

HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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WRIT PETITION No.9799 OF 2004

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ORDER:

This writ petition is filed challenging the order dated 03.04.2004, passed by the Andhra Pradesh Cooperative Tribunal, Vijayawada (for short, 'the Tribunal'), in O.A.No.130 of 2002.

Heard Smt B. Vijayalakshmi, learned counsel for the petitioner and the learned Government Pleader for Cooperative Societies and Sri B. Adinarayana, learned counsel for the 3rd respondent.

It is the case of the petitioner that he is the Ex-President/Ex-Chairman of the 6th respondent-Society. An enquiry was ordered under Section 51 of the A.P. Cooperative Societies Act, 1964 (for short, 'the Act') on 28.09.2001, by the Joint Registrar/District Cooperative Officer, Krishna District. After its enquiry, a report was submitted with a finding that there were some irregularities and misappropriation of various amounts to the tune of about Rs.47,00,000/-. Based on the enquiry report, action was sought to be initiated to fix the responsibility on the individuals by invoking Section 60 of the Act. After issuance of the show-cause notice and after considering the explanation submitted by the President, Secretary and Financing Bank Supervisor, the 2nd respondent-Deputy Registrar passed the surcharge order dated 07.03.2002 in Rc.No.3134/01-E fixing the responsibility on the petitioner along with the Secretary jointly and severally for a sum of Rs.23,56,107/-. Aggrieved thereby, the petitioner filed an appeal in O.A.No.130 of 2002 before the Tribunal raising two objections. The first objection is that the petitioner was not provided adequate opportunity and there being violated the principles of natural justice. The second objection is that the Secretary alone was responsible as he is the person who either received or disbursed the money and thus the petitioner cannot be fastened with the liability.

So far as the first objection is concerned, the same was negated on verification of the record and that as a matter of fact the petitioner was given adequate opportunity to represent himself and it is the petitioner who did not chose to avail the opportunity given. Even with regard to the second objection, the same was rejected on the ground that the Secretary might be the person who has infact dealt with various financial aspects, petitioner being the Chairman and being the joint signatory for signing and issuance of cheques, he is also responsible and thus negated the appeal of the petitioner. Challenging the same, petitioner filed the present writ petition.

Learned counsel for the petitioner placed on record the order dated 02.11.2006 passed by this Court in W.P.No.11931 of 2004 in N.V. Ramakrishna Sarma and the Deputy Registrar of Cooperative Societies and 4 others, who was the Ex-Secretary and also the order dated 07.08.2005 passed by the Tribunal in O.S.No.77 of 2002 in relation to Tupakala Appa Rao, who is the 3rd respondent herein. A perusal of the order dated 07.08.2005 passed by the Tribunal in O.A.No.77 of 2002 reveals that the Tribunal while dealing with the appeal of the 3rd respondent found that the enquiry officer merely recorded the statements of various persons but none of them were examined and they were also not subjected to cross-examination. The Tribunal had recorded a further finding that no evidence as such was adduced to prove the allegations made against the petitioner therein. The Tribunal recorded a finding that the surcharge proceedings were fastened on the Secretary merely based on the enquiry report which is infact negated. Thus, holding the same, the Tribunal had set aside the surcharge proceedings dated 07.03.2002 and remanded the matter back to the Deputy Registrar for conducting a de-nova enquiry after giving opportunity. It may be noticed that the order dated 07.03.2002 of the Deputy Registrar is the order passed in respect of three individuals, i.e., the appellant in O.S.No.77 of 2002 and the petitioner in W.P.No.11931 of 2004. The order dated 07.03.2002, also does not indicate that any independent evidence having been brought against the petitioner or there is any independent finding having been given against the petitioner, so as to fix the liability solely on the petitioner. The finding of the Deputy Registrar with respect to the amounts mentioned, both the petitioner as well as the Secretary are jointly and

severally responsible. In other words, loss if any incurred is required to be recouped both from the petitioner as well as the Secretary. In relation to the Secretary, the Tribunal had recorded a categorical finding that the enquiry is vitiated on account of not providing an opportunity to the Secretary and thus had set aside the order passed by the Deputy Registrar giving liberty to conduct a de-nova enquiry. Further in the absence of there being any independent material and findings recorded by the Deputy Registrar in relation to the petitioner, there cannot be a different result in the case of the petitioner. Considering the fact that a common order was passed after conducting the enquiry in relation to three individuals and considering the fact in relation to two individuals a de-nova enquiry is directed to be conducted, the writ petitioner herein cannot be singled out. In that view of the matter, the impugned order dated 03.04.2004 of the Tribunal is liable to be set aside.

Accordingly, the writ petition is allowed setting aside the order dated 03.04.2004, passed by the Tribunal, in O.A.No.130 of 2002 and remitting back the case of the petitioner to the 2nd respondent-Deputy Registrar, to conduct a de-nova enquiry along with the enquiry that is already being conducted in relation to the respondents 3 and 4, and complete the same within a period of three months from the date of receipt of copy of this order.

Further, inasmuch as the surcharge proceedings dated 07.03.2002 issued by the 2nd respondent-Deputy Registrar are being set aside as against the petitioner, all the consequential actions taken pursuant to the said surcharge proceedings against the petitioner are not sustainable and thus liable to be quashed and accordingly quashed. However, it is made clear that the petitioner shall not alienate or create any charge with regard to the properties which are the subject matter of attachment till the completion of the de-nova enquiry proceedings by the 2nd respondent-Deputy Registrar. No order as to costs.

Miscellaneous Petitions, if any pending in this writ petition shall stand closed.
No order as to costs.

CHALLA KODANDA RAM,J

Date:05.11.2015.

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HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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