

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No.1893 of 2018

ORDER:

This Writ Petition is filed challenging the action of the 2nd respondent in issuing surcharge notice dated 26.12.2017 under Section 60(1) of the Andhra Pradesh Cooperative Societies Act, 1964 (in short "the Act") directing the petitioner to appear before him for conducting independent enquiry on the contents of the Special Audit Report.

2) It is the contention of the learned counsel for the petitioner that this Court while disposing of Writ Petition Nos.22815; 22828 and 22829 of 2009, by a common order, dated 05.01.2010, had categorically held that the employees of the District Central Cooperative Bank (in short "the DCCB") has no role to play with respect to the affairs of the Co-operative Society and, at any rate, the conduct and service conditions of the employees of the DCCB are governed by a settlement entered into by the Andhra Pradesh Co-operative Banks Association with their employees.

3) Heard the learned counsel for the petitioner.

4) On the other hand, learned Government Pleader for Cooperation (A.P.) opposes the Writ Petition and would submit that it is a case where the petitioner approached this Court after enquiry and challenged the findings in the enquiry report. Whatever may be the petitioner's stand, he can as well take the same before the Enquiry Officer and as and when such contention is raised, the same can be considered based on the material on record.

5) Having heard the respective submissions, it is seen that through as can be seen from the Common Order dated 05.01.2010 passed in W.P.Nos.22815, 22828, 22829 of 2009, the order of the Tribunal was set aside and the surcharge orders made under Section 60 of the Act, were affirmed. Though there were certain observations made in the said judgment with respect to the plea taken *vis- a-vis* a finding recorded therein, the same shall be understood in the context of the judgment. However, as a legal principle, now it is settled that an employee of Cooperative Bank cannot be proceeded and fastened with the liability under Section 60 of the Act. However, the said principle does not preclude the enquiry being conducted under Section 60 of the Act and in the process, if there is any material linking such employee of the DCCB to the affairs of the alleged malfeasance and misfeasance of the employees of the Cooperative Society, appropriate legal proceedings could be initiated in terms of the appropriate provisions of law.

6) At this point of time, so far as the petitioner is concerned, certain allegations were made against him along with others, in connection with the affairs of the Penumantra LSCS Ltd., Penumantra, and in connection therewith, the petitioner can also submit an explanation raising all objections both in law and on facts. Only in the event of there being any adverse y in the findings, the petitioner would be liable to be proceeded under the relevant provisions of law by the competent authority subject to his rights.

7) At this stage, since the challenge is to the Notice dated 26.12.2017, Writ Petition is closed giving liberty to the petitioner to file his objections, which shall be considered in the light of the order of this Court, dated 05.01.2017, in W.P.Nos.22815, 22828, 22829 of 2009 (**K. Satyarnayana and others vs. A.P. cooperative Tribunal, Visakahapatnam and others**). The Observations made in the present Writ Petition shall not be considered as expressing any opinion or conferring any right on the authority-2nd respondent with respect to the petitioner in any manner. There shall be no order as to costs.

8) Consequently, Miscellaneous Petitions pending, if any, shall also stand dismissed.

Date: 24.01.2018.

CHALLA KODANDA RAM, J.

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