

HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.43367 OF 2016

AND

WPMP Nos.53749,53837 AND 53875 OF 2016

ORDER:

Heard Smt.Bobba Vijaya Lakshmi for petitioners and the learned Government Pleader for Cooperation.

The petitioners challenge Rc.No.58/SRPT/2016-C dated 08.12.2016 passed under Section 34(6) of the A.P. Cooperative Societies Act,1964 (for short 'the Act') (Telangana Adaptation) Order 2016 in the instant writ petition.

Learned counsel for petitioners vehemently contends that the proceeding impugned in the writ petition cannot and could not stand to judicial scrutiny even for a while, inasmuch as the mandatory procedure prescribed under Section 34 of the Act is not followed and the observations in the proceedings impugned suffer from contradictions which finally affect the conclusions recorded by 4th respondent. A few submissions are made by keeping in mind the statutory remedy of appeal under Section 76 of the Act to contend that remedy of appeal is not efficacious.

The learned Government Pleader vehemently opposes the maintainability of writ petition and places strong reliance upon Section 76 of the Act which reads thus:

76. Appeal:— (1) Any person or society aggrieved by any decision passed or order made under Section 6, Section 9A, Section 9B, Section 9C, Section 12A, Section 13, Section 16, Section 17, Section 19, Section 21, Section 21A, Section 21AA, Section 23, sub-section (3) of Section 32, Section 34, Section 34A, Section 60,

Section 62, Section 64, Section 66, Section 70, Section 71, Section 73 and Section 117 may appeal to the Tribunal :

Provided that nothing in this sub-section shall apply to any order of withdrawal or transfer of a dispute under sub-section (3) of Section 62.

(2) On a reference made by the Registrar of Cooperative Societies, the Tribunal shall call for and examine the records of any proceeding which is appealable to it for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and where it appears to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as it may deem fit:

(3) Any appeal under sub-section (1) shall, subject to the other provisions of this Act, be preferred within sixty days from the date of communication to the appellant of the decision, refusal or order complained of but the Tribunal may admit an appeal preferred after the said period of sixty days, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the said period.

(4) In disposing of an appeal under this section, the Tribunal may, after giving the parties an opportunity of making their representations, pass such order thereon as it may deem fit.

(5) The decision or order of the Tribunal on appeal shall be final.

(6) The Tribunal may pass such interim orders pending the decision on the appeal as may deem fit.

(7) The Tribunal may award costs in any proceedings before that authority to be paid either out of the funds of the society or by such party to the appeal as the Tribunal may deem fit.”

(Emphasis added)

I have perused the proceeding impugned in the writ petition and taken note of the preliminary objection raised by the learned

Government Pleader on maintainability of writ petition. This Court is of the view that a few grounds are raised to make it appear they are pure, simple legal objections and availability of statutory remedy need not preclude the petitioners from invoking the jurisdiction of this Court under Article 226 of the Constitution of India. After carefully examining these grounds, this Court is of the view that it is not as direct or categorical as the petitioners try to make out to appreciate the legal objections raised to examine the matters under Article 226 of the Constitution of India. In the considered view of this Court, the remedy of appeal under Section 76 of the Act is best suited and the same is required to be availed by the petitioners, but not, but not pursue the writ prayer.

The learned Government Pleader submits that the petitioners can be given liberty to avail the remedy of appeal within 15 days from today.

I have taken note of respective submissions and the writ petition is disposed of by this order.

The petitioners are given liberty to file appeal within two weeks from today against the proceedings impugned in the instant writ petition before Cooperative Tribunal, Hyderabad.

The parties are directed to maintain status quo as on today for a period of four weeks from today and in the meantime, it is open to petitioners to convince the Tribunal and obtain appropriate order on merits.

It is made clear that the direction to maintain status quo shall not be understood as authorisation granted to petitioners to pass

orders or take steps for disbursement of any amount made available by parent Bank after the surcharge order is passed.

Since the writ petition is disposed of, I do not see any reasons to consider the prayers in WPMs and the petitioners herein are given liberty to file appropriate petitions as and when the petitioners take steps by filing appeal before the Tribunal and canvass their cause. WPMs are dismissed.

No order as to costs.

Miscellaneous petitions, if any, pending, shall stand closed.

Date: 19-12-2016

Note:

C.C. in two days.

B/o.

Sp



S. V. BHATT, J