

IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition Nos.6667, 12902 and 19486 of 2007

W.P. No.6667 of 2007

Between:

L. Ramkumar Singh

...Petitioner

And

The Deputy Registrar of Cooperative Societies-cum-
Divisional Cooperative Officer, Mancheriala,
Adilabad District and others

....Respondents

JUDGMENT PRONOUNCED ON : 08.12.2016

THE HON'BLE SRI JUSTICE A.RAMALINGESWARA RAO :

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? : YES
2. Whether the copies of judgment may be Marked to Law Reporters/Journals? : NO
3. Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? : NO

HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

Writ Petition Nos. 6667, 12902 and 19486 of 2007

Common Order:

These three Writ Petitions are being disposed of by this common order as they raise same point of law in this batch of cases.

W.P.Nos.667, 12902 and 19486 of 2007 arise out of CTA Nos.22, 18 and 17 of 2005 dated 20.09.2006 respectively passed by the A.P. Cooperative Tribunal, at Hyderabad confirming the surcharge order of the first respondent dated 03.11.2004. The Writ Petition filed against CTA No.55 of 2006 in W.P. No.2454 of 2007 was dismissed by this Court on 15.09.2008.

The petitioners in W.P.Nos.667 and 12902 of 2007 were Treasurers and the petitioner in W.P.No.19486 of 2007 was Secretary of Singareni Collieries Employees Cooperative Credit Society, MVK-6, Golletti. An enquiry was ordered against the affairs of the Society under Section 51 of the Cooperative Societies Act (for short 'the Act') and the enquiry revealed misappropriation of funds by the office bearers of the Society including the petitioners who at the relevant point of time were acting as office bearers. The Collector (Cooperation), Adilabad permitted initiation of proceedings under Section 60 of the Act, as a result of which a show cause notice was issued on 14.11.2000. The depositions of the delinquents were recorded and the available documents were supplied to them. Based on the depositions, findings were recorded against the petitioners holding them liable to pay an amount of Rs.1,78,668/-, Rs.2,10,000/- and Rs.13,66,083/- respectively by surcharge order dated 03.11.2004. Against the said surcharge order, the petitioners preferred CTA Nos.22, 18 and 17 of 2005 respectively before the A.P. Cooperative

Tribunal. The Tribunal framed an issue with regard to validity of the surcharge order dated 03.11.2004. After considering the submissions made by the appellants and the Presenting Officer and perusing the surcharge order, the Tribunal confirmed the order of the first respondent with the following observations.

“36. It would clearly manifest that the 1st respondent has exerted his best to extend every reasonable opportunity to the appellants to disprove the allegations levelled against them but the appellants have not utilised the same in a constructive and positive manner. They succeeded in ensuring that the surcharge proceedings are protracted for over three years. The difficulties encountered by the 1st respondent in bringing the guilty to book are chronicled in vivid detail upto page No.6 and again page No.26 & 27 of the impugned order. A careful examination of the record, also goes to prove the magnitude of efforts put in by the official respondent and the various tricks and strategies adopted by the appellants to delay the proceedings. The documentary evidence conclusively establish the liability of the appellants without any shadow of doubt whatsoever and there were several admissions made by the appellants during the course of recording their depositions and written statements.

37. The 1st respondent gave a cogent finding on all the counts. We do not find any reason to interfere with findings given by 1st respondent.

38. Having regard to the above discussion, we are of the firm view that the appellants in all the four CTAs covered by the same surcharge order have clearly acted against the interests of the society and have thrown all canons of propriety and norms of cooperative business ethics to the winds and brazenly misappropriated huge amounts of public money, duping several gullible employee members of Singareni Collieries. They have ostensibly diverted the funds of the society to unapproved and illegal purposes, which resulted in bringing a bad reputation to cooperative lending, as such. They caused irreparable loss to the image of the cooperative finance besides ruining themselves in the process. We do not find any merits in the appeals and all of them are liable to be dismissed.”

The above writ petitions were filed challenging the said common order of the Tribunal. Counter affidavits were filed and the learned counsel for the petitioners submits that in view of the law laid down by this Court in W.P.No.25990 of 2003 dated 10.11.2016, the orders of the

Tribunal and the first respondent are unsustainable in law. Whereas, the learned counsel for the respondents submits that in view of the concurrent findings recorded by both the authorities, the orders are valid.

A perusal of the above observations of the Tribunal clearly show that the Tribunal has not examined the matter in proper perspective. The Tribunal being an appellate authority should have independently examined the matter and recorded the findings with regard to liability of the petitioners and others.

This Court has come across several instances where surcharge proceedings were initiated based on Section 51 enquiry and those surcharge orders were passed relying on the report submitted in 51 enquiry. This Court elaborately considered the issue in W.P.No.25990 of 2003 dated 10.11.2016 and in view of the ratio laid down therein after examining the various binding decisions this Court is inclined to set aside the order passed by the Tribunal confirming the surcharge order dated 03.11.2004.

In view of the unsatisfactory conduct of the proceedings by the first respondent as well as by the A.P. Cooperative Tribunal, the surcharge order passed by the first respondent on 03.11.2004 and as confirmed by the Tribunal in CTA Nos.22, 18 and 17 of 2005 are set aside. The matter is remanded to the first respondent for conducting a *de novo* enquiry in respect of the liability of the petitioners and any amount recovered from the petitioners would be subject to the orders to be passed in the said enquiry. The first respondent shall pass fresh order in accordance with the law laid down by this Court in W.P. No.25990 of 2003 dated 10.11.2016 by giving due opportunity to the petitioners and complete the

same within a period of six (6) months from the date of receipt of a copy of this order.

The Writ Petitions are, accordingly, allowed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in these Writ Petitions shall stand closed.

A. RAMALINGESWARA RAO, J

Date: 08th December, 2016
Nsr

Note:
Office shall enclose a copy of the order in
W.P. 25990 of 2003 dated 10.11.2016.

