

THE HON'BLE SRI JUSTICE P.NAVEEN RAO

WRIT PETITION No.24049 OF 2019

Dated:14.11.2019

Between:

Bharata Vasudev, S/o. Lingaiah,
Aged 56 years, Occ: Ex-PIC Chairman,
Pochampally HWCS Limited,
R/0.2-222, Bhongiri Road, Bhoodan
Pochampally, (V&Mdl), Yadadri
Bhongir District and others

.. Petitioners

And

The State of Telangana, rep., by its
Principal Secretary, Cooperative Societies
Department, Secretariat, Hyderabad
And others

.. Respondents



This Court made the following:

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ORDER:

Heard learned counsel for the petitioners, learned Government Pleader for Cooperation for respondents 1 and 2, learned Government Pleader for Revenue for respondent No.3 and learned Government Pleader for Industries and Commerce for respondents 4 to 6.

2. Petitioners challenge the proceedings dated 17.05.2019 issued by the Assistant Director, Handlooms and Textiles, Yadadri Bhongir District, the 4th respondent, appointing the enquiry officer to enquire into the allegations levelled by some members of the Handloom Weavers Cooperative Society Limited, Bhoodhan Pochampally, alleging that former Executive Committee Members have misappropriated funds released to the Yard Depot of the National Handloom Development Corporation sanctioned under cluster scheme, sale of land belonging to the society without prior permission of the Registrar and remittance of sale proceeds of Rs.3.5 lakhs after lapse of one year. Enquiry was conducted into the allegations levelled by the said members of the society under Section 51 of the Telangana Cooperative Societies Act, 1964 (for short, 'the Act') and accordingly above proceedings were issued.

3. Sri A. Sudarshan Reddy, learned senior counsel appearing for Sri B. Chandra Shekhar, learned counsel for the petitioners, contended that the process now set in motion to conduct enquiry under Section 51 of the Act is vitiated on the ground of

non-compliance of requirement of Section 51 of the Act. Section 51 of the Act vests power in the Registrar to hold an enquiry or direct some person authorized by him by an order in this behalf to hold an enquiry into the constitution, working and financial condition of a society either *suo motu* or on an application of the society to which the society concerned is affiliated or of not less than 1/3rd of the members of the committee, or of not less than 1/5th of the total number of members. According to learned senior counsel, the present proceedings are not *suo motu* set in motion by the Registrar, but exercised based on the complaint lodged by the members of the society. As against more than 900 members of the society, only 11 members have submitted complaint, whereas minimum requirement is 1/5th of the total number of members. On this ground alone, the proceedings impugned are vitiated. In support of his contention, learned senior counsel placed reliance on the decision of this Court in **T. Satyanarayana v. Joint Registrar, District Cooperative Officer, West Godavari District, Eluru and others**¹.

4. Learned Government Pleader submits that the proceedings were initiated based on a complaint filed by 11 members of the society. He further submits that though only 11 members of the society have submitted complaint, a preliminary enquiry was conducted and the District Cooperative Officer submitted report to the District Collector requesting him to issue suitable directions to the concerned administrative departments for initiating suitable action and the same is treated as source of information to initiate *suo motu* proceedings.

¹ 2009 (4) ALT 724

5. However, this appears to be an afterthought. From a reading of the proceedings dated 17.05.2019 impugned in the writ petition, it is clear that the matter is set in motion only based on the complaint lodged as a *suo motu* exercise.

6. From a reading of the provision in Section 51 of the Act, it is clear that unless sufficient quorum is fulfilled, enquiry cannot be initiated and apparently only 11 members have filed complaint in a society comprising of more than 900 members. The very issue was considered in the judgment referred to above. The relevant paragraph Nos.8 and 9 of the above referred judgment read as under:

“8. The Act provides for audit, enquiry and inspection under Sections 50, 51 and 52 respectively. The common factor, as regards these three exercises is, that, the findings recorded therein can lead to surcharge proceedings, under Section 60 of the Act. Apart from that, the findings in an enquiry under Section 51, would constitute the basis, for action under Section 21-AA. The manner in which the proceedings, under these provisions; can be initiated, differs from each other. Audit under Section 50 is, almost a periodical exercise. Enquiry under Section 51 can be ordered by the Registrar, on his own motion, or on an application filed by not less than 1/3rd of the members of the Managing Committee, or not less than 1/5th of the total members of the Society. Inspection under Section 52, on the other hand, can be ordered by the Registrar, on his own motion, or on an application by a creditor Society.

9. In the instant case, the basis for the impugned proceedings dated 16.07.2007, directing enquiry under Section 51, is a representation dated 20.06.2007, filed by the 4th respondent, the Vice-President and six others, of the Society. Therefore, it cannot be treated as an enquiry, ordered by the 1st respondent, on his own accord. Once that be so, there must have been representation of, at least, 1/3rd members of the Managing Committee, or 1/5th of the

total members of the Society. The representation dated 20.06.2007, submitted by the 4th respondent and certain others, does not satisfy this requirement. Therefore, the very basis for initiating the proceedings under Section 51 of the Act, by the 1st respondent, becomes defective.”

7. As the facts in the present case are similar to the facts of the case referred to above and having regard to the plain language of Section 51 of the Act, the proceedings initiated are not maintainable and therefore liable to be set aside.

8. Accordingly, the proceedings dated 17.05.2019 are set aside and the Writ Petition is allowed. However, this order does not come in the way of the respondents from initiating appropriate proceedings in accordance with law to enquiry into the affairs of the society. Further, there is no expression of opinion on merits of the respective claims and all issues are left open. Pending miscellaneous petitions, if any, shall stand closed.

Date:14.11.2019

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P.NAVEEN RAO, J