**The Hon'ble Sri Justice A.Ramalingeswara Rao**

**Writ Petition No.6575 of 2009**

**Order:**

The petitioner was the President of respondent No.3- Bank. An enquiry into the affairs of the said Bank was ordered under Section 51 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short 'the Act') in the year 2002. The enquiry report was submitted by the Enquiry Officer on 09.09.2002. Since certain irregularities were pointed out therein, respondent No.2- Deputy Registrar of Co-operative Societies, Rajampet, issued notice under Section 60 (1) of the Act on 18-10-2002 to the petitioner directing him to explain the irregularities pointed out therein. The petitioner submitted representations on 16-11-2002 and 26-11-2002 to supply copies of certain documents in order to enable him to give proper explanation. But, without supplying those documents, an order of surcharge was passed by respondent No.2 on 24-12-2002. Hence, the petitioner preferred CTA.No.28 of 2003 before the Andhra Pradesh Co-operative Tribunal, Hyderabad (for short 'the Tribunal'), which was allowed on 23-06-2003 by setting aside the order of surcharge, dated 24-12-2002, and directing respondent No.2 to supply the documents in order to enable the petitioner to give proper explanation, record the evidence of the witnesses, mark the documents and permit him to cross-examine the witnesses. The petitioner submitted representations on 30-09-2003, 07-10-2003, 20-10-2003, 19-07-2004 and 17-09-2005 to supply the documents, but without supplying the same, a notice was issued by respondent No.2 on 07-06-2007 directing him to appear before the Enquiry Officer on 15-06-2007. Challenging the same, the petitioner filed WP.No.13021 of 2007, which was disposed of on 21-06-2007 directing respondent No.2 herein to furnish the documents within one week and if the documents were not available, state the reasons therefor. After receipt of the documents, the petitioner was given two weeks' time to submit his explanation and the proceedings were directed to be concluded soon thereafter.

It is the case of the petitioner that after passing of the above order, he was given 13 documents out of 33 items (562 documents) on 25-06-2007 and he submitted his explanation on 17-07-2007 to respondent No.2. He submits that respondent No.2, without giving him sufficient opportunity to cross-examine the Enquiry Officer, Ex-Secretary, Ex-Accountant and Ex-Cashier of respondent No.3-

Bank, posted the matter to 26-10-2007. On 26.10.2007, he submitted a written representation seeking permission to cross-examine the above Officers and also to furnish the remaining documents. Thereafter, the case was adjourned several times and the last one being 19-06-2008, but no enquiry had taken place. In the meanwhile, respondent No.2 was transferred from Rajampet to Chittoor on 31-05-2008. But, the impugned order was passed on 30-05-2008 even before taking up the case on the adjourned date. Challenging the said Order, the present Writ Petition is filed.

This Court, while admitting the Writ Petition on 30-03-2009, granted an order of *status quo*. Seeking vacation of the same, the respondents filed WVMP.No.5706 of 2010 along with a counter-affidavit wherein it is stated that the enquiry was conducted under Section 51 of the Act; that the Enquiry Officer *vide* enquiry report, dated 27-08-2002, fixed responsibility against the petitioner for an amount of Rs.77.43 lakhs for sanction of benami loans and irregular withdrawal of money by producing false vouchers and false remittance slips. It is further stated therein that based on the recommendations of the Enquiry Officer, a notice was issued to the petitioner on 12-09-2002 as he has been prolonging the matter on the ground of non-supply of documents and not giving sufficient opportunity during the enquiry. That though the petitioner appeared before respondent No.2 on 28-05-2008 and gave his deposition, he did not ask for cross-examination of any witnesses. That the enquiry was completed on 28-05-2008, order was passed on 30-05-2008 and respondent No.2 was transferred on 31-05-2008. That due to administrative reasons, the surcharge order was served on the petitioner on 19-03-2009. That a re-enquiry was conducted pursuant to the orders of the A.P.Co-operative Tribunal by giving proper opportunity to the petitioner and others. That the intention of the petitioner is to drag on the proceedings and due to irregularities committed by him, the Bank, which was established 70 years back, went into liquidation.

In view of the allegation of not providing sufficient opportunity to the petitioner and having regard to the averments made by the respondents in their counter-affidavit, the original record of enquiry was called for in the present case and the Counsel for the petitioner was permitted to peruse the same. On perusal of the record, the learned Counsel submitted that the petitioner was examined on 28-05-2008 and he was not cross-examined by the Department. He further submits that though the Ex-Directors and an attender were examined on 30-05-2008, no opportunity was given to him to cross-examine them. The learned Government Pleader, on the other hand, submits that the enquiry was taken up on day-to-day basis and the petitioner did not choose to cross-examine the said witnesses and he cannot take advantage of the same.

Be that as it may. It is clear from the record that the officer was transferred on 31-05-2008 and enquiry was concluded on 30-05-2008. No final submissions were made before him on the basis of the evidence recorded as he had no time before relinquishing the post.

In these circumstances, this Court is satisfied that the enquiry was not properly conducted. This Court has been noticing in several cases that due to lack of experience of the Officers in the Co-operative Department with regard to the conduct of enquiry, several lapses are being committed during the enquiry process, which is being taken advantage of by the delinquents. By the time, this Court is examining those irregularities, many years are being lapsed. This is a case where the petitioner was alleged to have committed irregularities to the tune of Rs.77.43 lakhs about 16 years back and was responsible for the liquidation of an Institution, which was established 70 years back. The surcharge order passed at one point of time was set aside by the Tribunal. Thereafter, the petitioner filed a Writ Petition for supply of documents. The proceedings were delayed on one pretext or other.

In these circumstances, respondent No.2 is directed to conduct the enquiry by calling the witnesses, who were already examined and provide an opportunity of cross-examining them to the petitioner. It is open to the petitioner to produce witnesses from his side. The petitioner shall also categorically state the documents required and effort made by him to secure those documents under the Right to Information Act, 2005, and the prejudice caused to him due to non-availability of such documents. Respondent No.2 shall make available to the petitioner, the documents, which are available in the Bank, and proceed with the enquiry at the earliest possible time. It is needless to observe that the petitioner shall co-operate for conclusion of the enquiry. The Enquiry Officer shall take into consideration, the law settled by this Court in various decisions culminating in Order, dated 08-12-2016, in WP.No.25990 of 2013 with regard to the procedure of conducting the enquiry. The entire exercise shall be completed within a period of six months from the date of receipt of a copy of this order.

Subject to the observations and directions, the Writ Petition is allowed.

As a sequel, interim order, dated 30-03-2009, is vacated and Miscellaneous Petitions, pending if any, stand disposed of as infructuous.

**(A.Ramalingeswara Rao, J)**

**Dt: 8th December, 2016**
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