

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.4307 of 2018

ORDER:

The proceedings, dated 23.01.2018, issued by the 2nd respondent-Registrar of Co-operative Societies, ordering inquiry into the affairs of the petitioner's Cooperative Bank, invoking Section 51 of the Telangana Cooperative Societies Act, 1964 (in short "the Act"), is challenged in this Writ Petition.

2) The challenge is laid on the ground that the proceedings, as read above, does not indicate exercise of application of mind on the part of the 2nd respondent, as the proceedings under Section 51 of the Act can be initiated by the Registrar either, on his motion, or on the application of a Society. Section 51 of the Act reads as under:

51. Inquiry: The Registrar, may on 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."

3) In the present case on hand, it is the specific contention of the learned counsel for the petitioner that as the proceedings indicate, the inquiry has been ordered merely on account of receipt of a complaint by the Government from the 3rd respondent-Vice Chairman of the

petitioner. Inasmuch as, the invocation of Section 51 of the Act has been made without examining the relevant facts and without application of mind, the same is liable to be set aside. Further, it is the specific contention of the learned counsel for the petitioner that if an act is to be done in a particular manner, the same shall be done in the said manner or not at all.

4) Heard the learned counsel for the petitioner.

5) Sri Bhaskhar Reddy, learned Government Pleader for Cooperation, has placed on record the material papers relating to issuance of the proceedings dated 23.01.2018.

6) Learned counsel appearing for the 3rd respondent submits various factors, particularly, certain omissions and commission on the part of the 3rd respondent and contends that the petitioner, particularly, deponent of the writ affidavit, is not forced to file the Writ Petition and further there are various allegations of misappropriation of funds by the deponent of the writ affidavit and no prejudice would be caused if an enquiry is caused, as it is only a fact finding inquiry. In those circumstances, learned counsel for the 3rd respondent submits that, as held by this Court in **Khadernawaskhanpet Labour Contractor Co-operative Society, Mulapet, Nellore and others Vs. Collector (Co-op) Nellore and Others**¹, the Registrar is also empowered to initiate proceedings *suo moto* invoking Section 51 of the Act and there is no illegality in the initiation of the proceedings in the present case on hand taking recourse to Section 51. The learned counsel also would submit that various representations were made to the Government as well as to the Registrar bringing various commissions and omissions by the deponent of the writ affidavit. In those circumstances, the Registrar has exercised the powers under

¹ 1980 (1) (HC) APLJ 320

Section 51 of the Act and hence prays for dismissal of the Writ Petition.

7) Considered the respective submissions and perused the record leading to issuance of the proceedings. From the note file produced by the Cooperation Department, so far as it is relevant, the General Secretary of the Petitioner-Bank made a complaint in Abid Road Police Station, Hyderabad, against its Chairman and Directors for the offences punishable under Sections 420, 465, 466, 468, 471, 477-A, 406, 409, 120+-B of IPC r/w 34 IPC along with Sections 65 and 66E of the Information Technology Act.

8) At the outset, it is to be seen that the satisfaction or otherwise *prima facie* opinion that is required to be formed by the Registrar, for initiation of proceedings under Section 51 of the Act is not available on record. However, as contended by the learned counsel for the 3rd respondent, there is other material available in the record with respect to the petitioner bank. Though such material is available, the 2nd respondent had not initiated the proceedings based on the said material, which relates to the year 2016. In other words, the Registrar-2nd respondent did not choose to initiate proceedings based on the said material in the last two years. It is only after receipt of the communication from the Government, the impugned proceedings have been initiated, which goes to show, *prima facie*, total non-application of mind by the 2nd respondent and formation of an opinion that the affairs of the bank are required to be inquired into. Further, the contention of the learned Government Pleader as well as the learned counsel for the 3rd respondent that under Section 131 of the Act, the Government is empowered to give direction, also does not hold water in the present case, as, even assuming the Government can direct the Registrar to conduct an enquiry, the Registrar has to

form an opinion based on the material made available to him. Here, the 2nd respondent has not formed any opinion on his own and therefore shows that the 2nd respondent has not applied his mind, probably, on account of not being familiar with the legal requirement.

9) In those circumstances, the impugned order is set aside, however, giving liberty to the 2nd respondent to take appropriate action in accordance with law taking into consideration the material available on record. The judgment of this Court referred to supra by the learned counsel for the 3rd respondent is distinguishable on facts, inasmuch as, in the said judgment, the impugned proceedings were initiated after taking into consideration the representation made by the Vice President and Ex-member of the Society therein, which was the basis for initiation of Section 51 inquiry, the very order in the said case reads as such.

10) In those circumstances, unlike in the present case, there being no such recital even in the file, if not in the order, this Court has no option other than to allow the Writ Petition setting aside the impugned order.

11) The Writ Petition is accordingly allowed, setting aside the proceedings dated 23.01.2018 issued by the 2nd respondent. No order as to costs.

12) Consequently, Miscellaneous Petitions pending, if any, in this Writ Petition, shall stand closed.

CHALLA KODANDA RAM, J.

Date: 14.02.2018.

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