IN THE HIGH COURT OF JUDICATURE AT HYDERABAD

FOR THE STATE OF TELANGANA AND THE STATE OF ANDHRA PRADESH

* * * *

Writ Petition No.2536 of 2007

Between:

Kalwala Posham

....Petitioner

and

The Deputy Registrar of Cooperative Societies-cum-Divisional Cooperative Officer, Mancherial, Adilabad district and others

....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 No. 2536 of 2007

Order:

This Writ Petition arises out of CTA No.176 of 2004 dated 20.09.2006 passed by the A.P. Cooperative Tribunal, at Hyderabad, confirming the surcharge order dated 19.03.2004 of the first respondent.

Though the Tribunal passed a common order in CTA Nos.176, 177 and 178 of 2004 against the surcharge order dated 19.03.2004, the present Writ Petition was filed only against the order in CTA No.176 of 2004.

The petitioner is an employee of Singareni Collieries Company Limited and member of Singareni Collieries Employees Cooperative Credit Society Limited, Somagudem, the second respondent herein. The second respondent Society was registered on 14.07.1995. He was elected as Secretary of the Society in the elections held on 09.03.1996. He was expelled from the post of Secretary as he was not attending the meetings of the managing committee. An enquiry was conducted under Section 51 of the A.P. Cooperative Societies Act (for short 'the Act') in respect of the affairs of the Society and the Enquiry Officer submitted his report on 16.03.2000. Consequent to the said report, the managing committee was superseded and a person in-charge was appointed. The enquiry report revealed that the President of the Society in collusion with the Adilabad District Cooperative Bank officials indulged in several irregularities like issuing loans without documentation, double loaning and placing entry of recovery in multiple heads etc., causing loss to a tune of Rs.62,62,000/-. In the said report, the enquiry officer held the petitioner is responsible along with two others. A notice was issued under Section 60 of the Act. It is his case that though he entered appearance through a counsel and cross-examined the enquiry officer, later on the enquiry officer was never summoned. He further states that three members were examined by the first respondent and the case was adjourned on 13.02.2001 for cross-examination of Directors and the case was never taken up till 23.09.2003, for 2 ½ years. The fifth respondent was examined and on the basis of the statement made by him, without giving any opportunity to him to cross-examine the fifth respondent, surcharge order was passed against him for an amount of Rs.15,48,501/-. He states that the said surcharge order was vitiated, since it was based on the uncertified Xerox copies of documents in the possession of the police, non-examination of benami members who alleged to have taken loans, in view of denial of the bank officers that they have honoured the cheques without examining the identity of the loanees. He also stated that as per the bye-laws of the Society, the President alone is responsible for all the affairs of the Society. Challenging the surcharge order dated 19.03.2004, he preferred CTA No.176 of 2004 before the A.P. Cooperative Tribunal, Hyderabad and the said CTA along with two other CTAs was dismissed on 20.09.2006 by a common order. Against the order in CTA No.176 of 2004, the above Writ Petition was filed.

This Court, by order dated 19.02.2007, granted interim stay on condition of the petitioner depositing 1/3rd of the amount fixed against him within a period of four weeks failing which it was stated that the stay stands vacated.

It could be seen from the order dated 14.02.2011 of this Court that the said conditional order was not complied with, as a result of which execution petitions were filed and they were pending. No counter affidavit is filed by the respondents even after nine years.

In the circumstances, it has to be seen whether the surcharge order passed by the first respondent on 19.03.2004 as confirmed by the Tribunal is valid in law or not.

A perusal of the surcharge order shows that the show cause notice was issued to the petitioner and others on 18.12.2000 to appear before the first respondent and accordingly they appeared. They sought time to file their written statements through a counsel. They filed a petition on 03.02.2001 for cross-examination of the remaining managing committee members and though summons were issued to the managing committee members none attended. In those circumstances, the deposition of the petitioner and two others was recorded on 13.02.2001. Later on, the managing committee members attended on 20.10.2003 and gave their deposition. One M. Lakshmi Narayana, Ex-Secretary attended the hearing on 23.02.2004 and gave deposition. On the basis of the depositions of the office bearers, the first respondent came to the conclusion that the loans were granted to 120 members for an amount of 18.61 lakhs out of which some amount was recovered in some cases, full amount was recovered in respect of some members and an amount of Rs.13.41 lakhs has to be recovered from 81 members. He held that the President is responsible for half of the amount coming to Rs.6,70,500/- and the remaining two office bearers being co-signatories are responsible for the remaining half of the amount. Accordingly, he fixed the liability on the petitioner for an amount of Rs.3,00,500/-. In respect of another major amount of benami loaning to the tune of Rs.22,10,000/- to 142 persons, there is absolutely no finding whether benami loans were granted to them but gave a finding of liability of Rs.22,10,000/- and apportioned 1/3 each to the petitioner, President and Treasurer of the Society. Ultimately, the liability fixed against the office bearers is as follows.

	ITEM OF FRAUD	RESPONSIBILITY			
		L. Shankar President.	K. Posham, Secretary.	Ch. Swamy, Treasurer	M. Laxminarayana, Secretary.
I)	a) Misappropriation amount by direct loaning to benami member without documentation (120) members Rs.13,41,000-00	6,70,500-00	3,00,500-00	3,26,250-00	43,750-00
	Less remittance of Share capital amount	4,500-00			
	b) Misappropriation of amt. against the names of directors (6) Directors	1,05,000-00			
II)	Joint responsibility on L.Shankar,President and K.Posham Secretary				
	a) Collection amount diverted and shown as loan disbursed to members without documentation and misappropriated Rs.1,05,000-00	52,500-00	52,500-00		
	b) Amt. drawn from SBH Br.Mandamarry not brought to the cash book and misappropriated Rs.3,000-00	1,500-00	1,500-00		
III)	Joint responsibility on L.Shankar,President. K.Posham Secretary. & Ch.Swamy Treasurer				
	a) Misappropriation of amt. by way of benami loaning to (149) members Rs.22,10,000	7,36,667-00	7,36,667-00	7,36,666	
	b) -do- (33) members Rs.4,22,000/-	1,40,667-00	1,40,667-00	1,40,667-00	
	c) Misappropriation of amt.by way of loan disbursed to benami members more than two times and single recovery posted in Multiple loan account (72) members 9,50,000	3,16,667-00	3,16,667-00	3,15,666-00	
		20,28,001-00	15,48,501-00	15,20,248-00	43,750-00

When the matter was taken in an appeal before the Cooperative Tribunal, the Tribunal framed only one point with regard to illegality or infirmity in the surcharge order. The Tribunal, after considering the submissions of the Appellant and the Presenting Officer, observed in paras 20, 25, 27 and 29 as follows.

> "20. In the first instance of benami loaning discussed from page 4 to 9 of the impugned order, the 1st respondent has verified all such members and arrived at a list of 81 members from whom no recoveries are coming forth to a tune of Rs.13.41 lakhs. We are of the view that the 1st respondent has given a long rope to the delinquents by absolving them to the extent of the loan accounts in respect of which recoveries are coming forth, even though as per law and loaning policy all such loanings which are resorted to without credit limits must be held as benami and liable for recovery. However, since the narrow ambit of appeals entertained by this Tribunal does not envisage going into the details of the original transactions, suffice it to say that the benami lendings as arrived at by the 1st respondent after verifying the recovery details from the PIC of the society are held to be proved beyond any doubt. The specific liability is also correctly fixed up with reference to the signatories on the cheques who cannot evade responsibility after indulging in such irregular transactions. However, in respect of the appellant in CTA 178/2004, we are of the view that he is suddenly dragged into the picture and was not furnished adequate details either during the course of enquiry or surcharge proceedings to defend his case. Law requires that the delinquents are put under adequate notice and all legal formalities followed before indicting them under any charge, howsoever deplorable or heinous, it may be.
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> 25. Similar modus operandi is adopted in the benami loan disbursement without documentation in respect of (142) loan accounts amounting to Rs.22.10 lakh. The 1st respondent has reduced the liability to a tune of Rs.1.21 lakh in respect of certain loan accounts where recoveries are being affected or already recovered by the time of finalization of the surcharge proceedings. The details of benami loanings under this head are presented at page Nos.22, 23, 25, 26, 27 and 28 in the impugned order. Thus, the denial of the appellants that the details of benami loaning are not available is found to be false and misleading. Another irregular loan disbursement without documentation was also held proved to an extent of Rs.4.22 lakhs with detailed statement of benami loanees available on page 30 and 31 from whom no recoveries are coming forth. The less

remittance of share capital by the Ex-President to an extent of Rs.4,500/- is also proved and held sustainable.

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27. Thus, the findings arrived at by the 1st respondent cannot be faulted with and every reasonable opportunity to the appellants in CTA No.176/2004 and 177/2004 was given to disprove the allegations levelled against them. Since the original records seized by the police in C.C.No.42/99 are submitted in the Court of Chief Judicial First Class Magistrate, Mancherial and the Criminal trial is underway, the 1st respondent has taken care to furnish certified copies of the requisite documents to the delinquents and the record submitted to the court is also verified with reference to the findings arrived at in the surcharge order and found to be tallying. Thus, the documentary evidence proves the liability of the appellants in CTA 176/2004 and 177/2004 beyond any doubt. We do not find any reasons to come to a different conclusion and accordingly confirm the findings of the 1st respondent so far as the appellants in CTA 176 and 177 concerned.

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29. Having regard to the above discussions, we are of the firm view that the appellants in the two CTAs of 176/2004 and 177/2004 covered by the same surcharge order have clearly acted against the interests of the society and have committed misappropriation of public money to subserve their own and self interest. All the norms of byelaws and conditionalities of loaning have been violated and several employees of their own organization were cheated. They have ostensibly diverted the funds of the society to unapproved and illegal purposes, which resulted in bringing a bad reputation to cooperative lending as such. They caused irreparable loss to the image of the cooperative finance besides ruining themselves in the process. We do not find any merits in the two appeals i.e., CTA 176/2004 and CTA 177/2004 and both of them are liable to dismissed. However, in respect of the appellant in CTA 178/2004, we allow the appeal on the sole ground of breach of principles of natural justice and opportunity of fair hearing."

A perusal of the above observations of the Tribunal clearly shows that the Tribunal has not examined the matter in proper perspective. The Tribunal being an appellate authority should have independently examined the matter and recorded the findings with regard to liability of the petitioner and others.

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 under 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 inclined to set aside the order passed by the Tribunal confirming the surcharge order dated 19.03.2004.

Now it is not clear, in the absence of counter affidavit, whether the amount was recovered from the petitioner pursuant to the execution petitions which were alleged to have been pending from the year 2011 consequent to the inoperation of the stay due to non-deposit of the amount by the petitioner pursuant to the interim order passed by this Court.

In view of the unsatisfactory conduct of the proceedings by the first respondent as well as by the A.P. Cooperative Tribunal, the surcharge order passed by the first respondent on 19.03.2004 and as confirmed by the Tribunal in CTA No.176 of 2004 dated 20.09.2006 are set aside. The matter is remanded to the first respondent for conducting a *de novo* enquiry in respect of the liability of the petitioner and any amount recovered from the petitioner would be subject to the orders to be passed in the said enquiry. The first respondent shall pass fresh order in accordance with the law laid down by this Court in W.P. No.25990 of 2003 dated 10.11.2016 by giving due opportunity to the petitioner and complete the same within a period of six (6) months from the date of receipt of a copy of this order.

The Writ Petition is, accordingly, allowed. There shall be no order as to costs.

As a sequel thereto, the miscellaneous petitions, if any, pending in this Writ Petition 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.