

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.25260 of 2017

ORDER:

Heard the learned Counsel for the petitioner and the learned Government Pleader for the respondents.

The sixth petitioner is stated to be the Vice President and other petitioners are Directors of the fourth respondent Society. It is the case of the petitioners that one Sri M.Venkata Narayana was elected as the President and he is continuing as such. They wanted to move a no confidence motion against him and the same is under consideration. While so, it is stated that he set up one person by name S.Srinivasu and submitted a false representation by making allegation against the Secretary of the Society to the third respondent. The third respondent, in turn, referred the same to the Assistant Registrar to conduct an enquiry into the contents of the petition and submit a report. On submission of the report by the third respondent, the second respondent ordered for an enquiry under Section 51 of the Andhra Pradesh Cooperative Societies Act (for short, the Act) into the affairs of the Society. Challenging the order dated 22.07.2017 ordering enquiry, the present Writ Petition is filed.

Learned Counsel for the petitioners submits that the said S.Srinivasu has nothing to do with the affairs of the Society and no enquiry should have been ordered on the basis of the representation alleged to have been submitted by the said

S.Srinivasu. He also submits that the Registrar cannot initiate *suo motu* enquiry without the reference of the Society. He relied on **Mandava Laxmana Rao v. Primary Agricultural Co-operative Society**¹ and **T.Satyanarayana v. Joint Registrar/District Cooperative Officer, West Godavari District, Eluru**².

Learned Government Pleader, on the other hand, relied on a decision of the Division Bench of this Court in **The Fishermen Marketing Cooperative Society v. The Commissioner of Fisheries** (W.A.No.131 of 2012, dated 07.08.2012) and submits that in order to have some *prima facie* opinion before initiating *suo motu* proceedings, there must be some basis for the Registrar to initiate enquiry and for such purpose, he can call for a report and after having satisfied with such report, he can exercise the *suo motu* powers.

A reading of the impugned order shows that on receipt of the representation from Sri S.Srinivasu with regard to the irregularities committed by the Secretary of the Society, the petition was entrusted to the Assistant Registrar of Narsapuram Sub-Division to conduct enquiry into the contents of the petition and submit a report. The enquiry report was submitted and it came to light that certain financial irregularities occurred in the working of the Society. In those circumstances, the Registrar felt it necessary to probe into the irregularities

¹ 1996 (4) ALT 299

² 2009 (4) ALT 724

regarding misappropriation of funds and to fix up the responsibility on the persons responsible and, accordingly, he exercised the *suo motu* power to conduct the enquiry under Section 51 of the Act. In the background of the facts indicated in the order, it cannot be said that the exercise of *suo motu* power by the Registrar is bad in law.

The case in **T.Satyanarayana** (supra) is a case of initiation of enquiry subsequent to inspection conducted under Section 52 of the Act and also simultaneously ordering for taking action under Section 21 AA of the Act leading to the disqualification of the petitioner therein. In the said case the Registrar wanted to take simultaneous proceedings under Sections 51, 52 and 21 AA of the Act. In those circumstances, this Court held that initiation of enquiry was bad. No such circumstances exist in the present case.

The other case in **Mandava Laxmana Rao** (supra) is a case of initiation of enquiry on the directions of the Minister and this Court held that no such power exists under Section 51 of the Act.

The order of the Division Bench in **The Fishermen Marketing Cooperative Society's** case (supra) with regard to the exercise of *suo motu* power by the Registrar is apposite in the facts of this case, and it reads as follows:

“In our opinion, such functioning on *suo motu* cannot be based on imagination, there must be some basis which is to be placed before the Registrar to act *suo motu*. We can also draw analogy from the fact that

when a Court wants to issue a *suo motu* Contempt Rule, in the said jurisdiction, at that point of time also, it would require that some one should bring to the notice the fact of disobedience of the order so passed by the Court, and then only the Court can issue a *suo motu* Rule in the matter in question, that too if it finds it necessary. Therefore, in our considered opinion, the word *suo motu* does not mean that without any information even the enquiry can be done. The word *suo motu* is based on the facts or information, which comes to the notice of the authority and upon his satisfaction that the enquiry is necessary, then only he can function to act in the matter *suo motu*. It is to be noted that in this case, the 1st respondent Commissioner/ Registrar received such information by way of a representation of the Ex-President and other members. Further, while exercising *suo motu* power, the 1st respondent did not order only in respect of the allegations made in the representation, but also ordered enquiry into entire functioning, affairs and financial irregularities of the Society.”

In view of the above, the Writ Petition is dismissed at the admission stage. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.

31.07.2017
vs

(A.RAMALINGESWARA RAO, J)