

THE HON'BLE SRI JUSTICE A.V.SESHA SAI

WRIT PETITION No.9506 of 2017

ORDER:

This writ petition is filed under Article 226 of the Constitution of India, for the following relief:

“To issue an appropriate Writ or order or direction more particularly writ of Mandamus, declaring the action of the third respondent in issuing the proceedings in Rc.No.905/2016-B, dated 06.03.2017, directing the petitioner to obtain clearance certificate from fourth respondent bank after payment the loan amount within one week, illegal, arbitrary and contrary to Section 60 of the A.P. Cooperative Societies Act. 1964 and also the law laid down by this Hon'ble Court in Challa Sanyasinaidu Deputy Registrar of Co-op. Society, Srikakulam {1998 (1) ALD 455 (DB and consequently set aside the same.”

2. Heard the learned counsel for the petitioner Smt.Bobba Vijayalakshmi and the learned Government Pleader for respondents.

3. Petitioner herein is the elected President of the 5th respondent society. In connection with a loan advanced to the brother of the petitioner, the Deputy Registrar of the Cooperative Societies, Rajampeta, issued a notice,

asking the petitioner to submit explanation/statement, while proposing to initiate surcharge proceedings under Section 60 (1) of the A.P. Cooperative Societies Act, 1964 (hereinafter called 'the Act'). In response to the said notice, the petitioner herein submitted an explanation dated 14.09.2016. Subsequently, the third respondent vide proceedings Rc.No.905/2016-B, basing on the surcharge notice dated 22.08.2016 and pursuant to the explanation offered by the petitioner herein, directed the petitioner to deposit the amount in the District Cooperative Central Bank Limited, Kadapa and to obtain clearance certificate.

4. It is contended by the learned counsel for the petitioner that the said order passed by the third respondent asking the petitioner to pay the amount without holding any enquiry under Section 60 of the Act is highly illegal, arbitrary and unreasonable. It is further submitted that unless a regular enquiry is conducted under the provisions of Section 60 of the Act, the petitioner herein cannot be mulcted with any responsibility. In this context it is appropriate to extract Section 60 of the Cooperative Societies Act, which reads as under:

."60. Surcharge:—

(1) [Notwithstanding anything contained in any other law for the time being in force where in the course of an audit under Section 50 or an inquiry under Section 51 or an inspection under Section 52 or Section 53, to the winding up of a society, it appears that any person who is or was entrusted with the organisation, affairs or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment contrary to the provisions of this Act, the rules or the bye-laws, the Registrar himself, or any person specially authorised by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributor, may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retention, breach of trust, or wilful negligence as the Registrar or the person authorised as aforesaid thinks just :

Provided that no order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representation.

(2) Any sum ordered under this section to be repaid to a society or recovered as a contribution to its assets may be recovered on a requisition being made in this behalf by the Registrar to the Collector in the same manner as arrears of land revenue.

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act."

5. A reading of the above provision of law makes it abundantly clear that before fixing any liability it is incumbent on the part of the authorities to hold regular enquiry as contemplated under the said provision of law. In support

of his submissions and contentions, learned counsel for the petitioner placed reliance on the judgment of this Court in the case of *CHALLA SANYASINAIDU v. DEPUTY REGISTRAR OF CO-OP SOCIETY, SRIKAKULAM*¹ and paragraph No.10 of the judgment reads as under:

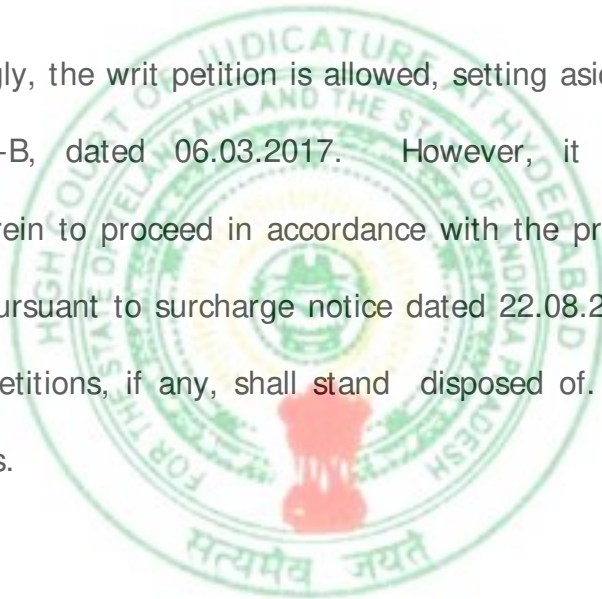
“10. In the course of inspection under Section 52 of the Act, the Registrar may cause the inspection of Books of the Society with a view to find out the irregularities, acts of omission and commission. This enquiry is only administrative in nature, and if the Registrar prima facie is satisfied of the irregularities on the basis of the report of the enquiry officer, he may initiate surcharge proceedings under Section 60. That report may form the basis for the Registrar to proceed under Section 60 and issue a surcharge order eventually. The person against whom a report is sent under Section 52 has no opportunity to squarely meet the allegations against him at that stage. He is not allowed to cross examine the witnesses from whom statements are recorded implicating his involvement. He cannot also adduce rebuttal evidence. That is not the stage where a demand can be made against him to pay back the sum or liability fastened to him as per the report of the enquiry officer. On the contrary, Section 60 clearly contemplates an opportunity being given to the delinquent by making a representation. In our view, this is the proper occasion where the officer or the servant has to be given an opportunity of explaining his stand and allow him to participate in the enquiry before a final order is passed. This is a valuable right given to the delinquent which cannot be brushed aside in a routine manner. After the show-cause-notice is served and an explanation is called for, an opportunity should be given to the affected person to cross-examine the witnesses examined in the course of enquiry under Section 52 or permit him to examine his witnesses to rebut their evidence. Until this is done the spirit of making a representation, as contemplated under Section 60, cannot be fulfilled. Although Section 60 does not prescribe any particular procedure before passing surcharge order, nonetheless, it is mandatory that principles of natural justice shall be followed in the enquiry. Evidence recorded behind the back of the defaulter cannot be relied upon to fasten the liability on him without giving him an opportunity to cross-examine the witnesses. The Registrar in his surcharge proceedings is a Court whose order can very well form the subject-matter of judicial review under Article [226](#) of the Constitution of India. Therefore, it is in the fitness of things that an opportunity like supply of copy of enquiry report, statements of witnesses recorded during the said enquiry, and also an opportunity to cross-examine those witnesses, or permit him to examine his own witnesses by the delinquent by way of rebuttal should be allowed before an order under Section 60 is passed. Therefore, we respectfully agree with the view taken by the learned Judge in *S. Rama Subba Rao v. President, Kaikaluru Irrigation and Power Department Sub-Divisional Employees Co-operative Credit Society Limited* (supra). Even in *Mohd. Ghouse v. Deputy Registrar of Cooperative Societies, Vikarabad and others* (supra) the learned Judge has rightly observed that the proviso to Section 60 mandates adequate opportunity before passing the

¹ 1998 (1) ALD 455

order, and the issuance of notice proposing to fix the liability under Section 60 is imperative and as such there is no breach of principles of natural justice. Having said so, the learned Judge went on observing that Section 60 is an immediate and necessary consequence of enquiry and audit and inspection and the enquiry for the second round is considered to be superfluous and the affected person is not prejudiced or disadvantaged as the enquiry is done in anterior proceedings. These later observations of the learned Judge appear to strike a contrary note, and we do not therefore subscribe to the same.”

6. In view of the above provision of law and the principle laid down in the above judgment, this Court is of the considered opinion that the impugned proceedings Rc.No.905/2016-B, dated 06.03.2017 fixing the liability of the petitioner herein without being preceded by any enquiry as contemplated under Section 60 of the Act is highly unsustainable and untenable.

7. Accordingly, the writ petition is allowed, setting aside the proceedings Rc.No.905/2016-B, dated 06.03.2017. However, it is open for the respondents herein to proceed in accordance with the provisions of Section 60 of the Act pursuant to surcharge notice dated 22.08.2016. As a sequel, miscellaneous petitions, if any, shall stand disposed of. There shall be no order as to costs.



A.V.SESHA SAI, J

Date:20.03.2017
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THE HON'BLE SRI JUSTICE A.V.SESHA SAI



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Dated 20.03.2017

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