

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION Nos.40180 and 40629 OF 2017

COMMON ORDER:

Since the issue involved in both the writ petitions is one and the same, they are being heard together and disposed of by this common order.

WP.No.40180 OF 2017

This petition is filed for a writ of *Mandamus* declaring the enquiry report dated-nil conducted and submitted by the 4th respondent and consequential notices in Rc.Nos.488/2015/1-D, 488/2015/2-D, 488/2015/3-D and 488/2015/4-D, dated 28.10.2017 issued by the 3rd respondent, as illegal and arbitrary and contrary to Section 51 of the A.P.Cooperative Societies Act, 1964 and to set aside the same

WP.No.40629 OF 2017

This petition is filed for a writ of *Mandamus* declaring the proceedings in Rc.No.488/2015/2-D, dated 28.10.2017 issued by the 3rd respondent, as illegal and arbitrary and contrary to Section 34(1) of the A.P.Cooperative Societies Act, 1964 and to set aside the same.

Learned counsel for the petitioners submits that the 4th respondent has travelled beyond the terms of reference by which the District Co-operative Officer-2nd respondent directed the 4th respondent to conduct enquiry, as such, the

impugned notice is bad. He submits that as per Section 51 of the A.P.Co-operative Societies Act, 1964 (*for short 'the Act'*), the report has to be submitted by the 4th respondent within four months from 06.08.2016 and the said four months can be extended by further two more months. In the present case since report dated is Nil, the same is in violation of Section 51 of the Act. He also submits that as far as the impugned notice dated 28.10.2017 issued under Section 34(1) of the Act is concerned, there is no independent formation of opinion of the Registrar, as such, the same is without jurisdiction. He also submits that the independent opinion as envisaged under Section 34(1) of the Act, cannot be on the basis of report under Section 51 of the Act.

On the other hand, learned Government Pleader for Cooperation submits that the enquiry under Section 51 of the Act is only a fact finding enquiry and no action is being taken directly on the basis of enquiry under Section 51 of the Act. It is only a basis for further action to be taken under Section 60 of the Act, where petitioner will be afforded appropriate opportunity and thereafter the petitioner has further remedies against any action being taken. He also submits that as far as notice dated 28.10.2017 issued under Section 34(1) of the Act is concerned, it is only at the stage of notice and the notice clearly indicates that basing on the material available, an opinion was formed; that petitioner has already requested for certain documents which contains part of enquiry report and

the same was already supplied to the petitioner; and that in case further documents are required, the respondents will supply the same and petitioner can file explanation. If order is passed, petitioner has alternative remedy against action being initiated in pursuance to the impugned notice dated 28.10.2017.

As far as challenging the enquiry under Section 51 of the Act is concerned, this Court has already concluded the issue in WP.No.8611 of 2011 relied on by the learned Government Pleader, wherein it is held as follows;

“The second ground of attack is, about the time-frame. It is true that Section 51 of the Act requires the inquiry to be completed within the stipulated period of four months. A restriction is also placed on the time up to which it can be extended. This is more, with a view to ensure that the matter is not kept pending, unduly. However, failure to adhere to the time-frame does not give rise to any right, in favour of an individual. In ***B.Srinivasulu v. Government of Andhra Pradesh (1988 (1) ALT 10 (NRC)***, this Court held that the time-frame under Section 51 of the Act, as to the submission of a report, is only directory; and a report, submitted after the stipulated time, cannot be treated as illegal or invalid.”

In view of the same, the contention of the learned counsel for the petitioner that enquiry report is submitted beyond the time, stipulated, under Section 51 of the Act, cannot be a ground to quash the enquiry under Section 51 of

the Act. It is to be seen that no action is being taken straightaway on the basis of enquiry under Section 51 of the Act. The action can be initiated under Section 60 basing on the enquiry under Section 51. As and when any action is initiated under Section 60 of the Act, petitioner will be afforded sufficient opportunity. In view of the same, the challenge under Section 51 cannot be upheld.

As far as challenging the notice dated 28.10.2017 is concerned, after referring to elaborate material the respondent authorities have come to a conclusion that proceedings under Section 34(1) required to be initiated. More so, this Court in WP.Nos.15253 & 29015 of 2017 held that when the enquiry revealed misappropriation of funds and serious financial irregularities, the same cannot be interdicted. In this case also serious financial irregularities are alleged. More so, it is only show cause notice.

The decision cited by the learned counsel for the petitioners in **Barium Chemicals Ltd and another v. Company Law Board and Others** ¹, pertain to the case where order is passed in pursuance to the notice under Section 34(1) of the Act.

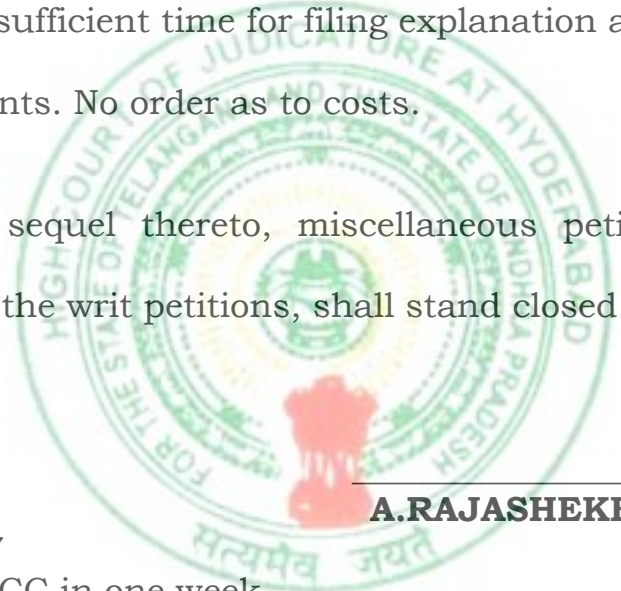
In view of the same, petitioner can urge all his objections in the explanation to be submitted to the respondents. In view of the same, this Court cannot conduct roving enquiry regarding formation of opinion by the

¹ AIR 1967 Supreme Court 295

authorities in issuing the impugned notice dated 28.10.2017, when serious financial irregularities are alleged.

In view of the same, I do not see any merit in both the writ petitions, accordingly, writ petitions are dismissed. However, the respondents are obligated to furnish documents as requested by the petitioners if not already furnished for the purpose of filing explanation and also afford opportunity of hearing to the petitioner before passing orders in pursuance to notice under Section 34(1) of the Act. The respondents shall grant sufficient time for filing explanation after providing the documents. No order as to costs.

As a sequel thereto, miscellaneous petitions, if any pending, in the writ petitions, shall stand closed.



A.RAJASHEKER REDDY, J

30 .11.2017

Note: Issue CC in one week.

B/o.tk