

HON' BLE SRI JUSTICE C. PRAVEEN KUMAR

AND

HON' BLE SRI JUSTICE N. BALAYOGI

WRIT PETITION Nos.29132 and 29154 of 2017

COMMON ORDER: (Per Hon' ble Sri Justice C.Praveen Kumar)

1) W.P.No.29132 of 2017 came to be filed seeking issuance of writ of mandamus declaring the orders passed by the Hon'ble Lokayukta in complaint No.4611/B1 dated 17.10.2016 and the orders dated 12.10.2016 passed vide Lr.Dis.No.4611/ 2013/ B1/ Lok.10104/ 2016, 2016, directing initiation of proceedings under Section 51 of the Telangana State Cooperative Societies Act, 1964 (for short "the Act"), the consequential orders passed by the District Collector, Khammam in Rc.No.318/ 2014-B dated 04.11.2016 for enquiry under Section 51 of the Act and appointing one N.Venkateswarlu, Assistant Registrar, as Enquiry Officer for conducting enquiry and the report of the said authority in Roc.No.2/ 2017-A, dated 23.05.2017 and the consequential orders passed in appointing surcharge officer to proceed under Section 60 of the Act in Rc.No.21820/ 2012/ Mktg., dated 21.07.2017, as illegal, arbitrary and contrary to the mandatory provisions of the Act.

2) W.P.No.29154 of 2017 filed seeking issuance of writ of mandamus declaring the orders passed by the Hon'ble Lokayukta dated 17.10.2016 and Lr.Dis.No.4611/ 2013/ B1/ Lok.10104/ 2016, 2016, dated 19.10.2016 directing for 51 inquiry under the Act,

report of the Director, Investigation of Lokayukta dated 14.10.2016 and the orders passed by the District Collector in Rc.No.318/ 2014-B, dated 04.11.2016 ordering inquiry Under Section 51 of the Act with special mention of report of Deputy Director (Investigation) of Hon'ble Lokayukta and appointing Sri N.Venkateswarlu, Assistant Registrar, as authority to conduct enquiry under Section 512 of the Act and the report of the said authority in Rc.No.2/ 2017-A, dated 23.05.2017 and the orders of suspension of the petitioner in Proc.Rc.No.DCMS/ ESTT/ DISP/ 2/ 2017 dated 05.06.2017 as illegal, arbitrary and contrary to the provisions of Section 15 of Lokayukta Act, 1983 and also contrary to the mandatory provisions of Section 51 of the Act, consequently declare that the petitioner is entitled to continue in service without there being any break in service with all consequential attendant benefits.

3) Since the issue involved in both the writ petitions is interconnected, they are being disposed of by this common order.

4) The averments in the affidavits filed in support of the writ petitions would show that the Managing Committee of the District Cooperative Marketing Society, Khammam (hereinafter referred to as "the Society"), consists with 13 members. Out of the 13 members, 10 members would be elected, while three others would be ex-officio members. The management and affairs of the society would be managed by the Managing Committee as per the provisions of the Co-operative Societies Act. The petitioners in W.P.No.29132 of 2017 were elected as Directors and Members of

the Managing Committee of the society in the year 2005 from different political parties, where as the petitioner in W.P.No.29154 of 2017 is working as Assistant Business Manager in the Society. Though the period of term of office was five years, but the same was being extended from time to time, which continued upto December, 2013. On 19.09.2013 one Pitta Srinivasa Reddy, lodged a report before the Hon'ble Lokayukta making allegations against Kuricheti Ramachandra Murthy, former Chairman of the Society by questioning the mortgage of valuable lands for his illegal benefit, selling of diwali crackers in the black market for higher rates and also selling of fertilizers and pesticides in the black market. The Lokayukta enquired into the allegations made in the complaint by calling for a preliminary report from the Deputy Director of Investigation of Lokayukta. A report came to be submitted on 29.09.2016. After receiving the said report, Lokayukta vide its order dated 17.10.2016, directed the District Cooperative officer, Bhadradi Kothagudem District, to initiate proceedings under Section 51 of the Act, and file a report by 16.01.2017. A letter dated 19.10.2016 was also addressed to the District Cooperative Officer about the orders passed by the Lokayukta and for its compliance. In view of the above, the District Collector, Khammam, who is the Registrar of Cooperative Societies, Khammam, ordered enquiry under Section 51 of the Act by appointing one N.Venkateswarlu, Assistant Registrar, as inquiring authority. The said N.Venkateswarlu, issued summons to the petitioners and thereafter submitted his report dated 14.03.2017.

It is said that out of the 12 items pointed out by the inquiring authority, in respect of item No.6 which relates to irregular payment of salaries to staff from 2005-2006 to 2015-2016 to an extent of Ac.1,63,98,207-31, was directed to be recovered from the managing committee members. The said report was placed before the Lokayukta on 01.06.2017. Thereafter, on 21.07.2017, the Registrar passed orders in Rc.No.21820/ 2012/ Mkts., appointing surcharge officer for initiating civil action under Section 60 of the Act. Accordingly, one Mr.K.Mykel Bose, District Cooperative officer, was appointed as surcharge officer. Challenging the same W.P.No.29132 of 2017 came to be filed.

5) It is stated that basing on the report of N.Venkateswarlu, dated 23.05.2017, the petitioner in W.P.No.29154 of 2017, was kept under suspension and accordingly appointed three men committee for conducting domestic enquiry. Challenging the same the W.P.No.29154 of 2017 came to be filed.

6) The main ground urged by the learned counsel for the petitioners is that the order passed by the Lokayukta, which lead to an enquiry under Section 51 of the Act and also appointment of surcharge officer is in violation of Section 10 of the Andhra Pradesh Lokayukta Act, 1983. According to him, Lokayukta has no power to order an enquiry under Section 51 of the Act since a separate mechanism is provided under the Act for initiating the said proceedings. It is said that Section 51 of the Act provides holding of an enquiry by the Registrar, in respect of the affairs of the

society by an officer contemplated under the statute itself. It is said that before passing any order under Section 60 of the Act, certain protections are provided under the statute and the same would be violated if enquiries are to be conducted basing on the directions given by the Lokayukta, which has no power to do so. Various issues came to be raised on merits of the matter which we are not inclined to go into the same.

7) Referring to various provisions under Andhra Pradesh Lokayukta Act, 1983 more particularly Sections 9 and 10 and in view of Full Bench Judgment of this Court in Dr.R.G.Sunil Reddy v. A.P.Lokayuktha, Hyderabad and others¹, learned counsel for the petitioners would contend that the Lokayukta has acted beyond its jurisdiction, in initiating an enquiry under Section 51 of the Act.

8) On the other hand, the learned Standing Counsel for Lokayukta as well as the Government Pleader for Co-operation, would submit that there is nothing irregular in the order passed by the Lokayukta. It is urged that *de hors* the order of Lokayukta, still the Registrar has got power to initiate proceedings under Section 51 of the Act, either on his own motion or on an application of a society, or of not less than 1/3rd of the members of the committee. Since the Registrar herein appointed an officer to conduct enquiry under Section 51 of the Act and then submitted a report which lead to initiating surcharge proceedings, there is nothing illegal or improper in the procedure that was adopted and that no prejudice would be caused to the petitioners. The learned

¹ 2015(6) ALD 302 (FB)

counsel would also contend that in view of Section 22 of the Lokayukta Act, suitable directions can be given since the officers involved in the alleged transaction are public servants. He placed reliance on the judgment of this Court reported in *Araja Narasimha Rao v. District Cooperative Officer/Joint Registrar, Krishna District, Machilipatnam and others*² and also the Full Bench Judgment of this Court in *Dr.R.G.Sunil Reddy (1 supra)*, to show that there is nothing wrong in initiating the proceedings, where huge loss in revenue was caused to the Government.

9) In order to appreciate the rival arguments, it would be useful to refer to the impugned orders passed and the provisions of law.

10) Originally a complaint was given by one P.Srinivasa Reddy, an advocate practicing at Bhadrachalam, making allegations against the former Chairman of the Society. Having regard to the nature of allegations made, the Lokayukta got the matter enquired by calling for a preliminary report from the Deputy Director of investigation. The said authority submitted his report on 29.09.2016. A detailed report came to be submitted with regard to the various allegations made in the said complaint. It would be appropriate to extract last three paragraphs of the report, which are as under:

“It is fact that the property was mortgaged in favour of the Indian Bank for the purpose of availing loan for establishing the Irradiation Plant but it is incorrect to say that the PS has not obtained permission from the

² (2007) 5 ALD 698

concerned authorities. The DCMS has obtained permission from the CC & RCS and also carried out the activities for establishing the said plant under the close supervision and guidance of the District Collector and also District Cooperative Officer. Thus, there is no truth in the allegation to that extent. However, because of their failure to pursue the matter at every stage to the logical end, the DCMS incurred a huge loss of Rs.4 to 5 crores and the said sum cannot be recovered. For this negligence the PS and the committee members and also the Business Managers who ever worked during the tenure are responsible.

With regard to the business in crackers and also fertilizers and pesticides no proper accounts are maintained and it is sure that the DCMS incurred heavy losses in such business. Even for this the DCMS responsible for lack of supervision and also the concerned business Managers who worked during the said period are responsible for improper, irregular and haphazard maintenance of the relevant records and also running the affairs of the society in a bad, haphazard and negligent manner.

In view of the above it is submitted that if a detailed and comprehensive statutory enquiry under Section 51 of the Telangana State Cooperative Societies Act, 1964 (formerly Andhra Pradesh Cooperative Act, 1964) is conducted by the officials of the Cooperative Department, the responsibility for such lapses can be fixed up and based on the findings, action including criminal action wherever necessary can be initiated against the persons responsible for the abnormal loss caused to the DCMS and recovery of loss caused can also be resorted to."

11) After receiving the said report, the Hon'ble Lokayukta is said to have directed the District Cooperative Officer, to initiate proceedings under Section 51 of the Act and file compliance report by 16.01.2017. The order reads as under:

“ Having perused the report dated 14.10.2016 of the Director (Investigation) or the Institution, the District Cooperative officer, Bhadrachalam District, is directed to initiate proceedings under Section 51 of the Telangana State Cooperative Societies Act and file his compliance report, by 16.01.2017.”

12) In view of the report of the Deputy Director (Investigation), coupled with the order dated 19.10.2016 passed by the Institution of Lokayukta, the Collector and District Magistrate, Khammam, who is the Registrar of the District Cooperative Societies, in exercise of his powers conferred under Section 51 of the Act and as per the delegation of powers vide G.O.Ms.No.34, dated 18.01.1989, appointed one N.Venkateswarlu, Assistant Registrar, Office of the District Cooperative Office, Khammam, as enquiry officer, with a direction to submit his report within 60 days from the date of receipt of the said order. This order came to be passed on 04.11.2016. It is to be noted here that though the District Collector passed an order appointing N.Venkateswarlu, as Enquiry Officer under Section 51 of the Act, the same was not challenged. But six months later, the said Venkateswarlu submitted a report, dated 23.05.2017, after conducting oral enquiry by examining the aggrieved persons, and also after perusing the entire documents

which were placed before him. The conclusion of the report is as under:

“While going through the entire record and on examination of every business that the society had conducted from 2005-96 to 2013-14 with a special reference to the allegation leveled against the then President. The Public Servants such as Business Managers and the Accountant had managed not to produce the entire required record to conduct the enquiry. However the information is gathered from all sides, besides the available record and completed the enquiry. I have proved that, the misappropriation committed by the then President, the then Business Managers and the Accountant, besides all the depots in-charges etc. beyond any doubt with recorded evidence.

After investigation on each and every allegation it is found that, the Chairman, Sri Kuricheti Ramachandra Murthy, the then Business Manager, Sri S. Seetharamulu, Sri K. Raghavaraju and the Accountant Sri K. Saibaba had struck the DCMS so that it cannot stand any more in the future. They have routed out its base of financial position, and broke to backbone. It is clear that, they have committed SN against the society, which fed them and their families for long years.

It is sure that there are no more items of fraud than those detailed in Part-A.

The misappropriation committed by the public servants of the Society caused the financial position of the society is damaged like anything. The amount involved in misappropriation cannot be recovered

unless the authorities for appropriate civil and criminal actions.

Therefore it is hereby confirmed and recommended to launch prosecution against the following delinquents.

1. Sri Kuricehti Ramachandra Murthy, the then President of KDCMS, Khammam.
2. Sri S.Seetharamulu, the then Business Manager of KDCMS, Khammam.
3. Sri K.Raghavaraju, the then Business Manager, KDCMS, Khammam.
4. Sri K.Sai Baba, Accountant-cum-Asst. Business Manager, KDCMS, Khammam.”

13) Pursuant to the report submitted by the Enquiry Officer to Registrar, he initiated surcharge proceedings under Section 60 of the Act by appointing K.Mykel Bose, which was on 21.07.2017. The petitioner in W.P.No.29154 of 2017 was suspended vide Proc.Pc.No.DCMS/ ESTT/ DISP/ 2/ 2017, dated 05.06.2017. At that stage, the present writ petitions came to be filed raising various grounds.

14) It is to be noted here that no steps were taken at the time when the Registrar appointed one N.Venkateswarlu, as Enquiry Officer. In fact, even after the notices were issued asking the writ petitioners to appear before them, they never bothered to challenge the said proceedings. Even after the submission of the report, they did not choose to question the same. After the appointment of officer under Section 60 of the Act, the present

writ petitions came to be filed questioning the orders passed by the Lokayukta in the month of October, 2016 on the ground that the said authority has no jurisdiction to pass such an order.

15) The main thrust of the argument appears to be on the basis of the Full Bench Judgment of this Court in Dr.R.G.Sunil Reddy (1 supra). In the said case, this Court after referring to various judgments, held as under:

““20. We, accordingly, answer question No.1 in the negative and hold that the Lokayukta has no jurisdiction to entertain a complaint, which neither involves an allegation nor involves any action or inaction connected with such an allegation. We also hold that inter se private disputes between the parties including matrimonial dispute does not fall within the purview of the jurisdiction of the Lokayukta under the Act and that only such acts, which are actuated by allegation against public servants and the authorities as named under Section 7 of the Act alone fall within the domain of the Lokayukta or Upa-Lokayukta, as the case may be. The discussion, as above, also answers question No.2 in the negative Question No.3, however, does not arise on the facts and circumstances of the case and would amount to adjudication on hypothetical question. Hence, the said question is left open.” under Section 51 of the Act 06.10.2016. The order of Lokayukta which lead to initiation of the proceedings under Section 51 of the Act is as under:

16) Before proceeding further, it would be useful to refer to Section 51 of the Act, which reads as under:

“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 thereunder, 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.”

17) From a perusal of Section 51 of the Act, it is evident that enquiry under Section 51 of the Act can be initiated 1) either suo motu, by the Registrar, (2) on a petition submitted by a society, to which the other society is affiliated, (3) on a requisition by one third of the members of the Managing Committee, or (d) at the instance of the 1/5th of the members of the General Body. The same is explained by this Court in the following judgments.

1. Md.Gaffar vs. State of Telangana and others³

2. Araja Narasimha Rao (2 supra)

3. Khadernawaskhanpet Labour Contract Cooperative Society, Mulapet, Nellore vs. Collector (Co.op) Nellore⁴

18) From the above, it is clear that the Registrar has got power under Section 51 of the Act to order an enquiry, by appointing N.Venkateswarlu, as an Enquiry Officer.

19) In order to appreciate the provisions of the Act and also the power exercised by the Registrar in initiating proceedings under Section 51 of the Act, it would be useful to first go into the allegations in the complaint made before the Lokayukta by P.Srinivasa Reddy. In the said complaint, he stated that the former Chairman of the Society, who held his post as Chairman from 18.11.2005 to 13.02.2013, mortgaged valuable lands of the

³ (2015) 6 ALD 63

⁴ APLJ 1980 (1) 319

society in different commercial banks for Rs.6.00 crores illegally without permission of the Government and swallowed the said money. The complaint also speaks about the radiation plant proposed to be constructed, for which he created a benami contractor and swallowed crores of rupees by creating fake construction bills. It also speaks of the permission obtained to sell diwali crackers and goods and sell the same in black market for higher rates apart from selling fertilizers and pesticides in black market through different shops in many mandals, thereby causing huge loss to the society. It is said that along with the Chairman, number of other persons were also involved in the said transactions.

20) The allegations in the complaint mainly relates to misappropriation of large sums of money for which the Registrar is competent to initiate action against the persons, who were *prima facie* found guilty of misappropriation of large sums of public money. It has been held by this Court in Md.Gaffar case (3 supra) that “*if public money is misappropriated, the competent authority is entitled under law to recover and restore the same. Therefore, the civil action for recovery of the misappropriated amount is a legitimate action. Insofar as the criminal culpability is concerned, it is beyond any pale of doubt that misappropriation of public money is a breach of conduct, which attracts several penal provisions.*”

21) Having regard to the above, Section 51 of the Act, if read alone, gives ample power to the Registrar to initiate suo motu action basing on the information received by him with regard to act of misappropriation by the Chairman or members of the society. In fact there cannot be any dispute with regard to proposition as well. However, the question now is whether the Lokayukta was right in ordering enquiry under Section 51 of the Act and report compliance.

22) It is true that if the enquiry was ordered by the Registrar of Cooperative Societies only on the basis of the order passed by the Lokayukta, definitely one can find fault with the same as it would be without jurisdiction. But as observed earlier, Section 51 of the Act gives ample power to the Registrar, to suo motu initiate any action. If the order dated 04.11.2016 is looked into, it is clear that though the proceedings refers to the order passed by the Lokayukta, dated 19.10.2016 and the order of the Deputy Director (Investigation), but the circumstances which made him to initiate enquiry is not because of the order passed by the Lokayukta but because of the report submitted by the Deputy Director, wherein he opined that the Chairman of the Society has caused huge loss of about four to five crores to the society. In view of the said report, the Registrar, who has the power to suo-motu, initiate action, took cognizance of the information and if felt necessary to order an enquiry by invoking his powers under Section 51 of the Act. It is true that there is a reference to the order passed by the Lokayukta also but the last paragraph of the proceedings indicates that in

exercise of powers under Section 51 of the Act, he has initiated the said proceedings by appointing Sri N.Venkateswarlu, Assistant Registrar as enquiry officer. As stated earlier, these allegations mainly relate to misappropriation of public money by public servants which falls within the meaning of complaint as defined under Rule 2 (1) (iii) of the A.P. Lokayukta and Upa-Lokayukta (Investigation) Rules, 1984. Since the Registrar has got power under section 51 of the Act, to suo motu initiate proceedings basing on the information received by him, one cannot find fault with the initiation of proceedings basing on the report of the Deputy Director (Investigation), wherein it was found that huge amount running into four to five crores, was misappropriated. The Enquiry Officer conducted detailed enquiry after giving opportunity to one and all and submitted report which lead to initiation of surcharge proceedings under Section 60 of the Act.

23) As stated earlier, the petitioners having participated in the said proceedings and never raised their finger questioning the jurisdiction and procedure followed by the said authority. Only after the final report has been submitted and when surcharge proceedings were initiated under Section 60 of the Act, wherein it was found that the petitioners are liable for action on both civil and criminal side, they filed the present writ petitions.

24) As held earlier, de hors the order of the Lokayukta, still the Registrar has got all the power to initiate proceedings under Section 51 of the Act on his own, which act he has done in the

present case. Merely because there is a reference to the order passed by the Lokayukta, it does not mean that he has initiated the proceedings under Section 51 of the Act only on the basis of the order passed by the Lokayukta. If it was done in such manner definitely one can find fault with it, but the same has not happened in the instant case. Suo motu proceedings came to be initiated under Section 51 of the Act which lead to submission of the report and later proceedings under Section 60 of the Act came to be initiated. Hence, we feel that there is no illegality in the said proceedings.

25) Having regard to the above and since the complaint is against the public servants misusing public money; as the action is in exercise of suo motu powers under Section 51 of the Act basing on the report of the investigating officer, we see no reason to interfere with the impugned proceedings.

26) Accordingly, both the writ petitions are dismissed.

27) There shall be no order as to costs. Miscellaneous Petitions, pending if any in these Writ Petitions shall stand closed.

C. PRAVEEN KUMAR, J

N. BALAYOGI, J

02.02.2018
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