

HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION No.15968 of 2007

Date: 31-07-2007.

Between :

Ch.Veerabhadreswara Rao & others.

.....Petitioners

And

The Government of Andhra Pradesh, rep. by its Principal
Secretary, Industries and Commerce (Handlooms &
Textiles) & others.

.....Respondents.

HON'BLE SRI JUSTICE L. NARASIMHA REDDY

WRIT PETITION No.15968 of 2007

ORDER :

The 1st petitioner is an Ex-President of the Managing Committee of the 4th respondent Co-operative Society and petitioner Nos.2 to 8 are its employees. An inquiry under Section 51 of the A.P. Co-operative Societies Act, 1964 (for short 'the Act') was ordered into the functioning of the Society. The Deputy Director of Handlooms and Textiles, Visakhapatnam, was appointed as an Inquiry Officer. He submitted the report on 14.05.2004, recording certain findings against the petitioners.

The 2nd respondent initiated Surcharge Proceedings under Section 60 of the Act. The 3rd respondent was specially authorized to conduct the proceedings.

During the course of inquiry in the Surcharge Proceedings, the Deputy Director of Handlooms and Textiles, who submitted the report under Section 51 of the

Act, filed an affidavit in lieu of his chief-examination. Thereupon, the petitioners submitted a representation, dated 01.04.2007 before the 2nd respondent, stating *inter alia*, that the 3rd respondent, who is conducting the Surcharge Proceedings, is inferior in rank, to the authority, who conducted the inquiry under Section 51 of the Act and the same would result in miscarriage of justice. Their grievance is that no action has been taken thereon and they seek appropriate directions in this regard.

Heard the learned counsel for the petitioners and learned Government Pleader for Industries.

The Act provides for various steps such as inquiry, inspection and audit into the affairs and functioning of a Society. In case any adverse findings are recorded during such proceedings, the Registrar is conferred with the power to initiate Surcharge proceedings. Such proceedings can be conducted by the Registrar, or he can authorize any other officer specially for this purpose. An inquiry under Section 51 of the Act was caused into the affairs of the 4th respondent-Society. In the report, dated 14.05.2004 submitted by the Deputy Director of Handlooms and Textiles, certain findings were recorded against the petitioners and the same resulted in initiation of Surcharge Proceedings. As provided for under Section 60 of the Act, the 2nd respondent authorized the 3rd

respondent to proceed with the matter, vide his orders, dated 22.09.2004.

The inquiry in the Surcharge Proceedings is in progress. In the recent past, the authority, who conducted the inquiry under Section 51 of the Act and submitted the report i.e. the Deputy Director of Handlooms and Textiles, has filed an affidavit in lieu of his chief-examination. This became necessary on account of the fact that the findings recorded in the inquiry under Section 51 of the Act cannot be treated as final in the Surcharge Proceedings and conclusions have to be arrived at independently. The grievance of the petitioners is that an affidavit filed by an officer, who is superior in rank to the one conducting the Surcharge Proceedings, would have its own adverse affect. Law, as such, does not prohibit such a course. However, the representation made by the petitioners deserves to be considered on its own merits. Nearly four months have elapsed from the date of representation and the 2nd respondent has to dispose of the representation on one hand or the other.

Hence, the writ petition is disposed of, directing the 2nd respondent to pass appropriate orders on the representation, dated 01.04.2007 made by the petitioners, within a period of four weeks from the date of receipt of a copy of this order. Till such time, the 3rd respondent may

proceed with the inquiry, but shall not pass the final order.

L. NARASIMHA REDDY, J

31st July 2007

N.B:

Furnish C.C. in three days.

(b/o)

ajr