

HON'BLE SRI JUSTICE C. PRAVEEN KUMAR

WRIT PETITION No.8096 of 2002

ORDER:

The present Writ Petition is filed seeking the following relief:

“For the reasons and in the circumstances stated in the accompanying affidavit, the petitioners herein pray that this Hon’ble Court in the interests of justice be pleased to issue a writ, order or direction more particularly one in the nature of Writ of Certiorari:

- (i) calling for the records relating to and connected with the orders passed by the Andhra Pradesh Cooperative Tribunal, Vijayawada in O.A.No.168/1994, dated 22.12.2001 and proceedings in Rc.No.2452/93-G, dated 20.11.1993 of the 2nd respondent and Rc.No.3097/93-C, dated 31.01.2000 of the 3rd respondent and quash or set aside the same holding it as arbitrary, unjust and unsustainable;
- (ii) consequently direct the respondents to refrain from proceeding any further against the petitioner and pass such other order or orders as it may deem fit to pass in the facts and circumstances of the case.”

2. The averments in the affidavit filed in support of the Writ Petition are to the effect that pursuant to notification issued by the Department of Telecommunications, petitioner applied for the post of Telecom Operator and got selected in the year 1979. Initially, he was posted at Nizamabad and subsequently transferred to Rajahmundry. It is averred that the petitioner herein developed an idea of promoting a cooperative society, catering to the needs of the employees of the Department. The idea got support from others and there was active participation from all quarters. Accordingly, a cooperative society came to be established in the year

1985. Elections were being conducted from time to time and on 21.12.1987, it was proposed to hold elections for filling of vacancies of 6 directors and a President. However, all the 6 directors and the President were unanimously elected. One Sri D. Satyanarayana was co-opted as Secretary. During his tenure, Sri D. Satyanarayana expired. During the course of audit, the audit party opined that certain areas need to be inspected in accordance with the provisions of Section 52 of the A.P. Cooperative Societies Act, 1964 (for short "the Act"). Pursuant thereto, the Sub-Registrar of Cooperative Societies, Amalapuram conducted inspection and submitted report dated 15.08.1991 and basing on the said report, notices were served on Smt. D. Surya Kantham, W/o. Sri D. Satyanarayana, the petitioner and Sri T.V. Sudhakara Rao, former President. It is stated that petitioner and others misappropriated funds from 31.08.1988 to 22.12.1989. Objections to the said report came to be submitted on 11.10.1993. Having regard to the nature of allegations made, surcharge orders were issued by the 2nd respondent vide Rc.No.2452/93-G dated 20.11.1993. Aggrieved by the said surcharge orders, the petitioner preferred an appeal, vide O.A.No.168 of 1994, before the Cooperative Tribunal, Vijayawada. After considering the material available on record, the Tribunal dismissed the appeal, confirming the orders passed by the lower authority, wherein the petitioners along with others are found to have misappropriated an amount of Rs. 37,000/-. Challenging the same, the present Writ Petition has been filed.

3. Counter-affidavit came to be filed by the President, Telecom Employees Cooperative Society, Amalapuram, disputing the averments made in the affidavit filed in support of the Writ Petition. It is urged that surcharge proceedings came to be issued for the loss of Rs.37,000/- with interest at 18% p.a., from 31.08.1998. It is stated that 2nd respondent issued notice dated 15.12.2003 proposing to hold auction of the petitioner's property. Pursuant thereto, petitioner filed WPMP No.34091 of 2003 seeking stay, which was dismissed on 26.12.2003; thereafter, the petitioner's property was put to auction. It is stated that on 23.02.2004, an amount of Rs.14,300/- and on 09.03.2004, an amount of Rs.67,700/- was realized through auction and the same was apportioned towards interest in terms of the surcharge order, which worked out to Rs.1,33,083/- as on the date of sale. It is stated that out of the total amount of Rs.1,33,083/-, only Rs.82,000/- was realized through auction. The averments made in the counter also show that certain amounts came to be deposited, even after 2006.

4. A counter-affidavit also came to be filed by the 3rd respondent, Divisional Cooperative Officer, Amalapuram, denying the averments made in the affidavit filed in support of the writ petition except those admitted by him. In Para No.6 of the counter it is stated that the petitioner, who was working as Treasurer, Secretary (deceased) and the then President of the Society are liable for misappropriation of funds. It is further stated that basing on the findings of the Inspecting Officer, action was initiated for realization of the misappropriated amount from all the concerned. In Para No.8 of the counter, it is stated that pursuant to

the surcharge notice, petitioner filed objections. After examining the information available on record, the objections raised by the petitioner and after giving all reasonable opportunity to the petitioner, the respondent passed surcharge orders holding that the petitioner, deceased Secretary and the then President are jointly and severally liable for the misappropriated amount. It is also stated in the counter that the appeal preferred by the petitioner against the said surcharge order was dismissed.

5. Though various grounds are urged by the parties, learned counsel for the petitioner restricts his argument stating that the rate of interest levied on the amount alleged to have been misappropriated by the petitioner is on higher side and if the interest is calculated at 18% p.a., the petitioner could be put to irreparable loss. He further submits that having regard to the quantum of amount alleged to have been misappropriated, a lenient view may be taken.

6. After arguing the matter for considerable time, both the counsel insisted for disposal of the writ by reducing the rate of interest. At this stage, learned Counsel appearing for the 4th respondent took time to get instructions.

7. Today, Smt. Bobba Vijaya Lakshmi, learned counsel appearing for the 4th respondent submits that it would be appropriate if the interest is reduced from 18% to 12% on the amount alleged to have been misappropriated by the petitioner.

8. Taking into consideration the fact that the quantity of amount already paid by the petitioner and the petitioner is now retired from service, while confirming the findings of the Tribunal in O.A.No.168/1994, dated 22.12.2001, I deem it proper to scale down the interest from 18% to 8.5% on the amount alleged to have been misappropriated by the petitioner.

9. Accordingly, the Writ Petition is disposed of.

As a sequel, miscellaneous petitions pending, if any, shall stand closed. No costs.

February 7, 2017
MRR/gkv



C. PRAVEEN KUMAR, J