

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.7648 of 2004

ORDER:

Heard learned counsel for the petitioner

2. This Writ Petition is filed questioning the order, dated 30.10.2003, in O.A.No.63 of 2003 passed by the Chairman, A.P.Co-operative Tribunal, Vijayawada, confirming the order, dated 30.04.2002, passed by the 3rd respondent, Andhra Pradesh Co-operative Tribunal, Vijayawada.

3. The brief facts of the case are as follows:

The petitioner is working as Clerk in Primary Agricultural Cooperative Credit Society, Mandapakala, Konduru Mandal, Krishna District. While so, since there were allegations of financial irregularities in the said society, the District Cooperative Officer, Krishna, appointed Cooperative Sub-Registrar, Divisional Cooperative Officer as Enquiry Officers to conduct enquiry into the allegations as per Section 51 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short, 'the Act'). Accordingly, they conducted enquiry and submitted a report, which discloses that the petitioner and the President of said Society have committed the financial irregularities with regard to three items. Based on the said report, notices were issued under Section 60 (1) of the Act, to show cause as to why action should not be initiated against them for recovery of an amount of Rs.47,924/-. After receipt of explanations, the Deputy Registrar of Cooperative Societies, Machilipatnam, by virtue of powers conferred under Section 60 of the Act, directed the petitioner and Smt U.Dhanalakshmi, President of the Society to pay an amount of Rs.47,924/- together

with interest at 18%, by an order, dated 30.04.2002. Aggrieved by the said order, the petitioner filed O.A.No.63 of 2003 before the 3rd respondent and the same was dismissed confirming the order passed by the 1st respondent. Challenging the same, the present Writ Petition is filed.

4. The 1st respondent filed counter-affidavit denying the averments made in the writ petition. Learned Government Pleader submits that the scope of enquiry before this Court is very limited and there is no material for this Court to take a contra view and record a finding that the findings recorded by the Tribunal are liable to be set aside.

5. The principal contention of learned counsel for the petitioner is that the explanation submitted by the petitioner with respect to three items was not considered by the Enquiry Officer; that the petitioner is only a Clerk and he cannot be held responsible as it is the President, who is the cheque signing authority; that further, the Enquiry Officer ought to have examined and verified whether the amounts, which have been credited to the Bank accounts of the loanees, rather than simply accepting their contention that they have not received amounts; that the Enquiry Officer failed in all respects to consider the explanation submitted by the petitioner; that the Tribunal also failed to appreciate the specific grounds raised by the petitioner and hence, he prays to set aside the impugned order.

6. It may be noted that the explanation submitted and the objections raised is with reference to the defects in the enquiry conducted in terms of Section 51 of the Act and not in the process

of enquiry under Section 60 of the Act. Based on the report issued under Section 51 of the Act, with reference to the affairs of the society, the petitioner along with the President of the Society were issued show cause notice imputing against them specific allegations. The petitioner has submitted explanation on 05.09.2008 and in the said explanation, he had raised objections with respect to the enquiry report. While the enquiry is in process, the petitioner had an ample opportunity to dispute the findings of the Enquiry Officer under Section 51 of the Act, which he did not choose, except contending that the findings recorded by the Enquiry Officer, which were the basis for proceedings under Section 60 of the Act, were bad. The Deputy Registrar, in the process of enquiry under Section 60 of the Act, had found that though the petitioner was working as Clerk, he was entrusted with the functions of the Secretary and further, he was working in the Society for long years and it is not that he is not aware of the procedure and that he could state that he could not recognize the loanees. The Deputy Registrar had categorically found that the detailed discussion was made with respect to the role played by the petitioner in Case No.1246/97D (10).

7. On overall appreciation of the material placed before the Enquiry Officer under Section 60 of the Act, the Registrar found that the petitioner is liable. Except contending that the appellate authority and the Tribunal had failed to consider and peruse the grounds raised before them that the petitioner is not responsible officer and it is only the President, who is responsible with reference to the charges levelled against the petitioner, the petitioner did not substantiate the same. The Tribunal had

rejected both the grounds raised by the petitioner and as a matter of fact, found that there is no violation of the principles of natural justice either by the Enquiry Officer under Section 51 of the Act or the Registrar in the process of enquiry under Section 60 of the Act. The Tribunal also recorded a finding that the petitioner has been working in the Society over a long period and he ought to have taken minimum caution to ensure that the cheques were issued to right persons, to whom they were intended. The Tribunal also found that in the process of discharge of the duties by the petitioner, he ought to have verified the loanees before disbursement of the loan amounts and that his failure to do so resulted in loss to the society.

8. Essentially, the petitioner desires this Court to examine with reference to the findings of facts recorded by the respondent authorities, particularly challenging the findings recorded in the enquiry report under Section 51 of the Act. It may be noted that what is challenged before this Court is the order of the Cooperative Tribunal confirming the order made under Section 60 of the Act. As it is well-settled, in exercise of the power of this Court especially in exercise of the Certiorari jurisdiction under Article 226 of the Constitution of India, appreciation of facts shall not be undertaken unless extreme perversity is brought before this Court. In the case on hand, the original enquiry report under Section 51 of the Act is of 1998 and the enquiry order made and surcharge proceedings under Section 60 of the Act is of 2002 and the Tribunal order is of 2003. The Writ Petition came to be filed in 2004. I find that there is no merit in the writ petition, more particularly, either error of

jurisdiction or of violation of the principles of natural justice as required for exercise of jurisdiction for issuing a writ of Certiorari.

9. Accordingly, the Writ Petition is dismissed. Miscellaneous petitions, if any, pending in this writ petition shall stand closed. There shall be no order as to costs.

CHALLA KODANDA RAM, J

OCTOBER 22, 2018

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THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM



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Date:22.10.2018

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