

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.2602 of 2006

ORDER:

Heard Sri K.Pavan, counsel for petitioner, the Assistant Government Pleader for 1st respondent and Sri E.Satyanarayana for respondents 2 and 3.

The petitioner challenges proceedings Rc.No.90/2000-B, dated 12-10-2001 and confirmation order in CTA No.43 of 2003, dated 15-02-2005 as illegal and violative of principles of natural justice.

On 04-04-2016, the writ petition was heard in great detail and learned counsel have made several submissions on the merits of the matter including the similarity of circumstances between the instant writ petition and W.P.No.2603 of 2006, which was disposed of on 04-01-2007. To enable Sri Satyanarayana to get instructions on the initiation of proceedings under Section 60 of the A.P.Co-operative Societies Act, 1964 (for short 'the Act') and that there is any similarity in the facts and circumstances of both the matters, the matter underwent two adjournments and today, learned counsel appearing for respondents 2 and 3 fairly submits that the proceedings impugned in the instant writ petition and W.P.No.2603 of 2006 emanate from the same, file but in respect of two distinct transactions. He further fairly states that the objections raised in the instant writ petition and the objections raised in W.P.No.2603 of 2006 are substantially one and the same. The operative portion of order dated 04-01-2007 reads as follows:-

"It is an admitted fact that no documents were marked including the enquiry officer's report and no witnesses who purported to have given evidence during the course of enquiry under Section 51 of the

Act were examined before the surcharge authority. The surcharge authority, simply on the basis of enquiry report as well as the written statement, disposed of the case, which was confirmed by the appellate authority.

In this regard, the learned counsel for petitioner drawn attention of the Court to the judgment in **CHALLA SANYASINAIDU v. DEPUTY REGISTRAR OF COOP. SOCIETY, SRIKAKULAM [1]** and submitted that this is a glaring example where principles of natural justice were given a go-by and no enquiry known to law has been conducted either by the surcharge authority or appellate authority, therefore, both the orders are liable to be set aside.

I am in full agreement with the submissions made by the learned counsel for petitioner. This is a case where the witnesses who purported to have deposed before the Enquiry Officer, were not examined before the surcharge authority and no opportunity was given to the petitioner to cross-examine them and the entire evidence was recorded behind the back of the petitioner. Unless the persons who deposed before the enquiry under Section 51 of the Act are examined in Section 60 proceedings, their statements cannot form basis to hold the petitioner guilty of the charges. Therefore, the impugned orders are vitiated by law, procedure and principles of natural justice.

Therefore, I am of the opinion that the order passed by the surcharge authority (first respondent) dated 12.10.2001 as confirmed by the appellate authority (A.P. Cooperative Tribunal) in C.T.A.NO.9 of 2003 dated 15.12.2005 are liable to be set aside and accordingly set aside and the matter is remitted back to the first respondent-surcharge authority for fresh consideration of the matter after giving due opportunity to the petitioner and passing appropriate orders as per law.

The writ petition is accordingly allowed.”

Having regard to above circumstances, without considering the merits of the writ petition, I am satisfied

that the orders impugned in the writ petition are set aside on the short ground that the copy of enquiry report under Section 51 of the Act is not given to petitioner, matter is remanded to 1st respondent for fresh consideration and disposal in accordance with law.

A statement is made by the Assistant Government Pleader that 1st respondent will consider and dispose of the proceedings pending under Section 60 of the Act in both the matters within three months from the date of receipt of a copy of this order.

The statement is accepted and accordingly 1st respondent is directed to complete the enquiry in accordance with law, after remand in both the matters and pass appropriate orders within three months from the date of receipt of a copy of this order.

Accordingly, the writ petition is allowed and the matter is remanded as stated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date: 11-04-2016
Prv

THE HON'BLE SRI JUSTICE S.V.BHATT

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Dated 11-04-2016

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