

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.6189 OF 2017

ORDER:

The petitioners assail the surcharge notice dated 19-12-2016 issued against them under Section 60 (1) of the AP Co-operative Societies Act, 1964, (for short “the Act”) by the 5th respondent and also the inquiry report dated 29-08-2016 submitted by the 7th respondent, under Section 51 of the Act, as being illegal, arbitrary and contrary to the procedure laid down under the provisions of the Act and; consequently declare that both the surcharge notice and inquiry report as null and void.

2. The petitioners are ex-chairman, ex-CEO, ex-directors, managers, branch manager and staff of the 6th respondent- Durga Co-operative Urban Bank Limited, Vijayawada, (for short, “the bank”). The bank was registered and established in the year 1929 and started its operations since then with an initial membership of 59 members, now increased to 31,955 with 12 directors as board of directors of the bank. Election to the erstwhile managing committee

was held on 28-01-2011 and the tenure of the managing committee came to an end on 27-01-2016 and at present the bank is being run by the Person-in-charge appointed by the Government.

3. The case of the petitioners is that 8th respondent who had contested for the post of Director of the bank in the election held on 28-01-2011, could not succeed in the election, but since then become inimical towards the petitioners and he along with one B. Ram Kumar, who is not a member of the bank made series of complaints against the petitioners on 8-12-2014, 9-1-2015, 5-5-2015, 12-5-2015, and pursuant thereto, the 4th respondent-District Co-operative Officer, Krishna district, appointed 7th respondent-Asst. Registrar-IV, Inquiry Officer, Nuzvid, to conduct inquiry into the matter under Section 51 of the Act. Thereafter, 7th respondent conducted inquiry and in his report concluded that an amount of Rs.18,43,462/- was misappropriated from the bank funds and fixed the responsibility for such misappropriation on the members of

the managing committee. Pursuant to the report of the 7th respondent, the 5th respondent-Dy. Registrar of Co-operative Societies, Vijayawada, issued surcharge notice dated 31-10-1998 under Section 60 (1) of the Act and pending surcharge inquiry, the then management of the bank represented by its Secretary preferred appeal under Section 77 (1) of the Act against the surcharge order before the then Addl. Registrar of Co-operative Societies, Hyderabad, and the said authority, on hearing the case, set aside further action in the matter on the review issued by the 4th respondent-District Co-operative Officer, Krishna district, as it would cause more damage to the image/reputation of the bank than the advantage expected of such an inquiry as to the happenings in the bank.

4. Once again in the year 2011, one Chokkara Durga Rao and Durbesula Hussain, both members of the bank made complaint petition to the 4th respondent bringing to his notice the irregularities in the administration of the bank. That as per the instructions of the 4th respondent, the

Divisional Co-operative Officer, Vijayawada, conducted inquiry into the allegations and recommended for ordering inquiry under Section 51 of the Act into the affairs of the bank. On the suggestion made by the Divisional Co-operative Officer, Vijayawada, the 4th respondent accorded permission to conduct inquiry under Section 51 of the Act. But, the then 2nd respondent, having perused the report of the Divisional Co-operative Officer, Vijayawada, has referred the matter to the Member, Expert Committee on Co-operative banks. The Expert Committee seems to have opined that the bank has been continuously improving its performance and earning profits and secured 'A' grade in RBI inspection and, therefore, instead of further proceeding in the matter, recommended to the management of the bank to take immediate action either to dispose of the services of the employees appointed in excess of the cadre strength or to submit proposals for sanction of additional posts by furnishing the required information.

5. It is stated that again 8th respondent and another person by name B. Ram Kumar, made complaints on the mismanagement of the bank by the management of the bank. Acting on the same, the 5th respondent seems to have appointed a team of officers to inquire into the matter. On submission of report by the team of officers, the 5th respondent, sent up a report to the 4th respondent to order inquiry under Section 51 of the Act and ultimately necessary permission was accorded and 7th respondent was appointed as inquiry officer to conduct inquiry. Accordingly, the inquiry officer submitted his report which revealed misappropriation of funds of the bank in relation to 22 items to the tune of Rs.23,34,53,295/- and recommended for recovery of the said misappropriated amounts from the persons responsible and that is how the impugned surcharge proceedings under Section 60 (1) of the Act came to be issued against the petitioners.

6. Counter affidavit is filed by the 5th respondent-Dy Registrar of Co-operative Societies, Vijayawada, reiterating

the facts in so far as the sequence of events as stated in the writ affidavit of the petitioners. The other averments in the counter, other than the facts of the writ affidavit are that the items of misappropriation reported in the inquiry conducted at the first instance, the review issued by the 4th respondent exonerating the same as it would likely to cause damage to the otherwise repute functioning of the bank are not similar to the 22 items of misappropriation of funds, surcharge proceedings of which are impugned in the writ petition. That all the ingredients required for conducting the inquiry were complied and the inquiry initiated under Section 51 of the Act and the continuation of the surcharge proceedings under Section 60 (1) are well within the parameters of the Act. Since there is possibility of alienation of the properties of the delinquents pending surcharge proceedings, conditional attachment of their properties was ordered by giving due opportunity to all concerned and accordingly issued orders vide Rc.No.59/2016/B, dated 21-01-2017 and 17-02-2017. It is

denied that the respondents have been initiating successive inquires against the petitioners on the self same allegations.

7. Heard the learned counsel for the petitioners and the learned Government Pleader for Co-operation for the respondents.

8. Learned counsel for the petitioners drawn my attention to Section 51 of the Act and submits that basing on the complaint given by one of the members of the bank, inquiry under Section 51 of the Act cannot be ordered unless the ingredients therein are fulfilled. Learned counsel contends that as none of the mandated conditions under Section 51 of the Act exists to order inquiry, the impugned proceedings cannot be maintained against the petitioners. Learned counsel also contended that successive inquires ought not to have been ordered against the petitioners on the self same grounds. In support of his contentions, learned counsel relied on the decisions of this Court in **PRIMARY AGRICULTURAL CO-OP. SOCIETY vs.**

B. MALLA REDDY,¹ & MEKALA OBULA REDDY vs.

GOVERNMENT OF ANDHRA PRADESH.²

9. *Per contra*, learned Government Pleader for Co-operation, on the other hand, submitted that the 3rd respondent after examining the preliminary report and after being satisfied as to the allegations made therein and after obtaining necessary permission from the 2nd respondent, ordered inquiry under Section 51 of the Act. It is also contended that the items of misappropriation in the inquiries conducted at first and second instances are different from the items of misappropriation under the present impugned surcharge proceedings and there is no truth in the allegation of the petitioners that successive inquiries are being initiated on the self same grounds.

Reliance is placed on the decision of this Court in **A.N. RAO**

vs. DISTRICT CO-OPERATIVE OFFICER/JOINT

REGISTRAR, KRISHNA DISTRICT.³

¹ 1996 (2) ALD 803 (DB)

² 2017 (1) ALD 187

³ 2007 (5) ALD 698

10. In view of rival contentions, the following points emerge for deciding the issue:

i) Whether suo-motu inquiry initiated in the present case is in consonance with Section 51 of the Act.

ii) Whether present inquiry is barred in view of the earlier inquiries initiated in the years 1997 and 2011.

11. For better appreciation of the matter, it is worthwhile to reproduce Section 51 of the Act, which reads thus:-

“Section 51. Inquiry:- The Registrar, may of 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 there under, 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

Explanation:--For the purposes of this Section "Managing Committee" includes a Committee constituted under Section 31 (1) (a) and a person-in-charge appointed under Section 32 (7) (a) and also Administrator(s) appointed under Section 34 of the Act."

11. From a perusal of the above provision of law, it is understood that inquiry under this Section can be ordered

(i) *suo motu* by the Registrar, (ii) on a petition submitted by a society, to which the other society is affiliated, (iii) on a requisition by one third of the members of the managing committee, and (iv) at the instance of the one fifth of the members of the General Body.

12. In this case, out of the four situations, excluding the other three grounds which does not fit in the facts of the

case, the only other ground on which inquiry is ordered is by exercising *suo motu* power, based on the complaint petition given by the 8th respondent and another person.

13. In my considered view, this issue is no longer *res-integra* in the light of the decision of this Court in **A.N.**

RAO's case (3 supra). In that case a similar issue, as the present one in this writ petition, fell for consideration and this Court at para 10 observed thus:-

“10. Basically, the allegation of the petitioner that the inquiry was initiated at the instance of the local Legislator, is denied, and it is categorically pleaded that the 1st respondent took the step on the basis of the report submitted by the Audit Officer. In this regard, it needs to be noted that, once the 1st respondent is conferred with the power to order enquiry suo motu, the information that can constitute the basis for such initiation, cannot be restricted to any source. As long as the suo motu power is conferred, even a representation received from any source, can be treated as the basis. The very purpose of conferring suo motu power, is to relieve the concerned authority from the rigor of depending any definite source, for initiation of the

proceedings. Therefore, this Court is not inclined to accept the contention, advanced on behalf of the petitioner.”

15. It is true that where there is manifest mismanagement of affairs of society, a duty is enjoined upon by the competent authority to exercise its *suo motu* power, and as rightly observed in the case cited (3 supra), the source of information cannot be restricted nor insisted that it should be in a particular modulated form. *Suo motu* power has sky-high powers to chase an illegality and any scuttling of such power would amount to allow illegality to be perpetuated. *Suo motu* power always cannot be inferred, it can be gathered from any source by the authority vested with such a power. Therefore, no exception can be taken in acting upon the complaint petition of the 8th respondent by the 2nd respondent and in ordering inquiry under Section 51 of the Act in exercise of *suo motu* powers. The decision in ***PRIMARY AGRICULTURAL CO-OP. SOCIETY's case*** (1 supra) was a case where second enquiry in respect of the same allegation against the office bearers of the Society was

ordered that too, on the ground that the first inquiry was not satisfactory and under those circumstances it was held that the said action amounts to double jeopardy, and the order of the learned single Judge which quashed the impugned proceedings therein was affirmed by the Division Bench of this Court. In the case on hand, such is not the situation. Though inquiries have been initiated on earlier two occasions, every time it was done on a set of new or additional items of misappropriation and every inquiry reached its logical conclusion, and not that they were terminated midway and sought to be initiated afresh. The decision rendered by me in **MEKALA OBULA REDDY'S case** (2 supra), is on a different set of facts where in the counter affidavit of the respondents it was stated that inquiry initiated therein was not under Section 51 of the Act and no other provision was brought to the notice of the Court under which such an inquiry was ordered. The action of the respondents was also faulted on the ground that no notice was given to the affected parties and under those

circumstances the action of the respondents in seeking to conduct inquiry under Section 51 of the Act was held to be arbitrary and illegal. This decision (2 supra) can be distinguished and it is not applicable to the facts of the present case. In an unreported decision of this Court in WP No.10849 of 2004, which was a case of allotment of house sites wherein complaint petitions filed by the members of the Mathrusree Co-operative House Building Society Limited, Visakhapatnam, complaining cancellation of house sties, this Court observed that instead of ordering inquiry under Section 51 of the Act based on enquiry held behind the back of the petitioner-society therein, the matter ought to have referred to the Tribunal under Section 61 of the Act. This decision is also of no assistance to the case of the petitioners, in this case fraud and misappropriation of funds of the Co-operative Bank are involved.

16. Coming to the other contention of the petitioners that successive inquiries have been ordered against them, it is seen from a perusal of the counter affidavit filed by the 5th

respondent wherein the details of items of misappropriation on all the three occasions are mentioned, it is clear that items of misappropriate in the earlier two inquiries are dissimilar to the one which is impugned in the writ petition. It has been categorically stated in the counter affidavit, that even in the previous inquiries the delinquents were found to have misappropriated the funds of the bank, but the higher authorities taking into consideration the overall interest of the bank and its reputation and if any further action is taken, it may adversely affect the functioning of the bank and there is also a likely possibility of the members of the bank rushing to withdraw the deposits *enmasse*, corrective steps were taken, that itself would not entail the petitioners to seek exoneration of the charges now levelled against them. For that matter, it was the benevolence of the authorities, keeping in view the improving performance of the bank, thought it fit, not to proceed further in the matter. Such action in dropping the matter at that stage cannot be a ground to absolve the petitioners of the present

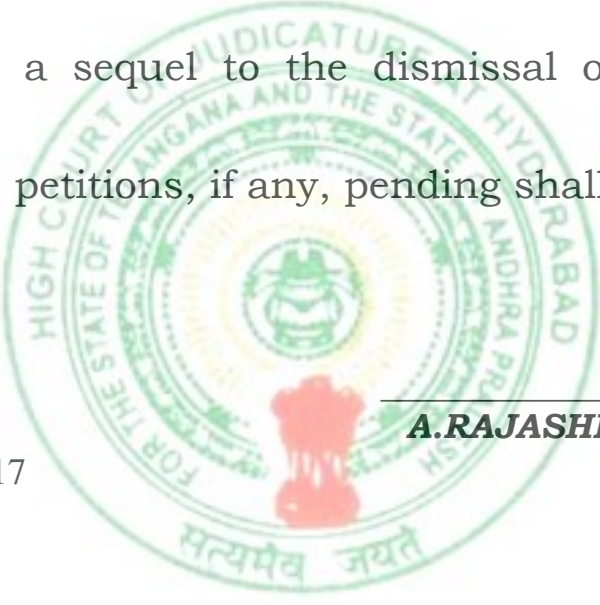
charges, moreso when the present charges are dissimilar to the previous ones. A comparative perusal of the items of misappropriation, the items of the misappropriation for which the impugned surcharge proceedings are issued revealed huge misappropriation of funds of the bank to the tune of Rs.23,34,53,295/-.

17. Petitioners have not challenged initiation of inquiry under Section 51 of the Act at the initial stage and it is only after report is submitted and show cause notice is issued, the same is challenged. Petitioners can submit explanation to the show cause notice and elaborate enquiry is also envisaged under Section 62 of the Act and if any order adverse to petitioners is passed, the petitioners have remedy to challenge the same under the provisions of the Act.

17. The allegations of misappropriation of funds of the bank by the petitioners requires examination of minute details, which this Court cannot undertake to exercise in proceedings under Article 226 of the Constitution.

18. In the result, the writ petition fails and it is accordingly dismissed. It is open to the petitioners to submit explanation to the impugned show cause notice, if not already submitted within four weeks and the respondent-authority shall deal with the same in accordance with law, without being influenced by any of the observations made in the order. There shall be no order as to costs. As a sequel to the dismissal of this petition, miscellaneous petitions, if any, pending shall stand closed.

Dated: 02-06-2017
NRG



A.RAJASHEKER REDDY,J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.6189 OF 2017



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Date: 02 -06-2017

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