

THE HON'BLE THE ACTING CHIEF JUSTICE RAMESH RANGANATHAN

AND

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT APPEAL NO.1620 OF 2017

JUDGMENT: {Per the Hon'ble the Acting Chief Justice Ramesh Ranganathan}

This appeal, under Clause 15 of the Letters Patent, is preferred against the order passed by the learned Single Judge in WP.No.29015 of 2017 dated 07.09.2017.

The appellant herein filed the said Writ Petition seeking a writ of mandamus to declare the report made under Section 51 of the Andhra Pradesh Co-operative Societies Act, 1964 ("the Act" for brevity) by the fifth respondent, the consequential proceedings dated 06.04.2017 issued by the second respondent, and the notice issued on 21.04.2017 by the third respondent, as illegal, arbitrary and contrary to the provisions of the scheme and the Act.

The appellant, a co-opted director of the sixth respondent-Bank, has questioned the report submitted by the fifth respondent under Section 51 of the Act, and the consequential proceedings dated 06.04.2017. On receipt of the complaint from the President of Rayapudi Primary Agricultural Co-operative Society, on 30.08.2013, alleging certain irregularities having been committed in the sixth respondent-Bank, the Hon'ble Lokayukta directed an enquiry to be caused. A preliminary enquiry was conducted, and a report was submitted to the second respondent on 11.08.2014. The second respondent issued proceedings dated 22.10.2014 authorising the District Co-operative Officer to conduct an enquiry, under Section 51 of the Act, into the constitution, working and financial position of the sixth respondent-Bank from 20.04.2005

onwards. On a report being submitted, the order of the second respondent was modified and, vide proceedings dated 22.12.2014, the Joint Collector was appointed as the enquiry officer to conduct an enquiry under Section 51 of the Act. The enquiry was conducted and completed on 17.11.2016. Subsequently, an order was passed on 18.11.2016 enlarging the time by a period of four months, for submission of the report, and the fifth respondent submitted his report on 31.03.2017. As the irregularities were in excess of Rs.5.73 crores, the Registrar of Co-operative Societies passed an order on 06.04.2017 issuing several directions to the authorities concerned, questioning which the jurisdiction of this Court was invoked under Article 226 of the Constitution of India.

In the order under appeal, the learned Single Judge observed that though the fifth respondent was transferred from the post of Joint Collector, without taking up any further proceedings in the enquiry that had already been completed, he was entitled to submit a report in view of enlargement of time; accordingly, he submitted a report on 31.03.2017; and, on that ground, the report could not be held to be bad. With regards the appellant's claim that the District Collector lacked jurisdiction, as he had not been delegated powers under G.O.Ms.No.34 Food and Agriculture dated 18.01.1999, the learned Single Judge observed that the enquiry revealed misappropriation of funds, and serious financial irregularities in excess of Rs.5.73 crores, details of which were mentioned in the proceedings of the District Collector dated 06.04.2017; and, when serious irregularities were detected in the enquiry conducted on the basis of the complaint lodged before the Hon'ble Lokayukta, this Court could not interdict further action

being taken pursuant to the report. The Writ Petition was, accordingly, dismissed.

Sri K.Ananda Rao, learned counsel for the appellant-writ petitioner, would complain of violation of principles of natural justice drawing our attention to the memo filed, on behalf of the Managing Committee Members, by their counsel. The said memo records that the appellant-writ petitioner, and others, had only received show cause notices, along with the relevant pages of the enquiry report pertaining to the allegations mentioned in the show cause notice; they had no knowledge of the contents of the enquiry report; they were, therefore, denied a reasonable opportunity of submitting their explanation; and they required a copy of the entire enquiry report along with its enclosures, as also the documents connected to the allegations.

While emphasis was placed by Sri K.Ananda Rao, learned counsel for the appellant-writ petitioner, on this memo to contend that the action of the authorities, in continuing with the surcharge proceedings without furnishing them a copy of the enquiry report, was in violation of principles of natural justice, learned Government Pleader for Co-operation would point out that a copy of the entire enquiry report, under Section 51 of the Act, has been filed by the appellant himself before this Court. While a feeble attempt was made by Sri K.Ananda Rao, learned counsel for the appellant, to contend that the enquiry report was subsequently obtained under the Right to Information Act, 2005, it is evident that the complaint of violation of principles of natural justice is not tenable as the appellant has, himself, filed before us (along with the Writ Petition) a copy of the enquiry report. All that the District

Collector has done, vide proceedings dated 21.04.2017, is to call upon the persons concerned, including the appellant herein, to show cause why the amounts mentioned in the notice should not be recovered by passing a surcharge order under Section 60(1) of the Act. The said notice calls upon the persons concerned (including the appellant) to submit their written submission/objections within 15 days from the date of receipt of the notice.

The contention of violation of principles of natural justice, raised at the stage when merely a show cause notice has been issued, does not merit acceptance in as much as it is always open to the appellant to submit a representation to the District Collector, and seek whatever information they require from him.

The contention of lack of jurisdiction of the District Collector, to initiate proceedings under Section 60(1) of the Act, is only to be noted to be rejected. Reliance is placed by Sri K.Ananda Rao, learned counsel for the appellant, on G.O.Ms.No.34 dated 18.01.1999, as amended from time to time. G.O.Ms.No.34 is a notification issued by the State Government regarding delegation of powers by the Governor of Andhra Pradesh, under Section 3 of the Act, to the authorities mentioned in column (2) of the Schedule to the G.O., conferring on them the power of the Registrars under the said Act and the Rules made thereunder.

The submission of Sri K.Ananda Rao, learned counsel for the appellant, is that the aforesaid Schedule confers power, to take action under Section 60 of the Act, only on a Special Cadre Deputy Registrar of Co-operative Societies working as District Co-operative Officers, and not on the District Collector. While it is

no doubt true that the Schedule explicitly confers power, under Section 60 of the Act, on the District Co-operative Officers, such a power is also conferred on the District Collector as is evident from the Schedule itself. The mere fact that Section 60 of the Act has been specifically referred to in relation to the powers conferred on the District Co-operative Officers, and has not been explicitly referred to in the column relating to the District Collector, is wholly irrelevant, as all the powers of the Registrar are conferred on the District Collectors, except those specifically referred to in the relevant column of the Schedule. The very fact that Section 60 of the Act has not been mentioned in the column shows that it is not among the powers which the District Collector is barred from exercising. As the District Collector has been delegated all the powers of the Registrar, other than those specifically excluded statutory provisions referred to in the relevant column of the Schedule, and as Section 60 of the Act is not referred to therein, it is clear that the District Collector has been conferred the power of a Registrar, among others, under Section 60 of the Act also.

Yet another contention, urged on behalf of the appellant, is that, even before the General Body had examined the contents of Section 51 proceedings, action was initiated under Section 60(1) of the Act; and the proceedings initiated under Section 60(1) of the Act must, therefore, be set aside. This contention does not also merit acceptance. It does appear that the District Collector was authorised by the Special Commissioner of Co-operation to take action under Section 60 of the Act vide proceedings dated 06.04.2017, soon after receipt of the report under Section 51 of the Act dated 31.03.2017, and prior to the decision of the General

Body in its meeting held on 12.05.2017. The fact, however, remains that the General Body had subsequently, on 12.05.2017, directed that action be taken with respect to certain matters. Learned Government Pleader for cooperation would submit that Section 51 of the Act authorises the District Collector to take action even without initiating surcharge proceedings under Section 60(1) of the Act. In any event, all these questions can also be urged in appropriate legal proceedings on completion of surcharge proceedings under Section 60 of the Act initiated for recovery of a sum in excess of Rs.5.73 crores.

The learned Single Judge has exercised his discretion not to interdict the surcharge proceedings under Section 60(1) of the Act. A writ of mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. **(C.R. Reddy Law College Employees' Association, Eluru, W.G. District v. Bar Council of India, New Delhi¹)**. As the extra-ordinary jurisdiction of the High Court, under Article 226 of the Constitution of India, is discretionary, it is not to be exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will, ordinarily, be exercised subject to certain self-imposed limitations, **(Thansingh Nathmal v. Supdt. of Taxes²)**, and not as a matter of course. The discretionary jurisdiction, under Article 226 of the Constitution of India, must be exercised with great caution and only in furtherance of public interest, and not merely on the making out of a legal point. Larger public interest must be kept in mind in order to decide whether intervention of the Court is called for or not **(Master Marine Services Pvt. Ltd v. Metcalfe and Hodgkinson**

¹ 2004(5) ALD 180 (DB)

² AIR 1964 SC 1419

Pvt Ltd³; Air India Ltd v. Cochin International Air Port Ltd⁴; Rashpal Malhotra v. Mrs. Saya Rajput⁵; Council of Scientific and Industrial Research v. K.G.S. Bhatt⁶). Even if a legal flaw can be electronically detected, this Court would not interfere save manifest injustice or unless a substantial question of public importance is involved. **(Rashpal Malhotra⁵; K.G.S. Bhatt⁶)**.

In an intra-Court appeal, under Clause 15 of the Letters Patent, interference is justified only if the order of the learned Single Judge suffers from a patent illegality. We find no such infirmity in the order under appeal. Suffice it to make it clear that the questions regarding action having been initiated, without awaiting approval of the General Body, and such other contentions as are available to the appellant in law, can always be agitated later after conclusion of the surcharge proceedings initiated under Section 60(1) of the Act.

The Writ Appeal fails and is, accordingly, dismissed. There shall be no order as to costs. Miscellaneous petitions, if any, pending shall stand dismissed.

(RAMESH RANGANATHAN, ACJ)

(ABHINAND KUMAR SHAVILI, J)

3rd November 2017
RRB

³ (2005) 6 SCC 138

⁴ (2000) 2 SCC 617

⁵ AIR 1987 SC 2235

⁶ AIR 1989 SC 1972