

**IN THE HIGH COURT OF TELANGANA AT HYDERABAD****W.P. No. 4379 of 2021**

Between:

M/s S.K. Industries Cotton Merchant &  
Commission Agent.

... Petitioner

And

The State of Telangana and others

... Respondents

**JUDGMENT PRONOUNCED ON: 16.08.2023**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

1. Whether Reporters of Local newspapers : Yes  
may be allowed to see the Judgment?
2. Whether the copies of judgment may be  
marked to Law Reporters/Journals? : Yes
3. Whether Their Lordships wish to  
see the fair copy of the Judgment? : Yes

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**SUREPALLI NANDA, J**

**THE HON'BLE MRS JUSTICE SUREPALLI NANDA**

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< Gist:

> Head Note:

! Counsel for the Petitioners : Chandrasen Law Offices

^ Standing Counsel for Respondents: G.P. for Industries &  
Commerce

? Cases Referred:

**HON'BLE MRS JUSTICE SUREPALLI NANDA****W.P. No. 4379 of 2021****ORDER:**

**Heard the learned Senior Counsel Sri Chandrasen appearing on behalf of the Petitioner and the learned Government Pleader for Industries and Commerce appearing on behalf of the Respondents.**

2. This Writ Petition is filed praying to issue a Writ of Mandamus/certiorari to set-aside the order dated 17.06.2020 vide proceedings No. R.C.No.5218/03-S1, of the 2<sup>nd</sup> respondent by declaring the same as illegal, arbitrary, violative of Article 14, 21 of the Constitution of India and section 121 (2) of A.P. Co-operative Societies Act 1964 and consequently direct the respondents to pay a sum of Rs.1,15,78,745/- with interest calculated 18% interest to the petitioner forthwith.

**3. The case of the Petitioner, in brief, is as follows:**

a) The Petitioner is the proprietor of Ms. S.K Industries Cotton Merchant & Commission Agent, having its office at

New Bus stand road, Adilabad town. The Petitioner supplied cotton to the Adilabad Cotton Grower co-operative Spinning Mills Limited, Industrial Area Adilabad town. The said spinning mill had to pay sum of Rs.75,92,625/- towards cost of cotton supplied by the petitioner.

b) The said spinning mills issued a cheque for Rs.75,92,620/- dated 30.1.1999. The said cheque was dishonored. The said spinning mills went on liquidation and the erstwhile State of Andhra Pradesh issued a Notification dated 24.08.2000 inviting bids for the sale of assets of the said co-operative spinning mills, Adilabad.

c) Subsequently, the petitioner filed W.P. No.1458 of 2001 before this High Court questioning the said Notification. This court was pleased to dispose the said W.P on 08.05.2001 directing to deposit the sale proceeds of said spinning mills in the A.P.Public Enterprise Department and receive the claims of unpaid traders.

d) On 03.08.2001, the petitioner received a letter from the Chairman A.P. Public Enterprise Department asking the petitioner to submit his claim. Accordingly, the Petitioner

made a claim demanding Rs.75,92,620/- along with interest @ 18 % per annum i.e. total Rs. 1,15,78,748/-, but the same was not paid to the Petitioner. Aggrieved by the same, the petitioner issued a legal notice dated 16.03.2002 to the concerned authorities of State of AP and then filed a money suit i.e. O.S.No.16 of 2010.

e) The 3<sup>rd</sup> Respondent, in the above-mentioned money suit, stated that the liquidation proceedings of the Adilabad Cotton Grower Co-operative Spinning Mills Adilabad was already completed and the assets of said spinning mills were already sold to some third party in auction sale. Thus, the court was please to dispose O.S.No.16 of 2010 on 06.10.2015, observing that the leave of the Registrar Co-operative Societies is essential for continuation of said proceedings in O.S.No.16 of 2010 and accordingly liberty was given to the petitioner to approach concerned authorities for redressal.

f) On 30.01.2016, the petitioner submitted a representation before the 2<sup>nd</sup> Respondent, who is acting as Registrar for co-operative societies for the State of Telangana,

requesting to grant leave to proceed in O.S. No. 16 of 2010. However, the 2<sup>nd</sup> Respondent failed to grant leave.

g) Aggrieved by the same, the petitioner filed W.P. No.5880 of 2016 before this High Court, but at admission stage this Court was pleased to dispose said W.P on 26.02.2016 directing the 2<sup>nd</sup> Respondent to pass appropriate orders on the representation request dated 30.01.2016 within a period of four weeks from the date of receipt of the copy of the order.

h) Consequently, the Petitioner received a copy of proceedings issued by the 2<sup>nd</sup> Respondent herein vide Rc. No.5218/2003-S dated 29.03.2016, wherein it was informed that the 2<sup>nd</sup> Respondent cannot grant the leave to the petitioner under section 121(2) of A.P. Co-operative societies Act to file petition before the Family court cum IV Additional District & Sessions Judge Adilabad for recovery of claimed amount. It was informed that further action will be initiated as per the Liquidation norms by the Liquidator of the Mill.

i) However, it appears that the 2<sup>nd</sup> Respondent was not ready to grant leave to continue the suit basing on a report

given 3<sup>rd</sup> Respondent dated 19.03.2016. Therefore, with intent to know the contents of report given by the 3<sup>rd</sup> Respondent dated 19.3.2016, the petitioner made a representation dated 04.04.2016 to the 2<sup>nd</sup> Respondent herein under R.T.I. Act. But through letter vide Rc. No.391/2016-M, dated 20.04.2016, the petitioner was informed that the 2<sup>nd</sup> Respondent cannot supply the information sought by him under R.T.I. Act.

j) Aggrieved by the same, the Petitioner has challenged the proceedings R.C.No.5218/2003-S, dated 29.03.2016 by virtue W.P. No.15184/2016 before this court and this court by order dated 13.07.2019 allowed the W.P by setting aside the impugned order dated 29.03.2016 and remanded back to the concerned authorities to pass appropriate orders after giving notice and hearing to the petitioner.

k) Thereafter, as per the direction of this court in W.P.No.15184/2016, the 2<sup>nd</sup> Respondent passed an order vide proceedings R.C.No.5218/2003-S1, dated 17.06.2020 stating that, the petitioner has given an undertaking to the government appointed liquidator on 06.01.2009 duly agreeing

to take 50% of the total claim amount i.e., Rs.39, 47,288/- and after giving acquiescence it is untenable for him to approach the legal courts and seek a modified settlement of entire claim amount with interest i.e, Rs.1,15,78,745/.

l) Despite several requests made to the respondents since 1999 the dues were not settled and the said undertaking and the modified settlement was not honored. Alongside, in the year of 2009 the 2<sup>nd</sup> Respondent with undue influence coerced the petitioner to give an undertaking accepting only 50% of the claim towards his claim.

m) To the petitioner's dismay the above said proposal was not honored and the same proposal has become infructuous since it is deemed withdrawn. Therefore, the 2<sup>nd</sup> Respondent cannot bind the petitioner to a proposal made nearly 10 years ago as the petitioner suffered legal costs and consequences and interest of loans to the third parties due to inaction of the 2<sup>nd</sup> Respondent in the settlement of dues.

n) Thus, for the above-mentioned reasons, the 2<sup>nd</sup> Respondent's statement of taking suitable action to pay 50% of due claims of Rs.39,47,288/- after a period of 20 years is

unreasonable when looked in consonance with the amount of mental and financial distress the petitioner was subjected to by the inaction of 2<sup>nd</sup> Respondent in settling the claims, the present Writ Petition is filed.

**4. The counter affidavit filed by the Respondent No. 3, in brief, is as follows:**

a) The petitioner has given an undertaking on his firm letter head dated 06.01.2009 duly agreeing to take the amount of 50% of claim dues against the due amount of Rs.39,47,288/- towards full and final settlement as decided by the Government.

b) Further, the petitioner also declared that all cases filed in any court against the above mill in respect of cotton bales dues were withdrawn and no further cases will be filed against Government, or SPINFED, or Director (H&I) and the mill in any way or any manner. Accordingly, Lr.Rc.No.15274/2004-S1 dated 06.05.2009 was addressed to the Government for payment of 50% of total claim amount shall be paid to the petitioner.

c) In contrary to the Petitioner's own undertaking, the petitioner filed W.P No.5880/2016, dated 26.02.2016 and also filed money suit vide O.S.No. 16/2010 and the same was returned by an order dated 06.10.2015. After giving such undertaking, it is untenable to claim a modified settlement of entire claim amount with interest.

d) Further, in the undertaking it was clearly indicated that "all court cases filed in any court against the above mill in respect of cotton bales dues were withdrawn and no further cases will be filed against Govt/ Spinfed/ Director (H&T) and the mill or any way in any manner"

e) Under the above-mentioned circumstances, the Petitioner has created prolonged litigation instead of allowing this Department to take steps to pay the amount due as per the undertaking. Alongside, the said litigation is intentionally created to wrongfully claim a sum of Rs. 1,15,78,745/- with interest after giving consent for payment of 50% of Rs.39,47,288/- to the Government.

f) Furthermore, the Government vide Memo.11379/Tex.1/2005-16, dated 20.10.2008 has been

consented for making payment of 50% dues to all the parties/traders who have supplied Cotton to Adilabad Cotton Growers Cooperative Spinning Mills Ltd. Hence, there is no justified reasons for the petitioner, to once again approach the Courts and seek relief. Hence, the Writ Petition is without merits and is liable to be dismissed.

**PERUSED THE RECORD :**

**5. The proceedings dt. 17.06.2020 vide Rc.No.5218/03-S1 of the 2<sup>nd</sup> Respondent herein reads as under :**

The party M/S.S.K. Industries has personally appeared before me on 03.02.2020 along with the Advocate. I have perused the record on file and the written arguments filed by the Applicant on 06.02.2020. It is opined that:

1. M/S .S.K. Industries has given an under taking to the Government appointed liquidator on 06.01.2009 duly agreeing to take 50% of the total claim amount i.e Rs.39,47,288/-. After giving such acquiescence it is untenable to approach the legal courts and seek a modified settlement of entire claim amount with interest i.e. Rs.1,15,78,745/-.

2. Further, in his undertaking Mr. Rais Ahmed Javid has clearly indicated that "all cases filed in any court against the above mill in respect of the cotton bales dues was /

were withdrawn and no further cases will be filed against Government /SPINFED/Director of Handlooms and Textiles/ and the Mills /or any way in any manner.

3. However, in contravention of his own acquiescence by way of undertaking, he has filed a suit in the court of District Judge, Adilabad on 11.08.2010 vide O.S No 16/2010 asking for payment by way of recovery of Rs. 1,15,78,745/-.

4. Under the circumstances, he has created prolonged litigation instead of allowing this department to take steps to pay the amount due as per the undertaking.

5. It is also observed that this litigation is intentionally created to wrongfully claim a sum of Rs.1,15,78,745/- after giving consent for payment of 50% of Rs.39,47,288/- to the Government.

6. Further, this office has already addressed the Government vide Rc.no.15274/2004-S1, dated: 06.05.2009 for payment of 50% of the total claim amount to M/s .S.K. Industries, Adilabad.

7. Also, there is no precedent for filing such a litigation, as other traders viz, Sri Chaitanya cotton traders, Guntur and M/s Kamala and company,Guntur whose dues were paid, were also paid 50% of the claims due only.

8. Further, it is observed that Government vide Govt. Memo no.11379/Tex.1/2005-16 dated 20.10.2008 has already consented to making payment at 50% of the dues to all the parties/ traders who have supplied Cotton

to the Adilabad Cotton Growers Cooperative Spinning Mills Ltd.

9. Hence, there is no justified reason for M/s .S.K. Industries to once again approach the Courts and seek relief. This department will take suitable action to pay 50% of due claims of Rs.39,47,288/- and there is no dispute of the department on this claim, for which M/s .S.K. Industries has given consent/ Undertaking.

10. Under Section 121 (2) of Erst while A.P. Cooperative Act,1964 and now Telangana Cooperative Societies Act 1964, this Authority cannot grant leave to resubmit the suit O.S. No. 16/2010 before the Hon'ble Judge Family Court Cum IV, Additional District and Sessions Judge, Adilabad for all the above mentioned reasons.

**6. The relevant portion of the order dt. 13.06.2019 in W.P.No.15184/2016 reads as under :**

Accordingly, the Writ Petition is allowed setting aside the impugned order, dated 29.03.2016, and the matter is remanded to the authority concerned to pass appropriate orders on the representation of the petitioner, dated 30.01.2016, after giving notice and after affording the opportunity of hearing the petitioner.

**7. The order dt. 26.02.2016 in WP No.5880/2016 reads as under :**

“4. Having regard to the submissions made by the learned counsel received on instructions, I am satisfied that the writ petition can be disposed of by directing the second respondent to pass appropriate orders on the representation/request dated 30/1/2016 within four weeks from the date of receipt of a copy of this order. No costs.

**8. Counter affidavit filed by the Respondent Nos.1 to 3, in particular paras 7 and 8 read as under:**

7. It is submitted that under the circumstances, he has created prolonged litigation instead of allowing this Department to take steps to pay the amount due as per the undertaking. It is also observed that this litigation is intentionally created to wrongfully claim a sum of Rs.1,15,78,745/- with interest after giving consent for payment of 50% of Rs.39,47,288/- to the Government. Further, this office also addressed the Government vide Lr. Rc. No. 15274/2004-S1, dt: 06.05.2009 for payment of 50% of total claim amount to M/S S.K. Industries, Adilabad; also there is no precedent for filing such litigation as other traders viz, Sri Chaitanya Cotton Traders, Guntur and M/s Kamala & Company, Guntur whose dues were paid to the extent of 50% of total claim amount as per their undertaking.

8. It is submitted further observed that the Government vide Memo 11379/Tex. 1/2005-16, dt:20.10.2008 has already consented for making payment of 50% dues to

all the parties/traders who have supplied Cotton to Adilabad Cotton Growers Cooperative Spinning Mills Ltd., Hyderabad.

Hence, there is no justified reasons for M/s S.K.Industries to once again approach the Courts and seek relief. The Department/Government is ready to take suitable action to pay the 50% of due claims of Rs.39,47,288/- and there is no dispute of the Department on this claim, for which M/s S.K. Industries has given Consent/Undertaking.

#### **DISCUSSION AND CONCLUSION:**

**9. It is specific case of the Petitioner that the order impugned dt. 17.06.2020 in Rc.No.5218/03-S1 of the 2<sup>nd</sup> Respondent herein failed to take into consideration the mental and financial distress the Petitioner was subjected to by the inaction of the Respondent No.2 in settling the claims of the Petitioner for the last more than 20 years and further that the 2<sup>nd</sup> Respondent would take suitable action to pay 50 % of due claims of Rs.39,47,288 / - is not reasonable in view of the fact that the Petitioner in the year 2009 was coerced by the 2<sup>nd</sup> Respondent to give an undertaking accepting only 50 % of the claim towards Petitioner's claim and the**

Petitioner in order to settle the dues of the third parties and being in serious financial distress had agreed for the said proposal under duress with a fond hope that the 2<sup>nd</sup> Respondent will immediately settle the dues, but however, in view of the fact that the Petitioner's claim amount remained unpaid since the year 2009, it was not fair and reasonable to contend that the Petitioner would be paid 50% of due claims of Rs.39,47,288/- after a period of 20 years.

### **CONCLUSION**

10. On perusal of the material on record, it is evident that in pursuance to the impugned proceedings dt. 17.06.2020 vide Rc.No.5218/03-S1, of the 2<sup>nd</sup> Respondent herein, the Petitioner herein vide his detailed representation dt. 27.08.2020 requested the 2<sup>nd</sup> Respondent to review the proceedings dt. 17.06.2020 in Rc.No.5128/03-S1, explaining to the 2<sup>nd</sup> Respondent that during the last 21 years as on 30.07.2020 the 2<sup>nd</sup> Respondent did not make any effort in issuing any proceedings or any cheque and now the 2<sup>nd</sup> Respondent offered only 50% amount agreed in the

year 2009 in June 2020 and taking into consideration the fact that nothing prevented the 2<sup>nd</sup> Respondent to pay the said amount for the last so many years and it is not the case of the 2<sup>nd</sup> Respondent that the 2<sup>nd</sup> Respondent offered the said amount to the Petitioner and the petitioner had refused to receive it, this Court is of the firm opinion that the 2<sup>nd</sup> Respondent herein failed to take into consideration the said fact and the hardship of the Petitioner due to non settlement of dues since 2009 while passing the impugned proceedings dt. 17.06.2020 in Rc.No.5218/03-S1.

11. Taking into consideration the above said facts and circumstances, the writ petition is allowed and the impugned proceeding in Rc.No.5218/03-S1, dt. 17.06.2020 passed by the 2<sup>nd</sup> Respondent is set aside and the 2<sup>nd</sup> Respondent is directed to consider Petitioner's representation dt. 27.08.2020 which has been acknowledged by the 2<sup>nd</sup> Respondent seeking review of the proceedings dt. 17.06.2020 in Rc.No.5218/03-S1 and pass appropriate orders in accordance to law within a period of 2 weeks from the

**date of receipt of the copy of the order by issuing due notice to the Petitioner and pass appropriate orders duly communicating the decision to the Petitioner. However, there shall be no order as to costs.**

Miscellaneous petitions, if any, pending shall stand closed.

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**SUREPALLI NANDA, J**

**Date: 16.08.2023**

**Note: L.R.Copy to be marked.  
b/o kvrm**