

THE HON'BLE SRI JUSTICE A. RAMALINGESWARA RAO

WRIT PETITION No.19987 of 2006

ORDER:

The petitioner worked as Secretary of the 2nd respondent society which was affiliated to the District Cooperative Central Bank, Nalgonda through its Nidamanoor branch.

An enquiry was ordered under Section 51 of the A.P. Cooperative Societies Act on the basis of adverse reports submitted by the Manager of Nidamanoor branch and the Divisional Cooperative Officer, Miryalguda against the petitioner. Based on the enquiry report, surcharge proceedings were initiated under Section 60 of the A.P. Cooperative Societies Act against the petitioner and the then President. A show cause notice was issued to the petitioner on 13-06-2003 and the petitioner submitted his explanation on 23-07-2003.

An order of surcharge was passed by the 1st respondent on 18-11-2003 and a perusal of the same showed that he merely came to the conclusion in respect of each charge based on the enquiry report conducted under Section 51 of the A.P. Cooperative Societies Act, without considering the explanation submitted by the petitioner.

Against the order passed by the 1st respondent, petitioner filed C.T.A.No.6 of 2004 before the A.P. Cooperative Tribunal, Warangal and contended that the enquiry was conducted only in respect of 18 allegations even though 32 allegations were leveled against the petitioner and the 1st respondent did not conduct an independent enquiry on every item of allegations leveled against the petitioner. He further submitted that the liability fixed against the petitioner society was also clubbed in the amount held against the petitioner. The audit of the accounts of the society was conducted and nothing was found as could be seen from the audit reports submitted up to March, 1999.

The Tribunal framed the following points for its consideration:

1. *Whether there are any infirmities in the impugned order passed by the Respondent No.1; and*
2. *Whether there are any merits in the appeal warranting interference with the impugned order.*

The Tribunal after extracting the allegations and the amount held to have been misappropriated after investigation by the Enquiry Officer, came to the conclusion that the 1st respondent enquired in respect of all the 32 allegations. The Tribunal further observed that the 1st respondent conducted the enquiry based on the Enquiry Officer's report, cash book, ledgers and vouchers, etc., and they cannot be found fault for

having done so as the books of accounts of the society are permanent records. It ultimately held as follows:

“10. Having examined the relevant record made available before the Tribunal, we believe that the Respondent No.1 considered and took into account all the claims and contentions of the appellant before passing the impugned order of surcharge. He deleted Rs.8,000/- (S.C. 31) from the liability of the appellant as he was convinced with the explanation and also showed Rs.10,053/- (S.C. 21) separately in the impugned order as it was not an item of misappropriation itself, but a liability arising out of the appellant’s temporary misappropriation of funds by retaining monies collected from members with himself for sometime. It is the misfortune of the Society and the borrowing members in particular that there should be a person like the appellant to work as Secretary. The appellant perpetrated mischief and defrauded the Society of which he was the Secretary himself by adopting several modi operandi, which can be conceived only by dishonest and irresponsible persons. His conduct is a sad reflection on the Cooperative movement itself.

11. In the light of the foregoing discussion, we are of the opinion that there are not any infirmities in the impugned order passed by the Respondent No.1 and that there are no merits in the appeal warranting interference of the Tribunal with the impugned order. The points are accordingly answered.”

Accordingly, dismissed the appeal by order, dated 14-07-2006. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner by placing reliance on a Division Bench decision of this Court reported in case of **CHALLA SANYASINAIDU V. THE DEPUTY REGISTRAR OF COOPERATIVE SOCIETY, SRIKAKULAM**¹ submits that the enquiry under Section 60 the A.P. Cooperative Societies Act has to be conducted independently of the report submitted under Section 52 of the A.P. Cooperative Societies Act by giving due opportunity to the delinquent to cross-examine the witnesses and permit him to examine his own witnesses.

On a perusal of the surcharge order passed by the 1st respondent shows that he did not even took into consideration the explanation submitted by the petitioner, gave opportunity to the petitioner to adduce evidence in support of his case, no documents were marked but in a routine administrative fashion passed an order, dated 18-11-2003 and the same was confirmed by the Cooperative Tribunal as aforesaid.

Since this Court is not satisfied with the manner of dealing with the case by the 1st respondent and disposal of the same by the Cooperative Tribunal and keeping in view of the amount of Rs.18,66,625/- alleged to have been misappropriated by the petitioner, this Court feels it appropriate to remand the matter to the 1st respondent for

¹ 1998 (1) A.P.L.J., 35 (HC)

conducting fresh enquiry, in accordance with law, and complete the same within a period of six (6) months from the date of receipt of a copy of this order by giving due opportunity to the petitioner.

The writ petition is accordingly allowed by setting aside the orders of the 1st respondent, dated 18-11-2003, confirmed by the Cooperative Tribunal, Warangal in C.T.A.No.6 of 2004, dated 14-07-2006. There shall be no order as to costs.

Miscellaneous petitions, if any, pending in the Writ Petition shall stand closed.

October 20, 2016

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A. RAMALINGESWARA RAO, J



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