

THE HON'BLE SRI JUSTICE S. V. BHATT

WRIT PETITION No.9267 OF 2010

ORDER:

Heard learned counsel appearing for the parties.

The petitioner challenges the judgment in O.A.No.154 of 2006 before the Andhra Pradesh Cooperative Tribunal, Visakhapatnam, confirming the order of surcharge bearing No.75/2002 – DI dated 28.02.2004 as illegal and arbitrary and without material. The surcharge proceedings have been initiated against the petitioner herein and one K.S.Ch.S.V.J.Nageswara Rao, Ex-Secretary. The irregularities against which findings have been recorded are as follows:

Sl. No.	Item of Expenditure	Amount	Reasons
01	Building Repairs	Rs.69,258-00	No permission of Registrar of Coop. Societies as obtained. No work was expected
02	Advance to Sri P.V. Subbarao, S/o. P.Chandrarao Ex-President	Rs.19,427-00	No need to pay the advance to the President son
03	Advance to Carpenter	Rs.6,200-00	No need to pay advance. No furniture i.e., doors and windows were manufactured
04	Credit Sales of Manures	Rs.23,409-00	No provision in byelaw for credit sales
05	Advance paid to Sri Ch. Bhima Sankararao, Ex.-PPIC	Rs.2,850-00	No need to pay advance. No action taken for recovery. The individual also retired from service.

The petitioner contends that the surcharge amount of Rs.69,258/- spent towards repairs of the society building cannot and could not be ordered against him, for according to petitioner, it is not a case of misappropriation per se or non-spending of amount towards repairs and maintenance. The allegation plainly understood suggests that repairs were carried out, but permission of Registrar was not taken. In a case like this, ex post facto permission can be considered and/or actual repairs made to the building ought to be examined. As regards other heads of surcharge, it is submitted that the society, in fact has recovered the credit sales of manures

paid as advance to one Ch. Bhimashankar Rao and firstly prays for setting aside the orders impugned in the Writ Petition. The petitioner alternatively contends that Ex-Secretary, against surcharge order impugned in W.P., filed appeal before the Tribunal and the Tribunal has allowed and remanded the matter to the 1st respondent for fresh disposal. Therefore, prays for setting aside the orders impugned in the Writ Petition and remanding the matter to the 1st respondent.

Learned counsel for the respondents contends that (on merits of irregularities) the findings of fact on irregularities are consistent and that no interference is warranted from this Court. Replying to the alternative submissions that in respect of the same and similar charges, the matter is remitted to the 1st respondent for disposal afresh, learned counsel appearing for the respondents submits that in fact the matter is remanded and no final decision is taken as on date.

Having regard to the fact that at the instance of Ex-Secretary, the impugned surcharge order was set aside and remitted to the 1st respondent for fresh disposal and also having regard to the merits in the contentions of petitioner, I am satisfied that the orders impugned in the Writ Petition are required to be set aside and the matter is remitted to 1st respondent for disposal afresh. All contentions urged by the petitioner are left open for consideration and decision by the 1st respondent.

The Writ Petition is accordingly allowed as indicated above. No order as to costs.

Miscellaneous petitions, if any, pending in this Writ Petition shall stand closed.

S. V. BHATT, J

Date:21.03.2016

KH