the proceedings, dated 17.11.2014 and the response thereto through proceedings, dated 02.02.2015 are filed in the Writ Petition paper

book at pages 24 and 20 respectively. I was left wondering whether the petitioner has secured these copies under the Right to Information Act, 2005. If he has not done so, it is a pity that the District Cooperative Officer, Nalgonda and the Commissioner and Registrar of Cooperative Societies for the State of Telangana are not able to protect and insulate their official records from being pouched by the unauthorized agents.

While dealing with the proceedings, dated 16.02.2015, all I need to observe is that the Registrar of Cooperative Societies has ordered the action to be initiated against those persons, who were *prima facie* found guilty of misappropriation of large sums of public money. No fault can be taken to this exercise. If public money is misappropriated, the competent authority is entitled under law to recover and restore the same. Therefore, the civil action for recovery of the misappropriated amount is a legitimate action. Insofar as the criminal culpability is concerned, it is beyond any pale of doubt that misappropriation of public money is a breach of conduct, which attracts several penal provisions. Therefore, initiation of criminal case against all such persons, who are found *prima facie* responsible for the misappropriation cannot be faulted. So far as the institutional actions are concerned, no person can think that he can misappropriate large sums of public money and still expect himself to be very safe and secure. Every servant is bound by the Code of conduct and discipline. If he has breached the said code of conduct, he exposes himself to the risk of being hauled up for the said breach. Therefore, the institutional action initiated against the petitioner also cannot be faulted with.

There is one contention, which Sri Rama Rao presses too hard i.e. no specific act is attributed against the petitioner herein in the Inquiry Officer's report and hence, he cannot be subjected to any action, as contemplated by the Registrar of Cooperative Societies, which is liable to be initiated only against Sri Ramayya. I am afraid, this contention does not hold any water. The finding recorded by the Inquiry Officer is that Sri Ramayya, the Branch Manager of Devarakonda Branch of Nalgonda District Cooperative Central Bank in collusion with seven other Chief Executive Officers of the Primary Agricultural Cooperative Societies, including the one headed by the petitioner herein, has been alleged to have misappropriate large sums of money. Therefore, the proceedings initiated against the petitioner, at this stage, cannot be faulted and it is for him to establish either in the civil Court or in the criminal Court or in any other suitable action initiated against him, to demonstrate

that he has played no role whatsoever in the act of misappropriation of public funds and hence, he is not guilty of the allegations levelled against him. At this stage, it will be hard and hazardous for the Court to speculate that the petitioner has not played any role. That would only be available at the stage when a thorough and detailed investigation in all respects is carried out by the respective Courts/agencies to whom the task is liable to be entrusted.

Hence, I have no hesitation to reject this Writ Petition at the admission stage and accordingly, it is dismissed. No costs.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

24th March 2015

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