

THE HONOURABLE SRI JUSTICE M.GANGA RAO

WRIT PETITION NO.22166 OF 2006

ORDER:

This writ petition is filed to call for the records relating to C.T.A.No.11 of 2003, dated 31.1.2006 on the file of the Andhra Pradesh Co-operative Tribunal, Warangal District (Respondent No.5) and to set aside the same as illegal, arbitrary and contrary to the provisions of the Andhra Pradesh Co-operative Societies Act and consequently to restore the Surcharge Orders dated 30.12.2000 in Proceedings Rc.No.380/90-E on the file of the Deputy Registrar of Co-operative Societies-respondent No.6.

The facts of the case are that the Special Cadre Deputy Registrar/District Co-operative Officer, Khammam vide Proceedings Rc.No.2769/92-C, dated 29.5.1994 directed the Co-operative Sub-Registrar to conduct enquiry under Section-51 of the Andhra Pradesh Co-operative Societies Act 7 of 1964 into the affairs of the Primary Agricultural Co-operative Society, Chinthakani with reference to the financial irregularities committed by the staff of the society. The respondent No.2 was placed under suspension for manipulation of cash dealings relating to chemical fertilizers for his personal benefits, by the DCO, Khammam vide proceedings Rc.No.2769/92-C, dated 19.9.1992 on the directions of the District Collector, Khammam. The respondent Nos. 2 and 3 misappropriated huge funds of the petitioner-Society and the respondent No.1 as well as respondent No.4 failed to exercise their administrative control over them by not

verifying the records properly. The Enquiry Officer in his report, dated 28.12.1994 held that the respondent No.2-Ch.Kotaiah, Additional Secretary of PACS, Chinthakani and respondent No.3-K.Venkateswarlu, Clerk misappropriated the amounts and suggested for recovery of Rs.54,835/- from respondent No.2-Ch.Kotaiah, Additional Secretary, (under suspension) towards the SAO loans, and fresh loans given to 30 over due members, whereas Auditor, Bonakal conducted final audit during the year 1993-94 and submitted a special report for recovery of Rs.54,835/- from the President of the Society and the staff, namely, Sri Nunnaka Babu, the then President, Ch.Kotaiah, Additional Secretary (under suspension), Sri K.Venkateswarlu, Clerk and Sri K.Janardhan Rao, the then Supervisor.

Basing on the audit report, the Deputy Registrar of Co-operative Society, Khammam issued surcharge orders, dated 30.12.2000 under Section 60(2) of the APCS Act 7 of 1964 and came to an independent conclusion that Ch.Kotaiah, Additional Secretary (under suspension), arranged for sanction and disbursement of loans to 34 members whose loans are fallen due, and retained the heavy cash balance intentionally, after recovering the loan amounts from the members of the Society (loanees). The respondents 1 to 4, namely, Nunnaka Babu, the then President, Ch. Kotaiah, Additional Secretary (under suspension), K.Venkateswarlu, Clerk and K.Janardhan Rao, the then Supervisor are responsible for the improper sanction of loans to over due members and for the loss sustained by the Society. The Secretary of the Society stated that some of the members among the over due

members, now in question, have repaid their old loans to the extent of Rs. 24,901/- leaving a balance of Rs.29,874/- which amount has to be recovered. Accordingly, the Deputy Registrar, Co-operative Societies, Khammam passed surcharge orders for recovery of Rs. 29,874/- together with interest at the rate of 18% per annum from 1.10.1993, jointly and severally from respondents 1 to 4 from their movable and immovable properties, by order dated 30.12.2000.

Being aggrieved by the surcharge order, dated 30.12.2000, Nunnaka Babu- respondent No.1, President of the Society, filed an appeal under Section 76(1) of the A.P. Co-operative Societies Act, 1964. The Andhra Pradesh Co-operative Tribunal allowed the appeal by setting aside the surcharge order holding that pre-requisites for passing a surcharge order, namely misappropriation, fraudulent retention of money, breach of trust etc., are not evident and that the authority, who issued orders under Section-60 of the Act, basing on the enquiry report held under Section 51 of the Act, has to necessarily trace at least one of these elements for fastening a liability on the persons responsible for the loss caused to the Society. No charge is proved against the appellants. The appellants cannot be said to have committed any misappropriation in having recommended the sanction of loans pending clearance of old dues. Hence, it cannot be said that the appellants are liable to pay Rs.29,874/- to the Society on the ground that they caused loss to the Society.

Aggrieved by the order dated 31.1.2006 in CTA No.11 of 2003, the Society filed this writ petition on the ground that the Tribunal erred in coming to the conclusion that the amounts collected from the borrowers were not credited to the account of the Society as per surcharge orders passed by the respondent No.6. The Tribunal ought to have held that the respondent no.1 discharged his duties negligently and that the respondent No.1 ought not have granted fresh loans to the members who are fallen over due. The Tribunal erred in setting aside the surcharge orders of the respondent No.6.

The Deputy Registrar of Co-operative Societies-Respondent No.6 filed counter-affidavit stating that the respondent Nos. 1 to 4 had misappropriated the amounts of the Society for which the Surcharge Order was passed on 30.12.2000. After independently verifying the records of the Society, the Enquiry Officer came to the conclusion that the respondents 1 to 4 are jointly and severally liable to pay the amount of Rs. 29,874/- to the Society. Further, the Tribunal misdirected itself and erred in allowing the C.T.A.No.11 of 2003, dated 31.1.2006 by setting aside the surcharge proceedings dated 30.12.2000.

Heard both the counsel.

In the facts and circumstances of the case, this Court is of view that the respondents 1 to 4 would not have granted improper sanction of loans to the over due members and that the Tribunal without considering the material on record, set aside the surcharge orders dated 30.12.2000 on the sole ground that the Deputy

Registrar of Co-operative Societies, Khammam has not done an independent enquiry and solely relying on the audit report passed the said orders. Hence, the impugned orders passed in C.T.A.No.11 of 2003, dated 31.1.2006 are set aside and the matter is remanded to the Tribunal for fresh enquiry and disposal as per the provisions of the A.P. Co-operative Societies Act.

Accordingly, the writ petition is allowed.

Consequently, miscellaneous petitions pending, if any, shall stand closed.

Date: 08.02.2018
slk



JUSTICE M.GANGA RAO