

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 17824 OF 2016

ORDER:

The surcharge notice dated 23.04.2016 issued under Section 60 (1) of the Andhra Pradesh Co-operative Societies Act, 1964, by the 2nd respondent-Deputy Registrar of Co-operative Societies, Chittoor, is challenged in this Writ Petition.

The case of the petitioner is that he joined in Co-operative Societies Department in the year 1968 and retired as Supervisor in June, 1996. While so, the second respondent issued surcharge notice dated 02.11.2009 seeking recovery of Rs.18,758/- stating that the petitioner had misappropriated the said amount while he was in service. Petitioner offered his explanation and the proceedings were dropped. Thereafter, again on 26.11.2011, surcharge notice was issued to the petitioner for recovery of Rs.2,46,387-99 ps. Again the petitioner submitted his explanation. However, ignoring the same, the 2nd respondent issued the impugned notice. Questioning the same, present writ petition is filed.

The grounds raised by the petitioner in the writ petition are as under:

a) That I was no way concerned with the lapses as it relate to 1987-1995. I worked for 6 months as incharge for the said society in 1996, before retirement.

b) That by proceedings dated 02.11.2009 a surcharge notice u/s.60 (i) was issued by second respondent for Rs.18,758/-. I submitted my explanation and the proceedings were dropped. Again by impugned proceedings, surcharge order is issued for Rs.2,46,387-99 p.

c) That by proceedings dated 05-11-2012 a surcharge notice u/s.60 (1) was issued by Respondent No.2 for Rs.2,46,387-99 p against which this Hon'ble Court granted interim suspension on 28-12-2012 in W.P.No.39978 of 2012.

d) No independent/regular enquiry was conducted by the respondents akin to Civil Court by examining witnesses and

allowing me to cross-examine them to pass a decree for realization of amounts, the said order is not only infraction of the statutory provisions but also violative of principles of natural justice.

e) That initiation of proceedings u/s.60 are hopelessly time barred as the lapses relate to 1987-1995. Action initiated after 16 years. The authorities could not have slept for 16 long years.

f) That the order passed by the Registrar is open to judicial review under Article 226 of the Constitution of India as the same is not supported by evidence on record or contrary to available evidence.

g) That alternative remedy is no bar when the order is passed in violation of principles of natural justice.

Learned counsel for the petitioner urges that it is totally unreasonable to rake up the issues, which were already settled 13 years back and at any rate, the petitioner, who is a senior citizen, cannot be subjected to mental agony at this age. He further submits that copy of the inquiry report was not furnished to the petitioner and no opportunity as such was given to him even during the course of enquiry, which was alleged to have been conducted, under Section 51 of the 1964 Act.

On the other hand, learned Assistant Government Pleader for Co-operative Societies (Andhra Pradesh) submits that since the petitioner was issued a surcharge notice, it is always open for him to submit his explanation and only after taking the same into account and consideration, the enquiry as mandated under the Act and the Rules made thereunder, will be conducted.

The notice dated 23.04.2016 has been placed on record along with the Writ Petition, the operative portion of which reads as under:

“ Therefore, by virtue of powers vested in me, I the Deputy Registrar of Cooperative Societies, Chittoor do hereby issue Surcharge Notice against the above persons responsible as per enquiry report and also the legal heirs of deceased persons, they are called on as to why the said amount should not be recovered from them along with 18% interest. Further, the Chief Executive Officer, Yadamari P.A.C.S. instructed to give deposition on the status of recovery of loan from the

member who have accepted and agreed to repay as per enquiry report. The above persons are also instructed to appear before the undersigned on 20.05.2016 at 10.30 A.M. at O/o Divisional Coop. Officer, Chittoor with all material evidences in support of their explanations to the Deputy Registrar of Coop. Societies Office, Chittoor.”

From a perusal of the above-quoted portion, it is clear that the proceedings dated 23.04.2016 is more in the nature of a show cause notice, which attribute mis-utilization of more than Rs.59 lacs by the persons named therein. It is also clear that the said notice was issued based on the enquiry report dated 04.12.2010. So far as the contention of the learned counsel for the petitioner that there is delay in issuing the present notice is concerned, it appears to have occasioned on account of the proceedings which were pending before the A.P. Co-operative Tribunal, Vijayawada, in O.A.Nos.7 of 2013 and 22 of 2014.

In these circumstances, interest of justice would be served, if liberty is given to the petitioner to submit his explanation and participate in the inquiry that may be conducted by the 2nd respondent, by raising all the grounds including the one raised before this Court, particularly the aspect of limitation. The 2nd respondent is directed to complete the inquiry as expeditiously as possible, in accordance with law, after considering the explanation that may be submitted by the petitioner, duly observing the principles of natural justice.

With this, the Writ Petition stands disposed of. No costs.

Consequently, the miscellaneous Applications, if any shall also stand disposed of.

CHALLA KODANDA RAM, J

08th June 2016
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