

**THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA
RAO**

WRIT PETITION No.26976 of 2015

ORDER:

In this Writ Petition, the petitioner assails the appointment of

7th respondent as Chairman of the 6th respondent Agricultural Market Committee vide notification G.O.Rt.No.569 Agriculture and Cooperation (MKTG.I) Department dt.06-08-2015 issued by

1st respondent under powers conferred on him under Section 6(1) and sub-Section (1) and (2) of Section 5 of the Andhra Pradesh (Agricultural Produce and Livestock) Markets Act, 1966 (for short "the Act").

2. The principal contention of petitioner is that 7th respondent had been declared as an insolvent by order dt.11-03-1998 in I.P.No.6 of 1995 of the Additional Senior Civil Judge, Gudur, that under the said order, he was directed to apply for discharge within two years from that date, and the 7th respondent has not done so. It is contended that although there is no disqualification prescribed under the above Act for a person declared as an insolvent being appointed to the post of the Chairman

of the 6th respondent Agricultural Market Committee, such a bar is contained in Section 73 of the Provincial Insolvency Act, 1920 disqualifying persons adjudged as insolvent from holding any office of the nature of a Chairman of an Agricultural Market Committee; by virtue of the said provision, notwithstanding the absence of any such disqualification under the provisions of the Act, the 7th respondent is disqualified from occupying the said office; and

1st respondent therefore ought not to have appointed him to the said post.

3. Learned Government Pleader appearing for respondent Nos.1 to 4 as well as 6th respondent has contended that there being no disqualification under the provisions of the Act to appoint a person adjudged as an insolvent as Chairman of Agricultural Market Committee, the 1st respondent cannot be said to have committed any illegality in appointing the 7th respondent as Chairman of the

6th respondent Market Committee. It is contended that the petitioner ought to have approached the 1st respondent and sought removal of

7th respondent, if the petitioner was aggrieved by the

appointment of 7th respondent or the petitioner ought to have filed a Revision under Section 27 of the Act. It is also contended that 1st respondent was not aware that 7th respondent had been adjudged as an insolvent and if the petitioner had submitted a representation to the 1st respondent in that regard enclosing the relevant material, the 1st respondent would consider the same and pass appropriate orders. They therefore prayed that Writ Petition should be dismissed.

4. Sri L.Ravichander, learned Senior Counsel appearing for Sri K.Neelakanteswara Rao, learned counsel for 7th respondent contended that petitioner has only sought a Writ of Mandamus and did not seek Writ of quo-warranto; that petitioner has not stated how he is affected by the appointment of 7th respondent as Chairman of the

6th respondent Agricultural Market Committee; so the petitioner has no *locus* to file this Writ Petition; and that the Writ Petition is not in the nature of Public Interest Litigation and if it has to be construed in that way, it does not fulfill the requirements of a Public Interest Litigation. It is next contended that the Act is a self-contained statute and since it does not prescribe any disqualification of the

nature alleged by petitioner for appointment as Chairman of a Agricultural Market Committee, the provisions of the Provincial Insolvency Act, 1920 cannot be imported into this Act. It is also contended that the provisions of the Provincial Insolvency Act, 1920 have to be treated as a General Law while the provisions of the Act have to be construed as a Special Law and the provisions of the Special Law would prevail over the General Law. A plea is also raised that 7th respondent had recently applied for discharge under Section 41 of the Provincial Insolvency Act, 1920 to the Insolvency Court, that the said application is pending consideration before that Court and therefore the Writ Petition be dismissed. He also adopted the contentions of the learned Government Pleader for Agriculture and the learned Standing Counsel for 6th respondent Agricultural Market Committee.

5. I have noted the submissions of all the counsel.

6. Section 73 of the Provincial Insolvency Act, 1920 in so far as it is relevant states:

“73. Disqualifications of insolvent : _ (1) Where a debtor is adjudged or re-adjudged insolvent under this Act, he shall, subject to the provisions of this section, be disqualified from_
(a) being appointed or acting as a Magistrate;
(b) being elected to any office of any local authority where the appointment to such office is by election or **holding or exercising any such office to which no salary is attached;**

and

(c) being elected or sitting or voting as member of any local authority.

... ..”(emphasis supplied)

7. It is an admitted fact that 7th respondent does not receive any salary and he is only receiving a honorarium of Rs.3,500/- per month as per Rule 38(4) of the Rules framed under the Act. Therefore, it is clear that 7th respondent is **holding an Office** to which no salary is attached and that Office of a Chairman of an Agricultural Market Committee is holding of an Office of a local body.

8. The 7th respondent has not disputed the fact that the Additional Senior Civil Judge, Gudur had adjudged him as an insolvent by judgment dt.11-03-1998 in I.P.No.6 of 1995. He also does not dispute the fact that under the said judgment, he was required to apply for discharge within two years from that date and that he has not so applied for discharge within the period of two years under Section 41 of the Provincial Insolvency Act, 1920.

9. The object and purpose behind Section 73 of the Provincial Insolvency Act, 1920 is to ensure the safety and wellbeing of the Institution and protect it from being manned by a person who is an undischarged insolvent. That being the policy behind enacting such a provision, in

the absence of any provision in the Act overriding the provisions of the Provincial Insolvency Act, 1920, it cannot but be held that 1st respondent could not have appointed the 7th respondent, (who is an undischarged insolvent) to the post of the Chairman of the 6th respondent Agricultural Market Committee.

10. It may be that at the time of appointment of 7th respondent under the impugned G.O., the 1st respondent was not aware of the judgment dt. 11-03-1998 in I.P.No.6 of 1995. But on 16-08-2015 itself the petitioner had informed the 5th respondent of this fact and copies of the said complaint of petitioner were marked to the Hon'ble Minister for Agriculture, Government of Andhra Pradesh, Hyderabad, the Secretary, Ministry of Agriculture, Government of Andhra Pradesh, Hyderabad and also to respondent Nos.3 and 4. In spite of the said disqualification of 7th respondent being made known to respondent Nos.1, 3 to 5, admittedly no action for removal of 7th respondent from the said office of Chairman was taken by them. This shows a callous disregard on the part of respondents to not only legal position but also to the safety of the finances of 6th respondent Agricultural Market Committee being to be under the control and

Management of 7th respondent, who is admittedly an undischarged insolvent.

11. The contention of respondent Nos.1 to 6 that petitioner ought to have availed of the remedy of Revision under Section 27 of the Act and questioned the appointment of 7th respondent as Chairman of 6th respondent Market Committee, is not tenable for the reason that the said provision enables the 1st respondent to revise the orders passed by the Director of Marketing. In the present case, the decision to appoint 7th respondent as Chairman of 6th respondent Market Committee was not taken by the Director of Marketing but by 1st respondent itself. Therefore, Section 27 of the Act could not be invoked by petitioner.

12. I also reject the contention that the provisions of the Provincial Insolvency Act, 1920 have to be construed as General Law and that the provisions of the Act have to be treated as Special Law overriding the provisions of the Provincial Insolvency Act, 1920. Merely because the provisions of the Act do not contain any disqualification of this nature, it cannot be said that the provisions of the Provincial Insolvency Act, 1920 would not apply. There is nothing in the Act which deals with disqualification of a

person who can be appointed as a Chairman. The Act also does not contain any provision giving overriding effect to this Act over provisions in other laws.

13. The contention of the learned Senior Counsel for 7th respondent that the petitioner, having sought a Writ of Mandamus and not a Writ of quo-warranto, the Writ Petition ought to be dismissed, also cannot be countenanced. This is because Article 226 of the Constitution of India vests on the High Court the power to issue to any person or authority, including, in appropriate cases any Government, within those territories directions, orders or Writs, including Writs in the nature of habeas corpus, prohibition, quo-warranto and Writ of Certiorari or any of them, for the enforcement of any of the rights conferred by part-III and for any other purposes. Therefore the power of the High Court under Article 226 of the Constitution of India is not confined only to Writ of quo-warranto but extends to issuing other directions, orders or Writs in nature of Writ of quo-warranto. As held in **State of Punjab Vs. Salil Sabhlok and others**^[1] and **Dwaraka Nath Vs. Income-Tax Officer, Special Circle, D Ward, Kanpur and another**^[2], High Courts can also issue directions, orders of Writs *other than* the prerogative

Writs and High Courts to reach injustice wherever it is found and can mould reliefs to meet the peculiar and complicated requirements of our Country. In these decisions, it was also held that the power of the High Court under Article 226 of the Constitution of India should not be attempted to be equated with that of the English Courts to issue prerogative Writs, that unnecessary procedural restrictions grown over the years in a small country like England cannot be introduced in a vast country like India and such a construction would defeat the purpose of Article 226 of the Constitution of India itself. Therefore, I am of the opinion that the nature of the prayer made by petitioner cannot be made a ground to dismiss the Writ Petition since this Court has the power to mould the relief.

14. It is also too late in the day for respondents to contend that 1st respondent has absolute discretion in appointing the Chairman of an Agricultural Market Committee under the above Act under Section 5(2) of the Act since there is a duty on the 1st respondent to select persons with integrity (moral and financial) and competence so that the discretion is exercised *for the purposes* of the Act.

15. It is not disputed that the petitioner is an agriculturist

and a resident of Ramasagaram village. Counsel for petitioner asserted that petitioner also sometimes sells his agricultural produce in the Agriculture Market Committee.

16. Having regard to these circumstances, and having regard to the nature of responsibility conferred under the Act on a Chairman of an Agricultural Market Committee, which is obviously of a fiduciary nature, it is wholly undesirable for 1st respondent to have appointed the 7th respondent, who is an undischarged insolvent to the Office of Chairman of the 6th respondent Agricultural Market Committee.

17. Accordingly, the Writ Petition is allowed and it is declared that the action of 1st respondent in nominating 7th respondent as Chairman of the 6th respondent Agriculture Market Committee under G.O.Rt.No.569 dt.06-08-2015 is illegal, arbitrary and violative of Article 14 of the Constitution of India. Consequently the said G.O.Rt.No.569 dt.06-08-2015 is set aside. No costs.

18. As a sequel, miscellaneous petitions pending if any, in this Writ Petition shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date: 04-01-2016

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[\[1\]](#) (2013) 5 SCC 1

[\[2\]](#) AIR 1966 SC 81