HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

W.P.Nos.23095, 23205, 23208 & 23254 of 2017

COMMON ORDER:

Petitioners in these Writ Petitions are employed in various capacities in Warangal District Cooperative Central Bank Ltd. (for short 'the Bank').

2. An enquiry under Section 51 of the T.S. Cooperative Societies Act, 1964 (for short 'the Act') was directed on 11.04.2017 by the Commissioner of Cooperation and the Registrar of Cooperative Societies (2nd respondent) into the constitution, working and financial condition of the said bank.

3. The Enquiry Officer was appointed and he submitted a report on 23.06.2017. A consultation meeting was held at the office of the Reserve Bank of India, Hyderabad on 29.06.2017 wherein he explained the findings of the enquiry and justification for the same to the officials of NABARD, RBI and Telangana State Cooperative Agricultural Bank(TSCAB) and a decision was taken therein that the Managing Committee of the Bank should be proceeded with, under the provisions of the Act.

4. Thereafter on 01.07.2017, the 2nd respondent, taking note of the Enquiry Officer's recommendation for action against the Managing Committee, directed the Managing Director of TSCAB and the CEO of the Bank, to take action

under Section 59 of the Act against the petitioners and report compliance.

5. Consequently, on 03.07.2017, the Chief Executive Officer of the Bank issued orders suspending the petitioners pending disciplinary proceedings.

6. Assailing the action of the 2nd respondent as well as that of the Chief Executive Officer of the Bank, these Writ Petitions are filed.

7. Sri A.Sudarshan Reddy, Senior Counsel appearing for Sri A.Prabhakar Rao, Counsel for petitioners raised two contentions.

(a) The impugned order dt.01.07.2017 of the 2nd respondent merely records recommendations of the Enquiry Officer in the enquiry under Section 51 of the Act, as a basis for directing the CEO of the Bank to take action under Section 59 of the Act to suspend the petitioners; that Section 59 requires 2nd respondent to form an opinion on the basis of the evidence against each of the petitioners that they are responsible for misappropriation, breach of trust or other offences in relation to the Bank and also that their suspension is necessary in the interest of the matter; that independent application of mind is not reflected in the order dt.01.07.2017 passed by the 2nd respondent; and in the absence of the same, the order dt.01.07.2017 under Section

59 of the Act directing the CEO of the Bank suspending the petitioners is unsustainable.

(b) Clause(2) of Section 59 states that on receipt of a direction by the 2nd respondent, the Managing Committee of the Bank should suspend the petitioners, but in the present case, the order dt.03.07.2017 is not passed by the Managing Committee of the Bank but by the Chief Executive Officer. Therefore, the order dt.03.07.2017 is without jurisdiction.

8. Sri S.Sharat Kumar, Special Government Pleader attached to the office of the Additional Advocate General refuted the above contentions. He stated that though counter affidavit is not filed, his submissions may be taken note of, while disposing of the Writ petitions. Accordingly, his contentions are recorded as under:

According to the Special Government Pleader, the report of the Enquiry Officer under Section 51 sets out how the Managing Committee of the Bank, in collusion with the petitioners and other staff, indulged in several acts of misappropriation and breach of trust during the period when demonetisation was introduced by the Union of India; and that even though the order dt.01.07.2017 passed by the 2nd respondent specifically does not say so, it has to be presumed that the 2nd respondent passed the order by independent application of mind and on being satisfied that there was evidence against the petitioners and that their suspension is necessary in public interest. He contended that having regard to the serious findings in the enquiry under section 51 of the Act, which would point to the misconduct committed by the petitioners, the 2nd respondent is justified in directing the CEO of the Bank to suspend the petitioners invoking power under sub-Section (1) of Section 59 of the Act.

9. Sri C.Haripreeth, Standing Counsel for 3rd respondent-Bank supported the submissions of the Special Government Pleader.

10. I have noted the contentions of both sides.

11. Section 59 of the T.S. Cooperative Societies Act, 1964 states as under:

> "**Section 59-Suspension of officer or servant of society** :-
> (1) Where in the course of an audit under Section 50 or an inquiry under Section 51 or an inspection under Section 51 or Section 53, it is brought to the notice of the Registrar that a paid officer or servant of a society has committed or has been otherwise responsible for misappropriation, breach of trust or other offence, in relation to the society, the Registrar may, if in his opinion there is prima facie evidence against such paid officer or servant and the suspension of such paid officer or servant is necessary in the interests of the society, direct the committee pending the investigation and disposal of the matter, to place or cause to be placed such paid officer or servant under suspension from such date and for such period as may be specified by him, but not retrospectively.
>
> (2) On receipt of such direction, the committee shall, notwithstanding any provision to the contrary in the bye-laws, place or cause to be placed the paid officer or servant under suspension forthwith.
>
> (3) The Registrar may direct the committee to extend, from time to time, the period of suspension and the paid officer or

> servant suspended shall not be reinstated except with the previous sanction of the Registrar."

12. A reading of the said provision indicates that firstly, the material must be brought to the notice of the Registrar through an audit under Section 50 or an inquiry under Section 51 or an inspection under Section 52 or Section 53, that a paid officer or servant of a Society has committed or is responsible for misappropriation, breach of trust or other offences in relation to a society; Secondly, the registrar must form an opinion that there is *prima facie* evidence against such paid officer or servant; and that suspension of such paid officer or servant is necessary in the interest of justice.

13. A reading of the order dt.01.07.2017 passed by the 2nd respondent shows the background relating to the enquiry as well as some decisions taken after the enquiry under section 51 are recorded, but it appears as if, on the recommendation of the Enquiry Officer in the enquiry report, the 1st respondent decided that suspension of the petitioners must be done invoking Section 59 of the Act. When the said provision requires him to form an opinion as to the involvement of the petitioners in the misappropriation or breach of trust and to base that opinion on *prima facie* evidence, and also requires him to form an opinion that the suspension of the petitioners is necessary in public interest, it is incumbent on the 2nd respondent to form such opinions.

14. The order dt.01.07.2017 sadly does not reflect independent application of mind by the 2nd respondent either to the existence of *prima facie* evidence against the petitioners or to the necessity of placing the petitioners under suspension. Therefore, the order dt.01.07.2017 passed by the 2nd respondent under Section 59 of the Act cannot be sustained.

15. Also under sub-section (2) of Section 59 any direction issued by the 2nd respondent should be acted upon by the Managing Committee for placing the paid officer or servant under suspension. Therefore, the Managing Committee alone can suspend the petitioners and not the CEO of the Bank. Therefore, the order dt.03.07.2017 issued by the CEO of the Bank is without jurisdiction.

16. In this view of the matter, all these Writ Petitions are allowed and the impugned orders dt.01.07.2017 passed by the 2nd respondent and orders dt.03.07.2017 passed by the 3rd respondent are set aside. However this will not preclude the 2nd respondent from taking appropriate action in accordance with law. There shall be no order as to costs.

17. Consequently, miscellaneous petitions pending, if any, shall stand closed. No costs.

M.S.RAMACHANDRA RAO, J

20th July, 2017

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