

*** THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN
AND
THE HON'BLE MRS JUSTICE SUREPALLI NANDA
+ W.A.No.1422 of 2017 and W.P.Nos.42098 & 42153 of 2017**

% Date: 18-07-2022

W.A.No. 1422 of 2017

Mr. K.Ramachandra Murthy

... Appellant

v.

**\$ The Khammam District Cooperative Marketing
Society Ltd 61306 VDOs Colony
Khammam Town
Rep by its Business Manager and others**

... Respondents

**! Counsel for the Petitioner : Mr. D.V.Seetharama Murthy,
learned Senior Counsel appearing
for Mr. N.Ashwani Kumar**

^ Counsel for respondents : ----

< GIST:

➤ HEAD NOTE:

? CASES REFERRED:

- 1.1996 (4) ALT 299
2. 2009 (4) ALT 724
3. 2008 (1) SCC 728

THE HON'BLE THE CHIEF JUSTICE UJJAL BHUYAN

AND

THE HON'BLE MRS. JUSTICE SUREPALLI NANDA

W.A.No.1422 of 2017 and W.P.Nos.42098 & 42153 of 2017

COMMON JUDGMENT: *(Per the Hon'ble the Chief Justice Ujjal Bhuyan)*

Heard Mr. D.V.Seetharama Murthy, learned Senior Counsel for the appellants in W.A.No.1422 of 2017 and for the petitioners in W.P.Nos.42098 and 42153 of 2017.

2. The writ appeal is directed against the final order dated 10.08.2017 passed by the learned Single Judge in W.P.No.19000 of 2017 filed by the appellants.

3. W.P.No.42098 of 2017 has been filed by appellant No.1-K.Ramachandra Murthy as the petitioner assailing the orders dated 17.10.2016 and 19.10.2016 passed by the Lokayukta directing initiation of proceedings under Section 51 of the Telangana State Cooperative Societies Act, 1964.

4. W.P.No.42153 of 2017 has been filed by appellant No.2-S.Seetharamulu seeking the same reliefs.

5. W.P.No.19000 of 2017 was filed by the appellants for quashing of proceedings dated 23.05.2017 of respondents No.2 and 3 *i.e.*, District Cooperative Officer, Khammam District and Assistant Registrar/Inquiry Officer, Khammam.

6. Case projected by the appellants in W.P.No.19000 of 2017 was that appellant No.1 was the erstwhile Chairman of Khammam District Cooperative Marketing Society Limited (briefly 'the Society' hereinafter) for the period from 2005-13. Appellants No.2 and 3 were employees of the Society, who have subsequently retired on attaining the age of superannuation.

7. By the proceeding dated 04.11.2016 of District Collector, Khammam, an enquiry into the affairs of the Society was ordered under Section 51 of the Andhra Pradesh Cooperative Societies Act, 1964, since adopted as the Telangana Cooperative Societies Act, 1964 (briefly 'the Act' hereinafter). After enquiry, a report was submitted on 23.05.2017. The related writ petition came to be filed challenging the merit of the enquiry report.

8. Learned Single Judge noticed that merit of the enquiry report could not be gone into in the writ proceeding. Adverting to Section 51 of the Act, learned Single Judge observed that report of the Enquiry Officer shall be communicated to the managing committee of the Society by the Registrar whereafter, the enquiry report shall be placed by the managing committee before the General Body or Special General Body of the Society within the period specified. Follow up action shall be taken thereafter. Learned Single Judge further noted the contention of the appellants that the very initiation of enquiry was bad, but held that no such challenge was made. It has further been observed that action is yet to be taken on the basis of the enquiry report. In such context, the writ petition was disposed of by giving liberty to the appellants to submit their representation before the Registrar questioning the legality and validity of the enquiry whereafter, Registrar was directed to take action on the objections raised by the appellants. Observing that Court cannot interfere at the stage of submission of report, Writ Petition No.19000 of 2017 was dismissed *vide* the order dated 10.08.2017.

9. Relevant portion of the order of the learned Single Judge dated 10.08.2017 is extracted hereunder:

“The enquiry into the affairs of the Society was ordered under Section 51 of the A.P. Co-operative Societies Act, 1964 (for short ‘the Act’). The enquiry was not challenged at any point of time, but when the enquiry report was submitted, the present Writ Petition was filed challenging the findings going into the merits of the case running in twenty one (21) pages in the affidavit filed in support of the Writ Petition. Hence, submission of enquiry report cannot itself be called as bad and this Court cannot decide whether the findings of the Enquiry Officer are proper or not, since a separate procedure is contemplated under Section 51 of the Act. Section 51 of the Act provides that the report of the enquiry along with the findings shall be communicated to the managing committee of the Society by the Registrar and it shall be the responsibility of the managing committee to place the enquiry report before the General Body or Special General Body convened for the purpose of its information within a period of one month from the communication of the enquiry 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. The proviso to said section enables the Registrar to take follow-up action on the basis of the enquiry report. But, the mere submission of the enquiry report by the Enquiry Officer, who was validly appointed, cannot be challenged in the present Writ Petition.

Learned counsel for the petitioners submits that the Enquiry Officer recommended civil and criminal action and it causes prejudice to the interest of the petitioners. He also relied on an order

of this Court in W.P.No.15422 of 2007 dated 24.10.2008 and submitted that the very initiation of enquiry itself is bad. But, no such challenge is made in the relief sought in the present Writ Petition and, in any event, the enquiry was proceeded and action is yet to be taken on the basis of the enquiry report. Since the enquiry report was submitted to the Registrar, it is open to the petitioners to submit their representation, if there are any lapses in the process of conducting enquiry and it is for the Registrar to take action on the basis of the objections raised by the petitioners. But, at this stage, this Court cannot interfere with the report submitted, as separate procedure is contemplated under the provisions of the Act.

The Writ Petition is, accordingly, dismissed. There shall be no order as to costs.”

10. Learned Senior Counsel for the appellants submits that there was a ground raised in the writ affidavit that enquiry proceedings could not have been taken up by respondents No.2 and 3, as such proceedings were neither *suo motu* in nature nor on the request of one-third of the members of the managing committee nor on the request of one-fifth of the members of the General Body. In the appeal, a specific ground has been taken that the enquiry was carried out on the direction of the Lokayukta, which is contrary to the provisions of Section 51 of the Act. Therefore, such a direction

is null and void and any action taken on such direction would also be null and void.

11. Learned Senior Counsel has elaborately taken us to the provisions of Section 51 of the Act and submits therefrom that Section 51 of the Act contemplates holding of enquiry on three eventualities- *Firstly*, the Registrar may hold such an enquiry or direct such an enquiry *suo motu*; *Secondly*, he may direct such an enquiry on the application of the Society to which the Society concerned is affiliated; *Thirdly*, if a requisition is made by not less than one-third of the members of the Managing Committee or by not less than one-fifth of the total number of members of the General Body. He has also referred to Section 10 of the Telangana Lokayukta Act, 1983 (briefly 'the 1983 Act' hereinafter) and contends that Lokayukta was not at all justified in directing the Registrar to carry out enquiry under Section 51 of the Act, more so, in view of the findings recorded in the preliminary enquiry that there is no truth in the allegation of corruption/misappropriation.

12. Learned Senior Counsel has placed reliance on two Single Bench decisions of this Court in **Mandava Laxmana Rao vs. Primary Agricultural Cooperative Society¹** and **T.Satyanarayana vs. Joint Registrar²**. Finally, learned Senior Counsel has placed reliance on paragraph 33 of the decision of the Supreme Court in **Devinder Singh v. State of Punjab³**.

13. We have duly considered the submissions made by learned Senior Counsel for the appellants and the writ petitioners.

14. In the proceedings held on 05.07.2022, we had made a *prima facie* observation that there are no good reasons to interfere with the order dated 10.08.2017 passed by the learned Single Judge in W.P.No.19000 of 2017. On further examination of the issue today, we reaffirm our *prima facie* observation as made above and hold that there are no good reasons to interfere with the order of the learned Single Judge dated 10.08.2017. We say this for the following reasons.

¹ 1996 (4) ALT 299

² 2009(4) ALT 724

³ 2008 (1) SCC 728

14.1. From the materials on record, we find that one Pitta Srinivasa Reddy had lodged a complaint before the then Lokayukta, Andhra Pradesh, alleging widespread corruption and misappropriation of money by the appellants and other members of the Society. It further appears that Lokayukta directed Deputy Director (Investigation) in his office to conduct an enquiry and to submit report. Deputy Director (Investigation) conducted the enquiry and submitted report on 29.09.2016. In his report, the Deputy Director did not find merit in the allegations but, came to the conclusion that because of the failure of the appellants and others to pursue the matter of establishing the plant in question, the Society incurred loss of about Rs.4 to 5 crores, which the Society was not in a position to recover. For this, the Deputy Director held the managing committee members and the business officials associated with the Society responsible. It was further observed that as regards the business in crackers and fertilizers, proper accounts were not maintained. For lack of supervision, the Society suffered heavy loss. Therefore, it was observed

that if a detailed and comprehensive statutory enquiry under Section 51 of the Act is conducted, the responsibility for such lapses could be fixed and thereafter, action could be taken for recovery of loss as well as for initiating penal action.

14.2. On perusal of the enquiry report, Lokayukta passed an order on 17.10.2016 directing the District Cooperative Officer, Bhadrachalam District, to initiate proceedings under Section 51 of the Act. It was thereafter that consequential order was passed on 19.10.2016 by the District Collector, Khammam for conducting enquiry under Section 51 of the Act.

15. Section 51 of the Act deals with enquiry. The said provision being relevant is extracted hereunder:

“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 authorised 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 the 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 Rules made thereunder, the byelaws of a society and the action of 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.

[**Explanation:** For the purposes of this section, "Managing Committee" includes a Committee constituted under Section 31(1)(a) and a person-in-charge appointed under Section 32(7)(a) and also Administrator(s) appointed under Section 34 of the Act.]

16. As already noticed above, an enquiry under Section 51 of the Act can be initiated by the Registrar or by persons authorized by him on his own motion or on the application of an affiliated society or on requisition of either one-third of the members of the managing committee or one-fifth of the total number of members of the General Body.

17. Much emphasis has been laid by learned Senior Counsel on the expression '*suo motu*', which according to him would mean an action initiated by the Registrar in the three circumstances mentioned in Section 51 of the Act. Any direction to conduct an enquiry by the Lokayukta or by any other officer would tantamount to violating the mandate of Section 51. We will deal with this aspect a little later.

18. First, let us deal with the provisions of the 1983 Act. The object of the said Act is to make provision for appointment and functioning of Lokayukta and Upa-Lokayukta, for investigation of administrative action taken by or on behalf of the Government or by certain local and public authority in the State of Telangana including any omission and commission in connection with or arising out of such action and for matters connected therewith.

19. Section 7 of the 1983 Act mentions the matters, which may be investigated by Lokayukta or Upa-Lokayukta. While sub-section (1) mentions such action against specific officials starting from Minister or a Secretary down to any other public servant, sub-section (2) empowers the Upa-Lokayukta to investigate any action of any public servant other than those referred to in sub-section (1).

20. Section 8 of the 1983 Act specifically deals with matters not subject to investigation by Lokayukta or Upa-Lokayukta. It specifically states that the Lokayukta or Upa-Lokayukta shall not investigate any allegation in respect of which, a formal and public

enquiry has been ordered under the Public Servants (Inquiries) Act, 1850 and in respect of a matter, which has been referred for enquiry under the Commissions of Inquiry Act, 1952, where the Lokayukta or Upa-Lokayukta, as the case may be, has given his prior concurrence for such enquiry.

21. The procedure in respect of investigation is laid down in Section 10 of the 1983 Act. As per sub-section (4)(c) thereof, the Lokayukta or Upa-Lokayukta may, in his discretion, refuse to investigate or discontinue the investigation of any complaint involving any allegation, if in his opinion, other remedies are available to the complainant and in the circumstances of the case, it would be more proper for the complainant to avail of such remedies. In the instant case, remedy was available under Section 51 of the Act.

22. In **Mandava Laxmana Rao vs. Primary Agricultural Cooperative Society** (1 supra), a learned Single Judge of this Court was concerned with the challenge made to an order of the Deputy Registrar of Cooperative Societies as was affirmed by the Appellate

Tribunal. In that case, an enquiry was made under Section 51 of the Act. But, it was noticed that the enquiry proceedings were initiated on the basis of a direction of the Minister for Cooperation. In that context, it was held that an enquiry conducted on the basis of direction of the departmental Minister could not have been construed to be an action initiated *suo motu* by the Registrar.

23. Likewise in **T.Satyanarayana vs. Joint Registrar** (2 supra), it was noticed that the enquiry under Section 51 of the Act was ordered on a representation submitted by seven members of the Society. In that context, learned Single Judge held that such an enquiry was not on the own accord of the Registrar and therefore, could not have been construed to be a proceeding under Section 51 of the Act.

24. In so far the first decision of this Court in **Mandava Laxmana Rao vs. Primary Agricultural Cooperative Society** (1 supra) is concerned, we are of the view that the order of the learned Single Judge is perfectly justified. The departmental minister could not have directed the statutory enquiry when the

statute did not clothe him with such power and therefore, the consequential enquiry could not have been construed to be an enquiry under Section 51.

25. On the other hand, in the second decision of this Court in **T.Satyanarayana vs. Joint Registrar** (2 supra), the enquiry was initiated on a representation submitted by seven members of the society, which also did not fall within the four corners of Section 51 of the Act. Law requires requisition of either one-third of the members of the managing committee or one-fifth of the total number of members of the General Body to initiate an enquiry under Section 51 of the Act. Therefore, learned Single Judge was right in holding that the very basis for initiating proceedings under Section 51 of the Act by the Registrar becomes defective.

26. In so far the decision of the Supreme Court in **Devinder Singh v. State of Punjab** (3 supra) is concerned, there is no dispute to the proposition that an order passed without jurisdiction is a nullity. Statutory authorities are bound by the procedure laid down in the statute.

27. However, in so far the present case is concerned, we find that the enquiry report has been submitted by the cooperative authorities and the matter is before the Registrar. It is in that context that the learned Single Judge held that the appellants would have the opportunity to submit their objection before the Registrar and it is for the Registrar to take a decision on such objection raised by the appellants one way or the other.

28. Though the expression '*suo motu*' is neither expressly used in Section 51 of the Act nor defined, but such expression is implied when Section 51 of the Act provides for conducting of enquiry by the Registrar on his own motion. The expression *suo motu* means "of one's own motion". The expression implies a considerable discretion and option. While discretion is vested with the Registrar to take action on his own motion *i.e., suo motu*, exercise of such discretion must be on the basis of some materials before him. It cannot be exercised in an arbitrary, unreasonable or in a fanciful manner *de hors* any materials on record. To trigger an action for *suo motu* exercise of power, the alleged irregularities have to be brought

to the notice of the Registrar. The Registrar cannot, in the name of *suo motu* exercise of power, carry out a roving and fishing enquiry. To act on his own motion or to act *suo motu*, there must be some basis. It is in that context that the order of the Lokayukta needs to be viewed, more so, in view of the observations made by the Deputy Director in his enquiry report that there is a provision for statutory enquiry under Section 51 of the Act. Learned Single Judge has disposed of the writ petition by permitting the appellants to raise their objection before the Registrar, leaving it open to the Registrar to take a decision one way or the other.

29. In the circumstances and for the reasons indicated above, we are not inclined to entertain the present writ appeal and the writ petitions. Those are accordingly dismissed. No costs.

As a sequel, miscellaneous petitions, pending if any, stand closed.

UJJAL BHUYAN, CJ

SUREPALLI NANDA, J

Date: 18.07.2022
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