

THE HON'BLE SRI JUSTICE S.V. BHATT

W.P.Nos.20492 & 20647 OF 2006

COMMON ORDER:

The petitioners pray for writ of Certiorari to call for the records leading up to and inclusive of proceedings Rc.No.11/2762/2003-C and 13/2762/2003-C dated 09.06.2005 of the 2nd respondent and quash the same as illegal and violative of principles of natural justice.

The petitioners in these two writ petitions were Ex-Presidents of the Vizia Cooperative Society Limited, Vizianagaram, Vizianagaram District. The 1st respondent, it is alleged, conducted enquiry under Section 51 of the A.P. Cooperative Societies Act (for short 'the Act'). The enquiry initiated under Section 51 of the Act resulted in issuance of surcharge proceedings dated 09.06.2015 which are assailed in these writ petitions.

Learned counsel for the petitioners contends that surcharge proceedings have been initiated without conducting enquiry as contemplated by the statutory scheme and on the short ground, the surcharge proceedings are liable to be set aside. Adverting to the facts which led to initiation of enquiry under Section 51, learned counsel contends that the loans which were sanctioned by the petitioners were repaid fully by the borrowers/members. Had an enquiry been conducted before issuing surcharge orders, the petitioners would have had the opportunity to explain that there is no necessity for issuing surcharge proceedings. Learned counsel prays for setting aside the impugned proceedings.

Smt.Bobba Vijaya Lakshmi, learned counsel for 3rd respondent, submits that the surcharge proceedings, no doubt, are issued without conducting enquiry and, therefore, she suggests that the impugned proceedings may be set aside and the matter be remanded to the 1st respondent to proceed in accordance with law. On the submission

of learned counsel for the petitioners
on discharge of loans by the members, learned counsel for
3rd respondent submits that unless and until the records are verified in a
properly instituted enquiry, the assertions of petitioners cannot be
accepted and pending enquiry closed. Therefore, she concedes to the
limited extent of setting aside the orders impugned and remanding the
proceedings for fresh consideration and disposal in accordance with law.

Having regard to the limited submissions of learned counsel
appearing for the parties, I am satisfied that the following order would
satisfy the requirements of law and principles of natural justice.

“Writ petitions are allowed. The impugned orders are set aside on
the ground that they are issued without conducting enquiry as
contemplated by Section 60 of the Act. The matter
is remanded to 2nd respondent for consideration afresh in accordance
with law. As and when notice is received
by petitioners from 2nd respondent, the petitioners are given
liberty to file representation/details to 2nd respondent on proposed
recovery by way of surcharge proceedings. The 2nd respondent
is under obligation to consider the representation/objections
and if the circumstances still warrant continuation of surcharge
proceedings, he is at liberty to do so. There shall be no order as to costs”.

Consequently, pending miscellaneous petitions, if any, also stand
disposed of.

S.V.BHATT, J

Date:10.03.2016
Lrkm