

THE HON'BLE SRI JUSTICE A.V. SESA SAI

WRIT PETITION No.28429 of 2015

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ORDER:

This writ petition, filed under Article 226 of the Constitution of India, calls in question the order of surcharge issued by the Assistant Director, Handlooms and Textiles, Nalgonda-the 4th respondent herein, vide orders in Rc.No.355/1998-C dated 18.02.2015 and the consequential distraint order issued by the Tahsildar, Chityala Mandal, Chityal, Nalgonda District-5th respondent herein.

2. Heard Sri V.Subrahmanyam, learned counsel for the petitioners, and the learned Government Pleader for Industries and Commerce and the Revenue for the respondents.

3. The petitioners are the former members of the Managing Committee of the Handloom Weavers Cooperative Society Limited, Nerada, Nalgonda District and they functioned as such during the period 1995-2000. The Assistant Director of Handlooms and Textiles, Nalgonda-the 4th respondent herein issued a show cause notice vide Rc.No.335/1998-C dated 20.06.2014, calling upon the petitioners herein to show cause as to why action should not be taken for recovery of an amount of Rs.1,28,455/-. Responding to the said show cause notice, the petitioners herein submitted their explanation dated 30.06.2014, denying the allegation of misappropriation. The 4th respondent, by way of an order bearing Rc.No.355/1998-C dated 18.02.2015, surcharged the petitioners herein for recovery of a sum of Rs.3,13,995/- with interest at 18%. In pursuance of the said surcharge order, the Tahsildar, Chityala Mandal, Chityal, Nalgonda District-5th respondent herein issued an order of distraint on 27.08.2015, informing the petitioners herein that if the amount due together with batta and all expenses of distress be not previously discharged, the distrained property will be immediately brought to public sale.

4. Calling in question the validity and legal sustainability of the said orders passed by the 4th respondent and the 5th respondents, the present writ petition has been filed.

5. It is contended by the learned counsel for the petitioners that the surcharge order issued by the 4th respondent is highly illegal, arbitrary and violative of Article 14 of the Constitution of India, besides being opposed to the very spirit and object of the provisions of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'Act, 1964'). It is submitted by the learned counsel for the petitioners that the surcharge order is in contravention of the provisions of Section 52(2) of the Act, 1964. It is also submitted by the learned counsel that the order passed by the 4th respondent herein is a non-speaking order and completely bereft of any foundation for arriving at conclusion. It is further submitted by the learned counsel that the 4th respondent did not consider the reply submitted by the petitioners herein and passed the order in breach of the mandatory requirement of Section 60 of the Act, 1964.

6. On the contrary, it is vehemently argued by the learned Government Pleader that there is no illegality nor there is any procedural infirmity in the impugned action, which culminated the order of surcharge, as such, the present writ petition is not maintainable and the petitioners are not entitled to the relief under Article 226 of the Constitution of India. It is also the submission of the learned Government Pleader that the petitioners herein cannot maintain the present writ petition in view of the availability of alternative remedy of appeal under the provisions of Section 76 of the Act, 1964.

7. The information available before this Court manifestly discloses that the authorities initiated statutory inspection under Section 52 of the Act, 1964 and the Inspection Officer submitted a

report as long back as on 10.07.2001. After lapse of 13 years approximately, the 4th respondent herein issued a show cause notice vide Rc.No.355/1998-C dated 20.06.2014, calling upon the petitioners to show cause as to why action should not be initiated for recovery of the alleged misappropriated amount of Rs.1,28,455/-. It is also evident from the material on record that the petitioners herein submitted an explanation dated 30.06.2014, categorically stating that during their period of office, there was no allegation of misappropriation of any funds in the society and no Inspection Officer inquired them about the alleged misappropriation nor they were asked any information nor served with any notice during the inspection. The petitioners herein also stated in the said explanation that they were not served with the inspection report of the Inspection Officer nor received any show cause notice said to have been issued on 24.09.2001. A perusal of the impugned surcharge order discloses that except indicating the submission of the explanation submitted by the petitioners, the 4th respondent did not advert to any one of the averments in the explanation. The power conferred on the authority under the provisions of Section 60 of the Act, 1964 is a quasi-judicial power and the said power is required to be exercised with great amount of care, caution and circumspection. In the instant case, the same is conspicuously absent as evident from the impugned action.

8. Yet another submission made by the learned Government Pleader is with regard to maintainability of the writ petition before this Court, in view of the availability of alternative remedy of appeal before the Tribunal under the provisions of Section 76 of the Act, 1964. Section 76 of the Act, 1964 reads as under:

"Section 76 Appeal:

(1) Any person or society aggrieved by any decision passed or order made under Section 6, Section 9A, Section 9B, Section 9C, Section 12A, Section 13, Section 16, Section 17, Section 19, Section 21, Section 21A, Section 21AA, Section 23, sub-section (3) of Section 32, Section 34, Section 34A,

Section 60, Section 62, Section 64, Section 66, Section 70, Section 71, Section 73 and Section 117 may appeal to the Tribunal :

Provided that nothing in this sub-section shall apply to any order of withdrawal or transfer of a dispute under sub-section (3) of Section 62.

(2) On a reference made by the Registrar of Cooperative Societies, the Tribunal shall call for and examine the records of any proceeding which is appealable to it for the purpose of satisfying itself as to the legality or propriety of any decision or order passed and where it appears to the Tribunal that any such decision or order should be modified, annulled or reversed, the Tribunal may pass such order thereon as it may deem fit:

(3) Any appeal under sub-section (1) shall, subject to the other provisions of this Act, be preferred within sixty days from the date of communication to the appellant of the decision, refusal or order complained of but the Tribunal may admit an appeal preferred after the said period of sixty days, if it is satisfied that the appellant has sufficient cause for not preferring the appeal within the said period.

(4) In disposing of an appeal under this section, the Tribunal may, after giving the parties an opportunity of making their representations, pass such order thereon as it may deem fit.

(5) The decision or order of the Tribunal on appeal shall be final.

(6) The Tribunal may pass such interim orders pending the decision on the appeal as may deem fit.

(7) The Tribunal may award costs in any proceedings before that authority to be paid either out of the funds of the society or by such party to the appeal as the Tribunal may deem fit. "

9. In view of the above provision of law, which authorises the petitioners herein to file statutory appeal before the Tribunal, this Court is of the considered opinion that the ends of justice would be met, if the petitioners herein are permitted to avail alternative remedy before the Tribunal and this Court is also inclined to protect the interest of the petitioners herein pending filing of the said appeal before the appellate authority.

10. For the foregoing reasons, the petitioners herein are permitted to file statutory appeal under the provisions of Section 76 of

the Act, 1964 against the impugned surcharge order bearing Rc.No.355/1998-C dated 18.02.2015 within a period of one month from the date of receipt of a copy of this order. If any such appeal is filed by the petitioners herein within the said time, the same be considered and appropriate orders be passed in accordance with law, as expeditiously as possible, without taking into consideration the limitation aspect. It is further made clear that the impugned surcharge order dated 18.02.2015 and the consequential distraint order dated 27.08.2015 passed by the 5th respondent herein shall remain suspended for a period of two months. It is also open for the petitioners herein to make an interlocutory application for necessary interlocutory orders in the said appeal.

11. With the above directions and observations, the Writ Petition stands disposed of. No order as to costs.

12. Miscellaneous petitions pending consideration, if any, in the Writ Petition, shall stand closed in consequence.

A.V.SESHA SAI, J

03rd September, 2015

- **Note:** Issue cc in one week

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