

THE HON'BLE SRI JUSTICE S.V.BHATT

WRIT PETITION No.17689 of 2008

ORDER:

Heard Sri C.V.R.Rudra Prasad, learned counsel for the petitioner, the Assistant Government Pleader for Co-operation for the 1st respondent and Smt.Bobba Vijayalakshmi, learned counsel for the 2nd respondent.

The petitioner, who was working as Secretary in the 2nd respondent Society, challenges the order, dated 30-06-2008 in O.A.No.27 of 2007 on the file of A.P.Co-operative Tribunal, Visakhapatnam, and surcharge order under Section 60(1) of the A.P.Co-operative Societies Act, 1964 (for short 'the Act') in Rc.No.3348/2003-E1, dated 06-03-2006.

Learned counsel appearing for the parties are not in issue on a few admitted facts. The enquiry under Section 51 of the Act was conducted by the Special Cadre Deputy Registrar/District Co-operative Officer, East Godavari District, Kakinada, against the petitioner and the enquiry report, dated 26-11-2004 was submitted against the alleged illegalities committed by the petitioner. The 1st respondent, purporting to pass orders of surcharge, based upon the enquiry report, dated 26-11-2004, issued surcharge notice under Section 60(1) of the Act in Rc.No.3348/2003-E1, dated 26.04.2005. As already noted, on 06-03-2006 the surcharge order was passed against the petitioner. The complaint of petitioner is that the basis for surcharge order is enquiry report dated 26-11-2004. According to petitioner, though hearings were conducted before the 1st respondent, a copy of enquiry officers report was not given to the petitioner and mere participation with whatever objection the petitioner could file, cannot be treated as due compliance with statutory

requirements of Section 51 read with 60 of the Act. He further assails that the findings recorded by the Tribunal are without appreciating the statutory safeguard provided to the petitioner and mere participation is no consideration to accept due compliance with statutory requirement of Section 60(1) of the Act.

The Assistant Government Pleader is unable to place on record copy of enquiry officer's report dated 26-11-2004 or in fact, the copy was given to petitioner and that thereafter enquiry in surcharge proceedings was conducted.

I have perused the order dated 06-03-2006 to find out whether copy of enquiry report dated 26-11-2004 was given to petitioner.

There is nothing to suggest that the 1st respondent supplied enquiry report dated 26-11-2004 to the petitioner. Once I am satisfied that before the primary authority there is breach of principles of natural justice and statutory requirement, *prima facie* I am not in agreement with the reasons recorded by the Tribunal. The orders impugned in the writ petition are set aside on the short ground that the copy of enquiry officer's report is not supplied to the petitioner.

The writ petition is accordingly allowed. The matter is remanded to the 1st respondent for fresh consideration in accordance with law and passing appropriate orders after furnishing a copy of the enquiry report in proceedings Rc.No.2698/2003-A from the office of the Special Cadre Deputy Registrar/District Co-operative Officer, East Godavari District to the petitioner.

Mr.C.V.R.Rudra Prasad, learned counsel for the petitioner assures this Court that the petitioner will fully cooperate with the 1st respondent for commencing and concluding the enquiry after remand by this Court.

The said statement is placed on record and accepted.

Therefore, the 1st respondent is directed to complete the

enquiry within three months from the date of receipt of a copy of this order and pass orders.

The writ petition is, accordingly, allowed and remanded as indicated above. No order as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

S.V.BHATT, J

Date:17-03-2016

Prv