THE HON'BLE SRI JUSTICE M.SEETHARAMA MURTI

Writ Petition no.18203 of 2008

ORDER:

This writ petition, under Article 226 of the Constitution of India, is filed by the petitioner requesting to call for the records relating to common order, dated 10.07.2008, passed by the learned Chairman, A.P. Cooperative Tribunal, Vijayawada, in O.A.nos.77 of 2005 & 15 of 2006 and quash the said common order insofar as it related to O.A.no.77 of 2005.

2. I have heard the submissions of *Sri Meherchand Noori*, learned counsel appearing for the petitioner and of the learned Government Pleader for Cooperation (AP) appearing for the respondents. I have perused the material record.

3. To begin with, it is to be noted that the Deputy Registrar of Cooperative Societies, Eluru, passed 'Surcharge Orders', dated 10.05.2005, in S.C.no.06/03-04-D holding the petitioner and another, R.Nancharaiah, responsible for the misappropriation of funds of Kovvali Large Sized Co-operative Society Limited ('society', for brevity). By the said orders, the said Deputy Registrar directed both of them to restore to the assets of the said Society, the amounts mentioned in the said order along with interest. As there was an error in the original Surcharge Order, dated 10.05.2005, the said Deputy Registrar issued an errata order, dated 18.05.2005. Aggrieved of the said Surcharge order directing the petitioner to restore Rs.4,37,791/- to the assets of the society, the petitioner preferred O.A.no.77 of 2005 before the A.P. Cooperative Tribunal, Vijayawada. Similarly, R.Nancharaiah, who is also aggrieved of the very same Surcharge order directing him to restore

Rs.7,01,936/- to the assets of the Society, preferred the other appeal in O.A.no.15 of 2006 on the file of the said Cooperative Tribunal. The Cooperative Tribunal disposed of both the said appeals by a common order. In this writ petition, the petitioner assailed the said common order insofar as it related to the dismissal of the O.A.no.77 of 2005 filed by the petitioner.

4. The case of the petitioner and the submissions made on his behalf, in brief, is this:

The impugned common order passed by the Tribunal confirming the Surcharge Order to the extent it is against the petitioner's interest and the surcharge order & the errata order of the Deputy Registrar of Co-operative Societies are illegal and arbitrary. The petitioner was the president of the 3rd respondent Society during the period from 1997 to 2004. At that time, Nancharaiah, the 4th respondent herein, was the Secretary of the said Society. The petitioner discharged his duties honestly and without any remark and to the utmost satisfaction of the members of the society and the authorities concerned. There were some allegations raised with regard to the conduct of the affairs of the society. Pursuant to the proceedings, dated 29.10.2003, of the Joint Registrar/District Cooperative Officer, West Godavari District, the Co-operative Sub Registrar (H) & the Enquiry Officer, Kovvali LSCS, conducted an enquiry under Section 51 of the A.P. Cooperative Societies Act, 1964, ('the Act', for brevity) with regard to certain financial irregularities and misappropriation of funds by the Secretary – the 4th respondent. It is evident from the report of the Enquiry Officer that the Secretary - 4th respondent admitted that he was responsible for the fraud and misappropriation of funds. The Enquiry Officer accordingly gave a finding that the 4th respondent, who was the then in-charge

Secretary committed financial irregularities and misappropriated the funds. However, the Deputy Registrar, in his Surcharge order, erroneously held that this petitioner and the 4th respondent are jointly and severally liable with regard to matters under certain heads. In the enquiry report, it was pointed out that Rs.11,39,727/- was misappropriated by the 4th respondent and that out of the said amount, there is a joint responsibility of the 4th respondent and this petitioner; and, the joint responsibility was fixed to a tune of Rs.6,32,867/-. The Enquiry report reveals that the enquiry was intended to examine the financial irregularities and misappropriation of funds committed by the Secretary. Despite such facts, the Enquiry Officer also held the petitioner jointly and severally liable only with regard to matters under certain heads. After the enquiry report, the Deputy Registrar of Co-operative Societies issued a show-cause notice asking the petitioner to show cause as to why responsibility shall not be fixed and the enquiry report shall not be directed to be complied with. This petitioner filed his objections referring to various bye-laws and stating that the responsibility to maintain accounts, registers and issuance of receipts etcetera is with the Secretary and that the President has a limited role in the day-to-day affairs, management and administration of the society and that the day-to-day affairs, management and administration of the society were specifically entrusted to the Secretary and the other staff members working for remuneration. However, the Enquiry Officer fixed the responsibility on this petitioner also under certain heads *inter alia* stating that the petitioner's liability is several and joint with the 4th respondent. The findings of the Enquiry Officer are baseless and not supported by any evidence. He has not noticed the bye-laws of the society while erroneously fixing the liability on the petitioner. The statements, which are recorded during the course of enquiry are statements within the meaning of the Indian Evidence Act, 1872, and they must be given due weight. The findings of the Enquiry Officer are based on assumptions and presumptions, but not on evidence. The bye-law no.29 specifically states that it is the responsibility of the Secretary to maintain accounts and registers and that the Secretary is the proper person for receipt of amounts and issuance of receipts and that he shall alone be the custodian of the records. It was also stated before the Enquiry Officer that the management of affairs and the administration of the society is fixed firmly with the Secretary; and, hence, the President need not look into such matters regularly. No official visited the society at any point of time; and, there were no adverse remarks against the petitioner until such time the fraud has been committed by the Secretary. There is no justification in fixing the liability jointly on this petitioner and the 4th respondent. The findings of the Enquiry are incorrect & illegal and the enquiry was held contrary to the principles of natural justice. The Enquiry Officer did not provide reasonable opportunity to this petitioner and failed to adhere to the principles of natural justice. Without conducting independent enquiry and without examining the contentions of the petitioner, the Surcharge order was passed. It is only stated that the explanation of the petitioner is not satisfactory and that the liability was fastened. The Co-operative Sub Registrar, being a quasi judicial authority, ought to have conducted proper enquiry by following the procedure established by law and the principles of natural justice. No independent enquiry was conducted by the Deputy Registrar of Co-operative Societies before passing the Surcharge Order. The admissions of the 4th respondent made before the Enquiry Officer to the effect that he was responsible and that he committed fraud are ignored by the Enquiry Officer and also the Deputy Registrar of Co-operative Societies, who passed the Surcharge Order. Being aggrieved of the Surcharge Order, when this petitioner preferred O.A.no.77 of 2005 before the Cooperative Tribunal, the learned Chairman of the Tribunal simply confirmed the Surcharge Order insofar as it related to the petitioner and had erroneously dismissed the said OA. The learned Chairman of the Tribunal failed to properly appreciate the facts, the evidence and the legal position obtaining & applicable to the case of the petitioner. Hence, the writ petition is filed.

4.1 Learned counsel for the petitioner placed reliance on the following decisions:

(i) U.Shankaraiah *v.* District Co-operative Central Bank, Medak and others[1]: The facts of the case show that a departmental enquiry was not conducted by the Society and no opportunity was given to the delinquent, who was removed from service. Hence the action taken for removal was found unsustainable;

(ii) S.Ramadas *v.* The Subordinate Judge and others[2]: In this cited case, on facts a finding was recorded that provision of section 60 of the Act as well as the Principles of Natural Justice were not followed;

(iii) Lankala Koderu Co-op. Rural Bank Limited *v.* Ungarala Pullaiah Naidu[3]: The facts of the case as are perceptible from the report reflect that the charge alleged is not germane to the duties entrusted to the delinquent employee and that he was not in-charge of money transactions and that his duty was only to make postings in the ledger

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[1] 2000 (3) ALT 404
[2] AIR 1993 ANDHRA PRADESH 6
[3] 2002 (6) ALT 380

and that the enquiry officer had not examined the loanees and had not verified the records;

(iv) G.Anasuyamma *v.* Kandulapuram Primary Agricultural Society[4]: The facts of the case reflect that the notice was issued to a dead person and later the orders were also passed against a dead person; And,

(v) Primary Agricultural Co-operative Credit Society Ltd., Rudrur *v.* V.M.Gangadhar & others[5]: In this cited case admittedly no enquiry was conducted and it was found on facts that there was no basis for the conclusion arrived at by the officer/Deputy Registrar.

5. Learned Government Pleader appearing for respondents 1 to 3 while supporting the impugned order contended as follows:

On coming to know that certain irregularities have been committed and that the funds of the society were misappropriated, the Joint Registrar/District Cooperative Officer ordered an enquiry; and, the Co-operative Sub-Registrar admittedly conducted an enquiry under Section 51 of the Act. After a detailed enquiry, he submitted a report. On certain aspects and under certain heads, he fixed joint liability upon the petitioner and the 4th respondent, who are respectively the President and the Secretary at the relevant time. Though the petitioner as well as the 4th respondent preferred separate appeals before the Co-operative Tribunal, the said two appeals were disposed of by a common order. The said common order is impugned by the petitioner in this writ petition insofar as it related to his appeal. The 4th respondent, to the knowledge of this respondent, has not preferred any appeal. Concurrent findings of fact are recorded by the Deputy Registrar of Cooperative Societies, who passed the Surcharge Order and also the Tribunal. The

4 2004 (1) ALT 787
5 1988 (II) NRC 51

Enquiry Officer followed the due procedure while conducting the enquiry. He examined the connected records and applied his mind to the facts borne out by the records and passed the Surcharge Order fixing joint & several responsibility and liability upon the petitioner and the then Secretary. The copy of the Enquiry report was furnished to the petitioner. The petitioner engaged an advocate and appeared for the hearing and cross-examined the witnesses. His counsel argued the matter. The orders were passed in accordance with the provisions of Section 60 and 55-A of the Act. The Tribunal found the Surcharge order to be correct in all respects. Therefore, the Tribunal confirmed the same by dismissing the appeal of the petitioner. Mere reiteration of the contentions, which are untenable, is of no avail to the petitioner. The writ petition is devoid of merit and is liable to be dismissed.

6. I have given earnest consideration to the facts & submissions.

7. As rightly pointed out and as not disputed before this Court, the petitioner is admitting that fraud was played, certain irregularities were committed and funds of the society were misappropriated. However, the petitioner specifically contends as follows: 'The Secretary, the 4th respondent herein, is solely responsible for such fraud, irregularities and mis-appropriation of funds of the society. As per the bye-laws and the duties enjoined upon, the Secretary is solely responsible for the maintenance of accounts, registers & records and for receipt of monies & issuance of receipts, besides management of the affairs and the administration of the society. The petitioner's role is limited. He is not concerned with the duties of the Secretary. He is not required to regularly deal with the day-to-day affairs, management and administration of the society. Though the 4th respondent-Secretary was solely responsible for the alleged irregular & illegal acts and

misappropriation of funds, the petitioner was made a scapegoat and was made responsible jointly with the secretary, much less without any basis.'

8. In this back drop of facts and contentions, I have carefully gone through the material record. The enquiry report of the Co-operative Sub-Registrar, on a plain perusal, reflects the following aspects: 'He looked into the bye-laws including the amended bye-laws, which are registered. He specifically adverted to the relevant bye-laws in his report. He separately dealt with various items which are subject matters of mismanagement, fraud and misappropriation. The investigation done item-wise was adverted to and then a reference was made to the evidence; thereafter he proceeded to fix the responsibility either on the Secretary solely or on the petitioner & the Secretary jointly, item-wise having regard to the item-wise facts, the investigation done and evidence brought on record. The report also reflects that he examined the day books, the cash books, receipt books, vouchers and pass books and thus noted the irregularities/omissions and commissions. He also noted the LT, CKCC loan records and the relevant statements. He delineated, in detail, the various irregular and fraudulent acts committed including forging of vouchers, making of wrong entries in the books of accounts & pass books of the members, withdrawals by forgery, credits without vouchers/receipts, non-tallying of the amounts in the books of accounts & the passbooks of the members, non-issuance of receipts, irregular postings in the Savings Bank account pass books, irregular recordings in the SP ledger etcetera. His report is a tell-tale account of the whole episode. The Deputy Registrar of Cooperative societies, on receiving enquiry report, issued a Surcharge notice under Section 61 of the Act requiring the petitioner and the 4th respondent to

show cause as to why the responsibility shall not be fixed upon them and the enquiry report shall not be complied with. Later, having considered the content of the entire record including the case pleaded by the petitioner, he passed the Surcharge order having adverted to and considered the contents of the enquiry report. While passing the Surcharge order, the Deputy Registrar of Cooperative Societies looked into the explanation offered by the petitioner herein, wherein the petitioner stated that the transactions took place during the period from August 2003 to October 2003 and that during that period, he was hospitalized due to a serious ailment. He also observed in his order that the petitioner has not handed over charge of his post of Chairperson to anybody and has not reported the matter to the authorities for appointment of another individual in his place during the said period of his alleged absence, and therefore, the petitioner cannot be absolved from the liability, which is joint with the 4th respondent. When such well reasoned enquiry report and the Surcharge order confirming such enquiry report are assailed before the Tribunal by the petitioner and the 4th respondent by filing separate appeals, the Tribunal found that there are no grounds to interfere with the Surcharge order and accordingly dismissed the appeals of the petitioner and the 4th respondent by holding that the appeals are devoid of merit. On a careful scrutiny of the matter, this Court finds that none of the contentions of the petitioner merit consideration and that there are no grounds much less valid grounds warranting interference with the order impugned wherein the Tribunal concurred with the factual findings recorded in the Surcharge Order by the competent officer. The said concurrent findings of fact are based on facts and evidence. When such findings are based on some legal evidence, this Court will not normally substitute its subjective opinion in the place of the one concurrently arrived at by the said officers. In the light of the facts and reasoning supra, the decision relied upon by the learned counsel for the petitioner, which are already considered supra, do not advance the case of the writ petitioner any further. As per settled law, in matters of this nature this Court is not and cannot act as a second court of first appeal and that this Court, in exercise of its powers Under Article 226/227 of the Constitution of India, shall not venture into re-appreciation of the evidence and its adequacy. This Court on careful examination finds that the enquiry was held by a competent authority; the enquiry is held according to the procedure prescribed in that behalf; there is violation of the principles of natural justice in conducting the enquiry proceedings; the surcharge order was passed by the competent authority as per procedure established by law; the conclusion arrived at is a fair conclusion based on verification of records, the evidence and merits of the case.

9. On the above analysis this Court holds that the contentions of the petitioner are devoid of merit and that the writ petition is liable to be dismissed.

10. In the result, the Writ Petition is dismissed. It is appropriate to mention that during the pendency of the appeal before the Tribunal, the petitioner has deposited Rs.2,19,000/-, *vide* Fixed Deposit Receipt no.723299 drawn on State Bank of India, Governorpet Branch, Vijayawada, and also a further sum of Rs.50,000/- on 19.09.2008, *vide* Fixed Deposit receipt no.TD/CS/A765639 drawn on State Bank of Hyderabad, Civil Courts Branch, Vijayawada, pursuant to the interim orders of this Court, dated 21.08.2008, in W.P.M.P.no.23694 of 2008 in W.P.no.1820 of 2008. The said deposits shall be taken into consideration by the appropriate authority while proceeding further in the matter.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

M. SEETHARAMA MURTI, J

08th November, 2018
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