

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.17874 of 2008

ORDER :

Heard Sri K. Veerabhadra Rao, learned counsel for the petitioner Society, and the learned Government Pleader for Cooperation.

2. The petitioner Society herein challenges the show cause notice in R.C.No.1170/2007-B, dated 14.07.2008, as illegal, without jurisdiction and unconstitutional.

3. The said show cause notice reads as under:

“Notice of Divisional Cooperative Officer,
NELLORE

Present : Sri P. LAXMI NARAYANA

R.C.No.1170/2007-B

Date: 14.07.2008

Sub: Revival Package – Execution of Revival Package as per Prof. Vaidyanathan Committee – Removal of the word ‘BANK’ from the names of Cooperative Rural Societies – Orders – Issued.

- Ref: 1. Circular Memo R.C.No.24499/07, Special Cell, dt.16.08.2008 of the Commissioner and Registrar of Cooperative Societies, Hyderabad.
2. This office Letter dt.07.09.2007.
3. Letter dt.10.10.2007 of the President, Indukurpeta Cooperative Rural Bank addressed to the Commissioner Registrar of Cooperative Societies, Hyderabad.
4. Instructions of the Commissioner and Registrar of Cooperative Societies, Hyderabad, dt.05.07.2008.
5. Joint Registrar, District Cooperative Officer, Nellore, Letter Rc.No.3111/2007/C, dated 05.07.2008.

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Through 1st reference cited, the Commissioner and Registrar of Cooperative Societies, Hyderabad, has directed to submit the proposals for amendment of Bye-Laws for removal of the word ‘Bank’ from the names of the societies which are using the

words 'Bank' and 'Banking' as the words 'Bank' and 'Banking' shall not be used without obtaining license from the Reserve Bank of India as per the Memorandum of Understanding of the State Government and Article 9-22 and if any Primary Agricultural Cooperative Credit Societies are using such words 'Bank', 'Banking' and 'Banker', the said societies shall be de-registered.

The Divisional Cooperative Officer, Nellore has directed vide 2nd reference cited, to implement the orders of the Registrar and to submit the proposals for the amendment of the Bye-Laws as required for the change of the name of the society as 'Indukurpeta Cooperative Society'.

But, the President of Indukurpeta Cooperative Rural Bank addressed a letter to the Commissioner and Registrar of Cooperative Societies, Hyderabad, through letter vide reference 3rd cited, informing that the Indukurpeta Cooperative Rural Bank is functioning its banking transactions and long term credit operations since 1956 onwards and it is running with the trust in the name of Rural Bank and if the word 'Bank' is removed from its name, there is every possibility of loosing the trust of the general public and resolved to reject to obtain the financial aid from the Vaidyanathan Committee and requested the Registrar to drop the said action.

Through 4th reference cited the Commissioner and Registrar of Cooperative Societies, Hyderabad, directed to initiate action under Section 16(5) of Cooperative Societies Act, 1964, if any cooperative society refuse for the removal of word 'Rural Bank'.

The Joint Registrar/District Cooperative Officer, Nellore vide 5th reference cited has directed to take necessary action for removal of the word 'Rural Bank' from the name of 'Indukurpeta Cooperative Rural Bank' located under the Nellore Division and the same shall be called as 'Indukurpeta Cooperative Credit Society'. But, so far no response from your side till date.

Therefore, the President, Indukurpeta Cooperative Rural Bank is hereby informed to submit a report to this office within a period of one week from the date of receipt of this notice, for changing the name of your society as 'Indukurpeta Cooperative Credit Society' by removing the word 'Rural Bank', failing which necessary action will be initiated under Section 16(5) of the Andhra Pradesh Cooperative Societies Act, 1964.

Sd/- x x x x,
Divisional Cooperative Officer,
Nellore."

4. The case of the petitioner Society is that the General Body

of petitioner Society has resolved not to delete the word 'Bank' from its description and nomenclature and, therefore, the contents of notice impugned in the writ petition amount to interference with the functional freedom of petitioner Society, without jurisdiction and liable to be set aside.

5. The show cause notice was suspended by this Court on 18.08.2008 and the respondents filed petition to vacate the interim order dated 18.08.2008.

6. In the counter affidavit filed along with the vacate stay petition, the respondents tried to justify why a notice under Section 16(5) of the A.P. Cooperative Societies Act, 1964 (for brevity "the Act") was issued to the petitioner Society. For the view I am proposing to take, I am not considering the writ on merits. Therefore, reference to those averments is avoided.

7. Section 16(5) of the Act reads as follows:

"16. Amendment of bye-laws of a society:-

(1) to (4)

(5) If in the opinion of the Registrar, an amendment of the bye-laws of a society is necessary or desirable in the interest of such society or of the Co-operative movement, he may, in the manner prescribed, call upon the society to make any amendment within such time as he may specify. If the society fails to make such an amendment within the time so specified, the Registrar may, after giving the society an opportunity of making its representation, register such amendment and forward the society by registered post a copy of the amendment together with a certificate signed by him; such a certificate shall be conclusive evidence that the amendment has been duly registered; and such an amendment shall have the same effect as an amendment of any bye-law made by the society.

8. Section 16(5) provides for giving opportunity to the Society to make a representation against the proposed amendment to the

Bye-law and the Registrar is under an obligation to consider the objections, pass an order and communicate the same to the Society. An order passed under Section 16(5) of the Act is appealable under Section 76 of the Act.

9. Section 76 of the Act reads as under:

“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. 3[XXX] 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.]”

10. From the above scheme under the Act, it is clear that the Registrar has authority or jurisdiction to issue notice to amend the Bye-laws of the Society. Therefore, it is not a case of inherent lack

of jurisdiction for the Registrar to issue the impugned show cause notice. The petitioner Society can certainly file a representation/explanation and contest the show cause notice before the 4th respondent, who will certainly consider the objections and take a decision under Section 16(5) of the Act. If the petitioner Society is ultimately aggrieved by such decision, an effective remedy of appeal under Section 76 of the Act, if so advised, can pursue.

11. Having regard to the scheme, availability of jurisdiction to Registrar and the stage at which the writ petition is filed, I am satisfied, no case is made out for interference against the show cause notice.

12. For the aforesaid reasons, the writ petition fails and dismissed. The petitioner Society is given four weeks' time from the date of receipt of a copy of this order to file representation/objections to the show cause notice dated 14.07.2008 before the 4th respondent. The 4th respondent will consider the objections and pass orders in accordance with law. If the petitioner Society is aggrieved by such outcome, it is free to avail the remedy of appeal under Section 76 of the Act.

13. With the above observations, the writ petition is dismissed. Interim order dated 18.08.2008 is vacated. As a sequel, miscellaneous petitions pending, if any, shall stand closed. No order as to costs.

JUSTICE S.V. BHATT

16.03.2016.

Msr

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