

(2016) 10 AP CK 0017

In the Andhra Pradesh High Court

Case No : Writ Petition No. 108 of 2007

Mallukunta Primary Agricultural Co-operative Society

APPELLANT

Vs

District Co-operative Officer

RESPONDENT

Date of Decision : 24-10-2016

Acts Referred:

Citation : (2017) 1 ALT 515 : (2017) 1 AndhLD 637

Hon'ble Judges : Sri A. Ramalingeswara Rao, J.

Bench : Single Bench

**Advocate : Senior Counsel, Sri Y.V. Ravi Prasad, Advocate, for the Petitioners;
GP for Cooperation (AP), for the Respondents**

Final Decision : Disposed Off

Judgement

Sri A. Ramalingeswara Rao, J. - The first petitioner is the Society and the second petitioner is its President. The second petitioner swears the affidavit stating that the first petitioner Society consists of 13 Directors and they were elected in October, 2005. The second petitioner was elected as the President of the Society. The Society was running in losses and the enquiry held by the Divisional Cooperative Officer in 1994 revealed that it sustained a loss of Rs.5,99,737/-. The second petitioner has nothing to do with the said loss since he was elected only in 2005. It is his case that due to political rivalry, at the instance of the local Member of Legislative Assembly, an enquiry was ordered under Section 51 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, the Act) alleging some irregularities in the working of the first petitioner Society by proceedings dated 22.12.2006. Challenging the initiation of the said enquiry, the present Writ Petition is filed.

2. This Court, by order dated 03.01.2007, granted interim suspension and seeking vacation of the said order, W.V.M.P. No. 2698 of 2008 was filed admitting the fact of election of a new Managing Committee in the elections held in the month of October 2005. It was further stated that the loss incurred by the Society and found during the enquiry in 1994 was recovered from responsible

persons. The allegation that the enquiry was initiated at the instance of the local Member of Legislative Assembly was denied. It was stated that a representation was made by the said Member of Legislative Assembly to the Incharge Minister of West Godavari District, Eluru, under a copy to the Hon''ble Minister for Cooperation, Government of Andhra Pradesh on the irregularities that took place in the first petitioner Society. The Commissioner for Cooperation and Registrar of Cooperative Societies, Andhra Pradesh, forwarded the representation to the District Cooperative Officer, West Godavari District to submit a report. The District Cooperative Officer, in turn, forwarded the same to the Divisional Cooperative Officer, Eluru, calling for a report. The Divisional Cooperative Officer reported the retention of huge cash balance during the year 1995 to 1999, irregular sanction of loans to the members and also reported that the Society sustained huge loss. The District Cooperative Officer, West Godavari, Eluru, examined the issue and ordered an enquiry keeping in view the interest of the members of the Society, in order to fix up the responsibility on the irregularities noticed and recover the amounts from the responsible persons. The challenge to the procedure in conducting the enquiry was also refuted. When an Enquiry Officer is appointed under Section 51 of the Act, the Enquiry Officer will fix the date, time and will give an opportunity by issuing notices to the members of the Society during the course of enquiry. After receiving the report from the Enquiry officer, the Registrar will consider findings in the enquiry report. Thereafter, the findings would be communicated to the Managing Committee of the Society to be placed before the General Body of the Society. The enquiry under Section 51 of the Act is a statutory function to protect the interest of the members and to safeguard the funds of the Society by detecting the frauds in the working of the Society and helping in recovering the amounts of the Society. The Joint Registrar/ District Cooperative Officer, West Godavari District, Eluru, is vested with powers vide G.O. Ms. No. 34, Food & Agriculture (Coop. IV) Department dated 18.01.1989, for ordering an enquiry and the enquiry now ordered was in consonance with the said powers. The mere conduct of an enquiry into the affairs of the Society will not hamper the day-to-day administration and transactions of the Society.

3. Learned Senior Counsel, Sri Y.V. Ravi Prasad, appearing for the petitioners submitted that the enquiry ordered by the first respondent is vitiated due to non-application of mind and at the instance of the local Member of Legislative Assembly. He relied on a decision of this Court in Mandava Laxmana Rao v. Primary Agricultural Co-operative Society, Warangal District, 1996 (4) ALD 141 and submitted that this Court, in the said decision, held that the enquiry ordered at the instance of Hon''ble Minister was bad in law. He further submitted that when a report was submitted by the second respondent stating that efforts are being made to recover the losses, the first respondent should not have ordered for an enquiry. Learned Government Pleader, on the other hand, submitted that the enquiry under Section 51 of the Act is a statutory function and a reading of the impugned order clearly shows that the first respondent had applied his mind

and in due exercise of the powers vested in him had ordered the enquiry and hence such an enquiry cannot be found fault.

4. The papers filed along with the Writ Petition showed that on 01.08.2006 the second respondent issued a telephonic message to the Sub Divisional Cooperative Officer for submission of a detailed report on the status of the financial position and working of two Societies in Chintalapudi sub division, including that of the first petitioner. He submitted a report to the second respondent on 06.08.2006. As per the said report, an enquiry was ordered under Section 51 of the Act during the year 1990-1991 in respect of the first petitioner Society and it was followed by another enquiry in the year 2000- 2001. It was found that an amount of Rs.5,99,737.93 was misappropriated, out of which an amount of Rs.1,92,618.90 was recovered and the balance amount is covered by Execution Petitions. He further stated that a loss of Rs.50,32,704.35 was detected during the audit of 2000-2001 and the said amount is coming down as rigorous steps are being taken for recovery of misappropriated amounts and the newly elected Board of Management is evincing interest to bring the Society potentially on sound lines by collecting over dues loans upright for the percentage up to the mark i.e., more than 80%. There was no complaint either from the members or from the members of the Managing Committee against the Society. Independent of the said report, the second respondent submitted a report on 16.12.2006 to the first respondent when the representation of the Member of Legislative Assembly was forwarded to him containing certain allegations against the ex-President and others. He submitted a preliminary report on the said allegations. He ultimately asked the first respondent to order an enquiry under Section 51 of the Act into the affairs of the first petitioner Society. Those reports were taken into consideration by the first respondent and the first respondent passed the impugned order on 22.12.2006 ordering an enquiry under Section 51 of the Act by appointing an enquiry officer. It is pertinent to notice that even before the representation of the Member of the Legislative Assembly, the Sub Divisional Cooperative Officer, Chintalapudi, submitted a report on 06.08.2006 itself. In the instant case, the enquiry was not ordered on the mere representation of the Member of Legislative Assembly, but after the first respondent satisfying himself on the material available with him ordered an enquiry. Such suo motu power exercised by the first respondent cannot be found fault merely because the representation of local Member of Legislative Assembly was existing. An authority exercising suo motu powers has to be satisfied on some material and that material can be from various sources. When there is some basis for exercise of suo motu powers, this Court cannot interfere with the exercise of that power as it would be within the realm of that authority.

5. Section 51 of the Act reads as follows:

"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 of its information, within a period of one month from the communication of the inquiry 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:

Provided that notwithstanding anything contained in this Act and the Rules made thereunder, the bye laws of a society and the action of the society in placing 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."

A perusal of the above provision makes it clear that in four circumstances the Registrar can exercise that power and exercise of the power on his own motion is one of such circumstances. In Mandava Laxmana Rao's case (supra) on which reliance is placed by the learned Senior Counsel, this Court came to the conclusion that the Registrar has not exercised the powers suo motu, but on the directions of the Hon"ble Minister. In the instant case there is enough material for the first respondent to set the enquiry process into motion and this Court cannot sit in appeal over such a decision. In fact the decision in Mandava Laxmana Rao's case (supra) came up for consideration before another learned single Judge of this Court in Akkayapalli Co-operative House Building Society Limited, Kadapa v. The Joint Registrar/District Cooperative Officer, Y.S.R. District, Kadapa, 2011 (1) ALD 662 and the learned single Judge also came to the same conclusion which I have expressed as above. This Court will be slow in interfering with the enquiry proceedings and exercise of discretionary powers when there is some material for the authority and when such material is available in this case, this Court sees no ground to interfere with the same.

6. The Writ Petition is, accordingly, dismissed. The miscellaneous petitions pending in this Writ Petition, if any, shall stand closed. There shall be no order as to costs.