

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.2 of 2010

ORDER:-

This writ petition is filed challenging the order dated 13.02.2009 passed in O.A.No.36 of 2007 by the A.P.Cooperative Tribunal at Vijayawada.

2. Heard Sri G.V.Shivaji, the learned counsel for the petitioner and the learned Government Pleader for Cooperation (AP) appearing for the respondents.

3. It is the case of the petitioner that the petitioner worked as the President of the second respondent society. During that period, there was an enquiry ordered under Section 51 of the A.P. Cooperative Societies Act, 1964 ('The Act', for brevity) into the affairs of the second respondent society and based on the enquiry report, surcharge proceedings were initiated against the petitioner under the Act and in the said surcharge proceedings, an amount of Rs.69,410/- was found to have been misappropriated and the liability was fixed on the ex-president and the ex-secretary of the second respondent society, jointly and severally. The petitioner challenged the same by filing an appeal before the Cooperative Tribunal, which confirmed the surcharge orders passed under Section 60 of the Act. Aggrieved by the same, the petitioner filed this writ petition.

4. It is the contention of the petitioner that the employees of the society by names A.Chenchaiah and P.V.Ratnam collected the amounts from the members identified under Swayam Upadi Padakam and failed to remit the same into the bank account of the society and that those persons are responsible for misappropriation and the respondent authorities had failed to examine those employees who

collected the amounts but the Enquiry Officer, under Section 51 of the Act, has already examined those two employees who calculated the amount. The Tribunal, taking into consideration the contentions raised by the petitioners, specifically dealt with the same, whereunder, a categorical finding has been recorded that the Enquiry Officer has examined the above employees and the factum of misappropriation was confirmed.

5. The fact that misappropriation of the amount took place is not in dispute. It is the contention of the petitioner in the surcharge proceedings as well as before the Tribunal that the petitioner had ample opportunity to establish the fact that he was not responsible in any manner with respect to the misappropriation of the amount by the employees of the society. It may be noted that Section 60 of the Act is in strict terms and fastens liability even with respect to the negligent acts of the office bearers. The petitioner (President) and the secretary of the second respondent society cannot wish away the liability fastened on them by the statute, as they are required to act in diligent manner and ensure that the amount belonging to the society is credited to the bank account of the society. The misappropriation aspect, being a finding on fact, cannot be gone into by this Court in exercise of jurisdiction under Article 226 of the Constitution of India. In the absence of violation of principles of natural justice, this Court is unable to interfere with the impugned order of the Tribunal.

6. Accordingly, this writ petition is dismissed. During the pendency of the writ petition, if any amount is paid by the petitioner, the same shall be given credit to in giving effect to the orders of the surcharge proceedings. There shall be no order as to costs.

7. As a sequel, miscellaneous petitions, if any, pending in this writ petition shall stand closed.

CHALLA KODANDA RAM, J

29th December, 2015

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