

THE HON'BLE SRI JUSTICE A.RAJASHEKER REDDY

W.P.NO.20379 OF 2019

O R D E R

From the material on record it could be seen that respondent No.5 is the elected president of Si Saibab Shatharanji Handloom weavers Co-operative Production and Sales Society Ltd., (for short 'the Society'), and respondents 6 to 9 are other elected members of the said Society. Thus, the respondents 5 to 9 are the Managing Committee of the Society, and the term of office of respondents 5 to 9 is up to March, 2021. In view of the complaints received from the members of the Society, making allegations against the Managing Committee of the Society, 3rd respondent – Assistant Director, vide proceedings in R.C.No.222/2017-B dated 18.10.2017, in exercise of jurisdiction under Section 34(1) of the Telangana Co-operative Societies Act, 1964 (for short 'the Act'), superseded the Managing Committee of the Society, and appointed the five men committee to manage the affairs of the Society. Aggrieved by the said proceedings, the members of the Managing Committee, who are private respondents 5 to 9 herein, filed appeal in C.T.A.No.03 of 2017 on the file of Telanana Co-operative Tribunal at Warangal, under Section 76(1) of the Act. Vide order dated 17.07.2019, the Tribunal set aside the impugned proceedings dated 18.10.2019, and in consequence thereof, the 3rd respondent issued proceedings in Rc.No.222/2017-B dated 28.08.2019, holding that the five men committee appointed vide proceedings dated 18.0.2019, shall cease to hold office, and the said committee was directed to handover charge to the former managing committee. Aggrieved by the order dated 17.07.2019 passed by the Tribunal and the consequential proceedings of the 3rd respondent dated 28.08.2019, the Society,

represented by one Mr. Swargam Ashok, who claims to be the Chairman of the said Society, filed the present writ petition.

In the affidavit filed in support of the writ petition it is stated that the Society consists of 105 weavers and it is registered under the provisions of the Act, to cater the needs of the weavers situated in and around Chinnakondepaka village of erstwhile Warangal District. Respondents 5 to 9 were elected in the elections held in the year 2016. Some members of the society made representation dated 18.08.2017 to the 3rd respondent alleging that the managing committee has been misusing the official capacity, and also indulging in irregularities. Based on the said representation, the 2nd respondent vide proceedings in Rc.No.222/2017-B dated 16.08.2017 directed the 3rd respondent to conduct an inquiry and submit a report. In the meanwhile, the members of the Society again submitted representation dated 01.09.2017 and thereupon, a preliminary report was submitted by the circle in-charge on 06.09.2017. On a perusal of the said preliminary report, it revealed that it has not covered important contents of the petition, and it does not focus on the items of fraud. In these circumstances, the 3rd respondent himself visited the Society on 16.09.2017, and conducted an inquiry in the presence of all the managing committee members and society members, and also examined the books of accounts, schemes sanctioned and their utilization, besides genuineness of production activities of the Society. Based on the said examination, the 3rd respondent came to the conclusion that statutory action should be initiated against respondents 5 to 9 by way of superseding the management of the Society to safeguard the interest of the Society, and accordingly addressed letter in Lr.Rc.No.22/2017-B dated 09.10.2017 to the 2nd respondent. Simultaneously, the 3rd respondent also issued show cause notice to respondents 5 to 9 on 09.10.2017 calling them

to submit explanation within a week from the date of receipt of a the said show cause notice, but the respondents failed to furnish explanation. But in the reply affidavit it is stated that private respondents submitted explanation on 16.10.2017. In the writ affidavit it is further stated that the vide letter dated 16.10.2017, the 3rd respondent required the 10th respondent – Bank to stop banking transactions with the Society until further orders. Subsequently, vide proceedings in R.C.No.222/2017-B dated 18.10.2017, 3rd respondent superseded the society under Section 34(1)(c) of the Act and appointed five men committee with one Mr. Swargam Sambaiah, as its chairman and subsequently, vide proceedings dated 16.10.2018, Sri Swargam Ashok was given charge as Chairman of the petitioner - Society by the 3rd respondent. The said five men committee has taken charge and discharging their duties. It is further stated that private respondents 5 to 9 filed appeal in C.T.A.No.3 of 2017, and vide order dated 17.07.2019, the appeal was allowed. The case of the deponent of the writ affidavit is that the Tribunal without considering the findings of the 3rd respondent in the proceedings dated 18.10.2017, set aside the said same and hence the same is illegal and arbitrary. Challenging the order dated 17.07.2019, and the consequential order of the 3rd respondent dated 28.08.2019, the present writ petition is filed.

This court on 19.09.2019, while ordering notice to private respondents, granted stay for a limited period and subsequently, the same was extended from time to time.

The private respondent No.5, filed counter affidavit. In the counter affidavit, while denying the allegations of fraud and irregularities, it is stated that the 5th respondent is the chief promoter of the Society and he

was elected as president of the Society from 25.03.2011 to 2016, and again he was re-elected in the year 2016 and the term of office is up to March, 2021 and since the date of assuming charge, the elected Managing Committee of the Society has been discharge their duties. The deponent of the writ affidavit and few members, who are inimical, and having vested interest, filed representations on 18.08.2017 and 01.09.2017 making false and baseless allegations, and based on the same, the 3rd respondent without proper verification of record, issued show notice dated 09.10.2017, under the provisions of the Section 34(1) of Telangana Handloom Weavers Cooperative Societies Act. It is stated that such an enactment is not in force and therefore, the 5th respondent gave reply stating that the Act on which the show cause notice was issued, does not exist and requested time for filing explanation. But without considering the request of the 5th respondent, the 3rd respondent issued proceedings dated 18.10.2017 superseding the elected managing committee, and appointed five men committee in exercise of jurisdiction under Section 34 (1) of the Act. Challenging the same, the elected managing committee, filed appeal in C.T.A.No.3 of 2017 on the file of Telangana Cooperative Tribunal at Warangal, and the Tribunal after hearing all the parties, vide order dated 17.07.2019, set aside the order of the 3rd respondent, and allowed the appeal. On receipt of the order of the Tribunal dated 17.07.2019, the 3rd respondent issued proceedings dated 28.08.2019 asking the five men committee headed by Sri Swargam Ashok, to handover the charge to the former committee. Subsequently, on 05.09.2019, in the presence of the 3rd respondent, the 5th respondent and other elected members assumed office. With these averments, the 5th respondent, supporting the order passed by the Tribunal, sought for dismissal of the writ petition.

The deponent of the writ affidavit filed reply affidavit, wherein while reiterating the averments made in the writ affidavit, it is stated that due to irregularities committed by the elected managing committee, representations dated 18.08.2017 and 01.09.2017 have been made and the 3rd respondent *prima facie* came to the conclusion that it is a fit case for supersession as contemplated under Section 34(1) of the Act, and accordingly the respondents 5 to 9 were issued with show cause notice and they submitted explanation on 16.10.2017. Therefore, the contention that private respondents were not given time for filing explanation, is not true and correct. It is further stated that the grievance of the members of the Society stood unresolved till date and the enquiry proceedings have not yet reached finality. In the reply affidavit, the averments made in the counter affidavit are denied and order of the Tribunal is sought to be set aside.

Learned counsel appearing for the petitioner, submits that the Tribunal without considering the allegations against respondents 5 to 9, which are serious in nature, set aside the proceedings issued by the 3rd respondent appointing the five men committee to manage the affairs of the Society. She submits that Tribunal held that under Section 34 of the Act, the 3rd respondent has no jurisdiction to appoint a five men committee, and at best can appoint an official administrator. Learned counsel submits that in view of serious allegations, the Tribunal ought to have directed the 3rd respondent to appoint the official administrator to manage the affairs of the Society, instead of setting aside the proceedings of the 3rd respondent. Learned counsel submits that the impugned order passed by the Tribunal, is against the spirit of Section 34 of the Act. With these submissions, she seeks to set aside the impugned order

of the Tribunal dated 17.07.2019 and the consequential proceedings of the 3rd respondents dated 28.08.2019.

Sri C.Damodar Reddy, learned counsel appearing for private respondents 5 to 9 submits that the 3rd respondent without verification of the records and without considering the request of private respondents seeking time for filing explanations, issued proceedings dated 18.10.2017 under Section 34 (1) of the Act, superseding the elected managing committee of the Society, and same is in violation of principles of natural justice. He submits that Section 34 of the Act does not provide for appointment of a five men committee, and it only envisages appointment of an administrator, that too after giving the committee an opportunity of making its representation to manage the affairs of the Society, as provided under Section 34(1) (c) of the Act. He submits that the allegations against private respondents are not serious in nature, and they are minor irregularities, which can be rectified. Therefore, the Tribunal, considering that the 3rd respondent exceeded his jurisdiction, allowed the appeal and in consequence thereof, 3rd respondents issued proceedings dated 28.08.2019 directing the five men committee to handover charge to private respondents, and on 05.09.2019 the private respondents have assumed office, and the same has been endorsed by the 3rd respondent. He submits that because of the stay granted by this court, the general body meeting which was scheduled on 30.09.2019, was cancelled. He submits that the Tribunal considering the facts and circumstances, rightly set aside the proceedings of the 3rd respondent, and hence the same may not be interfered with.

Heard the learned Government Pleader for Co-operation for 1st respondent, Government Pleader for Handlooms and Textiles for

respondents 2 to 4, and Sri C.Hari Preeth, learned Standing Counsel for respondent No.10 – Bank.

In this case it is to be seen that Section 34 of the Act provides for supersession of the committee. The relevant portion of the said provision is extracted as under:

34. Supersession of the committee:-

(1) (a) Notwithstanding anything contained in any law for the time being in force, no committee shall be superseded or kept under suspension for a period exceeding six months.

(b) ...

(c) by order, supersede or suspend the Committee from a specified date and appoint the official administrator (the Registrar may after giving the Committee an opportunity of making its representations) to manage the affairs of the society, as per the conditions of service as may be prescribed, for a period of not exceeding six months:

...

A reading of the above provision contained under clause (c) of sub-section 1 of Section 34, makes it clear that the committee can be superseded, and an official administrator can be appointed in the place of committee after giving the committee an opportunity for making its representation to manage the affairs of the Society. Thus, under Section 34(1)(c) of the Act, the 3rd respondent can appoint only an official administrator that too after providing the committee an opportunity of making representation to manage the affairs of the Society. But, the 3rd respondent appointed five men committee, which Section 34 (1) of the Act, does not provide for. As the 3rd respondent issued proceedings dated 18.10.2017, in violation of the provisions contained under Section 34 of the Act, the Tribunal rightly set aside the same. Further, as the inquiry under Section 52 of the Act is pending, the Tribunal rightly gave liberty to the 3rd respondent to proceed against the private respondents in accordance with law, based on the outcome of

the regular inquiry under Section 52 of the Act. In view of the same, no exception can be taken

When the appointment of the five member committee is set aside by the Tribunal and it is stated that elected committee took charge, it is not known how writ petition is filed by Society, and how Society can be represented by the Chairman of such five member committee.

Further it is settled principle that this court under writ jurisdiction does not sit in appeal over the findings of the Tribunal, and the jurisdiction of this court, under judicial review, is confined only to the decision making process, and if the said process is shown to be arbitrary, or in violation of principles of natural justice, or that the findings have been recorded without considering the material evidence on record, and in violation of statutory provisions, this court in exercise of judicial review, would definitely set aside the same. The petitioners, in this writ petition, have not pointed out any such circumstances, and on the other hand, the Tribunal found that the impugned order dated 18.10.2017 is in violation of Section 34 of the Act, and accordingly set aside the same.

For the foregoing reasons, the writ petition is devoid of any merits and the same is accordingly dismissed.

Interlocutory applications pending, if any, shall stand closed. No order as to costs.

A.RAJASHEKER REDDY,J

DATE:29—10—2019

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