HON'BLE SRI JUSTICE M.GANGA RAO

W.P.No.14757 OF 2007

ORDER

This writ petition is filed seeking to issue a Writ of Certiorari calling for the records relating to and connected with the impugned order in CTA No.2 of 2007, dated 29.3.2007 passed by the 1st respondent confirming surcharge order dated 14,09.2004 issued by the 2nd respondent and to quash the same by holding it as illegal.

It is the case of the petitioner that he was the Ex-President of the 5th respondent-Society. The 2nd respondent has issued surcharge notice in Rc.No.2683/2000 D, dated 14.09.2004 under Section 60 (1) of the A.P. Co-operative Societies Act, 1964, based on the Inspection report under Section 53 of the said Act. The 2nd respondent has recorded his sworn statement on 11.08.2004. The 2nd respondent has also taken similar sworn affidavit from the Secretary, PACS. The 2nd respondent, without any further enquiry, passed the impugned surcharge order dated 14.09.2004 directing the petitioner and the Secretary to pay to the assets of the 4th respondent an amount of Rs.1,52,478/- as a joint and several liability. Aggrieved thereby, the petitioner filed W.P.No.12668 of 2005 before this Court and the same was dismissed on

20.12.2006 on the ground of availability of alternative remedy of appeal before the 1st respondent. Thereafter, the petitioner filed an appeal before the 1st respondent and the same was also dismissed on 29.03.2007, confirming the surcharge order dated 14.09.2004 passed by the 2nd respondent. Questioning the said order dated 29.3.2007 passed by the 1st respondent, the present writ petition is filed.

The grievance of the petitioner is that the 2nd respondent passed the surcharge order without conducting an independent enquiry under Section 61 of the Act and without affording opportunity to cross-examine and produce the witnesses, which is contrary to law and the judgments of this Court. Further, the surcharge officer has given a finding that the cheques were withdrawn without any purpose under the joint signatures of the petitioner and Ex-secretary, and thereby, he fixed the liability jointly on the petitioner and secretary. The fact that the amount is withdrawn without any purpose under the joint signatures of the petitioner and the ex-secretary is proved, but such decision is independent decision of the petitioner. The petitioner pleaded that if he is found guilty, he is ready to pay the amount and that the loan disbursement is not mentioned in the records. Even the Secretary has pleaded the same. These two persons

themselves admitted the above two aspects in their depositions and have assigned reasons as to why such names are not mentioned. Hence, the Surcharge Officer held that the admitted facts need not be proved. Further, the Surcharge Officer has thoroughly conducted the surcharge proceedings under Section 60(1) of the Act after holding an enquiry and arrived at the right conclusion, which is legally acceptable.

The grievance of the petitioner is that no opportunity was given and no witnesses were examined and hence, the order impugned is liable to be set aside.

Counter-affidavit is filed on behalf of the 2nd respondent stating that with regard to the mismanagement of the affairs of Tharigopula PACS, the District Co-operative Central Bank Ltd., Warangal, issued certain instructions appointing the Manager of the Bank to conduct inspection into the affairs of the society as per the provisions under Section 53 of the A.P.Co-operative Societies Act, 1964. In pursuance of the same, after conducting inspection into the affairs of the society, the Inspecting Officer submitted report on 23.02.2004 to the General Manager, DCCB, Warangal. Based on the said report, and as per the letter of the General Manager, DCCB, dated 4.3.2004, notices were issued to the persons against whom responsibility was fixed under Section 53 of the Act and

surcharge notice dated 14.7.2004 was issued directing submission of explanation and conduct of an independent enquiry. The petitioner attended the enquiry and gave deposition on 11.8.2004, wherein he has categorically admitted the allegations made in charge No.1 as well as charge No.3. The secretary-G.Yugandhar Reddy also gave deposition on 11.8.2004 admitting all the charges. Along with the President and the Secretary, three more persons have also attended enquiry. During surcharge proceedings, the petitioner never sought for permission to examine any witnesses on his behalf or sought permission to cross-examine any of the witnesses. As such, the surcharge officer has recorded the depositions of the persons, conducted surcharge proceedings and came to an independent decision apart from Section 53 by giving findings. Therefore, the surcharge officer has conducted independent enquiry by giving sufficient opportunity to the petitioner and based on the findings arrived at by the surcharge officer, the Tribunal conducted enquiry and after considering all the aspects, passed a reasoned order on merits by dismissing the appeal.

Learned counsel appearing for the petitioner submits that the 2nd respondent while issuing surcharge proceedings dated 14.09.2004 under Section 60 (1) of the Act has not

conducted any independent enquiry. He further submits that based on the statements of the petitioner and secretary, notices were issued without affording any opportunity to the petitioner to cross-examine the witnesses. The Tribunal ought not to have dismissed the appeal as the surcharge proceedings are passed without conducting any enquiry as required under Section 60 (1) of the Act. In support of his contention, learned counsel placed reliance on the judgment of this Court in K.Kanaka Rao v. Chairman, A.P. Co-operative Tribunal, Hyderabad and others[1], wherein it is held as under:

> **"Recently, another Single Judge of this Court in the decision reported in V.V.Satyanarayana v. Chebroly Primary Agricultural Co-operative Society Ltd (Supra) noted as under:**
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> **7.A Division Bench of this Court in Challa Sanyasinaidu v. Deputy Registrar of Co-operative Societies, Srikakulam, 1998(1) ALD 455(DB)=1998(1) ALT 482(DB), held that enquiry under Section 52 of the Act is only administrative in nature and if the Registrar is *prima facie* satisfied on the basis of such report that irregularities have taken place, he may initiate surcharge proceedings under Section 60 of the Act, in which, the Inspection Report may form the basis for the Registrar to issue surcharge proceedings. It is further held that before issuing such proceedings it is incumbent upon the authority to give an opportunity to the delinquent to cross-examine the witnesses, whose statements are recorded by the Inspecting Officer and reliance is placed thereon. It also held that although Section 60 of the Act does not prescribe any particular procedure before issuing surcharge proceedings, nonetheless, it is mandatory that**

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[1] 2011(6) ALD 340

> principles of natural justice shall be followed in the enquiry and that evidence recorded behind the back of the defaulter cannot be relied upon to fasten the liability on him without given an opportunity to cross-examine the witnesses".
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> In view of the above judgments of this Court, I am of the view that the impugned orders fastening the liability on the petitioner without conducting an independent enquiry by recording the evidence and without giving the opportunity to the petitioner to cross-examine them, amounts to violation of the principles of natural justice and hence the same cannot be sustained."

Learned Government Pleader appearing for respondents 1, 2 and 4 while reiterating the averments in the counter submits that there is no illegality in passing the surcharge proceedings and the order impugned needs no interference.

In the facts and circumstances of the case and in the considered view of this court, the 2nd respondent has not conducted any independent enquiry as required under Section 60(1) of the Act. As held by this Court in the above referred case, the 1st respondent-Tribunal erred in holding that the surcharge officer has followed the provisions under Section 60(1) of the Act and the surcharge proceedings dated 14.09.2004 itself shows that they have not conducted any enquiry and they were not permitted to cross-examine the witnesses based on the statements of the petitioner and the secretary even though they have not admitted the charges.

Hence, the Writ Petition is allowed setting aside the order dated 29.3.2007 passed in CTA No.2 of 2007 and the surcharge order dated 14.09.2004. The 2nd respondent is given liberty to conduct fresh enquiry as per the provisions under Section 60(1) of the Act and pass a reasoned order. Pursuant to the order passed by this Court on 12.7.2007 in WPMP No.18566 of 2007, the petitioner has deposited an amount of Rs.50,000/- with the 5th respondent society. When the respondents have not conducted any independent enquiry and no liability is fixed on the petitioner, he is entitled to receive the same.

JUSTICE M.GANGA RAO

15th March, 2018
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