

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 14823 of 2016

DATED 27th APRIL, 2016

BETWEEN

Challa Challam naidu

....Petitioner

And

The State of Andhra Pradesh,
Rep. by its Principal Secretary, Cooperation Department,
Secretariat, Hyderabad and ors.

...Respondents.

HONOURABLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 14823 of 2016

ORDER:

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Proceedings dated 26.03.2016 issued by the third respondent ordering second enquiry against the fifth respondent-Society under Section 51 of the AP Cooperative Societies Act, 1964 (for short 'the Act') is challenged in the present Writ Petition on the ground that the second enquiry as ordered is impermissible and contrary as held by the Division Bench of this Court in *Primary Agricultural Cooperative Society Vs. B.Malla Reddy* {1996(2) ALD 803}.

The facts are not in dispute. The petitioner herein is the President of the fifth respondent-Society since 2005. Initially an

enquiry was ordered vide proceedings dated 08.01.2015 into the constitution, working and financial condition of the fifth respondent-Society in particular reference to the irregularities and lapses. The Enquiry Officer submitted his report on 5.8.2015 and further report on 5.11.2015. The third respondent-District Cooperative Officer in the impugned proceedings came to the conclusion that certain aspects of the enquiry have been left untouched by the Enquiry Officer and the enquiry report submitted by him does not reflect true facts in complete. He further observed that the Enquiry Officer failed to establish the grounds of fraud, amount involved in order to initiate further proceedings. Thereby the third respondent ordered second enquiry against the fifth respondent-Society.

In the similar and identical set of circumstances, confirming the decision of the learned single Judge, a Division Bench of this Court in *Primary Agricultural Cooperative Society Vs. B.Malla Reddy* (supra) held that ordering of second enquiry on the same set of materials is improper. For better understanding of the issue, the relevant portion of the decision of the Division Bench in the aforesaid case is excerpted hereunder, which reads as follows:

“ After a thorough examination of the case we are in respectful agreement with the learned Single Judge. It is a well known proposition that a second enquiry or successive enquiries are hit by the theory of double jeopardy to which a person cannot be subjected to. Apart from the reasons advanced by the learned Single Judge, the further fact that remains is that the report of the enquiry officer is only recommendatory in nature and the authority to initiate enquiry has himself the power to either accept the enquiry report or reject it either fully or in some respects and in the event he disagrees with any

part of the enquiry report, he can call upon the person proceeded to explain his conduct and in the course of such proceedings may also call upon him to explain any evidence, documentary or oral, appearing against him. The authority is not bound to accept the views expressed by the Enquiry Officer and can also take a different view on the same set of materials. It was hence not necessary for the District Cooperative Officer to direct a second enquiry if he was dissatisfied with the first enquiry report but could have proceeded in respect of matters which he felt were left untouched by the Enquiry Officer on his own, and called upon the respondent to explain such facts. In that view of the matter, the second proceedings was misconceived and has been rightly quashed. We, however, make it clear that the District Cooperative officer can take action as is available to him as explained above.”

In the light of the decision of the Division Bench of this Court extracted herein above, the learned Government Pleader for Cooperation appearing for Respondents 1 to 4 has no objection to set aside the impugned proceedings.

In view of the foregoing discussion, the Writ Petition is allowed setting aside the impugned proceedings dated 26.03.2016 passed by the third respondent insofar as it relates to ordering second enquiry contrary to the judgment of the Division Bench of this Court stated supra. However, it is left open to the third respondent to proceed in respect of matters which he felt were left untouched by the Enquiry Officer on his own and take further action in the matter in accordance with law.

Miscellaneous petitions pending consideration if any in the Writ Petition shall stand closed in consequence. No order as to costs.

JUSTICE CHALLA KODANDA RAM

DATED 27th APRIL, 2016.
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