THE HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION Nos.11208 and 11209 of 2001

COMMON ORDER:

The petitioner, Ex-Secretary of the 1st respondent-Society filed these writ petitions being aggrieved by the orders passed in OA.No.61 of 1995 and O.A.No.62 of 1995 dated 20.9.2000 of the 3rd respondent-Tribunal whereby the Andhra Pradesh Co-operative Tribunal, Vijayawada, confirmed the surcharge orders dated 23.11.1993 and 30.9.1994 passed by the 2nd respondent in proceedings R.C.Nos.832/92.G(1) and Rc.No.832/92/G(2) under the provisions of the Andhra Pradesh Co-operative Societies Act (for short 'APCS Act'), as illegal and arbitrary and set aside the same.

These two writ petitions are taken up together for hearing and disposed of by common order as the point involved in both the writ petitions is one and the same.

Brief facts of the case are that the petitioner was appointed as a Secretary of the Musnuru Multy Purpose Co-operative Credit Society in the year 1974. Subsequently, he was transferred to the first respondent-Society on 09.09.1981 and worked there till 19.11.1992. He made several representations bringing certain irregularities committed by Sri Raparla Venkata Subba Rao, the President of the first respondent-Society, during the period from 1982-1986 and 1987-1990, to the notice of the General Manager, Vijayawada Co-operative Central Bank Limited. The Divisional Co-operative Officer, Nuzivid, Krishna District, by his letter dated 26.06.2010 pointed out the misappropriation of funds of the first respondent-Society during the tenure of the petitioner as

Secretary. Based on the said proceedings, the Special Cadre Deputy Registrar/District Co-operative Officer, Krishna District, vide proceedings in R.C.No.1745/92-D-2 dated 27.07.1992 ordered enquiry under Section 51 of the APCS Act. One Sri M.S.Chalapathi Rao, Co-operative Sub-Registrar, conducted enquiry and submitted his report on 12.04.1993 holding that the petitioner along with others responsible for the misappropriation of funds of the Society. Against the said enquiry report, the petitioner approached the Government by filing revision under Section 77 of the APCS Act stating that the enquiry was conducted behind his back and without giving any opportunity. The Minister for Co-operation ordered re-enquiry under Section 51 of the APCS Act authorizing the Deputy Registrar to conduct enquiry and submit report within 30 days. On 05.06.1993, the Special Cadre Deputy Registrar authorized the Divisional Co-operative Officer, Nuzivid, to conduct re-enquiry under Section 51 of the APCS Act. Accordingly, the enquiry was conducted and report was submitted on 21.12.1994 upholding the first enquiry report. In pursuance of said enquiry report, the Deputy Registrar issued surcharge notice on 11.03.1994 to the petitioner calling for petitioner's explanation as to why he should not be surcharged for the misappropriated amounts i.e. Rs.3,97,296.05/- and Rs.47,344.69/-, for which, the petitioner submitted his explanation on 29.12.1994. After considering the explanation, the Deputy Registrar of Co-operative Societies issued surcharge proceedings dated 23.11.1994 and 30.11.1994 against the petitioner under Section 60 (1) of the APCS Act. Against the same, the petitioner approached the 3rd respondent-Tribunal. The Tribunal confirmed the surcharge proceedings holding that there is no irregularity or illegality in passing the orders. Aggrieved by the orders of the 3rd respondent-Tribunal passed in OA.Nos.61 of 1995 and 62 of 1995 dated 20.9.2000, the present writ petitions are filed.

Sri Srinivas Polavarapu, learned counsel appearing for the petitioner, would contend that the 3rd respondent-Tribunal as well as the 2nd respondent-Deputy Registrar of Co-operative Societies, Krishna District, have not considered the evidence available on record in its proper perspective. The plea of the petitioner that the enquiry was not conducted properly as per rule 47 of the A.P.C.S Rules 1964 and no opportunity was given to the petitioner in the enquiry was not considered by the Tribunal. He further contended that the whole enquiry was conducted behind the back of the petitioner. Learned counsel further contended that the petitioner challenged the said Enquiry Report submitted by Sri G.V.Chalapati Rao, Enquiry Officer, before the Government under Section 77 of the APCS Act by way of revision. As per the orders in revision petition, Sri G.V.Chandramoulishwar Rao, Divisional Co-operative Officer, has conducted re-enquiry. But, without conducting independent enquiry, he submitted re-enquiry report confirming the 1st enquiry report. Based on the same, the second respondent-Deputy Registrar of Co-operative Societies passed the surcharge proceedings against the petitioner. The second respondent without conducting independent enquiry under Section 61 of the APCS Act, merely based on the enquiry report under Section 51 of the APCS Act, issued surcharge proceedings, which is illegal. Learned counsel would further contend that enquiry under Section 51 of the APCS Act is only an administrative enquiry for the satisfaction of Registrar as to whether surcharge proceedings could be initiated under Section 60 of the APCS Act or not and once proceedings under Section 60 of the APCS Act are initiated, enquiry thereof should be conducted akin to the Civil Court as the Civil Court's jurisdiction is barred under Section 151 of the APCS Act. In support of said submission, he placed reliance on the decision rendered by a Division Bench of this Court in ***Challa Sanyasinaidu vs. Deputy Registrar of Co-op. Societies, Srikakulam***[1]. The learned counsel for the petitioner would further contend that the well considered decision of earlier **Division Bench** in ***Challa Sanyasinaidu (1 supra)*** was not brought to the notice of the Division Bench while deciding the issue in later decision in **Kolluri Bhaskara Rao v. Dy. Registrar of Co-operative Societies**[2]. However, mere issuance of show cause notice, calling for explanation and considering the explanation do not meet the requirement of provision of Section 60 of APCS Act, a full fledged opportunity should be given to the delinquent employee, before saddling with civil liability, in the peculiar circumstance under which the Co-operative Society functions. Hence, the impugned proceedings are illegal and liable to be set aside.

Learned Government Pleader appearing for the 2nd respondent would contend that the 2nd respondent conducted re-enquiry as per the orders passed in revision petition by the Government and came to the conclusion that the petitioner along with others committed misappropriation of funds of the 1st respondent-Society and the petitioner was given ample opportunity in the enquiry. The 2nd respondent, based on the enquiry report, passed surcharge proceedings dated 23.11.1994

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[1] 1998 (1) ALT 482 (D.B.)
[2] 1998 (3) ALD 154 (DB)

and 30.11.1994 against the petitioner. Against the said surcharge proceedings, the petitioner approached the 3rd respondent-The A.P. Co-operative Tribunal. The Tribunal, after considering the contentions of the petitioner, held that there is no illegality or irregularity in passing the surcharge orders.

Learned Government Pleader relied on the judgment reported in the case of ***Kolluri Bhaskara Rao (2 supra)*** and submitted that the petitioner was given show-cause notice and his explanation to the show-cause notice was considered and there is no necessity to give him opportunity before passing surcharge orders and, therefore, there is no illegality or irregularity in issuing surcharge orders and the Tribunal also confirmed the surcharge proceedings. Hence, the writ petitions are liable to be dismissed.

In the facts and circumstances of this case and in considered view of this Court, the 2nd respondent has not conducted any independent enquiry under section 60 of the APCS Act and the petitioner was not given proper opportunity as per law before passing the surcharge proceedings, in view of the ratio laid down by the Division Bench of this Court in ***Challa Sanyasinaidu (1 supra)*** wherein it is held that:

> " In the course of inspection under Section 52 of the Act, the Registrar may cause the inspection of Books of the Society with a view to find out the irregularities, acts of omission and commission. This enquiry is only administrative in nature, and if the Registrar *prima facie* is satisfied of the irregularities on the basis of the report of the Enquiry Officer, he may initiate surcharge proceedings under Section 60. That report may form the basis for Registrar to proceed under Section 60 and issue a surcharge order eventually. The person against whom a report is sent under Section 52 has no opportunity to squarely meet the allegations against

him at that stage. He is not allowed to cross-examine the witnesses from whom statements are recorded implicating his involvement. He cannot also adduce rebuttal evidence. That is not the stage where a demand can be made against him to pay back the sum or liability fastened to him as per the report of the Enquiry Officer. On the contrary, Section 60 clearly contemplates an opportunity being given to the delinquent by making a representation. In our view, this is the proper occasion where the officer or the servant has to be given an opportunity of explaining his stand and allow him to participate in the enquiry before a final order is passed. This is a valuable right given to the delinquent which cannot be brushed aside in a routine manner. After the show-cause notice is served and an explanation is called for, an opportunity should be given to the affected person to cross-examine the witnesses examined in the course of enquiry under Section 52 or permit him to examine his witnesses to rebut their evidence. Until this is done, the spirit of making a representation, as contemplated under Section 60, cannot be fulfilled. Although Section 60 does not prescribe any particular procedure before passing surcharge order, nonetheless, it is mandatory that principles of natural justice shall be followed in the enquiry. Evidence recorded behind the back of the defaulter cannot be relied upon to fasten the liability on him without giving him an opportunity to cross-examine the witnesses. The Registrar in his surcharge proceedings is a Court whose order can very well form the subject matter of judicial review under Article 226 of the Constitution of India. Therefore, it is in the fitness of things that an opportunity like supply of copy of enquiry report, statements of witnesses recorded during the said enquiry, and also an opportunity to cross-examine those witnesses, or permit him to examine his own witnesses by the delinquent by way of rebuttal should be allowed before an order under Section 60 is passed.”

Therefore, the surcharge proceedings are illegal and arbitrary. This Court finds that the 3rd respondent-Tribunal as well as the 2nd respondent committed an error of fact and law in appreciating the evidence and arriving at the conclusions. Hence, the orders of the Tribunal as well as surcharge proceedings are liable to be set aside.

Accordingly, the orders passed by the 3rd respondent Tribunal in O.A.Nos.61 of 1995 and 62 of 1995 dt.20.9.2000 and the surcharge proceedings dated 23.11.1994 and 30.9.1994 issued by the 2nd respondent are aside and the matter is remanded back to the 2nd respondent-The Deputy Registrar of Co-operative Societies, Nuzvid, Krishna District, to conduct fresh enquiry under Section 60 of the A.P. Co-operative Societies Act, by giving ample opportunity to the petitioner as per law and pass orders.

Accordingly, both the Writ Petitions are allowed. No orders as to costs.

Miscellaneous petitions pending, if any, shall stand closed.

JUSTICE M. GANGA RAO

Date: 17/07/2018
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