

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

WRIT PETITION Nos.15001 of 2017 and 11838 of 2018

COMMON ORDER:

The Nidamanuru Primary Agricultural Credit Society Limited (for short '**the Society**') is a Primary Agricultural Society registered under the Andhra Pradesh Co-operative Societies Act, 1964 (for short, '**the Act**'). It was incorporated with an aim to support farmers in the area of operation of the Society by disbursing loans to provide agricultural support, etc.

2. Sri Parimi Ramesh (for short, '**P.R.**'), petitioner in WP.No.11838 of 2018, was the President of the said Society from 1993-1996 and from 1999-2001.

3. An enquiry into the affairs of the said Society was ordered on 28.09.2001 by the Joint Registrar of Co-operative Societies, Krishna District under Section 51 of the Act.

4. A report was submitted by the Enquiry Officer giving a finding that there were irregularities in disbursement of loans and misappropriation of amounts to the tune of Rs.47 lakhs.

5. Thereafter, surcharge proceedings were initiated under Section 60 of the Act and orders were passed vide Rc.No.3134/01-E dt.07.03.2002 fixing liability on the President along with the then

Secretary, viz., Tupakula Appa Rao, jointly and severally, for Rs.23,56,107/-.

6. Challenging the said order, P.R. filed an appeal before the Andhra Pradesh Co-operative Tribunal under Section 76 of the Act, which was numbered as O.A.No.130 of 2002, and the said appeal was dismissed on 03.04.2004.

7. P.R. filed WP.No.9799 of 2004 before this Court.

8. The said Writ Petition was allowed by order dt.05.11.2015, the surcharge order dt.07.03.2002 was set aside, and the matter was remanded to the Deputy Registrar of Co-operative Societies / Divisional Co-operative Officer, Vijayawada for *de novo* enquiry. It was made clear that P.R. shall not alienate or create any charge with regard to the properties which are subject matter of attachment till the completion of *de novo* proceedings by the Deputy Registrar.

9. The Deputy Registrar conducted a fresh enquiry under Section 60 of the Act and again issued orders on 16.02.2016 fixing liability on P.R. for Rs.16,08,438/ and on Ex-Secretary and others for Rs.42,34,266.70 ps, and directed recovery of the said amount from P.R. and others along with interest at the rate of 18 % per annum from the date of occurrence of fraud till date of recovery.

10. P.R. filed an appeal under Section 76 of the Act which was numbered as O.A.No.44 of 2016 by the Andhra Pradesh Co-operative Tribunal.

11. In M.A.No.39/2016, in the said O.A., interim stay of the surcharge proceedings was granted on 03.06.2016.

12. P.R. also filed M.A.No.77 of 2016 for releasing / raising attachment over his joint family properties by depositing entire surcharge liability amount of Rs.16,08,438/-.

13. On 11.07.2018, M.P.No.77 of 2016 was allowed and P.R. was directed to furnish in the form of Fixed Deposit Receipt in the name of Secretary, Andhra Pradesh Co-operative Tribunal, Vijayawada by depositing the surcharge liability amount of Rs.16,08,438/- with interest at the rate of 8 per cent per annum from the date of occurrence of fraud till date of deposit or provide security by depositing the said amount by way of cash in the name of Secretary, Andhra Pradesh Co-operative Tribunal, Vijayawada, and furnish third-party security towards interest, or provide third-party security towards surcharge liability amount with interest.

14. The Society challenged it before this Court in WP.No.24812 of 2016 on the ground that the Tribunal ought not to have reduced the interest from 18 per cent to 8 per cent.

15. On 27.07.2016, this Court granted interim suspension of the order in M.A.No.77 of 2016 in O.A.No.44 of 2016 till further orders.

16. The said Writ Petition was disposed of on 12.09.2016 when P.R. agreed to deposit the entire surcharge amount at 18% interest amount on Rs.16,08,438/- to prevent the Society from executing the surcharge order. He later deposited the same on 21.09.2016 and 06.10.2016 through Fixed Deposits before the Tribunal to the Account of the O.A.No.44 of 2016.

17. Thereafter O.A.No.44 of 2016 was allowed by the Tribunal on 30.03.2017, setting aside the surcharge order as against P.R. dt.16.04.2016.

18. The Tribunal considered the evidence on record and the surcharge order passed by the Deputy Registrar and *interalia* held that the evidence on record indicated that misappropriation was committed only by the *ex* Secretary, and the Deputy Registrar had made the P.R. liable only for failure to supervise the affairs of the Society as per bye-law 26; it held that P.R. was not willfully negligent on his part; and the Secretary and the clerk, who have to carry on business of the Society, are alone be liable.

19. Assailing the same, the Society filed W.P.No.15001 of 2017.

20. Sri R.N. Hemendranath Reddy, learned counsel for the Society and Learned Government Pleader for Cooperative Societies contended

that the Tribunal erred in appreciating evidence in right perspective and its order is contrary to settled principles of law; that PR had addressed a letter dt.07-05-2015 to the Society undertaking to repay the entire misappropriated amount with interest and this itself proves that he misappropriated the sum indicated in the surcharge order. They contended that PR failed to monitor/supervise the employees of the Society as per bye-law No.26 and thus caused loss to the Society; that there was willful negligence and non-supervision by PR and the surcharge order rightly made him liable. A reference was also made to Rs.59,000/- deposited by PR on 10-10-2001 and it is stated that this also proves that he is guilty of misappropriation. Reliance is also placed on Section 55-A of the Act which provides that President of the Society is jointly and severally liable for maintenance of accounts of the Society.

21. The learned counsel for PR supported the order of the Tribunal.

22. I have noted the contentions of both sides.

23. The surcharge order passed by the Deputy Register dealt with the following aspects:

- (a) misappropriation through fake fixed deposit receipts;
- (b) loans on fixed deposits not disbursed to fixed deposit holders;
- (c) forgery of ST loans and disbursing less amounts than sanctioned;

(d) forgery of M.T. loans, not issuing receipts to loan installments collected and not bringing the receipts to cash book;

(e) misappropriation of stocks of fertilizers and seeds by not bringing the stocks to stock register and cash book;

(f) deficit of stocks in the godown;

(g) receipts not brought to cash book, different between receipts books and cash book regarding sale of seeds respectively;

(h) loan installment payments not brought to cash book though receipts were issued;

(i) and misplacement of cash balance.

24. The Enquiry Officer who conducted the enquiry under sec.51 of the Act had held that PR is jointly liable along with Ex-Secretary and Clerk for all these actions.

25. In the surcharge order, however, the Dy.Register held that the Ex.Secretary is liable for Rs.42,34,266.70 Ps. and PR liable for only Rs.16,08,438/-. Thus only to a limited extent, PR was held liable.

26. The allegation against PR was that as President at the relevant point of time, he did not supervise the functioning of the Ex-Secretary and Clerk.

27. By law 26 of the by-laws of the Society dealt with the power of the President and stated that he is the competent authority for running

the administration of the Society, that he is the custodian of all the properties of the Society, and that he was authorized to delegate custody of the properties of the Society such as cash and other stocks to the Secretary.

28. It is important to note that under Section 60 of the Act, the order of surcharge can be based only if the Officer or Servant of the Society had misappropriated or misapplied funds or fraudulently retained money or committed breach of trust or is guilty of *willful negligence*.

29. Before the Tribunal, PR had contended that there was no willful negligence on his part since it was the Secretary and Clerk, who have carried on business of the Society, and his role was only to supervise their work and the said officials alone are liable to make good the loss to the Society.

30. After considering the Enquiry report and the evidence collected by the Enquiry Officer, the Tribunal held as regards the allegation about misappropriation through issuance of fake fixed deposit receipts and fixed deposit loans that it was the Ex-Secretary, who signed and issued the fake fixed deposit receipts and so he alone is responsible for the same. It also noted that the ex-Secretary admitted in his statement that he utilized Rs.12 lakhs for his personal use out of the fixed deposits and fixed deposit loans and so he alone was held responsible by the Enquiry Officer and not the Ex-President or the Clerk.

31. As regards the item of fixed deposit loans not disbursed to fixed deposit holders, the Ex-Secretary admitted that he collected the fixed deposits and misappropriated the funds of the Society by not disbursing Rs.69,000/- to fixed deposit holders and he accepted his liability in his letters addressed to the Divisional Cooperative Officer, Vijayawada on 05-01-2002 and also by giving statement before the Enquiry Officer on 09-10-2001.

32. The Tribunal noted that PR, Ex-President was also held by the Enquiry Officer jointly with Ex-Secretary for misappropriation through fake fixed deposit receipts and for misappropriation of Rs.69,000/- by the Ex-Secretary for not disbursing the fixed deposit loans to fixed deposit holders only because the Enquiry Officer opined that the PR failed to supervise the affairs of the Society as per bye-law No.26.

33. On the alleged misappropriation of ST loans by way of forgery of ST loans and MT loans, the Enquiry Officer opined that only Ex-Secretary is liable and not PR.

34. On the item relating to fertilizers and seeds, the Enquiry Officer opined on verification of records that Ex-Secretary sold fertilizers by issuing receipts without date which were not brought to the cash book; that there was a difference between receipt books and cash book towards sale of seeds, which was not brought to cash book; and the Ex-Secretary stated before the Enquiry Officer that he utilized

Rs.6,69,000/- for personal use out of fertilizer sales amounts and the Enquiry Officer therefore found him guilty. He also made the Ex.President PR liable jointly on account of failure of supervision for this amount.

35. The Tribunal held that the evidence on record indicated that the actual misappropriation was in fact committed by the Ex.Secretary and only for failure of supervision the affairs of the Society, liability was fixed on PR.

36. The Tribunal considered the evidence of P.W.1 and stated that she had no personal knowledge about the misappropriation said to have been committed by the delinquents and she verified the records and was giving evidence. It also noted that the Enquiry Officer was examined as P.W.2 and he stated in his cross-examination that the FDRs did not reveal that the President either prepared or signed them; that he also admitted that the President and other Directors will not stay during the entire office hours; and that the Secretary issued the FDRs.

37. The Tribunal held that bye-law No.26 did not mention that President is responsible for the misappropriation committed by other employees of the Society; that this was also admitted by P.W.2 who stated that there is no evidence to show that PR committed misappropriation of the funds of the Society; and the liability was

fixed on him by the Enquiry Officer only for not supervising the affairs of the Society.

38. It held that the day-to-day administration of the Society has to be attended by the Secretary and Clerk of the Society and if the Secretary of the Society places the registers and cash books reflecting the entries, then President has to verify the same; so at best, it could be concluded that President was negligent in managing the affairs of the Society, but it cannot be said that he was willfully negligent or intentionally caused loss to the Society.

39. It held that only Ex.Secretary who admitted that he committed misappropriation is liable and liability cannot be fixed on the President, who ought to have been exonerated. It noted that there were no allegations of breach of trust which would attract Section 60, but the allegation was only one of lack of supervision, which might amount negligence.

40. By relying on judgment in **Subbammal Vs. President, the Tenkasi Cooperative Urban Limited, Tenkasi**¹, the Tribunal opined that various acts of the Ex.Secretary cannot be identified by PR because the Ex.Secretary adopted a *modus operandi* which cannot be detected; that PR was not supposed to be in the Office of the Society during the entire office hours and it is the Secretary and the Clerk who have to run the business during office hours. It concluded that the

¹ AIR 1977 Madras 92

evidence showed that only the Ex.Secretary committed misappropriation, but PR cannot be made liable for lack of effective supervision and *failure to supervise will not amount to willful negligence*. It held that the word 'willful' requires pre-meditation, knowledge and consciousness that loss would result from the acts done or from omission to act, which was not spoken to by any of the witnesses, and therefore the Deputy Registrar could not have made the PR liable for Rs.16,08,438/-. It therefore set aside the surcharge order against PR and allowed his appeal while confirming the surcharge order against other delinquents.

41. In my considered opinion, the Tribunal had considered the evidence on record in proper perspective and arrived at a conclusion which cannot be said to be perverse or based on no evidence. In exercise of judicial review under Article 226 of the Constitution of India, this Court cannot act as a Court of appeal and review the evidence. It has to only see if the findings are based on evidence and are not perverse. (see **M.P.State Co-op Dairy federation v. Rajnesh Kumar Jamindar**²)

42. Though learned counsel for the Society contended that PR himself admitted that he misappropriated by giving a letter on 07-05-2015, the contents of the said letter do not contain any admission by PR that he misappropriated the amount. It only stated that he was willing to pay the misappropriated amount. The said letter

² (2009) 15 SCC 221

therefore cannot be treated as an admission by PR that he misappropriated the funds when evidence on record showed that it was the Ex.Secretary who misappropriated the same. Also, the said letter was not brought on record in O.A.No.44 of 2016 by the Society and no contention based on the said letter was raised before the Tribunal.

43. I therefore hold that the findings recorded in the order dt.30-03-2017 in O.A.No.44 of 2016 by the Tribunal do not warrant any interference under Art.226 of the Constitution of India.

44. Accordingly, W.P.No.15001 of 2017 is dismissed. No costs.

45. Coming to W.P.No.11838 of 2018, PR challenged therein order dt.21-03-2018 in M.P.No.96 of 2017 in O.A.No.44 of 2016 wherein the Tribunal rejected the request of PR for issuance of cheque for Rs.60,45,000/- deposited by him on the ground that W.P.No.15001 of 2017 was pending before this Court wherein the order passed in the O.A. was questioned.

46. Now that W.P.No.15001 of 2017 has been dismissed, the order dt.21-03-2018 in M.P.No.96 of 2017 in O.A.No.44 of 2016 has to be set aside and is accordingly set aside.

47. M.P.No.96 of 2017 in O.A.No.44 of 2016 is accordingly allowed and the Tribunal is directed to issue a cheque for Rs.60,45,000/-

deposited by PR before it with interest payable thereon at 8% p.a within three (03) weeks from the date of receipt of copy of this order.

48. Accordingly, W.P.No.11838 of 2018 is allowed. No costs.

49. As a sequel, miscellaneous applications pending, if any, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 29-10-2018
Ndr/Vsv

