

IN THE HIGH COURT OF ANDHRA PRADESH: AMARAVATI
HON'BLE Mr. JUSTICE PRASHANT KUMAR MISHRA, CHIEF JUSTICE
&
HON'BLE Mr. JUSTICE NINALA JAYASURYA

WRIT PETITION No.9824 of 2023

Badamneni Srinivasa Rao, S/o. Mastanaiah, aged about 48 years,
H.No.1-66, Petlurivaripalem, Narasaraopet Mandal, Guntur District,
and another

... Petitioners

Versus

The Union of India, through the Secretary, Ministry of Finance,
New Delhi, and others

... Respondents

ORDER (ORAL)

Dt. 20.04.2023

(Prashant Kumar Mishra, CJ)

The grievance raised by the petitioners in this writ petition is to the effect that respondents 1 to 3 have not framed proper guidelines or rules to safeguard the interest of sureties under the Chit Funds Act, 1982 and A.P. Chit Fund Rules, 2008 and, consequently, to direct the said respondents to frame rules in this regard so that sureties are provided opportunity to contest the award and the execution proceedings.

2. The 5th respondent has borrowed money from the 4th respondent. Against the 5th respondent, a decree for recovery of money has been passed by the Principal Junior Civil Judge's

Court, Narasaraopet, Guntur District and E.P.No.53 of 2018 in Dispute No.213 of 2014 is pending for execution of award.

3. It is settled law that writ court cannot issue mandamus directing the competent Legislature or the Reserve Bank of India to frame a particular rule or regulation. Merely because it is open for the lender of money to proceed against the borrower and the surety for recovery of money, it cannot be said that interest of the surety is not safeguarded.

4. The Hon'ble Supreme Court in ***State of Himachal Pradesh and others v. Satpal Saini – (2017) 11 SCC 42***, held at paragraphs 5, 6 and 12, as follows:

"5. The State Government is aggrieved by the mandamus which has been issued by the High Court to amend the provisions of law. The submission of the State is that the above directions trench upon the sovereign legislative power of the State Legislature."

"6. The grievance, in our view, has a sound constitutional foundation. The High Court has while issuing the above directions acted in a manner contrary to settled limitations on the power of judicial review under Article 226 of the Constitution. A direction, it is well settled, cannot be issued to the legislature to enact a law. The power to enact legislation is a plenary constitutional power which is vested in Parliament and the State Legislatures under Articles 245 and 246 of the Constitution. The legislature as the repository of the sovereign

legislative power is vested with the authority to determine whether a law should be enacted. The doctrine of separation of powers entrusts to the court the constitutional function of deciding upon the validity of a law enacted by the legislature, where a challenge is brought before the High Court under Article 226 (or this Court under Article 32) on the ground that the law lacks in legislative competence or has been enacted in violation of a constitutional provision. But judicial review cannot encroach upon the basic constitutional function which is entrusted to the legislature to determine whether a law should be enacted. Whether a provision of law as enacted subserves the object of the law or should be amended is a matter of legislative policy. The court cannot direct the legislature either to enact a law or to amend a law which it has enacted for the simple reason that this constitutional function lies in the exclusive domain of the legislature. For the Court to mandate an amendment of a law — as did the Himachal Pradesh High Court — is a plain usurpation of a power entrusted to another arm of the State. There can be no manner of doubt that the High Court has transgressed the limitations imposed upon the power of judicial review under Article 226 by issuing the above directions to the State Legislature to amend the law. The Government owes a collective responsibility to the State Legislature. The State Legislature is comprised of elected representatives. The law enacting body is entrusted with the power to enact such legislation as it considers necessary to deal with the problems faced by society and to resolve issues of concern. The courts do not sit in judgment over legislative expediency or upon legislative policy. This position is well settled. Since the High Court has failed to notice it, we will briefly recapitulate the principles which emerge from the precedent on the subject.”

"12. The judiciary is one amongst the three branches of the State; the other two being the executive and the legislature. Each of the three branches is co-equal. Each has specified and enumerated constitutional powers. The judiciary is assigned with the function of ensuring that executive actions accord with the law and that laws and executive decisions accord with the Constitution. The courts do not frame policy or mandate that a particular policy should be followed. The duty to formulate policies is entrusted to the executive whose accountability is to the legislature and, through it, to the people. The peril of adopting an incorrect policy lies in democratic accountability to the people. This is the basis and rationale for holding that the court does not have the power or function to direct the executive to adopt a particular policy or the legislature to convert it into enacted law. It is wise to remind us of these limits and wiser still to enforce them without exception."

5. In view of the foregoing reasons and the judgment of the Hon'ble Supreme Court referred supra, the present writ petition cannot be entertained and the same is, accordingly, dismissed. No order as to costs. Pending miscellaneous applications, if any, shall stand closed.

Sd/-

PRASHANT KUMAR MISHRA, CJ

MRR

Sd/-

NINALA JAYASURYA, J