

THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO
+ WRIT APPEAL No. 61 OF 2016

% Dated 17.02.2016

Hanumantu Narayana Dora.

....Appellant

Vs.

\$ The Srikakulam Coop. Urban Bank Ltd. & others

....Respondents

! Counsel for the Appellants : Sri C. Raghu

^ Counsel for the Respondents : GP for Cooperation (AP)
Sri Srikanth Reddy Ambati

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> HEAD NOTE:

? Cases referred
AIR 1975 Supreme Court 2277

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA
PRADESH**

WRIT APPEAL No. 61 OF 2016

Between:

Hanumantu Narayana Dora.

....Appellant

Vs.

\$ The Srikakuklam Coop. Urban Bank Ltd. & others

....Respondents

JUDGMENT PRONOUNCED ON 17.02.2016

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**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
THE HON'BLE DR. JUSTICE B. SIVA SANKARA RAO**

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| 1. Whether Reporters of Local newspapers
may be allowed to see the Judgments? | yes |
| 2. Whether the copies of judgment may be
marked to Law Reporters/Journals? | yes |
| 3. Whether Their Lordship wish to see the
fair copy of the Judgment? | No |

**THE HON'BLE SRI JUSTICE NOOTY RAMAMOHANA RAO
AND
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WRIT APPEAL No. 61 OF 2016**

J U D G M E N T: *(per Hon'ble Sri Justice Nooty Ramamohana Rao)*

This Writ Appeal is directed against the common order passed by our learned Brother Justice C.V. Nagarjuna Reddy in Writ Petitions No. 7555 of 2011 and 3028 of 2012 on 25.06.2015.

In this Appeal, the petitioner-appellant has chosen to call in question the correctness of the view taken insofar as Writ Petition No. 3028 of 2012 alone is concerned, leaving the order passed in Writ Petition No. 7555 of 2011 untouched. Hence, we confine our scrutiny to this extent.

The writ petitioner is the appellant herein. It is his specific case that he was subjected to an inquiry ordered to be conducted in terms of and in accordance with Section 51 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act') once before by the proceedings of the Joint Registrar, Srikakulam, dated 16.03.2005, which culminated in a report being submitted in that regard on 04.01.2009 by the Inquiry Officer-cum-General Manager, District Cooperative Central Bank Limited, Khammam. Now, once again, an inquiry under Section 51 of the Act was ordered by the Joint Registrar –cum- District Cooperative Officer, Srikakulam through his proceedings dated 28.02.2011.

Sri C. Raghu, learned counsel for the petitioner-appellant would

contend that there could not be series of inquiries conducted in terms of Section 51 of the Act and, in fact, there is no such provision for conducting inquiry after inquiry under Section 51. This apart, Sri Raghu would also contend that the Registrar is required to apply his mind and make available his findings to the society, whereas, in the instant case, the District Cooperative Officer, by his proceedings, dated 23.01.2012, has forwarded the inquiry report without recording his findings to Srikakulam Cooperative Urban Bank Limited and the said action of the District Cooperative Officer is contrary to the content and scope of Section 51.

It is not in dispute that the Joint Registrar, Srikakulam, vide his proceedings, dated 16.03.2005, has ordered for inquiry under Section 51 of the Act, based upon a Petition said to have been submitted by the former Directors of the District Cooperative Central Bank, Srikakulam. After the final audit reports for the years 2002-03 and 2003-04 were made available and after the statutory inspection was carried out under Section 35 of the Act by the Reserve Bank of India during March 2003 and October 2004, certain lapses/financial irregularities have surfaced and they were noted by the Cooperative Sub-Registrar – cum- Auditor during the preparation of half-yearly inspection notes of the bank. Therefore, in the above context, the Joint Registrar, Srikakulam has called for an inquiry under Section 51 of the Act. For conducting the said inquiry, the General Manager of the District Cooperative Central Bank Limited, Khammam has been appointed as the Inquiry Officer. That Inquiry Officer, after conducting a detailed inquiry, made available his report on 04.01.2009 recording his findings, *inter alia*, that the failure on the part of the Chief Executive Officer/Managing Director was found affecting the normal functioning of the bank and hence, the bank has become victim of gross mis-handling of its affairs by its Chief Executive Officer/Managing Director. It is now contended before us by Sri C. Raghu that this inquiry conducted under Section 51 was once again sought to be re-

conducted by appointing another Inquiry Officer by proceedings, dated 28.02.2011 and appointing successive Inquiry Officers was frowned upon by the Supreme Court in its judgment rendered in ***State of Assam v. J.N. Roy Biswas***^[1].

We would like to clarify the factual controversy involved in the matter. The inquiry ordered by the Joint Registrar of the Cooperative Societies, Srikakulam on 16.03.2005, which has culminated in the report submitted by the Inquiry Officer –cum- General Manager, District Cooperative Central Bank, Khammam on 04.01.2009, has, undoubtedly, covered the period 2002-03 and 2003-04. Whereas, by the order dated 28.02.2011, the Joint Registrar –cum- District Cooperative Officer, Srikakulam has now ordered for an inquiry based upon a preliminary report submitted by a three-men committee of Assistant Registrars, which probed into the allegations of fraud/financial irregularities committed by the bank officials. The three-men committee of Assistant Registrars, which went into this aspect, appears to have submitted the preliminary report on 18.12.2010 and the Commissioner for Cooperation and Registrar of Cooperative Societies, by his proceedings, dated 25.02.2011, found it expedient to order for an inquiry to be conducted under Section 51 of the Act, in view of the *prima facie* material with regard to the financial irregularities/fraud. Clearly the area and scope of inquiry in between the one, which was ordered to be conducted on 16.03.2005 and the one lately ordered on 28.02.2011 is in its scope and content vastly different. It is purely an incidence that the latter inquiry ordered on 28.02.2011 has, once again, brought out the financial irregularities said to have been committed over a long period of time, which started running sometime during 2002-03 or even prior thereto. Therefore, we are of the opinion that the present case is not a case of ordering successive inquiries into the same subject matter, all over again. The present case is one where inquiry under Section 51 of the Act was ordered on two different occasions, but the scope and content of such

inquiries is vastly different with one another. Therefore, there is no merit in the contention canvassed by Sri C. Raghu with regard to the impermissibility of conducting inquiries successively into the same matter.

We are conscious that the Supreme Court in **J.N. Roy Biswas's case** (*cited supra*) has taken the view that successive inquiries into the same area of inquiry is impermissible. The rationale behind being that any such successive inquiries would amount to harassment, instead of trying to achieve the objective of unearthing the true and correct facts. This apart, successive inquiries cannot be ordered merely because the report of one inquiry is not to the liking of the competent authority. Such ordering of successive inquiries would amount to misuse or arbitrary exercise of power. That was impermissible. The principle underlying **J.N. Roy Biswas's case** does not have any applicability to the fact situation prevailing in the instant case.

That takes us to the sheet anchor of the contention of Sri C. Raghu with regard to the nature and scope of the power to be exercised by the Registrar under Section 51 of the Act.

The expression 'Registrar' has been defined in Section 2(n) of the Act by providing for an inclusive definition. It means the Registrar of Cooperative Societies appointed under Section 3(1) of the Act and also includes any other person on whom all or any of the powers of the Registrar under this Act are conferred. Section 51 of the Act reads as under:

51. Inquiry:— The Registrar, may on his own motion and shall, on the application of a society to which the society concerned is affiliated, or of not less than one third of the members of the Committee, or of not less than one fifth of the total number of members of the society, hold an inquiry or direct some person authorized by him by an order in this behalf to hold an inquiry into the constitution, working and financial condition of a society. Such inquiry shall be completed within a period of four months and the report of inquiry along with the findings of the Registrar thereon shall be communicated to the managing committee of

the society. It shall be the responsibility of the managing committee to place the inquiry report before the General Body or Special General Body convened for the purpose for its information, within a period of one month from the communication of the inquiry report by the Registrar. The Registrar shall be competent to initiate action under the provisions of this Act, if the committee fails to take action as aforesaid:

Provided that notwithstanding anything contained in this Act and the Rules made thereunder, the bye laws of a society and the action of the society in placing the inquiry report along with the findings of the Registrar, the Registrar shall not be precluded from taking follow up action as may be required on the basis of inquiry report :

Provided further that such action shall not be nullified even if the General Body of the Society passes a resolution negating the findings of the inquiry:

Provided also that the Registrar may for reasons to be recorded in writing extend the period of four months for completion of inquiry for a further period not exceeding two months.

From a perusal of the above provision, it emerges that:

- 1) The Registrar may, on his own motion, hold an inquiry under Section 51 or direct someone authorized by him to hold such an inquiry;
- 2) Where an application has been made by a society, to which the affairs of the society sought to be inquired into is affiliated, the Registrar shall hold or cause to be held an inquiry under Section 51;
- 3) Similarly, when not less than one-third of the members of the Committee of the society or not less than one-fifth of the total number of members of the society seek for an inquiry, the Registrar shall either hold or cause to be held an inquiry under Section 51;
- 4) Such inquiry may be held into the constitution, working and financial condition of the society;
- 5) Such inquiry shall be completed within a period of four months;
- 6) It shall be open to the Registrar to grant extension of time for

completion of the inquiry and such extension of time shall not exceed two months;

- 7) The report of the inquiry along with the findings of the Registrar thereon is required to be communicated to the managing committee of the society;
- 8) Wherever the Registrar is in agreement with the findings recorded by the Inquiry Officer, perhaps, elaborate reasons for his agreement with the findings contained in the Inquiry Officer's report may not be required or warranted;
- 9) But however, where the Registrar is in disagreement with any of the findings recorded by the Inquiry Officer, in such circumstances, as a part of adherence to the principles of natural justice and fair play, reasons, however brief they may be, are required to be assigned reflecting the lines of application of mind by the Registrar for arriving at different findings than those contained in the inquiry report;
- 10) It is the responsibility of the managing committee of the society to place the inquiry report before the General Body or Special General Body of the society convened;
- 11) Such placing the inquiry report before the General Body is only for the purpose of its information, inasmuch as the General Authority of the Society is always derived and dependent upon the General Body;
- 12) The General Body meeting is required to be convened by the Managing Committee within a period of one month from the receipt of the inquiry report, under Section 51, communicated by the Registrar.
- 13) If the Managing Committee fails to convene any such general body meeting, the Registrar shall be competent to initiate action for convening the general body meeting.
- 14) It is open to the General Body to order for action to be taken as considered appropriate by them against those

persons, who are found responsible for the lapse/irregularities found in the inquiry report;

- 15) Irrespective of the fact whether the General Body or the managing committee of the society takes or initiates any action against the person(s) found responsible for the lapse, the Registrar is not precluded from taking up the follow-up action, as may be required, based upon the Inquiry Officer's report;
- 16) Once the Registrar initiates any such action, on his own, based upon the findings of the inquiry conducted under Section 51, the General Body of the society cannot nullify any such action initiated by the Registrar against the person(s) concerned;

Thus, once an inquiry is conducted under Section 51 of the Act, the findings, as recorded in the report submitted by the Inquiring Authority together with the findings of the Registrar thereon, are to be placed before the General Body of the society only to enable it to get first-hand information as to how the affairs of the society are being carried on. Thus, it is an enabling provision, which makes the General Body to become aware of the goings-on of the society and then, initiate corrective measures. The report of the inquiry under Section 51 of the Act, if it is found to be adverse, does not preclude the Registrar from initiating action based thereon, entirely on his own, irrespective of the fact whether the General Body or the Managing Committee of the society takes any such similar action or not.

Therefore, we are of the opinion that the findings, which the Registrar is required to record on the report submitted by the Inquiry Authority, under Section 51, are only intended for securing the objective of application of mind by the Registrar. It is purely an administrative exercise, but not a quasi-judicial one. Hence, elaborate reasons, either for recording his agreement with the findings recorded by the Inquiring Authority or by disagreeing with the findings of the

Enquiring Authority, are not required.

We are therefore, of the opinion that the contention canvassed by Sri C. Raghu in this regard that a terse statement recorded in the order passed on 23.01.2012 by the Registrar that he is in agreement with the findings recorded by the Inquiring Authority in its report dated 13.01.2012, does not fit into the scheme of Section 51, is not well-founded. Far there from, it is in accord with the content and scope of Section 51 of the Act. We therefore, do not find any merit in this Appeal and accordingly, it is dismissed. No costs.

It is needless for us to observe that no observations/findings recorded either by us now or by the learned Single Judge in his order passed in Writ Petition No. 3028 of 2012 would come in the way of establishing his innocence/defence before the appropriate authority while facing the inquiry under Section 60 of the Act by the appellant.

Consequently, the miscellaneous applications, if any shall also stand dismissed.

NOOTY RAMAMOHANA RAO, J

DR. B. SIVA SANKARA RAO, J

17th February 2016

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[\[1\]](#) AIR 1975 Supreme Court 2277