

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.27097 of 2007

-
ORDER:
-

This Writ Petition filed under Article 226 of the Constitution of India, challenges the order of surcharge passed by the 1st respondent-Assistant Director, Handloom Weavers and Textiles, Nalgonda vide Proceedings No.1521/01-D dated 28.7.2007.

2. Heard Sri K.Lakshman, learned counsel for the petitioner and the learned Government Pleader for Industries and Commerce appearing for Respondents, apart from perusing the material available before this Court.

3. The petitioner herein is the former President of 4th respondent-Handloom Weavers Cooperative Society Limited. Earlier on 20.3.2004 an order of surcharge was passed by the 1st respondent-Assistant Director against the petitioner. Felt aggrieved by the said order of surcharge, petitioner herein preferred statutory appeal under the provisions of Section 76 of A.P. Cooperative Societies Act, 1964 (for short "the Act") before the Cooperative Tribunal, Warangal. The Cooperative Tribunal, Warangal, by virtue of judgment dated 19.1.2006 allowed C.T.A.No.31 of 2004 filed by the petitioner herein, setting aside the said order of surcharge dated 20.3.2004 passed by the 1st respondent-Assistant Director. The Tribunal, while setting aside the order of surcharge, remanded the matter for fresh consideration and to pass a reasoned order under Section 60(1) of the Act.

4. In pursuance of the said judgment rendered by the Tribunal on 19.1.2006, the 1st respondent-Assistant Director issued a show cause notice vide Rc.No.1521/01-D dated 1.4.2006, asking the petitioner to submit explanation. Responding to the said show cause notice, the petitioner herein submitted an explanation on 23.6.2006. Thereafter, the 1st respondent-Assistant Director passed an order vide Rc.No.1521/01-D

dated 28.7.2007, ordering recovery of an amount of Rs.2,59,613-55 ps. from the petitioner together with interest at the rate of 18% per annum till the date of realization. Calling in question, the validity and legal sustainability of the said order passed by the 1st respondent-Assistant Director, the present Writ Petition came to be instituted.

5. This Court, initially granted interim stay on 20.12.2007 and subsequently ordered rule nisi on 11.2.2008. Responding to the rule nisi issued by this Court, counter affidavit has been filed by the 1st respondent, denying the allegations and averments made in the affidavit filed in support of the writ petition and in the direction of justifying the impugned order.

6. It is contended by the learned counsel for the petitioner that the impugned order of surcharge passed by the 1st respondent-Assistant Director is erroneous, contrary to law and is opposed to the very spirit and object of the provisions of Act. It is further submitted that the questioned order is also contrary to the orders passed by the Tribunal. It is further submitted that the impugned order is in violation of principles of natural justice and completely bereft of any valid reasons. It is further argued by the learned counsel that being a quasi-judicial authority, it is incumbent on the part of the 1st respondent to assign valid and convincing reasons for arriving at the conclusions. In support of his submissions and contentions, the learned counsel for the petitioner takes the support of the judgments of this Court in **Challa Sanyasinaidu v. Deputy Registrar of Coop. Society, Srikakulam**^[1] and **V.V.Satyanarayana v. Chebrolu Primary Agricultural Cooperative Society Ltd., and others**^[2].

7. On the contrary, it is vehemently argued by the learned Government Pleader that there is absolutely no illegality nor there exists any procedural infirmity in the impugned order and the order impugned is strictly in accordance with the provisions of the Act. It is further contended

by the learned Government Pleader that only after affording complete opportunity of being heard to the petitioner, the 1st respondent-Assistant Director passed the impugned order.

8. In the above backdrop, now the issue that emerges for consideration of this Court is “whether the impugned order of surcharge passed by the 1st respondent is in accordance with the provisions of the Act and whether the petitioner is entitled for any relief from this Court under Article 226 of the Constitution of India.”

9. The information available before this Court manifestly discloses that while setting aside the order of surcharge on 20.3.2004 passed by the 1st respondent, the Cooperative Tribunal, Warangal in the judgment in C.T.A.No.31 of 2004 directed the 1st respondent to conduct fresh Proceedings and to pass an elaborate and reasoned order under Section 60(1) of the Act. There is absolutely no controversy with regard to the fact that in pursuance of the order of the Tribunal, the 1st respondent-Assistant Director issued a show cause notice dated 1.4.2006 and the petitioner, in response to the said show cause notice, filed an explanation on 23.6.2006, running into seven pages while dealing with the issues item-wise. A perusal of the impugned order of surcharge dated 28.7.2007 candidly discloses that except indicating the judgment of the Tribunal, show cause notice and the explanation submitted by the petitioner as references, the 1st respondent-Assistant Director did not advert to any one of the averments set out in the explanation. The said order is totally a non-speaking order. In this context, it may be appropriate to refer to Section 60 of the Act, which reads as under:

"60. Surcharge:-(1) Where in the course of an audit under Section 50 or any inquiry under Section 51 or an inspection under Section 52 or the Section 53, or the winding up of a society it appears that any person who is or was entrusted with the organisation affairs or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of

the society by breach of trust or wilful negligence or has made any payment contrary to the provisions of this Act, the rules or the bye-laws, the Registrar himself, or any person specially authorised by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributor, may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retention, breach of trust or wilful negligence as the Registrar or the person authorised as aforesaid thinks just :

Provided that no order shall be passed against any person referred to in this subsection unless the person concerned has been given an opportunity of making his representation."

10. While dealing with the scope and enquiry under the above referred provision of law, the Division Bench of this Court in *Challa Sanyasinaidu v. Deputy Registrar of Coop. Society, Srikakulam* (1 supra), at paragraph 10 held as under:

"10. In the course of inspection under Section 52 of the Act, the Registrar may cause the inspection of Books of the Society with a view to find out the irregularities, acts of omission and commission. This enquiry is only administrative in nature, and if the Registrar prima facie is satisfied of the irregularities on the basis of the report of the enquiry officer, he may initiate surcharge proceedings under Section 60. That report may form the basis for the Registrar to proceed under Section 60 and issue a surcharge order eventually. The person against whom a report is sent under Section 52 has no opportunity to squarely meet the allegations against him at that stage. He is not allowed to cross examine the witnesses from whom statements are recorded implicating his involvement. He cannot also adduce rebuttal evidence. That is not the stage where a demand can be made against him to pay back the sum or liability fastened to him as per the report of the enquiry officer. On the contrary, Section 60 clearly contemplates an opportunity being given to the delinquent by making a representation. In our view, this is the proper occasion where the officer or the servant has to be given an opportunity of explaining his stand and allow him to participate in the enquiry before a final order is passed. This is a valuable right given to the delinquent which cannot be brushed aside in a routine manner. After the show-cause-notice is served and an explanation is called for, an opportunity should be given to the affected person to cross-examine the witnesses examined in the course of enquiry under Section 52 or

permit him to examine his witnesses to rebut their evidence. Until this is done the spirit of making a representation, as contemplated under Section 60, cannot be fulfilled. Although Section 60 does not prescribe any particular procedure before passing surcharge order, nonetheless, it is mandatory that principles of natural justice shall be followed in the enquiry. Evidence recorded behind the back of the defaulter cannot be relied upon to fasten the liability on him without giving him an opportunity to cross-examine the witnesses. The Registrar in his surcharge proceedings is a Court whose order can very well form the subject-matter of judicial review under Article [226](#) of the Constitution of India. Therefore, it is in the fitness of things that an opportunity like supply of copy of enquiry report, statements of witnesses recorded during the said enquiry, and also an opportunity to cross-examine those witnesses, or permit him to examine his own witnesses by the delinquent by way of rebuttal should be allowed before an order under Section 60 is passed. Therefore, we respectfully agree with the view taken by the learned Judge in *S. Rama Subba Rao v. President, Kaikaluru Irrigation and Power Department Sub-Divisional Employees Co-operative Credit Society Limited* (supra). Even in *Mohd. Ghouse v. Deputy Registrar of Cooperative Societies, Vikarabad and others* (supra) the learned Judge has rightly observed that the proviso to Section 60 mandates adequate opportunity before passing the order, and the issuance of notice proposing to fix the liability under Section 60 is imperative and as such there is no breach of principles of natural justice. Having said so, the learned Judge went on observing that Section 60 is an immediate and necessary consequence of enquiry and audit and inspection and the enquiry for the second round is considered to be superfluous and the affected person is not prejudiced or disadvantaged as the enquiry is done in anterior proceedings. These later observations of the learned Judge appear to strike a contrary note, and we do not therefore subscribe to the same.”

11. In *V.V.Satyanarayana v. Chebrolu Primary Agricultural Cooperative Society Ltd.* (2 supra), this Court held as under:

“A Division Bench of this Court in **Challa Sanyasinaidu v. Deputy Registrar of Cooperative Societies, Srikakulam**, [1998(1) ALT 482] held that enquiry under Section 52 of the Act is only administrative in nature and if the Registrar is *prima facie* satisfied on the basis of such report that irregularities have taken place, he may initiate surcharge proceedings under Section 60 of the Act, in which, the inspection report may form the basis for the Registrar to issue surcharge proceedings. It further held that before issuing such proceedings, it is incumbent upon the authority to give an opportunity to the delinquent to cross-examine the witnesses, whose statements

are recorded by the Inspecting Officer and reliance is placed thereon. It also held that although Section 60 of the Act does not prescribe any particular procedure before issuing surcharge proceedings, nonetheless, it is mandatory that principles of natural justice shall be followed in the enquiry and that evidence recorded behind the back of the defaulter cannot be relied upon to fasten the liability on him without giving an opportunity to cross-examine the witnesses. I have perused the enquiry report, which is huge and voluminous.

It is clear from the Inspection Report that the Inspection Officer recorded the statements of several persons on the basis of which he found that the petitioner committed several irregularities. While conducting proceedings under Section 60 of the Act, it is the obligation of respondent No.2 to give an opportunity to the petitioner to rebut the statements made by several witnesses in the inspection, by permitting him to cross-examine such witnesses. As respondent No.2 failed to follow this procedure, the order passed by him and confirmed by respondent No.3 suffers from serious procedural illegality.

For the above-mentioned reasons, the writ petition is allowed. The impugned orders are quashed. Respondent No.2 is directed to hold a fresh enquiry, complete the same and pass an order, after giving the petitioner an opportunity to cross-examine the witnesses, whose statements were recorded by the Inspecting Officer, within a period of three (3) months from the date of receipt of a copy of this order. It is made clear that the amount deposited by the petitioner in pursuance of the interim order shall remain with respondent No.2 till the enquiry is completed.”

12. Admittedly, in the present case, the 1st respondent failed to adhere to the mandatory requirements as laid down by this Court in the above referred judgments. Therefore, this Court does not find any scintilla of hesitation to hold that the impugned order of surcharge passed by the 1st respondent cannot be sustained in the eye of law.

13. For the aforesaid reasons and having regard to the principles laid down in the above referred judgments, the writ petition is allowed, setting aside the order passed by the 1st respondent vide proceedings No.1521/01-D dated 28.7.2007 and the matter is remanded to the 1st respondent for fresh consideration and to pass appropriate orders in

accordance with law, after giving notice and opportunity in the light of the provisions of Section 60 of the A.P. Cooperative Societies Act, 1964. As a sequel, the miscellaneous petitions, if any, shall stand closed. There shall be no order as to costs.

A.V.SESHA SAI, J

Date: 9.2.2016
DA

140

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

W.P.No.27097 of 2007

—

-

-

-

9.2.2016

DA

[\[1\]](#) 1998 (1) ALD 455 (DB)

[\[2\]](#) 2009 (2) ALD (NOC 23)