

*** HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

+ WRIT PETITION No.24755 OF 2008

% 9th September, 2016

L. Rama Sudhakar and another

... Petitioners..

AND

\$ The Joint Registrar/District Coop Officer,
Visakhapatnam and three others.

... Respondents

! Counsel for the Petitioners : Sri VVN Narayana Rao

^ Counsel for the respondent No.1&2: Learned Government Pleader
For Cooperation

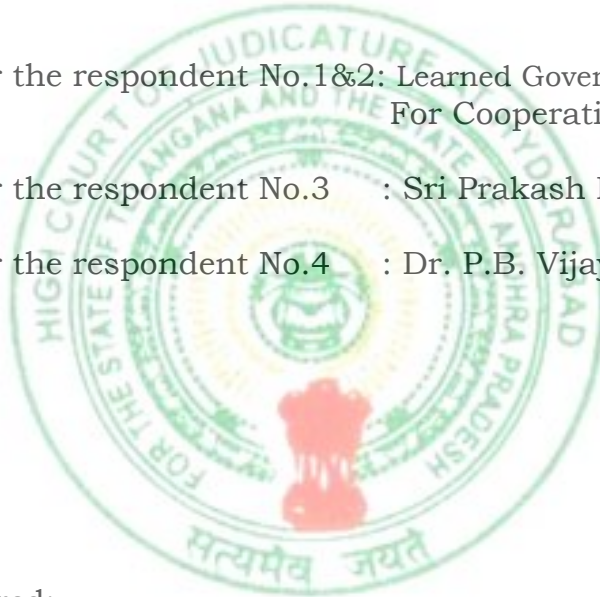
^ Counsel for the respondent No.3 : Sri Prakash Buddarapu

^ Counsel for the respondent No.4 : Dr. P.B. Vijay Kumar

< Gist:

> Head Note:

? Cases referred:



HON'BLE SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No.24755 OF 2008****ORDER:**

Heard Sri V.V.N. Narayana Rao, learned counsel for the petitioners, Dr. P.B. Vijay Kumar, learned counsel for the 4th respondent and Sri Prakash Buddarapu, learned counsel for the 3rd respondent and learned Government Pleader appearing for the official respondents 1 and 2.

The present writ petition is filed challenging the proceedings in Rc.No.2787/1998-B, dated 24.05.2008 issued by the 2nd respondent-Deputy Registrar of Cooperative Societies, Visakhapatnam.

As per the averments in the writ affidavit, 1st petitioner is the Secretary and the 2nd petitioner is the Director of the 3rd respondent-The Anakapalli Division Postal Employees Cooperative Credit Society Ltd., Anakapalli. Pursuant to the decision taken by the Managing Committee of the 3rd respondent-Society, money was pooled from other societies so as to enable the 3rd respondent to disburse such amount as loan to its eligible members. Accordingly, the 3rd respondent society approached the 4th respondent society and obtained cheques for Rs.20,00,000/-, and an amount of Rs.5,00,000/- was deposited in Andhra Bank, Woodpet Branch, Anakapalli and Rs.15,00,000/- was deposited in Head Post Office, Anakapalli. The said amounts were utilized for the purpose of disbursement of loan to the members of the society and for clearance of the loan of the society to the financial banks. The arbitration proceedings initiated under section 61 of the Act by

the 4th respondent-Society against the 3rd respondent-Society culminated in an Award being passed against the 3rd respondent society. The 3rd respondent-Society filed an appeal vide O.A.No. 57 of 2005 before the Andhra Pradesh Cooperative Tribunal, Vizag (in short “the Tribunal”) and the same was dismissed. Questioning the same the petitioners filed W.P.No.9370 of 2006 and this Court granted stay of the same. With respect to the same transactions, based on the enquiry report submitted by the Inquiry Officer under section 51 of the A.P. Cooperative-Societies Act (in short “the Act”), a Notice under Section 60 (1) of the Act was issued to the petitioners and other office bearers of the society and after inquiry the surcharge order dated 24.05.2008 was passed against them. In the said surcharge order, the 1st petitioner was surcharged for a sum of Rs.5,00,000/- with 18% per annum interest, apart from both the petitioners were surcharged jointly and severally for a sum of Rs.10,00,000/- with interest at the rate of 18% per annum, besides this each of the erstwhile office bearers were surcharged at Rs.1,40,000/- jointly and severally with interest at the rate of 18% per annum. The petitioners unsuccessfully challenged the surcharge order dated 24.05.2008 as the 3rd respondent society suffered an order under Section 62 of the Act, where under the society was held liable for the sums taken from the 4th respondent which order came to be upheld by the Tribunal for the same sums, initiation of surcharge proceedings against the petitioners is illegal and arbitrary. As the order passed under Section 62 of the Act as confirmed in C.T.A.No.57 of 2005 was pending before this Court as on the date of the order of the C.T.A.,

petitioners did not choose to file appeal before the Tribunal and instead approached this Court.

The 2nd respondent filed its counter wherein, in detail, the facts have been set out how and in what manner the role played by the petitioners in misutilisation of the funds of the Society, particularly, an amount of Rs.20,00,000/- received from the 4th respondent-Society in the name of 3rd respondent-Society. To the question raised with respect to the maintainability of the surcharge proceedings, it was contended that the proceedings issued under Section 60(1) of the Act against the petitioners and other office bearers are different and distinct from arbitration proceedings initiated by the 4th respondent-Society against the 3rd respondent-Society under Section 61 of the Act.

The 3rd respondent also filed a counter affidavit disowning the responsibility with respect to the amounts received from 4th respondent-Society, contending that the petitioners had played fraud and misutilised the said sums and at any rate the finding in the surcharge proceedings also confirmed the same and as a matter of fact, the 3rd respondent-Society has filed W.P.No.9370 of 2006 challenging the order dated 25.01.2006 in O.A.No.57 of 2005 of the Tribunal in confirming the Award passed in ARC No.11 of 2004-05, dated 07.05.2005, under Section 62 of the Act.

W.P.No.9370 of 2006 was also listed along with this writ petition and as a matter of fact, the same was dismissed vide separate order. Learned counsel appearing for the petitioner Sri V.V. Narayana Rao, in his usual persuading manner, submits that the arbitration proceedings initiated by the 4th respondent-Society

culminated in finding the 3rd respondent responsible for the amounts received from the 4th respondent-Society. Thereby, confirming the 3rd respondent-Society having received the monies from the 4th respondent-Society the arbitration award became final. In such circumstances, the very initiation of the surcharge proceedings against the petitioners and making the petitioners liable for the sums of Rs.20.00.000/- is totally illegal and contrary to the finding recorded in the Arbitration Award. It is also further contended that a criminal case was initiated against the petitioners in the Court of the First Class Judicial Magistrate at Anakapalli for the alleged misappropriation, the petitioners could not have been surcharged. The learned counsel also would further contend that now on account of the dismissal of the writ petition filed by the 3rd respondent, the stand of the petitioners is further gets consolidated confirming that there is no complacency on the part of the petitioners deserving exoneration from the alleged misappropriation and surcharge proceedings.

Learned Government Pleader supports the order passed under section 60 of the Act and further raises an objection regarding the maintainability of the writ petition on the ground that there was an effective alternative remedy against the surcharge order is available and as such the writ petition itself is not maintainable. He would also further contend that there is a distinction between the surcharge proceedings initiated against the petitioners' society and its office bearers under Section 60 of the Act and the arbitration proceedings initiated by the 4th respondent-Society against the 3rd respondent-Society, and both are independent.

Having considered the rival submissions and having noticed the above, as of now, the fact remains that W.P.No.9370 of 2006 filed by the 3rd respondent society against the order of the Tribunal in confirming the arbitration Award, made under Section 62 of the Act, stands dismissed. While dealing with the matter, this Court did not find any irregularity or the illegality warranting interference of the Award passed against the 3rd respondent-Society on account of the findings recorded by both the Arbitrator and the Tribunal on appreciation of the evidence that there was an element of complacency on the part of the office bearers in soliciting funds from the 3rd respondent-Society and opening parallel bank account and withdrawal of the same. The question now whether such finding in the arbitration entitle the petitioners to be exonerated from the surcharge order issued under Section 60 of the Act.

In this context, it may be noticed that the surcharge proceedings were initiated not only against the petitioners but also against 11 other office bearers of the 3rd respondent society and in the facts of the present case, it may be noted that it was the 4th respondent, which had initiated the proceedings invoking Section 61 of the Act by raising a dispute against the 3rd respondent-Society for not refunding the amounts, which were admittedly credited to the bank account of the 3rd respondent-Society. In the said proceedings, the 4th respondent-Society sought relief only against the 3rd respondent-Society and rightly so. So far as the 4th respondent-Society is concerned, it has nothing to do with the alleged mismanagement / misappropriation of the 3rd respondent-Society's funds by its office bearers, as long as there is no role

played by the 4th respondent society in such mismanagement / misappropriation. In the entire arbitration proceedings there are no allegations leave alone any finding that the 4th respondent-Society or its office bearers were involved in any manner in crediting monies with the accounts of the 3rd respondent-Society clandestinely or utilization or withdrawal of the said monies by the Society or its office bearers. In such circumstances, the 4th respondent-Society in law was rightly entitled to recover the money from the 3rd respondent-Society by invoking the provisions of the Act. So far as the surcharge proceedings initiated against the office bearers of the 3rd respondent-Society are concerned, they are the proceedings initiated on account of the enquiry under Section 51 of the Act, which are culminated by virtue of the impugned surcharge order. It is not the case of the petitioners that there was any irregularity in conducting enquiry or that the witnesses were not given opportunity to put forth their case before the competent authority. A perusal of the impugned order discloses that as a matter of fact, it was found that the 1st petitioner being the Secretary of the 3rd respondent-Society had played a key role in obtaining monies from the 4th respondent-Society and in opening a parallel account in Post Office and withdrawing the sum to their personal benefit. Having assessed the material placed before the 2nd respondent, 2nd respondent apportioned the amounts found to have been misutilised / misappropriated by the petitioners and also surcharged other office bearers to the extent of misappropriation found against each of the office bearers.

At any rate except contending that in the arbitration proceeding the 3rd respondent society was found to be liable, there is no independent challenge before this court with respect to the finding of facts in the impugned order. Petitioners had ample opportunity to challenge the finding of facts before the appellate authority and the petitioners having not chosen to avail the same, the limited scope of judicial scrutiny under Article 226 of the Constitution of India does not entitle the petitioners for any relief, there being no grounds warranting interference of this Court. At this point of time, this court is also not inclined to relegate the petitioners to avail the alternative remedy of appeal considering the fact the writ petition is of the year 2008 and the transaction itself relates to 1999-2000. In those circumstances, there are no merits in the writ petition and accordingly the same is liable to be dismissed.

Accordingly, this Writ Petition is dismissed. There shall be no order as to costs. As a sequel, miscellaneous petitions pending, if any, shall also stand closed.

CHALLA KODANDA RAM, J

Dated:09.09.2016

Note: L.R. copy to be marked.

B/o
Ssv