

ORISSA HIGH COURT : C U T T A C K

W.P.(C) NO.5235 OF 2007

*In the matter of an application under Articles 226 & 227
of the Constitution of India.*

Jnanendra Samantaray

: *Petitioner*

-Versus-

The State of Orissa & ors.

: *Opp.Parties*

For Petitioner

:

M/s.M.K.Mishra, Sr.Adv.,
Mr.S.Senapati, P.K.Das
& J.Panda

For O.Ps.

:

Mr.S.Ghosh, AGA

**CORAM :
JUSTICE BISWANATH RATH**

Date of Hearing & Judgment : 14.11.2022

1. The Writ Petition involves the following prayer :-

“It is, therefore, humbly prayed that this Hon’ble Court may graciously be pleased to issue Rule Nisi calling upon the Opp.Parties to show cause as to why an appropriate writ/writs shall not be issued to quash the Annexure-1 & 2 to the extent as the Petitioner’s name has been wrongly reflected without any basis, by deleting his name from such annexures and on perusal of causes shown or insufficient causes shown if any make the said Rule absolute and may pass any appropriate order as deemed just and proper.”

2. Learned counsel for the Petitioner submitted, even assuming there is an enquiry proceeding following the direction of this Court dated 10.12.2002 in O.J.C. No.3576/2002, there was no scope for bringing in

the present Petitioner, who appears to be the President of the Society for some period involved therein involved in the enquiry. It is further contended that even assuming there is enquiry at broader level taking place if the enquiry report under Annexure-1 is sustainable in the eye of law so far it relates to the Petitioner on the grounds, firstly, for there is no involvement of the present Petitioner in the enquiry proceeding, vide Annexure-1, secondly, in absence of any concrete finding against the Petitioner and thirdly, any observation therein involving the Petitioner since remains contrary to his own discussion. Reading through the order of this Court dated 10.12.2002 passed in O.J.C. No.3576/202, learned counsel for the Petitioner contended, first of all even though this Court directed for entering into the enquiry and undertaking follow up action, such order never involved the present Petitioner. Taking this Court to the entire proceeding, learned counsel for the Petitioner submitted, there is involvement of ex-Secretary and the Secretary incumbent in the enquiry proceeding but however there is no involvement of the Petitioner in the whole enquiry proceeding. It is thus contended, any development in such enquiry, such development should not affect the Petitioner also on the ground of non-compliance of natural justice. Taking this Court to the impugned order at Annexure-1, an attempt has been made by the learned counsel for the Petitioner to satisfy that the Petitioner has never been

involved in such proceeding, even in spite of observation of the Enquiring Officer at some point of time to issue notice to the Petitioner. Learned counsel for the Petitioner through the pleading contended, the Petitioner has never been served with notice involving such enquiry. Accordingly, a request is made for allowing the Writ Petition.

3. Mr.Ghosh, learned Additional Government Advocate for the State however, defending the action of the Public Authority through the report and the follow up action of the Authority while not disputing the allegation of the Petitioner through the enquiry report that there has been no recording of providing opportunity to the Petitioner herein in the entire enquiry proceeding, however, reading through the charges and findings, contended, for there is involvement of serious charges involving public money, the Petitioner being the President of the Society for some period of time should also be taken into task and as such contended, there is no illegality also in proceeding against the Petitioner. Mr.Ghosh thus requested this Court for dismissing the Writ Petition.

4. Considering the rival contentions of the Parties and going through the previous disposal of O.J.C. No.3576/2002, this Court finds, vide orders dated 10.12.2002 and 8.11.2006, the Division Bench of this Court appears to have passed the following orders :-

“10.12.2002.

Additional Government Advocate Mr.P.K.Mohanty submits that the investigation has been taken up and it is going on. We are not quite happy with the way the investigation has been delegated from one to the other. We, therefore, direct opposite party no.2, Deputy Registrar, Co-operative Societies, Cuttack Division, Cuttack, to himself investigate thoroughly the charges raised regarding misappropriations. We think that it is necessary to keep this writ petition pending so as to ensure that a thorough and proper investigation is made into the allegations. In that view, we direct opposite party no.2 to take up the investigation personally, pursue it vigorously and complete it expediently. After completing the exercise, opposite party no.2 will file an affidavit in this Court regarding his findings.

This matter will be called on for further hearing on 24.3.2003.”

8.11.2006

“Heard learned counsel for petitioner as well as learned Additional Government Advocate.

On 10.12.2002 this Court passed the following order :

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Additional Government Advocate Mr.P.K.Mohanty submits that the investigation has been taken up and it is going on. We are not quite happy with the way the investigation has been delegated from one to the other. We, therefore, direct opposite party no.2, Deputy Registrar, Co-operative Societies, Cuttack Division, Cuttack, to himself investigate thoroughly the charges raised regarding misappropriations. We think that it is necessary to keep this writ petition pending so as to ensure that a thorough and proper investigation is made into the allegations. In that view, we direct opposite party no.2 to take up the investigation personally, pursue it vigorously and complete it expediently. After completing the exercise, opposite party no.2 will file an affidavit in this Court regarding his findings.

This matter will be called on for further hearing on 24.3.2003”

In terms of the direction issued by the aforesaid order dated 10.12.2002, in the Inquiring Officer-cum-Deputy Registrar of Co-operative Societies, Cuttack Division, Cuttack conducted

inquiry into the allegations against certain persons mentioned in the said report and submitted an elaborate report.

We direct the Registrar or Co-operative Societies, Orissa, Bhubaneswar to peruse the said report thoroughly and examine as to whether a finding has been given by the said Deputy Registrar as to commission of serious irregularities like misappropriation of funds, and/or commission of some other penal offences. If he finds that indeed such a finding has been given by the Deputy Registrar of Co-operative Societies, Cuttack Division, Cuttack in the said report, it is needless to observe here that it shall be the responsibility of the said Registrar to take all necessary steps for registration of an F.I.R. and thorough investigation in accordance with the provisions of the Code of Criminal Procedure against the offenders who are responsible for commission of serious irregularities like misappropriation of funds and commission of other cognizable offences. The Registrar of Co-operative Societies shall take such steps on perusal of the said report within a period of six months from the date of communication of this order. Accordingly, we further direct that it shall be the responsibility of the petitioner to produce a certified copy of this order along with a copy of the said report of the Deputy Registrar of Co-operative Societies, Cuttack Division, Cuttack before the Registrar of Co-operative Societies, Orissa within a period of two weeks from today for compliance with the aforesaid direction.

The writ petition is thus disposed of.”

5. Reading the aforesaid orders, this Court from the first order dated 10.12.2002 observes, finding the allegation to be serious while expressing its unhappiness with the way the investigation has shown the progress, High Court then directed the Deputy Registrar, Cooperative Societies to himself investigate thoroughly the charges raised and to take up the investigation personally, further also completing such investigation as expeditiously as possible and for filing affidavit in Court accordingly. Case was next taken up and the final order dated 8.11.2006 further reveals, in disposal of the Writ Petition indicted herein above, this Court

directed the Registrar of Cooperative Societies, Bhubaneswar to peruse the report thoroughly and examine as to whether the finding given by the Deputy Registrar as to commission of serious irregularities like misappropriation of funds and/or commission of some other penal offences and if he finds any such finding, it shall be the responsibility of the Registrar to take all necessary steps for registration of F.I.R. and thorough investigation in accordance with law with provisions of the Code of Criminal Procedure against the offenders responsible for commission of such irregularities.

6. This Court here recording the statement of both the Parties as a matter of follow up action there has also been raising of F.I.R. and investigation of criminal case but both the Parties are unable to indicate the outcome if any involving such proceeding. At this stage, keeping in view the ground of challenge to the impugned order, this Court for the direction in disposal of O.J.C. No.3576/2002 finds, there might not be any difficulty in entering into an investigation on such serious allegation. However, in the event such serious allegations are investigated into, it has to involve all Parties likely to be affected including the present Petitioner. In the event the Deputy Registrar was of the opinion that the present Petitioner is also to be included in the enquiry process and he had taken a decision to include all concerned including the present Petitioner, as

reveals there is also a decision by the Enquiring Officer to issue notice to all such persons including the President, the Petitioner herein, however, reading through the appearance position and notice position through Page-14 of the Brief, this Court nowhere finds any observation on the service of notice on the Petitioner or his involvement and/or participation in the enquiry proceeding. This Court here also takes into consideration the specific allegation of the Petitioner in not involving him in the entire enquiry proceeding. Considering the submission of the learned State Counsel, this Court finds no response by way of denial to such allegation. In the circumstance, for there is a report prepared behind the Petitioner, such report if at all acted upon should be accepted as against persons involved and in no circumstance can involve the present Petitioner.

7. This Court here finds, the Petitioner is enjoying the stay order on civil or departmental proceedings pursuant to the order dated 3.4.2007 observing proceeding directed in Annexure-2 may be initiated but no final decision would be taken without leave of the Court and further no coercive action would be taken against the Petitioner without leave of the Court. In the circumstance, this Court observes, any decision through the civil or departmental proceeding dependent on Annexure-2 shall confine to all such persons except the present Petitioner. Final outcome, if any, shown may be shown at the earliest.

8. The Writ Petition stands disposed of with interference in the impugned orders at Annexure-1 & 2 but so far it relates to the Petitioner alone. No costs.

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(Biswanath Rath, J.)

Orissa High Court, Cuttack.
The 14th October, 2022/M.K.Rout, A.R.-cum-Sr.Secy.

