

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITION No.36300 OF 2017

ORDER:

This writ petition is filed seeking writ of mandamus declaring the order dated 11.10.2017 in Rc.No.643/2017-C issued by the 3rd respondent in pursuant to the orders dated 27.09.2017 in Rc.No.5378/2017/CR3 issued by the 2nd respondent ordering enquiry under Section 51 of the Telangana Cooperative Societies Act, 1964 (for short 'the Act of 1964') into constitution, working and financial condition of the petitioner society by appointing the 4th respondent as an Enquiry Officer and also to declare the order dated 27.09.2017 in Rc.No.5378/2017 issued by the 2nd respondent directing the 3rd respondent to order enquiry under Section 51 of the Act of 1964 into affairs of the petitioner society as illegal and arbitrary.

2. Brief facts, which are necessary for disposal of the writ petition, are as follows:

Petitioner is a registered society under the provisions of the Act of 1964, established in the year 1957 and its area of operation is spread over 16 villages in two Mandals in Warangal Rural District. There are about 8000 members in the society. The main activity of the society is to lend amounts to its members, who are agriculturists and to recover the loans with interest. The petitioner's society is borrowing amounts from the State Bank of Hyderabad, Chennaraopet Branch and refinancing

the same to its members and that the society is for the welfare and needs of its members.

3. The District Cooperative Central Bank (DCCB) is having its office at Hanamkonda, Warangal. The Primary Agriculture Cooperative Societies (PACS), Employees Cooperative Societies, Handloom Cooperative Societies, Weaker Section Cooperative Societies, Housing Societies and Labour Societies are the members of the DCCB and that the petitioner society is one among the members of the DCCB, Warangal. The Managing Committee of the DCCB, Warangal, consists of 21 Directors, out of which 16 Directors were elected among the members representing the PACS in Warangal District and the President of the petitioner's society was also elected as a Director in the elections held in the month of May, 2013. That due to political differences between the Chairman of DCCB and the ruling party, the MLA of Palakurthy Constituency gave representation dated 21.03.2017 to conduct inquiry into the affairs of the DCCB and basing on the said letter, the 2nd respondent ordered inquiry under Section 51 of the Act of 1964 and appointed the 4th respondent as Enquiry officer to enquire into the affairs of the DCCB, Warangal, who in turn submitted report dated 23.06.2017 vide Lr.Rc.No.3126/2017/CR-2 recommending to take action against the President of DCCB and also its employees. The Committee of DCCB was suspended initially and subsequently, it was superseded based on the inquiry report. That the Managing Committee of DCCB did not have any role in commission of the alleged irregularities by the DCCB, Warangal

and also that the functioning of DCCB does not have any bearing on the functioning of the petitioner society. That the 2nd respondent has passed impugned order dated 27.09.2017 by misusing the powers conferred on him under the statute to see that all the Directors of the DCCB be removed from the office of the petitioner society. That the enquiry officer appointed by the 2nd respondent to cause enquiry into the affairs of the DCCB did not submit any report recommending action against the affairs of the Directors of PACSs. That the impugned order passed by the 2nd respondent is against the provisions of Section 51 of the Act of 1964.

4. Counter affidavit is filed by the 3rd respondent denying the averments in the affidavit filed in support of the writ petition stating that the Writ Petition itself is not maintainable as the petitioner has not shown any statutory violation in issuing impugned proceedings. That the 2nd respondent conducted a preliminary inquiry into the constitution, working and financial condition of DCCB, Warangal and found certain irregularities by the management of DCCB as well as individual Directors and that on the basis of such preliminary report, which discloses certain irregularities, statutory inquiry under Section 51 of the Act of 1964 was ordered and basing on the findings, the Managing Committee was superseded. The 2nd respondent had considered the material before ordering inquiry under Section 51 of the Act of 1964 against petitioner society. That several representations were received leveling serious allegations of irregularities in functioning of the DCCB as well as petitioner

society and that the inquiry under Section 51 is only fact finding in nature and is not intended to cause any hardship to the petitioner society.

5. Heard Sri A.Sudharshan Reddy, learned Senior Counsel appearing for Sri A.Prabhakar Rao, learned counsel for the petitioner and Sri S.Sarath Kumar, learned Special Government Pleader for respondents, representing Additional Advocate General.

6. Sri A.Sudharshan Reddy, learned Senior Counsel submits that alleged irregularities committed in working of the DCCB does not have any bearing on the function of the PACSs , represented by the Directors of Managing Committee of the DCCB, Warangal. He submits that the 2nd respondent has misused his powers conferred on him under Section 51 of the Act of 1964 and issued impugned proceedings for conducting inquiry against the petitioner society. He would contend that the impugned inquiry ordered by the 2nd respondent is against the spirit of Section 51 of the Act of 1964. He also submits that there is no allegation of financial irregularities against the petitioner society.

7. On the other hand, Sri S.Sarath Kumar, learned Special Government Pleader appearing for Additional Advocate General apart from reiterating the averments in the counter affidavit filed by the 3rd respondent, submits that the 2nd respondent has conducted preliminary inquiry into the constitution, working and financial condition of DCCB, Warangal and found certain irregularities by the Managing Committee and basing on such

preliminary report, ordered inquiry under Section 51 of the Act of 1964. He submits that the 2nd respondent ordered inquiry on being satisfied with the material available on record regarding financial irregularities committed by the Managing Committee and the enquiry ordered is only for fact finding and in case any action is initiated on the basis of enquiry, petitioner has remedy.

8. Before considering rival contentions of both sides, it is necessary to extract Section 51 of the Act of 1964, which is germane for deciding the issue.

“51. 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 inquiry report along with the findings of the Registrar, the Registrar shall not be precluded from making 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.”

The aforesaid provision of law bestows a power on the Registrar of Cooperative Societies to hold an inquiry into the constitution, working and financial condition of a Society either *suo motu* or on an application made by a society to which the

society concerned is affiliated or an application made by not less than 1/3rd of the members of the committee or by not less than 1/5th of the total number of members of the society.

9. By virtue of the proceedings of the 2nd respondent dated 11.04.2017, a statutory inquiry was ordered under Section 51 of the Act against President, Chief Executive Officer and other staff members of DCCB, by appointing one G.Srinivasa Rao, Additional Registrar, as an Inquiry Officer and he submitted his report under Section 51 of the Act of 1964. A perusal of the inquiry report submitted by G.Srinivasa Rao, would go to show that there are certain irregularities against the President and CEO and other staff members of DCCB, Warangal and also against Hanamkonda branch. No doubt, the Inquiry Officer has examined several witnesses, including the Bank officials and submitted his report recommending the action to be taken against the persons who flouted the funds of DCCB by illegal means. In fact, the President of the petitioner's society also gave deposition and the same is extracted in page No.85 of the said report, which reads as follows:

“Sri R.Sambi Reddy, Director in his sown deposition dt.23.06.2017 stated that Agenda is given only in the meetings. Some discussions are held in meetings but minutes are not given. He also stated that, he did not take any bribe connected to exgratia. He also stated that, he did not go to the branch and he did not have such authority and is not aware of cash deficit and fake gold loans. He also stated that, he is not aware of the lease of the building and irregular promotions. He also further stated that, President did not bring any pressure on him and is not aware of any pressure by President on Employees.”

In the deposition, the President of the petitioner's society stated that he did not have any authority to go to the branch and he is also not aware of the cash deficit and fake gold loans.

Though learned Special Government Pleader vehemently argued that there are certain allegations against this petitioner's society and that the Registrar Cooperative Societies has received several representations from local people regarding mismanagement of the affairs of the petitioner's society besides newspaper reports with regard to defective implementation of Debt Waiver Scheme in the distribution of loans and also that huge loans have been sanctioned to the kith and kin of the President, without the notice to the Managing Committee and General Body of the Society, but he failed to produce any such material against petitioner's society. As already discussed supra, the Registrar of Cooperative Society 'may' on his own motion and 'shall' on the application of a society to which the society 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. In the instant case, though it is alleged in the counter affidavit that Central Committee of Marxist Communist Party of India had submitted a representation dated 30.12.2015 leveling serious allegations of irregularities in functioning of the Society and also letter addressed by Donthi Madhava Reddy, Member of Legislative Assembly from Narasampet Constituency of Warangal Rural District, but the same are not placed before this Court. Moreover, they are neither members of the petitioner's society nor members of the Committee. When once there are no allegations

against the petitioner's society or the President of the Petitioner's Society, the Registrar cannot order under Section 51 of the Act according to his own whims and fancies, even though there are no allegations in the inquiry report submitted by the Additional Registrar i.e., G.Srinivasa Rao, against President, CEO and other staff members of DCCB.

10. It is also pertinent to note that in the enquiry conducted against the DCCB, Warangal, there is no allegation against the petitioner's society directly. The basis for issuance of impugned proceedings dated 11.10.2017 is the Memorandum issued by the 2nd respondent on 27.09.2017. A perusal of the proceedings dated 27.09.2017 of the 2nd respondent goes to show that since it is established that the Managing Committee of Warangal DCCB has abused its powers and committed serious acts prejudicial to the interests of the DCCB Warangal and its members, the 2nd respondent ordered an inquiry into the constitution, working and financial condition of all the Primary Level Agricultural Societies under the control of DCCB, Warangal and there is nothing particular against the petitioner's society. Even the aforesaid proceedings are based on the proceedings dated 11.04.2017, 23.06.2017 and 16.08.2017 and same are placed before this Court. Even a perusal of those proceedings also, there is no particular allegation against the petitioner society. The proceedings dated 11.04.2017 issued by the Registrar of Cooperative Societies appointing one G.Srinivasa Rao, Additional Registrar, as an Inquiry Officer for conducting a comprehensive statutory inquiry into the management and

function of DCCB, Warangal. The said G.Srinivasa Rao, Inquiry Officer submitted his enquiry report to the 2nd respondent vide proceedings dated 23.06.2017 and basing upon the said enquiry report, the 2nd respondent issued proceedings dated 16.08.2017 ordering supersession of the Board (Managing Committee) of Warangal DCCB. The aforesaid proceedings does not indicate any allegation against petitioner's society in particular. When there is no allegation against the petitioner's society directly, It is not known how the 2nd and 3rd respondents have come to conclusion and order for initiating enquiry against petitioner's society under Section 51 of the Act. No doubt, the respondents 2 and 3 may have power under Section 51 of the Act to initiate *suo moto* proceedings against any Primary Agriculture Cooperative Societies working under DCCB, Warangal or for that matter, any PACSs under their control, but the said power should be exercised in fair and transparent manner. No material, muchless substantial material is placed before this Court to prove that there is an allegation against petitioner's society, except making allegations against DCCB, Warangal. Therefore, the respondents 2 and 3 have exercised their unbridled power on the petitioner's society, without any basis.

10. Though learned Special Government Pleader for respondents placed his reliance on the judgments reported in **Khader Nawaskhanpet Labnour Contract Cooperative Society, Mulapet, Nellore vs. Collector (Co-op.) Nellore and Akkayapalli Co-operative House Building Society Ltd., v. Joint Registrar/District Co-operative Officer** stating that mere conducting an inquiry against

petitioner's society, the interests of the Society or its members would in any way be jeopardized, but he failed to produce any evidence muchless substantial evidence to show that the petitioner's society represented by its President, has indulged in such activities which would be detrimental to the interests of the petitioner's society. In view of above facts and circumstances, I do not see any basis for exercising jurisdiction by the 2nd respondent vide proceedings dated 11.10.2017 directing the 4th respondent to conduct inquiry under Section 51 of the Act against the petitioner's society, as such, the same are liable to be set aside and accordingly set aside.

Accordingly, this Writ Petition is allowed. There shall be no order as to costs. As a sequel to the disposal of this petition, miscellaneous petitions, if any, pending shall stand closed.

16.02.2018
kvs

A.RAJASHEKER REDDY,J

HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

WRIT PETITON No.36300 OF 2017



Date: 16.02.2018

kvs



