

THE HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION Nos. 23903 of 2003 & 28845 of 2009

ORDER:

Both the writ petitions are disposed of by way of this common order, as the issue raised in these two writ petitions is one and the same.

These two writ petitions are filed by the employees of Co-operative Urban Bank Limited, Karimnagar and they are challenging the action of the respondents in issuing the impugned proceedings dated 25.2.2002 issued by the 2nd respondent and the consequential impugned sale proceedings, dated 28.10.2003 in E.P.No.4 of 2003 issued by the Sale Officer, Karimnagar Co-operative Urbank Bank Limited, Karimnagar, without completing the enquiry under Section 51 of the A.P. Co-operative Societies Act, against the delinquent Mr. B.Hanumandlu as directed by the Government and directing the petitioners herein to pay an amount of Rs.26,967-00/- and Rs.1,35,961/- respectively from both the petitioners as determined by the authorities under Section 51 of the A.P. Co-operative Societies Act (for short "the Act") and to declare the surcharge proceedings under Section-60 of the Act, as illegal and arbitrary.

Heard Sri M.Rama Rao, learned counsel for the petitioners, learned Government Pleader for Co-operation and Sri K.Vasudeva Reddy, learned Standing Counsel for the respondent-Bank.

It is contended by the petitioners that there were some allegations against 11 employees of the Karimnagar Co-operative Urban Bank Limited that they have embezzled Rs. 11,00,000/- of the bank funds and enquiry under Section 51 of the said Act was

conducted and without following the procedure, surcharge orders were issued under Section 60 of the Act against employees of Karimnagar Co-operative Urban Bank Limited. Similar allegations were also leveled against one B.Hanumandlu and identical proceedings were also issued against him. It is further contended that he had approached the Government by way of a revision and in the revision, the Government had absolved B.Hanumandlu. Challenging the orders passed by the State Government, the respondent-Bank had filed W.P.No.7077 of 2001 contending that the Government has no power to absolve Sri B.Hanumandlu. The said writ petition had been allowed on 02.08.2012 with the following observations:

“ For the foregoing reasons, the writ petition is allowed and the orders impugned in the writ petition are set aside. The third respondent shall take up the surcharge proceedings by proceeding on the assumption that the report under Section 51 of the Act submitted in relation to the petitioner-bank is very much on record, and shall record independent findings as to the liability of the 1st respondent duly, giving an opportunity to him.

The 1st respondent approached this Court in a different context. The arrangement directed by the Division Bench of this Court in Writ Appeal No.1650 of 2002 shall remain in force, until the 3rd respondent passes fresh orders, but the amount is restricted to Rs. 2,20,000/-.”

It is further contended by the petitioners that B. Hanumandlu, had approached the State Government once again seeking justice and the State Government vide Memo dated 31.8.2002 had passed the following orders:

“Further, as seen from the orders dated 18.4.2002 of A.P.H.C., Hyderabad, on MVMP No.3025 of 2011, the High Court have vacated the interim orders presuming that the petitioner has been exonerated from the surcharge proceedings and further action was dropped, whereas the

fact is that no such action has not been taken so far. More over the High Court has not given any direction to settle the pensionary benefits of the petitioner.

Government are of the view that the enquiry under Section 51 of the Act is not conducted in accordance with the principles and procedures laid down under Law. The enquiry did not bring out the guilty or otherwise. Therefore, the Additional Registrar should have quashed the enquiry conducted under Section 51 and ordered for a de novo enquiry. The statement that there is no provision for second enquiry under Section 51 of the Act is also not correct. The RCS should either order a de nova enquiry or direct the enquiry officer to specifically rectify omissions in enquiry. He can ask enquiry officer to look in to specific issues and give his findings with reasons for the same. Therefore, the CC & RCS, Hyderabad is requested to examine the case afresh, if necessary he should order a de nova enquiry or giving more specific directions to Enquiry Officer to rectify the deficiencies or examine more carefully omissions etc., in the report and send the same to Government immediately for taking further necessary action in the matter.”

The principal contention of the petitioners is that the petitioners are identically placed as that of B.Hanumandlu and the State Government had directed the respondents to conduct fresh enquiry under Section 51 of the Act. This Court *vide* orders dated 2.8.2012 in W.P.No.7077 of 2001 had directed that under section 60 of the Act that surcharge proceedings should be re-initiated after giving opportunity. Admittedly, neither the enquiry under Section-51 of the Act is conducted in terms of the Government Orders dated 31.8.2002 nor surcharge proceedings were initiated against Sri B.Hanumandlu, in pursuance of the orders passed by this Court in W.P.No.7077 of 2001, dated 2.8.2012 and as long as the respondents have not completed enquiry under Section 51 of the Act, no surcharge proceedings can be issued under Section 60 of the Act as stated *supra*, against the petitioners and the amounts cannot be recovered from the petitioners.

Learned Government Pleader would submit that this Court had directed the respondents to conduct surcharge proceedings under Section 60 of the Act and the State Government had also directed to conduct *de novo* enquiry *vide* orders dated 31.8.2002. In view of the same, the respondents are directed to complete the exercise as directed by the State Government and by this Court and after conducting fresh enquiry, surcharge proceedings would be issued to the petitioners.

Sri K.Vasudeva Reddy, learned Standing Counsel for the respondent-Bank would contend that since the petitioners are similarly situated as that of V.Hanumandlu, action will be initiated along with V.Hanumandlu.

This Court, having considered the rival submissions of the parties, is of the considered view that until and unless, the proceedings either under Section 51 of the Act or under Section 60 of the Act are not concluded against B.Hanumandlu, the respondents cannot issue surcharge proceedings against the petitioners. Therefore, the impugned surcharge proceedings ordering the petitioners to pay the said amounts are liable to be set aside. Accordingly, they are set aside and the writ petition is allowed, with an observation that as and when the respondents initiate action against B.Hanumandlu, the respondents are at liberty to take action against the petitioners also in accordance with the law.

Miscellaneous petitions pending if any, shall stand closed. No costs.

ABHINAND KUMAR SHAVILI, J

Date:19/09/2018

slk

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