

WRIT PETITION No.18400 of 2017

ORDER :

This writ petition is filed under Article 226 of the Constitution of India, seeking the following relief:

“to issue a Writ, Order or Direction more particularly one in the nature of writ of Mandamus, declaring proceedings of the 3rd respondent in Pc.No.849/2017-D dated 17.05.2017 as illegal, unjust, arbitrary tainted with bias, violative of principles of natural justice and contrary to the provisions of T.S.C.S Act and consequently set aside the same and pass such other order or orders as may be just and necessary in the interest of justice.”

Heard learned counsel for the petitioner and learned Special Government Pleader from the office of the Additional Advocate General representing the respondents and perused the prayer in the writ petition with supporting affidavit and the counter affidavit filed by the District Cooperative Officer/ 3rd respondent) and also reply to it with enclosure and perused the other material on record including from the attention drawn by the learned Government Pleader to the balance sheet as on 31.03.2016 and the preamble of the Bye-laws with reference to Section 2(p)(q)(r)(f) and Section 34(6) of the Cooperative Societies Act, 1964 (for short ‘the Act’) amended by the State of Telangana in G.O.Ms.No.53 dated 20.05.2016.

The core contention of the respondents from the counter in opposing the writ petition besides that the writ petition is not maintainable and there is an appeal remedy under Section 76 of the Act to approach the Cooperative Tribunal, apart from disputed facts involved in the case and not a pure question of law, even apart from the arguments sake to entertain a writ petition, the society in question is not a credit society nor doing any lending, borrowing activity to claim any obligation of consultation as per Section 34(6) of the Act of any financing bank before superseding the management for the fact that there is no financing bank through which they obtained finances, apart from the very Bye-laws mentions the objects that the society is not authorized to deal any credit of any lending and borrowing, as Bye-laws speaks from the objects as it is a cooperative society to arrange for market and sale of fertilizers, seeds etc., and the society is essentially an agency involved in distribution of fertilizers and seeds and agricultural implements to the members of the society and the plea that the impugned orders are vitiated by the non-observance of Section 34 (6) of the Act does not hold water and thereby, the writ petition is liable to be dismissed.

It is one of the submissions by the learned Special Government Pleader with reference to the balance sheet of the Society as on 31.03.2016 that there is nothing to show worth mentioned any financing bank to the society.

This Court is fresh in mind from the order dated 15.06.2017 in W.P.No.14733 of 2017 in Janga Raghava Reddy and others v. the State of Telangana (Cooperative Department) and others, where it is categorically held that despite appeal remedy, writ petition is maintainable including to adjudicate any question of fact also and once there is any violation of statutory provision, writ petition is maintainable by referring to more than two expressions particularly one in relation to Madhya Pradesh Cooperative Societies Act and the other in relation to Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, apart from the expression of the Constitution Bench in Hari Vishnu Kamath v. Ahmad Ishaque¹.

Now, the additional fact required to be considered herein is, the learned Special Government Pleader drawn the analogy with reference to Order 47 Rule 2 C.P.C. by saying one of the members of the superseded Managing Committee already approached the Cooperative Tribunal by maintaining appeal under Section 76 of the Act and with reference to it,

¹ AIR 1955 SC 233(1)

as per Order 47(1) sub-rule (2), a party who is not appealing from a decree or order may apply for a review of judgment notwithstanding the pendency of an appeal by some other party, except where the ground of such appeal is common to the applicant and the appellant, or when, being respondent, he can present to the Appellate Court the case on which he applies for the review. Though, it is in reference to the appeal remedy and review, here, it is in reference to appeal remedy and writ petition remedy. So, two aspects are important from the above that the question raised in the grounds of appeal and the question raised in writ petition must be common and the writ petitioner (as per that analogy and that petitioner) was one of the respondents to the appeal in question.

In the case on hand, it is not in dispute that the writ petitioner is one of the respondents to the appeal. It is also not in dispute that the issue mainly raised is non-compliance of Section 34(6) of the Act, as a common question involved in both. However, the fact, the Court cannot ignore is that undisputedly after filing of the writ petition only, the appeal is maintained. As it had been the appeal first in point of time the writ Court could not have been inclined to proceed further on the writ petition by dismissing the same or disposing the same, atleast by giving liberty to raise and agitate all the questions before the appellate Court. In view

of that change, the right if at all accrued by filing a writ petition cannot be taken away from subsequent filing of an appeal by one of the persons of the Managing Committee even raising the same question in issue. Thus, on that ground, this Court is not inclined to dismiss the writ petition or dispose of from what the law laid down referred supra in W.P.No.14733 of 2017 dated 15.06.2017 of despite alternative remedy, writ petition lies, more particularly, when there is violation of the statutory compliance of any provision of law.

In the case on hand, the other issue raised by the learned Special Government Pleader with reference to Bye-laws is there is no financing bank. No doubt, in the writ petition supporting affidavit or prayer there is no mention of what is the financing bank. No doubt, further as shown by the learned Special Government Pleader from the balance sheet as on 31.03.2016, there is no mention of any financing bank. However, the fact remains from S.No.VIII(1) LF Page 22 of sundry creditors, once, there is a creditor whether that creditor is a financing bank or not is alone to be seen. In fact, as per the Act, Section 2(p)(q)(r)(f) reads as follows:

(p) *society* means a co-operative society registered or deemed to be registered under this Act;

(q) *society with limited liability* means a society in which the liability of its members for the debts of the society, in the event of its being wound up, is limited by its bye-laws-

(i) to the amount, if any, unpaid on the shares held by each of them; or

(ii) to such amount as they may undertake to contribute to the assets of the society;

(r) '*society with unlimited liability*' means a society, the members of which are, in the event of its being wound up, jointly and severally liable for and in respect of all its obligations and to contribute to any deficit in the assets of the society;

[(f) '*financing bank*' means a society, the main object of which is to assist any affiliated or other society by giving loans or advancing moneys; and includes any scheduled bank as defined in the Reserve Bank of India Act, 1934 (Central Act 2 of 1934) and such other body corporate or financial institution as may be notified by the Government from time to time, which gives financial or other aid to a society;

We are now concerned with whether Society finances or not or dealing with arrangement for marketing and sale of fertilizers etc., nor creditors to society borrowing any amount showing a limited liability satisfying the requirement of financing bank or not. The petitioners along with reply affidavit filed a certificate under Section 71 of the Andhra Pradesh Co-operative Societies Act VII of 1964, which shows that the Society borrowed Rs.29,00,000/- from NDCMS and for repayment of the said amount, notice is issued in case No.153/ 2017 dated 17.4.2017 to the Society. Once NDCC is if not a scheduled bank atleast a body corporate or financial institution within the meaning of Section 2(f) of the Act and there is an amount borrowed there from the Society in question, it is to be considered with reference to Section 34(6) of the Act as to, it is a financing bank or not. Section 34(6) of the Act reads that where a society is indebted to any financing bank, the respondent shall, before taking any action under sub-section (1) in respect of that society, consult the

financing bank. Thus, the fact that the society in question indebted to NDCC, who is a financing bank as referred supra, is clear, then it is the mandatory duty of the Registrar before taking any action to supersede the society under Section sub-section (1) of 34 in respect of that society to consult the finance bank. This Court need not go into the aspect of what is meant by 'consultation' because, this Court in detail dealt with the said issue in W.P.No.14733 of 2017, but for to say in the case on hand there is no any consultation at all of the financing bank which is mandatory as discussed supra.

Having regard to the above, the writ petition is allowed setting aside the order of supersession passed under section 34(1) of the Act for there is no effective consultation contemplated under Section 34(6) of the Act. However, any further action to take as per the due process of law by the Society is left open. No costs.

Consequently, miscellaneous petitions, if any, pending shall stand closed.

Dr. B.SIVA SANKARA RAO J,

Date:23.06.2017

Note:

L.R. Copy to be marked.

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

*THE HONOURABLE Dr. JUSTICE B. SIVA SANKARA RAO

+WRIT PETITION No.18400 of 2017

%23.06.2017

#Between:

J.Venkateswarlu

...Petitioner

AND

1. The State of Telangana, Rep. by its Principal Secretary to
Government, Agriculture & Cooperation Department, Secretariat,
Hyderabad and three others ... Respondents

!Counsel for the petitioner :
Counsel for the respondents:

Sri N.Jayasurya
Special Government Pleader
from Additional Advocate
General Office

<Gist :
>Head Note:

? Cases referred:

¹ AIR 1955 SC 233(1)



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Hyderabad and three others ... Respondents

Counsel for the petitioner : Sri N.Jayasurya
Counsel for the respondents: Special Government Pleader
from Additional Advocate
General Office

DATE OF JUDGMENT PRONOUNCED: 23.06.2017

SUBMITTED FOR APPROVAL:

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

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

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