

The Court made the following: [order follows]

HONOURABLE SRI JUSTICE S.V. BHATT

WRIT PETITION NO. 11733 OF 2008

ORDER:

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Heard Sri K. Chidambaram for petitioner and Assistant
Government Pleader [Co-operation].

2. The petitioner prays for writ of Certiorari to call for the records leading upto and inclusive of order dated 25/04/2001 in O.A.No. 34 of 1999 and Order in Rc.No. 8739/95-M, dated 04/11/1998 quash as illegal, arbitrary and violative of principles of natural justice.

3. The circumstances relevant for disposal of writ petition are as follows:

The petitioner was elected as President of the East Godavari District Co-operative Marketing Society Limited, Kakinada/second respondent herein in the Elections held in 1992. The first respondent through proceedings dated 29/1/1995 ordered enquiry under section 51 of A.P. Co-operative Societies Act, 1964 [for short 'the Act'] against the petitioner. The report submitted under section 51 holds that the petitioner has not properly

accounted for and was responsible for excessive surcharge amount of Rs.3,20,977-60 paise. The enquiry was not challenged by the petitioner at any point of time. Thereafter, proceedings under section 60 were initiated by the first respondent in Rc.No. 8739/95/M. The first respondent passed surcharge order dated 04/11/1998 determining the amount payable by the petitioner as Rs.3,20,977/-. The petitioner filed O.A.No. 34 of 1999 before A.P. Co-operative Tribunal, Vijayawada on 25/4/2001. The O.A. filed by the petitioner was dismissed. It is contextual to refer to the points framed by the Tribunal for determination and the read thus:

i) whether the first respondent has given any opportunity to appellant before passing the surcharge order against him ?

ii) whether the appellant is permitted to use hired vehicle and telephone in the name of his family members?

iii) whether the order under challenge is liable to be set aside ?

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4. The Tribunal on point No. [i] held that the first respondent has given ample opportunity to petitioner by giving two years time to the petitioner to submit his objections, if any, against the

proposed surcharge proceedings and as objections were not received by the first respondent, the surcharge order dated 04/11/1998 was passed and it is further recorded that before issuing surcharge order the first respondent afforded opportunity to the petitioner. The petitioner in fact did not avail the opportunity and no exception on the ground that the surcharge order dated 04/11/1998 is violative of principles of natural justice could be taken.

5. On point No. [ii] the Tribunal has considered the allegation against the petitioner and found that the employment of 18 daily wage employees and their subsequent regularization from 01/7/1994 are without prior approval of the competent authority under section 116 [c] of the Act. The finding of fact recorded against the petitioner is that the appointment and regularization are contrary to law and without prior approval of the competent authority. On hiring taxi or private vehicle, it is noticed that the society has its own vehicle and the explanation offered for hiring of vehicle and spending Rs.2,30,000/- was not satisfactory and ordered recovery through the instant surcharge is justified. The irregular and unauthorized use of telephone bills by the petitioner

is not accepted and all the three points are held against the petitioner. Hence, the writ petition.

6. Sri Chidambaram contends that under section 60 of the Act, the first respondent is under obligation to issue notice to the petitioner, receive objections and conduct enquiry before determining the amount payable by the petitioner by way of surcharge. According to him, the surcharge order dated 04/11/1998 is vitiated and liable to be set aside.

7. The Assistant Government Pleader draws attention of the Court to the findings recorded by the first respondent and contends that there is no dispute about the issue of notice by the first respondent, for according to the petitioner himself written objections was filed on 17/8/1996 and admittedly these objections were returned as objections did not contain the signature of petitioner. Once filing of objections on 17/8/1996 is accepted, return is also accepted, the burden is on the petitioner to show that the objections were in fact filed at least when the matter was pending for two years before the first respondent. In the absence of any proof of filing of objections before the first respondent, assertion that the surcharge order is violative of section 60 and

principles of natural justice cannot be accepted. As regards other allegations against the petitioner, the Assistant Government Pleader contends that it is not the case of the petitioner that the appointments were made with the prior approval of the competent authority but the explanation offered by the petitioner is that the appointments and regularization have been carried out in terms of Board Resolutions. It is clear that the salaries paid to these employees is unauthorized, illegal and rightly recover from the petitioner, who was President of the society at the relevant point of time is ordered. Adverting to explanation for hiring a car and paying Rs.2,30,000/- he submits that when the society has a regular vehicle and driver there is no justification for incurring Rs.2,30,000/- for hiring taxi by the President. The explanation if any is unacceptable and impermissible, both in the enquiry and surcharge proceedings sufficient reasons are stated and he supports the findings recorded by the Tribunal and prays for dismissing the writ petition. Adverting to telephone bills, he contends that the telephone bills of kith and kin cannot be paid from the society account and there is no material placed by the petitioner to show that the findings recorded in the enquiry or in the

surcharge proceedings is contrary to the material available on record are perverse. For the above reasons, he prays for dismissal of the writ petition.

7. I have perused the material available on record and I taken note of the submissions of learned counsel appearing for the parties.

8. Now the point for consideration is whether the petitioner has made out any case for issuing writ of certiorari against the orders dated 25/4/2001 and 04/11/1998 ?

9. The principal contention of the petitioner is that the surcharge order dated 04/11/1998 is contrary to section 60 of the Act and violative of principles of natural justice. The admitted circumstances of the case are that the first respondent issued notice on 04/8/1996 to the petitioner and on 17/8/1996 the petitioner filed objections without his signature. As the objections filed are not in proper form, the objections were admittedly returned and from these two circumstances it cannot be said that the surcharge proceedings were concluded without notice to the petitioner. The fact of the matter is that as the petitioner has taken

chance by filing objections without his signature. It cannot further be said that after rejecting objections filed by the petitioner immediately surcharge proceedings dated 04/11/1998 was passed by the first respondent. The first respondent had waited for two years in anticipation of objections from the petitioner and as no objections was received, the surcharge order dated 04/11/1998 was passed. Further, the objection of the petitioner that surcharge order dated 04/11/1998 is vitiated and contrary to section 60 of the Act, is not made out and this contention is rejected. On this aspect of the matter, the Tribunal after perusing the record of the first respondent has recorded findings of fact and no illegality or irregularity is pointed out to attract the jurisdiction of this Court under Article 226 of the Constitution of India. This contention fails and accordingly rejected. Adverting to ancillary submission of the learned counsel for the petitioner before concluding, this Court has to precisely observe that once appointments are accepted to have been made without prior approval of the competent authority, the fact that Board Resolutions are available is no explanation to cure the inherent defect of lack of approval of the competent authority. Having made unauthorized and illegal appointments, rightly

surcharge proceedings for recovery of amounts paid to the employees' is initiated. From the findings recorded by the Tribunal, it is evident that the petitioner has not only used the vehicle of second respondent society but also hired vehicle whereunder he has paid huge sum of Rs.2,30,000/- during his tenure. In the considered view of this Court, the reasons recorded by the first respondent, as confirmed by the Tribunal need no interference and are confirmed.

10. Writ Petition fails and dismissed. No order as to costs.

11. As a sequel, miscellaneous petitions if any, pending in this Writ Petition shall stand closed.

JUSTICE S.V. BHATT

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