

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION Nos.3144 and 3191 of 2018

COMMON ORDER:

As the issue involved in both these Writ Petitions is one and the same, they are taken up together for disposal.

Respondent No.3 – Deputy Registrar of Cooperative Societies, Rajampeta, YSR Kadapa District, in exercise of powers under Section 60 of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act'), passed surcharge orders, dated 22.12.2017, against the petitioners in Surcharge Case No.664/2013-B. Aggrieved by the same, the petitioners have filed these Writ Petitions mainly on two grounds, 1) the impugned orders are solely based on the report submitted by the enquiry officer under Section 51 of the Act and no independent enquiry as such was conducted and thus, there is a violation of the procedure prescribed under Section 60 of the Act and 2) the issue is no longer *res integra* on account of the judgment of this Court in **Challa Sanyasinaidu v. Deputy Registrar of Cooperative Societies, Srikakulam**¹, as the incumbent officer holding the post of the third respondent was impleaded as the fourth respondent

¹ 1998(1) ALD 455 (DB)

by name and that the third respondent with *mala fide* intention passed the impugned orders.

Heard learned counsel for the petitioners.

Learned Government Pleader for Cooperation appearing for respondents 1 to 3 opposes these Writ Petitions and submits that the orders impugned were passed after enquiry only and the same is evident from the Appendix of Evidence, which shows the list of the witnesses examined and the documents marked for the plaintiff as well as the defendant, and that in the conclusion part of the impugned orders, it has been stated that oral and documentary evidence were taken into consideration. He further submits that there is an alternative remedy of appeal under Section 76 of the Act before the Cooperative Tribunal and the petitioners can as well avail the same and the Cooperative Tribunal can appreciate the fact and law.

Having considered the above, it is to be noted that there is no material placed by the petitioners before this Court to show that there was any element of specific *mala fide* on the part of the third respondent and there was any specific instance cited, except stating that the third respondent ignored the procedure contemplated under Section 60 of the Act and failed to take into

consideration the afore-cited judgment (1 supra), though she is aware of the same, as such, the contention of the petitioners that the third respondent passed the impugned orders with *mala fide* intention cannot be accepted. However, both these Writ Petitions deserve to be allowed on the first ground of challenge, as a bare reading of the impugned orders does not disclose that the third respondent had conducted any independent enquiry except making a reference to the findings recorded by the enquiry officer in the enquiry report. The relevant portion of the impugned orders reads as under:

“CHARGE/ALLEGATION: The Inquiry Officer appointed under Section 51 submitted his report on 08.05.2015 which is marked Exhibit-A1 that the DW1 have sanctioned an amount of Rs.2,26,81,900/- to 296 said to be members of Brahmanapalli PACS with collusion of Ex-Chief Executive Officer, Ex-Managing Committee members and Ex-Bank officials and misappropriated entire amount and the Inquiry officer has recommended to initiate action for recovery of the amount of Rs.2,26,81,900/-. As per report of 51-Inquiry officer, he has stated as per verification of the ST loans ledgers, Pattadar Pass Books, Declaration Bonds and Admission Register, the details of loans from account No.68 to 705 available except their names. As per deposition of the Ex-Chief Executive Officer he has stated that the President has sanctioned loans to 296 said to be members of Brahmanapalli PACS, but the loan amount not disbursed to them. As per pressure of the defendant/Ex-President of the society, he has prepared 296 members list for submission of credit limit approval.”

In the impugned orders, except mentioning in the Appendix of Evidence as to the list of witnesses examined and the documents

marked for the plaintiff as well as the defendant, there is no discussion undertaken by the third respondent whatsoever with respect to what the enquiry officer had submitted, what was elicited from the enquiry report and what were the documents on which reliance has been placed to come to a conclusion fastening liability on the petitioners a huge sum of Rs.11,60,453/- and Rs.7,84,090/- respectively, with interest @18% per annum.

It is well settled that enquiry has to be conducted in a meaningful manner and based on the concrete evidence, monetary liability can be fastened on a delinquent employee of the society.

In the present case, it is clear that there is no such enquiry having been conducted. Even the learned Government Pleader being faced with the inadequate material to support the impugned orders, fairly submits that the impugned orders may be set aside and the third respondent may be directed to conduct *de novo* enquiry and pass appropriate orders on merits strictly in accordance with law.

In those circumstances, the impugned orders are set aside and both the Writ Petitions are allowed. The third respondent

shall conduct *de novo* enquiry and pass appropriate orders on merits strictly in accordance with law.

Miscellaneous Petitions, if any pending shall stand disposed of. There shall be no order as to costs.

CHALLA KODANDA RAM, J

5th FEBRUARY, 2018.

kvni

