

In the High Court of Judicature at Hyderabad
for the State of Telangana and the State of Andhra Pradesh

WRIT PETITION No.23337 of 2006

S.S.Karri and another.

... Petitioners

and

The Deputy Registrar of Cooperative Societies and another.

...Respondents

Date of Judgment Pronounced: 29-10-2018

Submitted for Approval:

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

1. Whether Reporters of Local newspapers
may be allowed to see the judgments? Yes/No
2. Whether the copies of judgment may be
marked to Law Reporters/Journals? Yes/No
3. Whether Their Ladyship/Lordship wish to
see the fair copy of the Judgment ? Yes/No

CHALLA KODANDA RAM,J

* THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

+ WRIT PETITION No.23337 of 2006

% Dated 29.10.2018

Between:

S.S.Karri and another.

... Petitioners

and

The Deputy Registrar of Cooperative Societies and another.

...Respondents

! Counsel for the petitioner : Sri Challa Dhanamjaya

^ Counsel for respondents : G.P. for Cooperation

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? Cases cited:



THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**WRIT PETITION No.23337 of 2006****ORDER:**

Notice, dated 16.10.2006, issued by respondent No.1- Deputy Registrar of Cooperative Societies, Vizianagaram, under Section 60(1) of the Andhra Pradesh Cooperative Societies Act, 1964 (for short 'the Act'), is challenged in this writ petition.

Petitioners state that they are the President and Vice-President of respondent No.2-East Coast Railway Employees Consumer Cooperative Stores Limited, Vizianagaram. While so, enquiry under Section 51 of the Act was ordered against the affairs of respondent No.2 and the Enquiry Officer submitted a report on 19.04.2003 fixing the liability of Rs.52,051/- along with interest @ 21% per annum against the petitioners jointly and severally and pursuant to the same, respondent No.1 issued surcharge notice, dated 08.07.2003, to the petitioners, who, in turn, submitted their explanation. However, respondent No.1, without conducting any enquiry and without considering the explanation submitted by them, passed surcharge order, dated 29.03.2004, directing recovery of Rs.52,051/- with interest @ 21% per annum. Aggrieved by the same, the petitioners filed O.A.No.4 of 2005 before the Cooperative Tribunal, Visakhapatnam under Section 76(1) of the Act contending that

the enquiry said to have been conducted is not in accordance with the Act and the Rules made thereunder and the surcharge order, dated 29.03.2004, was solely based on the enquiry report. The Tribunal, observing that the surcharge order is in violation of the provisions of Section 60 of the Act, according to which, there is a duty cast on the Registrar to conduct enquiry independently by following the procedure prescribed, set aside the same and remanded the matter to respondent No.1 for fresh consideration. Upon such remand, respondent No.1 issued the impugned notice to the petitioners.

Respondent No.1 filed a counter-affidavit supporting the issuance of the impugned notice.

Sri Challa Dhanamjaya, learned counsel for the petitioners, submits that respondent No.2 became defunct and a Liquidator came to be appointed on 18.12.2004 under Section 65 of the Act and that respondent No.2 would be under the control of the Liquidator, as such, issuance of the impugned notice is ultra vires.

Learned Government Pleader for Cooperation submits that there is nothing wrong in issuing the impugned notice by respondent No.1 and at any rate, it would be open for the petitioners to raise all their objections before respondent No.1, as such, no writ would lie against it.

Having regard to the respective submissions, the only question which requires to be considered is 'whether the impugned notice issued by respondent No.1 is liable to be set aside on the ground that the Liquidator was appointed to look after the affairs of respondent No.2'. Since it is a pure question of law, it is for the Registrar/competent authority to initiate proceedings under Section 60 of the Act. For the purpose of clarity, Section 60 of the Act reads as under:

"60-Surcharge:- (1) Notwithstanding anything contained in any other law for the time being in force where in the course of an audit under Section 50 or an inquiry under Section 51 or an inspection under Section 52 or Section 53, or the winding up of a society, it appears that any person who is or was entrusted with the organization, affairs or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment contrary to the provisions of this Act, the rules or the bye-laws, the Registrar himself, or any person specifically authorized by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributor, may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorized as aforesaid thinks just or to contribute such sum to the asserts of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retention, breach of trust, or willful negligence as the Registrar or the person authorized as aforesaid thinks just:

Provided that no order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representation.

(2) Any sum ordered under this section to be repaid to a society or recovered as a contribution to its assets may be recovered on a requisition being made in this behalf by the Registrar to the Collector in the same manner as arrears of land revenue.

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act. (emphasis applied)”

A bare perusal of the above provision leaves no manner of doubt that it is the Registrar or his delegatee to initiate proceedings under Section 60 of the Act. Under Section 65 of the Act, the power of the Registrar is not limited, unlike in other enactments where the Liquidator is having full power and control over the affairs in relation to a Society. Yet another distinction is that the Registrar is empowered to initiate proceedings either on his own accord or on an application of the Committee, Liquidator, Creditor or Contributor. The power conferred on the Registrar is wide and at any rate, the same is not limited by Section 65 of the Act and it reads as under:

“Section 65: Appointment of Liquidator: (1) Where the Registrar has made an order under Section 64 for the winding up of a society, he may appoint a liquidator for that purpose and fix his remuneration.

(2) On the appointment of Liquidator, the property, assets, effects and actionable claims or liabilities of the society as on the date of appointment shall vest in or devolve on the

liquidator. He shall take such steps as he may deem necessary or expedient to prevent loss or deterioration of, or damage to, such property, asserts, effects and actionable claims.

(3) Where an order of winding up of a society is set aside in appeal the property, assets, effects and actionable claims or liabilities of the society as on the date of such setting aside shall revest in or devolve on the society.”

The Liquidator may have the control with respect to various aspects as specified under Sections 66 and 67 of the Act. However, the same does not confer any right on the Liquidator either to initiate proceedings or to conduct enquiry in terms of Section 60 of the Act and such power exclusively vests with the Registrar. Therefore, the argument of the learned counsel for the petitioner does not commend acceptance.

In those circumstances, the writ petition is dismissed.

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

CHALLA KODANDA RAM, J

Dt:29.10.2018

Note: L.R. Copy to be marked.
kdl

