

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION No.18988 of 2007

ORDER:

This Writ Petition is filed challenging the order dt.26-04-2007 in O.A.No.11 of 2007 of the A.P. Cooperative Tribunal, Visakhapatnam.

2. The petitioner is a Cooperative Society registered under the A.P. Co-operative Societies Act, 1964 and is under liquidation and its affairs are being managed by the Liquidator appointed on 10-05-2007 by the 2nd respondent.

3. A surcharge order under Section 60(1) of the A.P.Co-operative Societies Act, 1964 (for short “the Act”) was passed against 1st respondent herein vide proceedings No.836/2003-E2 dt.24-12-2005. In the said order, it is mentioned a sum of Rs.18,643/- was due from the Workshop Division, Dowleswaram, that fraud was committed by the Workshop division and since the petitioner was the President at the time when this occurred in the year 2000-2001, it is construed that 1st respondent is responsible for the fraud and he should pay an amount of Rs.18,643/- with interest @ 24% p.a. from the date of occurrence till the date of realisation.

4. This was assailed by the 1st respondent before the A.P. Cooperative Tribunal, Visakhapatnam in O.A.No.11 of 2007 on the ground that no notice was given to 1st respondent, that he was not a party to the surcharge notice dt.12-10-2004, that he never

received notice whatsoever regarding surcharge orders, that he retired from service on 30-04-2000 and therefore the action of respondents in trying to recover the said amount from him is illegal and cannot be sustained.

5. By order dt.26-04-2007, the Co-operative Tribunal held that though Section 60 of the Act does not prescribe any particular procedure before passing surcharge order, nonetheless, it is mandatory to follow principles of natural justice; and evidence recorded behind the back of the defaulter cannot be relied upon to fasten the liability, without giving any opportunity to cross-examine the witnesses. It also held that the Dy.Registrar of the Co-operative Societies (2nd respondent) did not conduct any independent enquiry, which is a condition precedent under Section 60 of the Act and issued the impugned surcharge order basing on the enquiry report under Section 61 of the Act, and that no documents were marked as evidence and no witnesses were examined. It also held that the records of the 2nd respondent do not show any evidence that surcharge notice was served on 1st respondent, and even Section 51 notice shows that one B.S.Vijaya Kumar, Ex-cashier of the Society misappropriated the collected amount from the member loanees of the Society every month by virtue of his position as Senior Assistant and Cashier of the Office. It observed that though misappropriation is committed by the said B.S.Vijaya Kumar, who caused loss to the funds of the Society, and when there is no evidence of willful negligence, the 1st respondent cannot be made liable for the same.

6. Assailing the same, this Writ Petition is filed.

7. Learned counsel for petitioner contends that while setting aside the impugned order of surcharge passed by 1st respondent, the Tribunal ought to have remitted the matter back to the 2nd respondent since the principal ground on which the appeal was allowed was that there was violation of principles of natural justice.

8. Admittedly, Section 51 enquiry report stated that 1st respondent was the President at the time when Sri B.S.Vijaya Kumar, cashier, misappropriated the amount and committed fraud. It further stated that no details from the record were available for fixing the responsibility.

9. On the basis of this finding, the surcharge order under Section 60 of the Act was passed by construing that 1st respondent is responsible for the fraud. In the absence of any evidence available from the records of the Society to fix the responsibility as stated by the Enquiry Officer, who conducted enquiry under Section 51 of the Act, and since it is stated specifically by him that it was the cashier who was responsible for the fraud, the 1st respondent cannot be made liable for the same. As such, there is no necessity to remit the matter again to the 2nd respondent for a fresh enquiry. Therefore, I see no reason to interfere with the order dt.26-04-2007 in O.A.No.11 of 2007 of the A.P. Cooperative Tribunal, Visakhapatnam.

10. Accordingly the Writ Petition is dismissed. No costs.

11. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 02-08-2017

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