

THE HON'BLE SRI JUSTICE S.V. BHATT

WRIT PETITION No.17846 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.700/2007/C, dated 14.07.2008, as illegal, without jurisdiction and unconstitutional.

3. The said show cause notice reads as under:

"Notice under Section 16(5) of A.P.C.S. Act 7 of 1964
Office of the Deputy Registrar of Cooperative Societies,
KAVALI

Present : Sri M. VARA PRASAD
Divisional Cooperative Officer

R.C.No.700/2007/C

Date: 14.07.2008

Sub: Revival Package – Recommendations of Prof. Vaidyanathan Committee
– Implementation deletion of word 'BANK' from the Cooperative
Rural Bank – Reg.

Ref: 1. This Office letter dated 19.09.2007.
2. Joint Registrar/District Cooperative Officer,
Nellore, Rc.No.3111/2007/C, dated 05.07.2008.

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It is informed earlier that the Cooperative Rural Banks in the Kavali Division were instructed to delete the nomenclature 'Bank' from the existing name by passing a resolution in the General Body Meetings on or before 31.10.2007 and report compliance lest the said amendment will be carried out by enforcing the provisions under Section 16(5) of A.P.C.S. Act 7 of 1964. Till date there is no such compliance to their office. Therefore, immediately after receipt of this notice you are requested to delete name 'Bank' and comply within 7 days otherwise the undersigned officer will take action suomoto as provided under the said section.

Treat the matter as immediate.

Sd/- M. Vara Prasad,
Divisional Cooperative Officer,
Kavali.”

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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