

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

* * * *

Writ Petition Nos.14535, 14728, 14729 and 14730 of 2006

WP No.14535 of 2006

Between:

Korukollu Primary Agriculture Cooperative Society,
Korukollu, Krishna District, rep. by its Secretary.

...Petitioner

and

The A.P. Cooperative Tribunal, at Vijayawada,
Krishna District.

...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.14535, 14728, 14729 and 14730 of 2006

Common Order:

All these Writ Petitions are being disposed of by this common order as they are filed by the same Society.

The Korukollu Primary Agriculture Co-operative Society filed the above Writ Petition Nos.14535, 14728, 14729 and 14730 of 2006 challenging the common order dated 27.02.2006 passed by the A.P. Cooperative Tribunal, Vijayawada in O.A. Nos.173 of 2004, 161 of 2004, 17 of 2005 and 18 of 2005 respectively, arising out of surcharge order in R.C.No.2207/2002-E dated 23.10.2004.

The Joint Registrar/District Co-operative Officer, Machilipatnam ordered an enquiry under Section 51 of the Andhra Pradesh Cooperative Societies Act (for short 'the Act') into the affairs of the petitioner Society and appointed an Enquiry Officer. The Enquiry Officer submitted his report on 16.02.2003 and an order of review was passed on 03.04.2003 for reviewing the said report. The enquiry report as well as the review revealed certain financial irregularities and misappropriation of funds in the Society. Based on the said enquiry report and review proceedings, surcharge notices were issued to the Ex-President and some employees of the Society. Since the Ex-Secretary was expired on 18.10.2002 separate proceedings were initiated against his legal heirs under Section 61 of the Act. The Deputy Registrar of Co-operative Societies, Gudivada heard the matter and the delinquent engaged a Counsel. One Ch.S. Ganeswara Rao and K. Subba Rao did not participate in the enquiry. The Ex-President of the society filed W.P.No.4111 of 2004 alleging that the enquiry officer did

not permit him to cross-examine some of the witnesses who were examined during the preliminary enquiry under Section 51 of the Act and also did not permit him to lead evidence on his behalf. The said Writ Petition was disposed of on 05.03.2004 directing him to file the list within one week furnishing the names of the persons to be cross-examined and also the names of the witnesses and the Enquiry Officer was directed to complete the enquiry. Thereafter, he furnished the list of witnesses and notices were issued to 104 persons. Out of 104 persons, only 19 persons attended. Out of 19 persons, 18 persons were not direct witnesses, but are henchmen of the Ex-President. One witness who is a direct witness to the transaction gave adverse evidence against the Ex-President. The Enquiry Officer extracted the grounds against each of the delinquent and gave findings in respect of irregularities alleged against each of them. Ultimately, surcharge order was passed for an amount of Rs.80,18,604.03 ps., on 23.10.2004 as follows.

SL. NO.	ITEM	AMOUNT	PERSONS HELD RESPONSIBLE
1	Misappropriation in fertilizers		
	Credit sales of fertilisers D.A.P. (70MT) amounts recovered but not remitted in the bank	4,26,000-00	G.Venkateswara Rao, Ex-president, M.L.Ravindrababu, Ex-sales man.
	Credit sales of fertilizers dated 08-06-02 (DAP 20 MT) shown as recovered on 03-10-2002 but not remitted in the bank	1,76,400-00	--Do--
	Deficit of fertilizers	89,080-00	--Do--
2	Misappropriation in oil business		
	Oil sales transferred to fish feed loans	11,26,000-00	G.Venkateswara Rao, Ex-Pdt Ch.Gopimanohar, Ex-sales man, K.Subba Rao, Ex-sales man
	Interest collected	2,33,342-00	--Do--
	Engine oil purchased from pilot service station Vijayawada on 24-01-02 but not brought to stock register and the sale proceeds not brought to cash book	65,050-00	G.Venkateswara Rao, Ex-president
	Deficit stock of diesel oil as on 12-11-2002	8,76,810-00	G.Venkateswara Rao, Ex-Pdt,

			Ch.Gopimanohar, Ex-sales man, K.Subba Rao, Ex-sales man,
	Deficit stock of engine oil as on 12-11-02	1,16,550-00	--Do--
3	Misappropriation in fish feed loans		
	Enhanced ST feed loans shown as disbursed to 51 members shown as recovered but not remitted into KDCCB Kalidindi Branch	28,80,700-00	G.Venkateswara Rao, Ex-Pdt Ex-president, Ch.S.Gnaneswara Rao, Ex-circle supervisor
	Loans disbursed without declarations	2,76,123-00	Ch.S.Gnaneswara Rao, Ex-supervisor circle, K.Bhagavanarayana ex-branch manager
	Loans disbursed over and above the declarations	3,39,800-00	D.Adinarayana, Deceased secretary Ch.S.Gnaneswara Rao, Ex-supervisor, K.Bhagavan narayana ex-branch manager
4	Deficit in cash balance and Super bazaar		
	Deficit stock of super bazaar as on 15-12-02	20,318-64	G.Venkateswara Rao, Ex-Pdt.
	Deficit in cash balance 17-10-2002	1,02,286-24	--Do--
5	Interest on retention of heavy cash balance from 1996-97 to 17-10-2002	1,78,530-65	-Do--
6	Irregular fictitious expenditure		
	Advance taken for construction of diesel bunk building on 09-02-2001	1,00,000-00	G.Venkateswara Rao, Ex-president
	Cashbook reduced by showing fictitious expenditure	93,000-00	
	Purchase of fish/Prawn feed but not brought to stock register and not accounted for the sale proceeds on 08-12-2001	84,400-00	
	Purchase of conference table from Laluram and Co., Vijayawada dated 20-03-02 but not brought to the society	12,500-00	
	Total	289900-00	
7	Short collection of interest of ST feed loans and loans closed	1,20,363-00	Separate action U/s.61 of Andhra Pradesh Cooperative Societies Act 7 of 1964
8	Loans denied by members	1,09,750-00	Separate action U/s.61 of Andhra Pradesh Cooperative Societies Act 7 of 1964
9	Short collection of Share capital from members	5,91,500-00	From the concerned numbers
	TOTAL	80,18,604-03	

Challenging the same, G. Venkateswara Rao, Ex-President, K. Bhagavannarayana, Ex-Branch Manager, M. Leela Ravindra Babu, Ex-

Salesman and Ch. Gopi Manohar, Ex-Salesman filed O.A.Nos.173 of 2004, 161 of 2004, 17 of 2005 and 18 of 2005 before the A.P. Cooperative Tribunal, Vijayawada.

The Tribunal framed the following points for determination.

1. Whether the Enquiry Officer under Section 60(1) of the Act 7 of 1964 conducted fair and regular enquiry and whether the impugned surcharge order can be sustained?
2. Whether the proceedings under Section 60 of the Act 7 of 1964 can be maintained without the presence of legal heirs of late D. Audi Narayana, Ex-Secretary?

While dealing with point No.1, the Tribunal recorded that the main contention of the appellants in O.A.Nos.17 and 18 of 2005 and 161 of 2004 is that the Enquiry officer conducted the enquiry behind their back and so far as they are concerned it is an *ex parte* order. The Tribunal noticed that the appellant in OA No.173 of 2004 engaged a counsel and filed his objections, whereas the appellant in OA No.161 of 2004 also filed his objections, but the appellants in OA Nos.17 and 18 of 2005 did not participate in the enquiry. The Tribunal observed that based on the records of the society marked as Exs.A11(a)(i) to A11(a)(viii), A11(b)(i) to A11(b)(iii), A11(c) and A11(d) it is clear that the misappropriation in oil happened with the full knowledge of the President and Salesmen. The Tribunal also observed that the findings of the Enquiry officer are based on documents Exs.A10(a)(i) to A21 and no opportunity was given to the appellant to test the genuineness or otherwise of the said documents. The Tribunal observed that when the Enquiry Officer felt that those documents which were marked in the surcharge order required to be marked before him, should have been marked through appropriate witness by giving due opportunity to the appellants to cross-examine the said witness in respect of those documents, and the documents which

were brought on record without following due procedure cannot be looked into. The Tribunal also observed that when the evidence of one Ch.S. Ganeswara Rao was marked as Ex.A8, the same should have been marked, when the said witness who gave evidence was alive and available. The Tribunal came to the conclusion that the surcharge order was passed based on Section 51 enquiry report and in view of the infirmity in the marking of the documents there was violation of principles of natural justice. It concluded that there was no fair and independent enquiry. The appellant in OA No.173 of 2004 alone cross-examined the witnesses whereas the other witnesses had no opportunity to cross-examine and, accordingly, it held that the surcharge order so far as appellants in O.A.Nos.161 of 2004 and 17 and 18 of 2005 was considered as an *ex parte* order.

With regard to second point the Tribunal came to the conclusion that without adding the legal heirs of the deceased D. Audi Narayana who expired on 18.10.2002, the surcharge proceedings are vitiated. Accordingly, it remanded the three OAs i.e., O.A.Nos.161 of 2004 and 17 and 18 of 2005 for giving an opportunity to the appellants by allowing them to file their written statements, examine them and to cross-examine those witnesses. Similarly, OA No.173 of 2004 was also remanded to re-cross examine the witnesses on the additional evidence both oral and documentary and allow the appellants to adduce rebuttal evidence by following the principles of natural justice. The above Writ Petitions were filed as stated above challenging the said order of remand.

Learned counsel for the petitioner Society submitted that the Deputy Registrar of Cooperative Societies, Gudivada, after considering the oral and documentary evidence, passed the surcharge order and hence

the order of remand by the Tribunal is bad in law. Learned counsel for the respondents tried to sustain the order of the Tribunal.

In the circumstances, it has to be seen whether the order of remand passed by the Tribunal by holding that the Deputy Registrar of Cooperative Societies has not followed due procedure while passing the surcharge order under Section 60(1) of the Act is proper or not.

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 Section 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 not inclined to interfere with the order of remand passed by the Tribunal. The amount involved in the instant case is Rs.80,18,604/- arising out of the transactions which took place about 14 years back. The Ex-President of the Society filed an application for examining 104 persons, out of which only 19 persons attended. The appellants in OA Nos.161 of 2004, 17 and 18 of 2005 did not participate in the enquiry. However, the matter is remanded by the Tribunal in view of the infirmities noticed by it in the process of surcharge enquiry. The Enquiry Officer to whom matters are remanded has to take into consideration the law laid down by this Court in W.P.No.25990 of 2003 dated 10.11.2016 and conclude the enquiry as expeditiously as possible, but not later than six (6) months from the date of receipt of a copy of this order.

The Writ Petitions are, accordingly, disposed of. 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.

