

**THE HON'BLE SRI JUSTICE M.GANGA RAO**

**WRIT PETITION No.2438 OF 2006**

**ORDER:**

This Writ Petition, under Article 226 of the Constitution of India, is filed questioning the action of the third respondent in initiating second surcharge proceedings under Section 61 (1) of the Andhra Pradesh Co-operative Societies Act, 1964, (for short 'the Act') vide his proceedings in RC.Nos.1 to 8/895/2004-C dated 24.05.2005 against the petitioner and other Managing Committee members of the Kothakota Primary Agricultural Cooperative Society Limited (for short 'Society'), as illegal and arbitrary.

2. Brief facts of the case are that the petitioner was elected as President of the Society in the year 1995 and his term was expired in the year 2000, however, the same Managing Committee was continued as person-in-charge Committee till the year 2002. Basing on the news published in news paper on 27.01.2001 about the irregularities in utilization of funds of the Society, the second respondent appointed the Co-operative Sub-Registrar of the 3<sup>rd</sup> respondent Office as Enquiry Officer to enquire into the alleged misappropriations of the society funds. The Enquiry Officer conducted enquiry and submitted his report on 30.11.2001. Based on the report, the 3<sup>rd</sup> respondent issued different show cause notices dated 20.07.2002 to the petitioner and other members of the Managing Committee of the Society. They submitted their explanation along with all relevant records, which were in the custody of the Secretary of the Society one Mr.S.Kameshwar Rao. The 3<sup>rd</sup> respondent conducted summary enquiry in detail under Section 60 of the Act. The 3<sup>rd</sup> respondent

conducted separate enquiry for each charge (8 charges) levelled against the petitioner. After due enquiry and verification of all the records, the 3<sup>rd</sup> respondent vide proceedings in Rc.No.169/2001-B dated 29.05.2003 held that the petitioner and other members of the Managing Committee of the Society are not held responsible for any of the charges framed against them and thereby dropped all the charges.

3. While so, a criminal complaint was also lodged against the members of the Managing Committee, against which they filed W.P.No.27774 of 2005, wherein this Court initially passed interim orders and finally allowed the writ petition setting aside the criminal complaint.

4. Again, the 3<sup>rd</sup> respondent issued second surcharge notices in RC.Nos.1 to 8/895/2004-C dated 24.05.2005 with the very same allegations, which are the subject matter of the earlier enquiry conducted by the 3<sup>rd</sup> respondent, which were already dropped in the earlier surcharge proceedings dated 29.05.2003. Questioning the same, the present Writ Petition is filed.

5. The third respondent filed a counter affidavit stating that Inquiry under Section 51 of the Act was ordered by the 2<sup>nd</sup> respondent. The Inquiry Officer vide report dated 30.11.2001 fixed responsibility against the petitioner. Based on the report, the 3<sup>rd</sup> respondent issued show cause notices to the petitioner and others intending to conduct independent Inquiry. Accordingly, the 3<sup>rd</sup> respondent conducted independent inquiry and an opportunity was given to the petitioner to submit his explanation to the proposed action. During the course of Independent inquiry, the

petitioner has fully remitted the amount alleged to have been misappropriated by him. As such, the proposed action against him was dropped. The 3<sup>rd</sup> respondent also absolved the petitioner and fixed responsibilities against the staff of the Society. After passing surcharge orders, the Society filed Execution Petitions against the persons concerned, but the amount was not fully realized. Since due to the wilful negligence of the petitioner, the funds of the society were misappropriated, the second Inquiry under Section 51 of the Act was ordered by the 2<sup>nd</sup> respondent as per law. Basing on the second enquiry report, the 3<sup>rd</sup> respondent issued impugned notices under Section 60 (1) of the Act to the petitioner calling his explanation. There is no illegality or irregularity in issuing the impugned notices.

6. Heard both sides and perused the material on record.

7. This Court while admitting the writ petition on 14.02.2006, granted interim stay of all further proceedings.

8. Learned counsel for the petitioner would contend that the impugned action of the respondents in issuing the surcharge proceedings under Section 60 of the Act based on the second enquiry under Section 51 of the Act for the self same charges, which were dropped by the 3<sup>rd</sup> respondent, is highly arbitrary, illegal and without jurisdiction. In support of his contention, he relied on **Primary Agricultural Coop. Society, rep. by its President v. B.Malla Reddy and others**<sup>1</sup> and **Choutuppal Handloom Weaver's Co-op. Society Ltd., Nalgonda Dist. And**

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<sup>1</sup> 1996 (2) ALD 803 (D.B.)

***others v. Commissioner of Handlooms and Director of Handlooms and Textiles, A.P. and others*<sup>2</sup>.**

9. Per contra, the learned Government Pleader for Cooperation would contend that there is no prohibition under Section 51 of the Act for holding second enquiry and the impugned action of the 3<sup>rd</sup> respondent is justified on the ground that the amounts could not be realized fully in the earlier round of proceedings.

10. From the submissions of both the parties i.e. the petitioner as well as the respondents, it is not in dispute that earlier in respect of the very same charges, the enquiry under Section 51 of the Act was initiated and based on the enquiry, the 3<sup>rd</sup> respondent dropped all the charges against the petitioner and other members of the Managing Committee of the Society under Section 60 (1) of the Act. However, some of the staff members were found responsible for the alleged misappropriation. It appears, since the entire misappropriated amount could not be recovered in those proceedings, the 2<sup>nd</sup> respondent ordered for second enquiry under Section 51 of the Act and based on the 2<sup>nd</sup> enquiry, the impugned surcharge notices were issued.

11. The main ground urged by the learned counsel for the petitioner is that the impugned surcharge notices issued under Section 60 (1) of the Act based on the report of the second respondent into the very same alleged charges, are illegal.

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<sup>2</sup> 1999 (5) ALD 146

12. Chapter VII which consists of Sections 50 to 60 of the Act deals with audit, enquiry, inspection and surcharge. Section 51 of the Act deals with the enquiry and as per the provisions of law, the Registrar may of his own motion and on the application of the Society hold an enquiry or direct some person authorized by him by an order in this behalf to hold an enquiry into the constitution, working and financial condition of a society. For initiating such surcharge proceedings under the provisions of Section 60 of the Act one of the basis is Section 51 enquiry report. Proceedings can be initiated under Section 60 of the Act basing on the enquiry report submitted under Section 51 of the Act.

13. In support of the same, the learned counsel for the petitioner has relied upon the judgments of this Court in *Primary Agricultural Co-operative Society* (1 *supra*) and *Choutuppal Handloom Weavers Co-operative Society Ltd.*, (2 *supra*).

14. In ***Primary Agricultural Co-operative Society*** (1 *supra*), this Court at paragraph 2, held as under:

“ 2. After a thorough examination of the case we are in respectful agreement with the learned Single Judge. It is a well known proposition that a second enquiry or successive enquiries are hit by the theory of double jeopardy to which a person cannot be subjected to. Apart from the reasons advanced by the learned Single Judge, the further fact that remains is that the report of the enquiry officer is only recommendatory in nature and the authority to initiate enquiry has himself the power to either accept the enquiry report or reject it either fully or in some respects and in the event he disagrees with any part of the enquiry report, he can call upon the person proceeded against to explain his conduct and in the course of such proceedings may also call upon him to explain any evidence, documentary or oral, appearing against him. The authority is not bound to accept the view expressed by the Enquiry Officer and can also take a

different view on the same set of materials. It was hence not necessary for the District Co-operative Officer to direct a second enquiry if he was dissatisfied with the first enquiry report but could have proceeded in respect of matters which he felt were left untouched by the Enquiry Officer on his own, and called upon the respondent to explain such facts. In that view of the matter, the second proceeding was misconceived and has been rightly quashed. We, however, make it clear that the District Co-operative officer can take action as is available to him as explained above.”

15. In ***Choutuppal Handloom Weavers Co-operative Society Ltd., (2 supra)***, this Court at paragraph 2 held as follows:

“2. .... Though it is settled principle that the theory of double jeopardy which is a principle applicable to convictions in criminal law as provided in the Constitution may not be applicable to administrative or quasi-judicial proceedings, the under-lying principle of irrational successive enquiries by statutory authorities being hit by the vice of arbitrariness would be applicable to vitiate any successive enquiries which are ordered without any rational reasons. In the circumstances, having regard to the totally cryptic nature of the impugned orders this Court is unable to sustain the same. No reasons as already stated, have been given for ordering a de novo enquiry. The impugned order of R1 directing a second enquiry by R3 is accordingly set aside. This invalidation however does not disentitle the R1 to take action or further proceedings to regulate and preserve the management and affairs of the petitioner-Society or to take action against any or all members of the management for any violation of the Act or of any other law, in accordance with the observations contained in the judgment of the Division Bench extracted supra and in accordance with such other law as would entitle any such action.”

16. The applicability of the above legal position is not seriously disputed by the learned Government Pleader. Therefore, this Court has absolutely no scintilla of hesitation to hold that the impugned proceedings initiated by the respondents herein are totally one without jurisdiction and are liable to be set aside.

17. For the aforesaid reasons and having regard to the principles laid down in the above referred judgments, the writ petition is allowed by setting aside the impugned surcharge proceedings initiated under Section 61 (1) of the Act by the third respondent vide proceedings in R.C.Nos.1 to 8/895/2004-C dated 24.05.2005.

18. Miscellaneous petitions pending in this petition, if any, shall stand closed. There shall be no order as to costs.

14.02.2018  
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**(M.GANGA RAO, J)**