

THE HON'BLE SRI JUSTICE C.V.BHASKAR REDDY

WRIT PETITION No.24514 of 2022

ORDER:

This writ petition came to be filed seeking to issue a Writ of Certiorari calling for the records pertaining to impugned proceedings vide Rc.No.554/22/YB/C dated 31.05.2022 issued by respondent No.4 as illegal, arbitrary, contrary to the provisions of the Telangana Cooperative Societies Act, 1964 (for short “the Act”) and also violative of Articles 14 and 21 of the Constitution of India and violative of principles of natural justice and consequently prayed to set aside the impugned proceedings.

2. The brief facts necessary for the disposal of the case are stated as under:-

The case of the petitioner is that he was elected as President of the Primary Agricultural Cooperative Society, Chandupatla Village, Bhuvangiri Mandal, Yadadri Bhuvanagiri District i.e., respondent No.2 herein, and he is discharging duties strictly in conformity with the provisions of the Act and the Telangana Cooperative Societies Rules, 1964 (for short “the Rules”). The District Cooperative Officer, Yadadri Bhuvanagiri District, respondent No.4 herein, has issued a show cause notice vide Rc.No.554/22/YB/C dated 16.05.2022 basing on the complaint of Vice-President and majority of the managing committee

members of the society alleging that after verification of the records found that the petitioner incurred lakhs of rupees without approval/resolution of the managing committee of the society and called upon the petitioner to show cause as to why action should not be taken under Section 21AA(1)(b) of the Act disqualifying him as per the Byelaws of the society. It is the further case of the petitioner that after receipt of the said show cause notice, he has submitted an explanation on the file of respondent No.4 dated 30.05.2022 *inter alia* stating that he has not misused any funds of the society nor acquired any property of the society for his personal gains and that the said show cause notice was issued to the petitioner without conducting any enquiry and there is no evidence on record to prove that the petitioner has misused the property of the society for his personal gains and thus denied all the allegations of the show cause notice.

3. It is the contention of the petitioner that without conducting any enquiry under Section 51 of the Act followed by surcharge proceedings under Section 60 of the Act giving an opportunity to the petitioner, and violating the procedure prescribed under the provisions of the Act, respondent No.4 has issued the impugned proceedings dated 31.05.2022 under Section 21AA(1)(b) of the Act declaring that he shall cease to hold office of respondent No.2/society with effect from 31.05.2022, for the residue of his term of office, and further held that

he shall also be ineligible for being chosen as or for being a member of the committee through election or cooption for the subsequent two terms.

4. It is the further contention of the petitioner that since the respondents have failed to adhere to the procedure prescribed under the provisions of the Act and the Rules, the said action on their part amounts to gross violation of principles of natural justice, the petitioner cannot be relegated to an alternative forum for filing of an appeal, as the said appeal is not an efficacious alternative remedy and the present writ petition filed challenging the said order would be maintainable.

5. It is also the contention of the petitioner that in the show cause notice, there is no reference to the enquiry report and in the absence of conducting any enquiry, issuance of show cause notice by respondent No.4 amounts to violation of principles of natural justice, for non-supply of copy of the enquiry report vitiating entire proceedings. It is his further contention that as per Section 56 of the Act, an enquiry under Section 51 of the Act has to be conducted or inspection has to be made under Section 52 of the Act, the Registrar has to give an opportunity to parties for making a representation. Since there was no enquiry conducted under Section 51 of the Act, by appointing a regular enquiry officer fixing the responsibility on the

part of the petitioner and followed by surcharge proceedings under Section 60 of the Act by giving an opportunity of personal hearing, the very procedure adopted by respondent No.4 is contrary to the various judgments of this Court as well as the Apex Court and as such the impugned proceedings suffers from non-application of mind leading to arbitrary action on the part of respondent No.4 for removal of the elected president of respondent No.2/society. The petitioner also placed reliance upon various judgments to substantiate his contention that without conducting a regular enquiry, he was found guilty of charges of the show cause notice which is not permissible in law and the impugned order suffers from legal infirmities calling for interference of this Court under Article 226 of the Constitution of India.

6. The petitioner also urged that the power to issue prerogative writs under Article 226 of the Constitution of India is plenary in nature and there is no limitation on the exercise of such power traceable in the Constitution of India. In the absence of any restrictions being imposed by the Constitution of India, the Court can exercise the discretionary power for issuance of writs in appropriate cases and mere providing for an alternative remedy by the Statute does not take away the power of the Court under Article 226 of the Constitution of India to issue appropriate writs when the Court is

satisfied that the procedure adopted by the respondents is in gross violation of the principles of natural justice. In support of the said contention, the petitioner also placed reliance upon the judgment of the Apex Court in the case of **Magadh Sugar & Energy Ltd. vs. State Of Bihar and others**¹ wherein the Apex Court while reiterating the principle that alternative remedy does not bar the High Court to exercise the jurisdiction under Article 226 of the Constitution of India held that the test that is to be applied for the determination of a question of law is whether the rights of the parties before the court can be determined without reference to the factual scenario. In the case referred supra, the issue was relating to determination of the meaning of the phrases used in Section 3 of the Bihar Electricity Duty Act to determine if the supply of electricity by the appellant would fall within its ambit.

7. A counter affidavit has been filed by respondent No.4 stating *inter alia* that a complaint has been received against the petitioner submitted by nine managing committee members and acting on the same, respondent No.2/society after conducting a personal inspection and after verification of the records and relevant documents, ordered a detailed enquiry into the allegations levelled against the petitioner and after examination of the enquiry report, the impugned order has been

¹ 2021 SCC OnLine SC 801

passed as continuing the petitioner is detrimental to the interest of the society. Further it is also stated that they are also contemplating action under Section 60 of the Act for recovery of misappropriated amounts by the petitioner. However, with a *mala fide* intention to prevent the enquiry to proceed with recovery of the misutilized amounts, the petitioner has approached this Court instead of availing efficacious remedy of filing of an appeal before the Tribunal. The sum and substance of the counter affidavit is that in view of the right created by the Statute which prescribes remedy of appeal for enforcing the right or liability, the petitioner must resort to that particular statutory remedy before invoking the discretionary remedy available under Article 226 of the Constitution of India. Since the petitioner has not availed alternative remedy as provided under the Statute, the writ petition as filed at the threshold without exhausting the remedies under the Act is misconceived. Further it is also contended that the case relied upon by the petitioner in W.P.No.4192 of 2005 is pending for enquiry, but in the present case the respondents have passed an order under Section 21AA(1)(b) of the Act. So far as the recovery of the misappropriated amount from any person involved in fraud, no orders under Section 51 and Section 60 will be necessary and on an enquiry under Section 21AA(1)(b) of the Act, necessary action can be taken. Since in the present case the proceedings are initiated for misuse of

official position, and the enquiry was limited to the extent of Section 21AA(1)(b) of the Act and since the ingredients of the said Act have been fulfilled, there is no legal infirmity in the procedure adopted by the respondents and as such the writ petition filed by the petitioner is not maintainable that too in the absence of the petitioner availing the statutory remedy of appeal and prays for dismissal of the writ petition.

8. Respondent No.2 also filed a detailed counter affidavit *inter alia* stating that the petitioner has indulged in misappropriation of the funds of the society and acted in contravention of the Byelaws of the society and having found the involvement of the petitioner in the acts of malfeasance and misfeasance, in order to protect the larger interest of the members of the society and to safeguard the funds of the society, on a complaint submitted by the managing committee members, action was initiated against the petitioner and the same does not require to be interfered by this Court under Article 226 of the Constitution of India. Further, it is stated that as per the enquiry conducted by the Assistant Registrar and on verification of the records by respondent No.4, it abundantly shows that the petitioner was indulged in misappropriating the funds of the society. The said fact is also corroborated in the report of the District Cooperative Officer dated 06.05.2002 wherein a clear finding is given to the effect that the President of the society (petitioner) has not followed the prescribed

procedure. Further, it is also alleged that the petitioner had drawn the amount on different dates under S/P Account worth of Rs.38,10,000/- whereas the measurement books recorded that in one day for Rs.36,61,484/-. Besides that the petitioner has also drawn the amount of Rs.1,48,566/- in excess to the measurement book record and failed to remit GST @ 12% amount of Rs.4,39,378/- and service charges of Rs.13,421/- to the Assistant Engineer (Panchayat Raj). Since there is no account for the utilization of the said amounts as per the prescribed procedure, a presumption has to be drawn that the said amounts have been misused for the personal gains of the petitioner. Further it is contended in the counter affidavit that since an enquiry was instituted under Section 21AA(1)(b) of the Act which does not pre-suppose nor it mandates any enquiry under Section 51 of the Act or surcharge order under Section 60 of the Act, there is no illegality in conducting an independent enquiry under Section 21AA(1)(b) of the Act holding the petitioner as responsible for misutilisation of the funds of the society. It is further stated that the impugned order is preceded by an enquiry and adequacy or inadequacy of material cannot be subject matter of the writ petition and that too when the Statute provides for an alternative and efficacious remedy. It is also stated that the petitioner was put on notice and explanation was called for and even the petitioner has

availed the copies of the enquiry report of the District Cooperative Officer vide letter dated 30.05.2022 and instead of obtaining copies of the relevant records before submitting the explanation dated 30.05.2022 the petitioner has chosen to obtain the copies on 01.06.2022. Therefore, the fault if any can be attributable to the petitioner, since the petitioner was lethargic in obtaining copies in time. It is further contended in the counter affidavit that this Court normally would not exercise its writ jurisdiction under Article 226 of the Constitution of India if an effective and efficacious alternative remedy is available. Since the case of the petitioner does not fall under any of the exceptions to the rule of alternative remedy, the present writ petition is not maintainable and the writ petition is liable to be dismissed *in limine* on the ground of alternative and efficacious remedy available under Section 76 of the Act.

9. Upon consideration of the submissions of the respective counsel for the parties and perusal of the records, the following points would arise for consideration for this Court:-

- (a) Whether the present writ petition filed questioning the orders passed under Section 21AA(1)(b) of the Act is maintainable when the same is not preceded by an enquiry under Section 51 and passing of orders under Section 60 of the Act;

- (b) Whether the present writ petition is maintainable when alternative and efficacious remedy is available under the Statute on the ground that the respondents have not followed the procedure prescribed under the Statute; and
- (c) To what relief the petitioner is entitled.

POINT No.1:

10. The petitioner was elected as President of respondent No.2/society. The term of office of the petitioner is governed by the provisions of the Act and Byelaws of the society. The case against the petitioner was that he misused his position as President of the society and committed grave irregularities in issuing circular calling for meeting contrary to the Byelaws of the society. As per Byelaw 16(A) of the society, 15 days notice has to be given to the members to attend the general body meeting mentioning the details of place, date, time and agenda and the minimum quorum to the general body is 1/10 of the total membership. In the present case, the number of members as on the date of general body was 7019, if 1/10 thereof is taken into consideration, the minimum members required to be present in general body meeting were more than 701 and as per the records in the minute book only ten managing committee members attended the general body. Therefore, according to the petitioner, the resolution said to have been passed in the general body meeting in the absence of

required quorum shall be treated as null and void. Further as per the enquiry report of the Assistant Registrar, there is no sufficient material evidence available to prove the guilt of the President. The Assistant Registrar being the competent officer, and having administrative control over the societies has conducted the inspection of respondent No.2/society and verified the minute books and other books of accounts and noticed that the petitioner has incurred expenditure in violation of the permission given by the District Cooperative Officer vide Rc.MNo.330/2017BC dated 04.03.2020 and committed several irregularities. Basing on the charges, which according to the respondents have been established in the enquiry, the petitioner was declared to be ceased to hold office of respondent No.2/society with effect from 31.05.2022 and for the residue of his term of the office and he was also declared ineligible for being chosen as or for being member of the committee through election or cooption for the subsequent two terms.

11. The impugned proceedings have been issued against the petitioner while exercising powers under Section 21AA(1)(b) of the Act. Nowhere in the impugned proceedings it has been stated that enquiry was contemplated against the petitioner under Section 51 of the Act followed by the proceedings under Section 60 of the Act. The Legislature has provided the different modes of enquiry for

disqualifying the members of the society. Section 21AA(1)(b) of the Act specifically states that on an enquiry under this Act, if a member of committee is found guilty of misuse of the property of the society for his personal gains, he shall cease to hold office forthwith as such, for the residue of his term of office and he shall also be ineligible for being chosen as or for being member of the committee through election or cooption for the subsequent two terms. As per the said provision, it is not mandatory that the member has to be ceased. The cessation order has to be passed followed by an enquiry under Section 51 of the Act or passing of an order under Section 60 of the Act. Section 21AA(5) of the Act states that where the committee or society fails to place the enquiry report under Section 51, or inspection report under Section 52 or Section 53, or audit report or special audit report under Section 50 along with the findings of the Registrar or fails to take immediate action for approval of the general body the member of the committee shall cease to hold such office. Section 22A(2) of the Act states that where a member of the committee found responsible for wilfully or knowingly sanctioning benami loans shall cease to hold office and shall also be ineligible to be a member of the committee for a period of six years. In the present case, the impugned order passed against the petitioner reveals that there is some material available to exercise the powers under Sub-Section (b) of Section 21AA of the Act. The

remaining provisions of the Act are not attracted so far as the present case is concerned.

12. The contention of learned counsel for the petitioner is that since there is no enquiry preceded before initiating action of cessation under Section 51 of the Act and also surcharge proceedings under Section 60 of the Act, the impugned order lacks power on the authority to disqualify the petitioner under Section 21AA of the Act.

13. Section 51 of the Act contemplated an independent enquiry with regard to the affairs of the society either by the Registrar on his own motion or he shall be entitled to act on the application of the society 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. Such enquiry initiated under this provision shall be completed within the period of four months and the report of the enquiry along with the findings of the Registrar thereon shall be placed before the general body or special general body convened for the purpose. A reading of this provision would make it very clear that this is an independent section which empowers the Registrar to investigate into the affairs of the society either *suo motu* or on the application submitted by the requisite quorum of the committee members.

14. Further Section 60 of the Act is relating to surcharge proceedings initiated holding responsibility on the persons involved in

misappropriation and misapplication of the funds, fraudulent retention, breach of trust or wilful negligence in implementation of the provisions of the Act. After conducting audit enquiry under Section 50 or an independent enquiry under Section 51 or an inspection under Sections 52 or 53 of the Act and if the said enquiry reveals that members of the society have involved in the abovesaid acts, the said misutilised amounts can be recovered under this provision.

15. Therefore, a reading of Sections 51 and 60 of the Act goes to show that these are independent provisions and these provisions have nothing to do with the initiation of action for cessation of membership under Sub-section (b) of Section 21AA of the act. As such the contention of the learned counsel for the petitioner that cessation of membership should be preceded by enquiry under Section 51 of the Act or surcharge proceedings under Section 60 of the Act is incorrect and it is not the intention of the Legislature that unless an enquiry is conducted under Section 51 of the Act followed by Section 60 proceedings, the authorities are not empowered to invoke the provisions of Section 21AA of the Act.

16. For the above said reasons, this Court is of the opinion that without conducting an independent enquiry under Section 51 of the Act followed by surcharge proceedings under Section 60 of the Act, the

authorities are empowered to pass an order under Section 21AA of the Act.

The point is answered accordingly.

Point No.2:

17. It is settled law that the power under Article 226 of the Constitution of India to issue writs can be exercised not only for the enforcement of fundamental rights but for many other purposes as well. The judicial review powers under Article 226 of the Constitution of India is available to question the proceedings on the grounds of perversity, illegality, irrationality, want of power to take a decision and the procedural irregularity. The power of judicial review is not available against administrative decisions nor the administrative decisions are called for interference in exercise of judicial review power in the absence of grounds referred to above. The High Court exercising its discretion has imposed self restrictions for entertaining the writ petitions. One of the self imposed restrictions is that while exercising the power by the High Court where an effective alternative remedy is available to the aggrieved person subject to general exceptions that the writ petitions have been filed for the enforcement of fundamental rights protected by Part III of the Constitution of India; where there is violation of principles of natural justice; the order or the proceedings under challenge are wholly without jurisdiction or vires

thereof is questioned. It is settled principle of law that an alternative remedy itself does not divest the High Court of its powers under Article 226 of the Constitution of India in an appropriate case. Ordinarily a writ petition should not be entertained when efficacious alternative remedy is provided by law. When a right is created by a Statute and very same Statute itself prescribes the remedy or the procedure for enforcement of the right arising under the Statute, resort must be had to the particular statutory remedy before knocking the doors of this Court under Article 226 of the Constitution of India. This rule of exhaustion of a statutory remedy is a rule of policy, convenience and discretion as held by the Apex Court in the cases of **Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai and others**², **Harbanslal Sahnia and another vs. Indian Oil Corpn. Ltd. and others**³ and **Radha Krishan Industries vs. State of Himachal Pradesh and others**⁴.

18. Learned counsel appearing for the petitioner has vehemently argued that the respondents have not followed the procedure contemplated under the Statute nor they have supplied the documents. Since there is no basis for conducting of enquiry and in the absence of substantial material, passing of the impugned order of

² (1998) 8 SCC 1

³ (2003) 2 SCC 107

⁴ 2021 SCC Online SC 334

this nature is always liable for judicial scrutiny and the High Court cannot refuse to exercise the discretionary power, when there is violation of principles of natural justice. In support of his contentions, learned counsel for the petitioner relied upon judgment of the Supreme Court in **M/s. Godrej Sara Lee Ltd. vs. The Excise And Taxation Officer**⁵.

19. Per contra, learned counsel appearing for respondent No.2/society has submitted that when an efficacious alternative remedy is available under the Statute, the petitioner must resort to the statutory remedy before invoking the discretionary remedy under Article 226 of the Constitution of India. Further, it is the contention of learned counsel for respondent No.2 that pleadings in the writ petition do not meet the principles of Certiorari and as such the present writ petition filed for seeking issuance of Writ of Certiorari is not maintainable. In support of the said submissions, he relied upon the judgments in the cases of **All India Lawyers Forum for Civil Liberties and another vs. Union of India and others**⁶, **S.N.J. Abdul Hakeem and others vs. Assisrathul Musthakeem Etheemkhana Trust and others**⁷, **Indian Oxygen Employees Union vs. BOC India**

⁵ 2023 SCC Online SC 95

⁶ AIR 2001 DELHI 380

⁷ AIR 2006 MADRAS 67

Limited⁸, Union of India and others vs. M/s. Cipla Ltd. and another⁹, Kalluram Alias Munnalal vs. The Commissioner of Endowments, A.P., Hyderabad and others¹⁰, A.V.Venkateswaran, Collector of Customs, Bombay vs. Ramchand Sobhraj Wadhwani and another¹¹, Union of India vs. T.R.Varma¹², Sarabjit Rick Singh vs. Union of India¹³, Surya Dev Rai vs. Ram Chander Rai¹⁴, Syed Yakoob vs. K.S.Radhakrishnan¹⁵, State of U.P. vs. Mohammad Nooh¹⁶, B.K.Muniraju vs. State of Karnataka and others¹⁷, Hrabans Lal vs. Jagmohan Saran¹⁸, Nagar Palika, Natar vs. U.P.Public Services Tribunal, Lucknow and others¹⁹.

20. After careful examination of the above submissions, this Court is of the *prima facie* view that there is no embargo under the provisions of the Statute that before passing of an order of cessation of membership of committee, while exercising powers under Section 21AA of the Act, it has to be preceded by an authorized enquiry under Section 51 of the Act or surcharge proceedings under Section 60 of the Act. Since these provisions are independent providing for different

⁸ 1998 LawSuit (Mad)-762

⁹ AIR 2016 SC 5025

¹⁰ 1991(II) ALT 673

¹¹ AIR 1961 SC 1506

¹² AIR 1957 SC 882

¹³ (2008) 2 SCC 417

¹⁴ (2003) 6 SCC 675

¹⁵ AIR 1964 SC 477

¹⁶ AIR 1958 SC 86

¹⁷ AIR 2008 SC 1438

¹⁸ AIR 1986 SC 302

¹⁹ (1998) 2 SCC 400

contingencies to disqualify the members of the society, it cannot be said that the authorities are not having power under Section 21AA of the Act in the absence of conducting the enquiry under Section 51 of the Act. Further, the Statute specifically provides for an efficacious alternative remedy of appeal against any of the orders passed by an authority under Section 76 of the Act. The Act further states that any person or society aggrieved by any decision passed or order made under Section 21AA of the Act may appeal to the Co-operative Tribunal. The Tribunals have been constituted to hear the appeals, revisions and reviews arising out of the dispute relating to the administrative affairs of the society. When such Tribunals have been constituted consisting of Chairman and more than two other members and the Chairman shall be a person represented by judicial officers, it cannot be said that it is not an efficacious remedy. When the appeals arising out of the orders of the quasi judicial authorities are subjected to the decision being taken by the Special Tribunals, it cannot be said that the Tribunals are not having jurisdiction to decide the validity or otherwise of the orders passed by the quasi judicial authorities in violation of principles of natural justice. Therefore, the petitioner or any aggrieved person is always entitled to raise all the available grounds before the Tribunal including the jurisdiction and violation of principles of natural justice by the statutory/quasi judicial

authorities. Normally the writ courts while exercising their jurisdiction are not entitled to examine the disputed questions which are having bearing on the merits of the matter rather the Tribunals constituted for specific purpose are always entitled to examine whether the authorities under the Statute have proceeded to conduct an enquiry in conformity with the provisions, rules, byelaws of the society and also adhering to the principles of natural justice. It is not that the High Courts are not having any power or authority to entertain the writ petitions. When an objection as to the maintainability goes to the root of the matter and if such objection is found to be substance, the Courts have imposed self-restrictions to entertain the writ petitions, as the entertainability falls entirely within the realm of the discretion of the High Court as the writ remedy is always to be discretionary. Writ petition even though is maintainable may not be entertained for so many reasons or relief could even be refused to the petitioner despite setting up a sound legal point, if grant of the claimed relief would not in the public interest.

21. Admittedly, in the present case, the petitioner was subjected for an enquiry which is preceded by issuance of show cause notice, calling for explanation and considered the grounds raised therein. Therefore, this Court is of the opinion that once such a procedure of fair play has been adopted by the respondents, the petitioner is not

entitled as a matter of right to agitate the claims before this Court on the ground of adequacy or inadequacy of material basis for forming of an opinion by the statutory authorities.

The point is answered accordingly.

POINT No.3:

22. In view of the foregoing discussion, this Court is of the view that there are no merits in the writ petition and the same is accordingly dismissed on the ground of availability of efficacious alternative remedy under the Statute. The petitioner is given liberty to agitate all his claims before the Tribunal by filing appeal, which in turn shall be decided uninfluenced by any observations made in this order.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.

08.06.2023
JSU

C.V.BHASKAR REDDY, J