

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.17991 OF 2004

ORDER:

The writ petition is filed questioning the order dated 12.04.2004 passed by the 5th respondent-A.P. Cooperative Tribunal, Vijayawada (for short "the Tribunal") in O.A.No.91 of 2003.

It is the case of the petitioner that he was the Secretary of the Vatlavanipalem P.A.C.C.S Limited, Vatlavanipalem, K.P.Palem, Mogalthur Mandal, West Godavari District at the relevant point of time. Petitioner along with one Mr. A.V.S.V.Sekharbabu, who is the 4th respondent herein was found to have misappropriated by showing the excess amount of Rs.3,50,000/- in credit column side of the cash book for the year 2002. Based on the enquiry report, surcharge proceedings under Section 60 of the A.P. Cooperative Societies Act, 1964 (for short "the Act") were issued to the petitioner and the 4th respondent fixing the liability to pay a sum of Rs.3,50,000/- jointly and severally with interest at the rate of 18% p.a from the date of transaction. Aggrieved thereby, the petitioner preferred a statutory appeal in O.A.No.91 of 2003 before the 5th respondent-Tribunal and after its enquiry, the Tribunal dismissed the appeal by an order dated 12.04.2004 directing the 1st respondent-Deputy Registrar of Cooperative Societies to fix the equal liability on the 3rd respondent also apart from the petitioner and the 4th respondent as the 3rd respondent was the President of the Society at the relevant point of time. The Tribunal further held that the Supervisor of the Central Bank is liable for disciplinary action in view of the recommendations of the Inspecting Officer. Incidentally, out of Rs.3,50,000/- originally said to have been misappropriated, a sum of Rs.1,74,512/- was paid back by the 4th respondent on 24.06.2002. Thus, finally misappropriated amount was arrived at Rs.2,50,000/-.

Heard Sri P. Radhakrishna, learned counsel for the petitioner, Sri

K. Chidambaram, learned counsel for the 2nd respondent and Sri K. Subrahmanyam, learned counsel for the 3rd respondent and Sri P. Durga Prasad, learned counsel for the 4th respondent.

Learned counsel for the petitioner vehemently contended that the petitioner was only a Secretary of the Society and it was the 4th respondent who was found to be responsible for misappropriation of the alleged amount and the petitioner had no role to play. Inasmuch as the petitioner had no role to play and he is only the Executive Head of the Society, fastening the liability on the petitioner was arbitrary and unwarranted.

Learned counsel for the 3rd respondent submits that his client has nothing to do and he was only the Chair Person of the Society and at any rate, the Tribunal's order suffers from the vice of fastening the liability on him when even though he was not impleaded as a party respondent before the Tribunal.

The arguments advanced by the learned counsel for the petitioner does not appeal to this Court for the reason Section 60 of the Act fasten the liability even for the acts of wilful negligence and the loss if any to the Society is liable to be recouped. In the present case, it is on account of the report of the Registrar under Section 52 of the Act and surcharge proceedings under Section 60 of the Act came to be issued and there is no challenge to the effect that there was no misappropriation. The other contention of the learned counsel for the petitioner that it was the General Body which has authorised the clerk i.e. the 4th respondent through their resolution dated 30.03.1998 entrusted with the function of collection of amounts and issuing of receipts to the members and to remit the collected amount into the D.C.C. Bank and he alone is responsible. It is difficult to accept the contention of the learned counsel for the petitioner for the reason that the 4th respondent is the clerk and he needs the authority of the petitioner who is the Secretary and it is the responsibility of the

Secretary who is the Chief Executive Officer of the Society to ensure that the proper receipts are issued and the collected amount is remitted into the Bank account of the Society. In the case on hand, the 4th respondent being the Accountant had shown receipts side of the cash book without in fact crediting the same cash amount into the Society's account. The resolution of the Society while resolving that the Secretary was irregular in attending the affairs of the Society had entrusted with the function of collection and remitting the same into the bank account. By such entrustment, it cannot be said that the Secretary gets exonerated as in the ultimate analysis as long as the Secretary continues to be a Secretary, the overall responsibility would lie with the Secretary of the Society. Further, there is no such plea before the Tribunal that the petitioner was not in fact looking after the affairs of the Society at the relevant point of time and had nothing to do with the affairs of the Society in any manner at the relevant point of time. In the absence of any such plea, the argument based on the alleged innocence of the petitioner does not merit any consideration. It is also not the case of the petitioner that he was not provided with the adequate opportunity of hearing either before the primary authority or before the Tribunal. It is also not being the case of the petitioner that there is no power in the authority in passing the impugned order. In the limited exercise of the supervisory jurisdiction of this Court under Article 226 of the Constitution of India particularly in considering the orders of the Tribunal under Certiorari jurisdiction and in the facts of the present case, the impugned order does not warrant any interference.

However, one aspect which needs to be considered is that the Tribunal had found that the 3rd respondent was also liable to be proceeded with as he also stands in the same position as that of the Secretary-4th respondent and the 3rd respondent being the Chairman was also liable to be proceeded as he stands in the position as of the

petitioner. The learned counsel for the 3rd respondent submits that his client had not challenged the orders of the Tribunal. However, he submits that the third respondent would asserts his rights as may be available to him to protect his interest. In that view of the matter, there is no requirement of expressing any opinion with respect to the finding of the Tribunal in relation to third respondent.

As the petitioner had failed to make out any case calling for interference of the order of the Tribunal, the writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed. No order as to costs.

CHALLA KODANDA RAM, J.

Date:10.12.2015.

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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

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