

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

WP.No.4462 of 2002

ORDER :

Heard the counsel for petitioner, the learned Government Pleader for Cooperation for 4th respondent, and Sri Polavarapu Srinivas, counsel for 5th respondent.

2. This Writ Petition is filed by petitioner assailing the order dt.23.01.2002 in O.A.No.37 of 1995 of the Andhra Pradesh Co-operative Tribunal, Vijayawada, which confirmed the order dt.24.12.1993 in Rc.No.4121/91-C of the 4th respondent holding that the petitioner has to pay a sum of Rs.1,42,190/- for having caused loss to the assets of 5th respondent-Society with interest at the rate of 18% per annum from 24.05.1992 till the date of realization.

3. The petitioner, who is holding a substantive rank of Co-operative Sub-Registrar, was deputed to the 5th respondent-Society to work as Secretary in 1984.

4. It came to light in an enquiry conducted under Section 51 of the Andhra Pradesh Co-operative Societies Act, 1964 (**for short, ‘the Act’**) into the affairs of the 5th respondent-Society that the petitioner committed financial irregularities by registering sale deeds to certain members of the said Society ignoring the provisions of the bye-laws, and certain amounts collected for execution of sale deeds for sale consideration were not credited to the cash book of the Society. Other

irregularities in the nature of misappropriation of funds were also found to have been committed by petitioner.

5. On the basis of this enquiry report dt.24.05.1992, proceedings under Section 60 of the Act were initiated against the petitioner by 4th respondent by issuing show-cause notice to him on 09.10.1992. The petitioner received the same on 06.11.1992. Copy of the enquiry report under Section 51 was also furnished to him on 23.01.1993. He attended the hearings before the 4th respondent on 28.06.1993, 30.07.1993, 06.08.1993, 27.08.1993. He also made requests for certain documents, but he was informed that he can peruse all connected records in the Office of the 4th respondent. The petitioner did not submit any explanation to the show-cause notice even though one year and one month had elapsed by 24.12.1993. The 4th respondent therefore construed that the petitioner had no explanation to defend his case for all the items mentioned in the surcharge notice dt.09.10.1992. Therefore, the 4th respondent passed orders on 24.12.1993 holding that a sum of Rs.1,42,190/- has to be paid by the petitioner to the 5th respondent-Society for having caused loss to the assets of the Society with interest at the rate of 18% per annum from 24.05.1992.

6. Assailing the same, the petitioner filed Appeal under Section 76 of the Act, viz., O.A.No.37 of 1995, before the Andhra Pradesh Co-operative Tribunal, Vijayawada (3rd respondent).

7. Pending Appeal, G.O.Rt.No.1102 Agriculture and Cooperation (COOP.II) Department dt.14.10.1999 was issued by the 1st respondent. In that proceeding, the State Government noted that a show-cause notice had been given to the petitioner proposing punishment of 2% cut in pension for 2 years besides recovery of an amount of Rs.46,972/-; that explanation was submitted by the petitioner denying that there was any misappropriation; and considering the fact that he was kept under suspension for 1 ½ years and he had retired from service in 1996, the Government, on humanitarian considerations, decided to exonerate him from all charges pending against him. It also regularized the period of suspension from 06.10.1994 to 28.03.1996 and treated it as 'Duty' in terms of Fundamental Rules 54(B), and directed the Registrar of Co-operative Societies to release the retirement benefits due to the petitioner.

8. Before the Co-operative Tribunal, the petitioner contended that in view of the said G.O.Rt., his appeal ought to be allowed since he had been exonerated by the Government. He also raised a contention that he was denied proper opportunity by the 4th respondent before passing of the order of surcharge.

9. By order dt.23.01.2002, the said appeal was dismissed.

10. The 3rd respondent rejected the contention of petitioner that departmental proceedings having been dropped against him, surcharge

proceedings also should be dropped on the basis of the G.O. issued by the Government. It observed that since public money was misused, petitioner, who has committed such misuse, is actually liable for severe punishment, and any such G.O. will not bind the Co-operative Tribunal. It also held that adequate opportunity was given to the petitioner for giving explanation to the show-cause notice, but he did not avail of the said opportunity by giving an explanation even though more than 1 year 1 month elapsed after receipt of the show-cause notice from the 4th respondent.

11. Assailing the same, the present Writ Petition is filed.

12. Though counsel for petitioner again reiterated the submission that the O.A. ought to have been allowed by the 3rd respondent in view of the G.O.Rt. dt.14.10.1999, I am unable to agree with the said contention because, firstly, there is no mention in the said G.O. that it would apply to surcharge proceedings initiated against the petitioner also. No provision of the Act has been brought to my notice to state that any such decision of the 1st respondent with regard to disciplinary proceedings would bind the surcharge proceedings. When there is finding of misuse of 5th respondent-Society's funds by the petitioner, it would be a travesty of justice if he is exonerated of the liability to make good the money which he is found to have misutilised in the Section 60 surcharge proceedings dt.24.05.1992 by the 4th respondent, particularly when he did not even give explanation denying the allegations before the 4th respondent.

13. Coming to the other contention raised by the counsel for petitioner regarding denial of opportunity by the 4th respondent, the order of the 4th respondent dt.24.12.1993 as well as the impugned order of the Tribunal indicate that the show-cause notice issued under Section 60(1) to the petitioner was served on the petitioner; that he was also furnished copy of the enquiry report dt.24.05.1992 under Section 51 of the Act; and he was given opportunity to peruse the records in the Office of the 4th respondent, but he still did not file explanation to the show-cause notice. Having waited for more than a year, the 4th respondent passed order under Section 60 on 24.12.1993. Therefore, I reject the contention of petitioner that adequate opportunity was not given to petitioner by 4th respondent before passing his order.

14. Therefore, the Writ Petition fails and is accordingly dismissed. No order as to costs.

15. As a sequel, miscellaneous petitions pending if any in this Writ Petition, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 25-10-2017

Ndr/*