

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

* * * *

WRIT PETITION No.33608 of 2016

Between:

O.Prabhaker Reddy and others.

....Petitioners

and

The Registrar of Mutually Aided Co-operative Societies
and Special Commissioner for Cooperation and
Registrar of Co-operation Societies, Guntur,
Andhra Pradesh,
And others.

....Respondents

JUDGMENT PRONOUNCED ON

08.09.2017

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

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 Ladyship/Lordship wish to see the fair copy of the Judgment? : Yes

*** THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO**

+ WRIT PETITION No.33608 of 2016

% 08.09.2017

O.Prabhaker Reddy and others

...Petitioners

vs.

\$ The Registrar of Mutually Aided Co-operative Societies
and Special Commissioner for Cooperation and
Registrar of Co-operation Societies, Guntur,
Andhra Pradesh,
And others.

... Respondents

!Counsel for the Petitioners : Sri A.Venkatesh

^Counsel for the Respondents : GP for Cooperation

<Gist :

>Head Note :

? Cases referred

1. 2013 (3) ALT 298 : 2013 (1) ALD 242
2. 1998 (4) ALD 689
3. 2012 (6) ALD 693
4. 2013 (1) ALD (Cr1.) 895 (AP)



THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO

WRIT PETITION No.33608 of 2016

ORDER:

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

The petitioners claim that they are the members of the Managing Committee of Sri Rama Raghavendra Mutually Aided Co-operative Thrift & Credit Society Limited, which was registered under the provisions of the Andhra Pradesh Mutually Aided Co-operative Societies Act, 1995 (for short, the Act), on 21.03.2009. The first respondent directed the second respondent to conduct an enquiry into the affairs of the Society by proceedings dated 24.04.2016. An enquiry was conducted and the report was submitted. Based on the said report, the first respondent passed an order on 19.09.2016 directing the second respondent to initiate action indicated in the said order. Challenging the said order, the present Writ Petition is filed.

Though various averments are made in the affidavit filed in support of the Writ Petition relating to the findings recorded in the enquiry report, this Court is not adverting to the said averments, as the present Writ Petition is being disposed of on the legal issue involved in the Writ Petition. This Court is also not inclined to go into the merits of enquiry report as further action has to be taken by the General Body in accordance with Section 31(a) of the Act. In view of this approach, the reference

to averments made in the counter affidavit relating to the facts involved in the enquiry report also would become unnecessary. Though a reply affidavit is filed controverting the averments mentioned in the counter affidavit, the same is also not taken into account for the purpose of disposal of the case.

The relevant portion of the impugned order reads as follows:

“While accepting the recommendations of the Enquiry officer, the following instructions have been issued.

1. The Managing committee is directed to convene a General Body meeting within 30 days from the receipt of this proceedings and place the findings of the enquiry report conducted U/s 29 of the APMACS Act, 1995. The DCO, Kurnool is directed to depute one of the Deputy Registrar to the General Body meeting and ensure that the findings of the Enquiry Officer shall be placed and discussed in the General Body as per provisions of Sec 31(a) of the APMACS Act, 1995.

2. The DCO, Kurnool is authorized and directed to file criminal complaint against the Members of the Managing Committee as listed in annexure A for violation of provisions in investment of Society funds in the Sri Rama Raghavendra Chits Pvt. Ltd., U/s 38 of the AP, MACS Act, 1995 read with Sections 405, 409, 418, 420 and 423 IPC.

3. The DCO, Kurnool authorized and directed to file petition before the AP, Cooperative Tribunal Vijayawada U/s 36 of the AP, MACS Act by invoking Section 73 of the APCS Act, 1964 for attachment of the properties of the Members of Managing Committee as listed in annexure – A for diversion of funds and also initiate action U/s 31(b) of the AP, MACS Act, 1995 for recovery of diverted funds.

4. The Members of Managing Committee and Chief Executive Officer of the Society are directed to file petition before the AP, Cooperative Tribunal for recovery of all pending overdue loans from the loanee members.

5. The DCO, Kurnool, is directed to report to the Registrar of stamps for deficit payment of stamp

duty in purchase of property for taking further action at their level.”

The said impugned order was passed enclosing a copy of the enquiry report along with the list of Managing Committee Members who were responsible for irregular management of Society funds in Sri Rama Raghavendra Chits Private Limited.

The relevant Sections of the Act are as follows:

“29. Inquiry:- (1) Every Co-operative Society shall furnish any relevant information required by the Registrar in order to enable him to satisfy whether the Co-operative Society has conducted its affairs in accordance with the cooperative principles and the provisions of this Act.

(2) The Registrar may, of his own motion, and shall on the application, of a federation to which the Co-operative Society concerned is affiliated, or of a creditor to whom the Co-operative Society is indebted or of not less than one-third of the Directors, or of not less than one-tenth of the members, hold an inquiry or cause an inquiry to be made into the specific matter or matters relating to any gross violation of any of the provisions of this Act by the Co-operative Society.

(3) The inquiry shall be completed within a period of one hundred and twenty days from the date of ordering the inquiry.

(4) If the inquiry is not completed within the time specified in sub-section (3) it shall lapse at the end of the said period and the Registrar shall refund to the applicants, the fee collected from them.

(5) The Registrar shall, within a period of thirty days from the date of the completion of the inquiry, as specified in sub-section (3) or of the lapse of the inquiry as specified in sub-section (4), communicate the report of the inquiry or the reasons for the non-completion of the inquiry, as the case may be,-

(a) to the Co-operative Society concerned;

(b) to the applicant federation, if any;

(c) to the applicant-creditor, if any;

(d) to the person designated by the applicant-directors, if any;

(e) to the person designated by the applicant-members, if any;

(f) to any person, on payment of fee fixed by the Registrar; and

(g) to the Co-operative Tribunal where necessary.

(6) The inquiry officer acting under this section shall, among others, specifically state the amount of deficiency, waste or loss which appears to have been caused by the gross negligence or misconduct of any person in the performance of his duties.

...

31. Action on special audit or inquiry report:-

On communication of a special audit report under sub-section (5) of Section 28 or an inquiry report under sub-section (5) of section 29 to the persons concerned, the Registrar may, where the special audit or inquiry report reveals mismanagement on the part of any or all of the office bearers or Directors, without prejudice to any civil or criminal proceedings to which they may be liable:-

(a) direct the Board to convene a General Body Meeting within such reasonable time as he may specify, to enable him to bring to the notice of the General Body, either directly or through his nominee, the findings of the special audit or inquiry report, for necessary action; or

(b) approach the Co-operative Tribunal for necessary action.

...

33. Power of the Tribunal to order recovery:-

(1) A Member, Director or Chairperson of the Co-operative Society may, and the Registrar shall file a copy of the report of the Auditor or the Special Auditor or the Inquiry Officer, before the Tribunal with an application for necessary action against the person on account of whose conduct the Co-operative Society has incurred loss. The Tribunal may on the basis of such report disallow every item of expenditure incurred contrary to law and order recovery of the same from the person incurring or authorising the incurring of such expenditure, or held responsible in the said report for any deficiency, loss or unprofitable outlay occasioned by his negligence or misconduct or of any such amount which ought to have been accounted but is not brought into account by that person and shall, in every such case, specify the amount liable to be paid by such person to the Co-operative Society.

Explanation:- It shall not be open to any person whose negligence or misconduct has caused or contributed to any such deficiency or loss, to contend that notwithstanding his negligence or misconduct the deficiency or loss would not have occurred, but for the negligence or misconduct of some other person.

(2) The Tribunal shall state in writing the reasons for its decision in respect of every dis-allowance, surcharge and a copy of such decision shall be served on the person against whom it is made in the manner laid down for the service of summons in the Code of Civil Procedure, 1908:

Provided that the Tribunal shall not pass any order of recovery under this section unless the person against whom any such order is passed has had an opportunity of making a representation either by himself or through the counsel.

(3) Any person aggrieved by an order passed under this section may, within sixty days after the date of service on him of the order by the Tribunal file an appeal against such order in the High Court.

(4) Where an appeal is filed in the High Court under sub-section (3), the persons who filed the application before the Tribunal or, as the case may be, the Registrar shall be the sole respondent thereto, and the applicant shall not make any other person a party to the proceedings.

(5) Every order passed by the Tribunal or an order passed by the High Court shall be executed in the same manner as a decree of a Civil Court under the Code of Civil Procedure, 1908.

...

38. Offences and Penalties:- (1) It shall be an offence under this Act, if a Co-operative Society:-

- (a) fails to give a notice, send a return or document, or fails to do or allow to be done any act which a Co-operative Society is by this Act or under its bye-laws required to give, send, do or allow to be done;
- (b) wilfully neglects or refuses to do an act or to furnish information required for the purposes of this Act or does an act forbidden by this Act, or the byelaws; or
- (c) makes a return, or wilfully furnishes information, in any respect false or insufficient.

(2) It shall be an offence under this Act, if any person or Co-operative Society contravenes the provisions of this Act or the bye-laws of a Co-operative Society.

(3) An offence by a Co-operative Society shall be deemed to have been also committed by each office-bearer of the Co-operative Society bound by the bye-laws thereof to fulfil the duties whereof the offence is a breach, or if there is no such office-bearer then by each of the Director, unless the office-bearer or Director proves to have attempted to prevent the commission of the offence.

(4) An offence under this section shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to ten thousand rupees or with both:

Provided that where a person is guilty of misappropriation, fraud, breach of trust, cheating or any other act involving moral turpitude, resulting in a loss to the Co-operative Society, he shall be punishable under the relevant provisions of the Indian Penal Code, 1860 (Central Act 45 of 1860)."

Learned Counsel for the petitioners addressed his arguments touching the merits of the case and also submitted that the General Body meeting was convened and it passed a resolution pursuant to the report submitted by the Enquiry Officer, which was transmitted to the Society. He relied on **M.V.Ramanaiah v. A.P.Secretariat Employees Mutually Aided Cooperative Housing Society Ltd.**¹

Learned Government Pleader, on the other hand, submitted that the impugned order is valid as it clothes the first respondent with the power to take action involving civil and criminal liability apart from the action under Section 31 of the Act. He relied on the words "*without prejudice to any civil or*

¹ 2013 (3) ALT 298 : 2013 (1) ALD 242

criminal proceedings” occurring in Section 31 of the Act in support of his contention. He relied on **Regula Bruhaspathi Rao v. State of A.P.², Telangana Non-Gazetted Officers Colony Welfare Association, Serilingampally Mandal, Ranga Reddy District v. Pankaj Dwivedi³, The Fishermen Marketing Cooperative Society Moosi Project v. The Commissioner of Fisheries** (W.A.No.131 of 2012, dated 07.08.2012) and **Garimella Subba Rao v. State of Andhra Pradesh⁴.**

A reading of Section 31 of the Act makes it clear that after receipt of the report, the Registrar is given an option either to direct the Board to convene a General Body meeting within the time specified or to approach the Co-operative Tribunal for necessary action. Thus, he can take action on his own or refer to the General Body for taking action on the report. This power under Section 31 of the Act is independent of the power under Section 33 and Section 38 of the Act. Section 33 of the Act enables a Member, Director or Chairperson of the Co-operative Society and the Registrar to file a copy of the enquiry report before the Tribunal with an application for necessary action against the person on account of whose conduct the Co-operative Society has incurred loss. Thereupon, the Tribunal would take the consequential action. This is the civil action which is independent of action under Section 31 of the Act.

² 1998 (4) ALD 689

³ 2012 (6) ALD 693

⁴ 2013 (1) ALD (Cr1.) 895 (AP)

Section 38 of the Act deals with the actions of the persons or the Society contravening the provisions of the Act including the situations mentioned therein. This is the criminal liability. Section 38 of the Act merely provides for offences and penalties, but the complaint has to be lodged by the competent authority. It does not speak of the power of the Registrar to invoke Section 38 of the Act.

The decision reported in **M.V.Ramanaiah's** case (supra) relied on by the learned Counsel for the petitioners supports the above view.

However, the learned Government Pleader by relying on **Pankaj Dwivedi's** case (supra) submitted that the enquiry report itself is sufficient for taking action under Section 38 of the Act. No doubt Section 31, in clear terms, states that the action of the Registrar under the said Section is without prejudice to any civil or criminal proceedings to be taken against the persons who are held responsible and, as stated above, there are specific provisions for taking civil and criminal proceedings. But, the point involved in the present case is whether the Registrar can pass a composite order while exercising his power under Section 31 of the Act. I am of the view that he cannot pass a composite order and action on the enquiry report and civil and criminal proceedings should be initiated independently by indicating the reasons for taking such action by the respective authorities. A reading of the

impugned order indicates the action of the Registrar on the report by referring the matter to the General body of the society in para 1 thereof and in other paras, the competent authorities are authorized to take appropriate action and the Registrar himself has not taken any action. Hence the impugned order cannot be found fault.

The decision in **The Fishermen Marketing Cooperative Society Moosi Project's** case (supra) is not applicable to the facts of the present case.

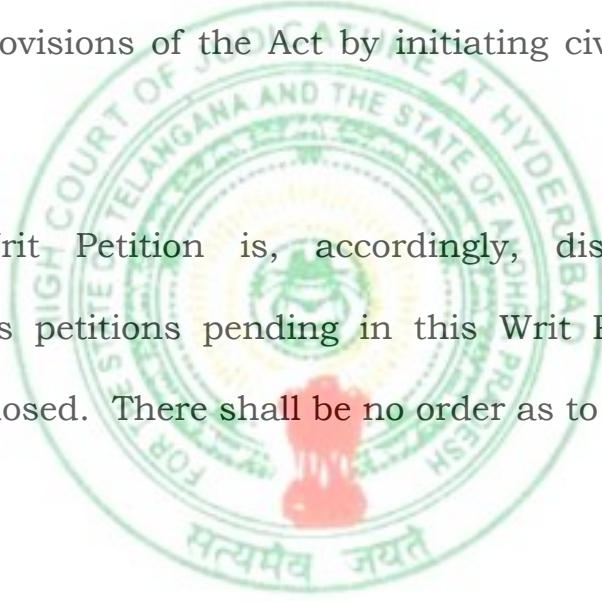
Similarly, the decision of the Division Bench in **Garimella Subba Rao's** case (supra) does not lay down a different proposition as it clearly says that even without fixing the liability on the person under Section 60 of the Andhra Pradesh Cooperative Societies Act, criminal prosecution can go on for the offence punishable under Section 409 of Indian Penal Code, meaning thereby that even without fixing any liability on a person or an Officer of the Society, criminal prosecution can be proceeded with subject to the facts constituting the offence. Thus, the Division Bench is also of the opinion that the facts should constitute an offence for initiating criminal proceedings and hence the application of the mind by the concerned authority for initiation of criminal proceedings is necessary.

The decision in **Regula Bruhaspathi Rao's** case (supra) is also irrelevant for the present case as it deals with the jurisdiction of the Special Court for the trial of offences

committed by employees of Cooperative Society. It lays down that the Special Court can try not only the offences under the Andhra Pradesh Cooperative Societies Act, but also those under the Penal Code.

In view of the above, this Court is of the opinion that the impugned order for placing the enquiry report before the General Body and directing civil and criminal proceedings to be taken by the respective authorities is not bad. It is left to the competent authorities to take appropriate action, if warranted, under the provisions of the Act by initiating civil and criminal proceedings.

The Writ Petition is, accordingly, dismissed. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.



(A.RAMALINGESWARA RAO, J)

08.09.2017
vs