THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.9679 and 8294 of 2006

COMMON ORDER:

In both these Writ Petitions, petitioners challenged order, dated 07.12.2005 passed by the Andhra Pradesh Cooperative Tribunal at Hyderabad (for short 'the Tribunal') affirming the order, dated 26.06.2002 passed by the Deputy Registrar/Divisional Cooperative Officer, Hyderabad (West), Ranga Reddy District. Hence, they are heard together and being disposed of by a common order.

Petitioner in Writ Petition No.9679 of 2006 was the Ex-Secretary and petitioner in Writ Petition No.8294 of 2006 was the Ex-President of NFC Employees Consumers Cooperative Society Limited, Hyderabad (for short 'the society').

Heard Sri M.Jagannatha Sarma, learned counsel for the petitioner in Writ Petition No.9679 of 2006, Smt. Shanthi Neelam, learned counsel for the petitioner in Writ Petition No.8294 of 2006 and Sri S.Srinivas Sharma, learned Standing Counsel for the society.

The brief facts as set out by the petitioners are that the petitioners were Office bearers of the society and enquiry under Section 51 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act') was conducted into the affairs of the society. Based on the said report, the Deputy Registrar/Divisional

Cooperative Officer, Hyderabad (West), Ranga Reddy District, passed surcharge order, dated 11.03.1988 under Section 60 of the Act fixing the liability of Rs.2,05,508.58 ps towards deficit in stocks, on the petitioner and the fifth respondent in Writ Petition No.9679 of 2006, jointly and severally, together with interest @18% per annum from 06.10.1983 till recovery of the said amount.

Aggrieved by the said surcharge order, dated 26.06.2002, the petitioner in Writ Petition No.9679 of 2006 approached the Tribunal by filing CTA.No.58 of 1996 (old CTA.No.1 of 1988) under Section 76 of the Act. The Tribunal by award, dated 11.11.1996 disposed of the said appeal holding that no liability can be fastened on the petitioner in Writ Petition No.9679 of 2006 for the deficit in stocks as the same cannot be held as misappropriation. The said award came to be challenged both by the society and the petitioner in Writ Petition No.9679 of 2006 by filing Civil Revision Petition Nos.2410 and 2853 of 1997 respectively before this Court. Both the Civil Revision Petitions came to be disposed of by this Court vide order, dated 11.12.2001, in which, this Court while refusing to interfere with the findings of the Deputy Registrar/Divisional Cooperative Officer as well as the Tribunal, remanded the matter to the Deputy Registrar/Divisional Cooperative Officer directing him to ascertain the quantum of loss occasioned to the society after duly taking into consideration the amount of loss as quantified in the enquiry report under Section 51 of the Act. In pursuance of the same, the Deputy Registrar/Divisional Cooperative Officer after taking into consideration various contentions raised by the petitioners and having regard to the facts and circumstances of the case, passed order, dated 26.06.2002 determining the loss on account of deficit in stocks as Rs.1,08,670/- as against the earlier deficit in stocks of Rs.2,05,508.58ps and accordingly, ordered recovery of the said amount from the petitioners along with Sri B.M.Pillai, who is arrayed as fifth respondent in Writ Petition No.9679 of 2006 and fourth respondent in Writ Petition No.8294 of 2006, jointly and severally, together with interest @18%

per annum from 06.10.1983 till recovery of the said amount.

Both the petitioners unsuccessfully challenged the surcharge order, dated 26.06.2002 before the Tribunal by filing CTA.Nos.121 and 127 of 2002. The society also filed CTA.No.152 of 2002 before the Tribunal. The Tribunal passed common judgment, dated 07.12.2005 dismissing the appeals filed by the petitioners and allowing the appeal filed by the society. Questioning the said common judgment, the petitioners filed both these Writ Petitions.

It is to be noted that Writ Petition No.9679 of 2006 came to be dismissed against respondents 4 and 5 vide order, dated 04.11.2011. Likewise, Writ Petition No.8294 of 2006 against respondents 3 and 4 vide order, dated 23.06.2011.

Learned counsel appearing on behalf of the petitioners contended that the primary authority as well as the Tribunal failed to consider the case of the petitioners in proper perspective and also appreciate the fact that the petitioners are only Office bearers of the society and it is in fact, the responsibility of the Business Manager with respect to the inventory in the society. The learned counsel further contended that passing of surcharge order was only based on the enquiry conducted into the affairs of the society under Section 51 of the Act and no independent enquiry as such was conducted and the very fact that the amount with regard to the deficit in stocks came to be scaled down virtually by itself would indicate that the enquiry was not conducted properly. The learned counsel strenuously contended that the Secretary as well as the President being Office bearers of the society ought not to have been fastened with the liability.

On the other hand, learned counsel for the society by copiously referring to the orders passed by the primary authority as well as the Tribunal would submit that it is not open for the petitioners now to contend and re-agitate the issue, which was settled in earlier proceedings, particularly, when this Court refused to interfere with the findings of the primary authority as well as the Tribunal as held by it in its order, dated 11.12.2001 passed in Civil Revision Petition Nos.2410 and 2853 of 1997. He would further submit that the limited relief this Court granted in the said Civil Revision Petitions is only with regard to quantification of liability and apportionment of the same among the persons, who are responsible for it. Pursuant to the directions issued by this Court, fresh enquiry was conducted and taking into consideration the respective submissions, the primary authority had in fact, scaled down the amount payable by the petitioners and another to Rs.1,08,670/-. He prays for dismissal of the Writ Petitions with costs as there being no infirmity in the orders of the primary authority as well as the Tribunal.

I have perused the record and considered the rival submissions of the learned counsel. As rightly contended by the learned counsel for the society, this Court while disposing of the Civil Revision Petitions categorically held ‘as this Court finds no perversity in the appreciation of evidence, this Court is unable to invalidate the findings of the surcharge authority as well as the appellate authority with regard to the culpability of Sri P.V.S.Pillai’. In other words, so far as the culpability is concerned, it had become final and the petitioners were held responsible for the deficit in stocks. The issue which the primary authority required to consider was only with regard to the quantification of deficit in stocks.

A perusal of the common judgment, dated 26.06.2002 passed by the Tribunal reveals that the Deputy Registrar/Divisional Cooperative Officer had taken into consideration the detailed submissions made and various figures put in a tabular form, and finally came to a conclusion that a sum of Rs.1,08,670/- (Rs.58,340/- and Rs.50,330/-) is recoverable from the three persons, namely, the Ex-President U.C.Gupta, who is the petitioner in Writ Petition No.8294 of 2006, and the Ex-Secretary P.S.V.Pillai, who is the petitioner in Writ Petition No.9679 of 2006 and the Ex-Business Manager B.M.Pillai, jointly and severally, together with interest @18% per annum from the date of deficit i.e. with effect from 06.10.1983. Though the learned counsel for the petitioners disputed the quantum of liability, this Court not being an appellate authority is not inclined to consider the same. The Tribunal had undertaken the exercise of re-appreciating the figures and finally did not find any case to interfere with the findings of the Deputy Registrar/Divisional Cooperative Officer. For the same reasons, this Court not being an appellate authority does not require to enter into a controversy with regard to the quantum of liability.

In the facts and circumstances of the present case, there is no illegality or arbitrariness on the part of the Tribunal in dismissing the appeals filed by the petitioners. However, learned counsel for the petitioner in Writ Petition No.9679 of 2006 had submitted that a sum of Rs.45,225/- was paid during pendency of the proceedings before the authorities and the same may be considered by the authorities, if any recovery proceedings are initiated against the petitioner. It is needless to mention that in execution proceedings, the assertion of the petitioner that he had paid a sum of Rs.45,225/- shall be taken into account and necessary such adjustment shall be made before proceeding with the execution proceedings.

Subject to the above observations, the Writ Petitions are dismissed.

Miscellaneous Petitions, if any, pending in these Writ Petitions shall stand dismissed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

14th DECEMBER, 2015.

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