

THE HONOURABLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.9506 OF 2018

ORDER:

Heard Sri R.Raghunandhan, learned senior counsel representing Sri Sai Sanjay Suraneni, learned counsel for the petitioner, and the learned Government Pleader for Cooperation (A.P.) for the respondents.

2. The petitioner herein is a society, registered under the provisions of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, "the Act"). Earlier, the Joint Registrar/District Co-operative Officer, Krishna, Machilipatnam, respondent No.3 herein, passed an order under Section 51 of the Act *vide* proceedings Rc.No.4367/2016/VJA/C3, dated 19.10.2016, ordering inquiry into the following aspects:

- "1. To examine all types of loans issued to the members till date and whether due procedure is followed in sanctioning the loans.***
- 2. To examine the recovery position of loans issued to the members.***
- 3. To examine whether any bonds cancelled without collecting the loan in full.***
- 4. To examine in particular the contents raised in the complaint made by the CEO of the society with the SHO, G.Konduru.***
- 5. To examine whether documents were released to the concerned members in respect of cases where loans were cleared/closed and to fix up responsibility against the responsible persons.***
- 6. To examine if any overdue/time barred loans as on date and fix up responsibility.***
- 7. To examine the petition filed by Smt Ch.Vijaya Laxmi, M/o.Bharat Kumar Chowdary addressed to the Deputy Registrar/OSD, KDCCB Ltd., Machilipatnam.***

8. To examine the petitions/representations filed by members of the society before the DLCO, Vijayawada.”

Questioning the said order, the petitioner herein approached this Court by way of filing W.P.No.38782 of 2016. This Court, by way of an order, dated 27.10.2017, disposed of the said writ petition and the operative portion of the said order reads as under:

“Since the third respondent is prima facie satisfied with regard to desirability of conducting the enquiry under Section 51 of the Act and entrusted the matter to the fifth respondent, this Court is not inclined to entertain the present Writ Petition. But, the learned counsel for the petitioner submitted that the issues framed in the impugned order dated 19.10.2016 are not specific and they are omnibus.

In the circumstances, this Writ Petition is disposed of directing the third respondent to indicate the terms of reference through separate set of proceedings within two (2) weeks from the date of receipt of a copy of this order and the enquiry shall proceed only on that basis. Till such terms are settled, further steps in pursuance of the impugned order shall stand stayed. There shall be no order as to costs.”

Thereafter, the Joint Registrar/District Co-operative Officer issued another proceedings Rc.No.4367/2016/VJA/C1, dated 18.12.2017, under Section 51 of the Act. Challenging the said proceedings, petitioner herein filed W.P.No.3650 of 2018 before this Court. Pending the said writ petition, respondent No.3 issued another order *vide* proceedings Rc.No.4367/2016/VJA/C1, dated 20.02.2018, as such, the petitioner herein had withdrawn the said writ petition with a liberty to assail the said revised order, dated 20.02.2018. In the present writ petition, challenge is to the order of respondent No.3 issued *vide* proceedings Rc.No.4367/2016/VJA/C1, dated 20.02.2018.

3. According to the learned senior counsel, the order impugned in the present writ petition is highly illegal and arbitrary and also violative of Article 14 of the Constitution of India besides being opposed to the very spirit and object of the provisions of the Act and the Andhra Pradesh Co-operative Societies Rules, 1964 (for short, “the Rules”) framed there under. In elaboration, it is further submitted that the questioned order is also contrary to the order, dated 27.10.2017, of this Court in W.P.No.38782 of 2016. It is further submitted that even the impugned order does not indicate the terms of reference in a clear manner. In support of his submissions and contentions, learned counsel for the petitioner placed reliance on the order, dated 06.11.2008, of this Court in W.P.No.17530 of 2008.

4. On the other hand, it is submitted by the learned Government Pleader that the present inquiry is only an inquiry under Section 51 of the Act and the same is only preliminary in nature, and it is only to know the constitution and working financial conditions of the society. It is further submitted by the learned Government Pleader that the order impugned is strictly in conformity with the provisions of the Act and the orders of this Court in W.P.No.38782 of 2016. In support of his contentions and submissions, learned Government Pleader placed reliance on the order, dated 07.07.2017, of this Court in W.P.No.21680 of 2017.

5. It is required to be noted that earlier, when the petitioner herein approached this Court by way of filing W.P.No.38782 of 2016, this Court declined to interfere with the desirability of conducting inquiry under Section 51 of the Act and the

entrustment of the matter to respondent No.5 therein. Obviously, taking into consideration the provisions of Rule 47 of the Rules, this Court directed the respondents to indicate the terms of reference.

6. Rule 47 of the Rules mandates that an order authorizing any person to hold an inquiry into the constitution, working and financial conditions of a society should contain the following information:

“47. Inquiry: - (1) An order authorising any person to hold an inquiry into the constitution, working and financial conditions of a society shall, among other things, contain the following:-

(a) name of the society whose affairs are to be inquired into ;

(b) name of the person authorised to hold an inquiry ;

(c) the terms of inquiry ;

(d) apportionment of the cost of inquiry ;

(e) any other matter relating or pertaining to the inquiry.”

7. In the instant writ petition, case of the petitioner herein, as advocated by the learned senior counsel, is that even the order impugned in the present writ petition does not contain the mandatory requirements as provided under the above provision of law. In fact, in the impugned order, respondent No.3 indicated the following terms of reference for the inquiry:

“1. To examine all types of loans pending collection from the members which are issued from 23.08.2010 to till date and whether due procedure is followed in sanctioning the loans and recovery position.

2. To examine whether any bonds cancelled without collecting the loans in full from 23.08.2010 to till date.

3. *To examine if any overdue/time barred loans from 23.08.2010 to till date.*
4. *To examine the petitions/representations filed by Members and President of the society pending before the Divisional Cooperative Officer, Vijayawada.*
5. *To examine whether or not all the records pertaining to the society are available at the seat of the society (for the last 10 years) and if not the details thereof and persons held responsible.”*

8. In view of the above terms of reference indicated in the impugned order, this Court is not inclined to meddle with the inquiry initiated. In the considered opinion of this Court, the same is in accordance with the orders of this Court in W.P.No.38782 of 2016.

9. Accordingly, this Writ Petition is dismissed. There shall be no order as to costs.

10. Miscellaneous petitions pending, if any, in this Writ Petition shall stand closed.

Date : 27.03.2018
AMD

JUSTICE A.V.SESHA SAI

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Date: 27.03.2018

AMD