

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

W.V.M.P.No.4983 of 2017 in/and W.P.No.34535 of 2017

W.V.M.P.No.4873 of 2017 in/and W.P.No.34536 of 2017 &

W.V.M.P.No.5045 of 2017 in/and W.P.No.34539 of 2017

COMMON ORDER:

Heard the learned counsel for petitioners and the learned Government Pleader for Cooperation for respondents.

2. The Writ Petitioners in all these Writ Petitions are members of 7th respondent-Ravivalasa Primary Agricultural Cooperative Society. There was a news article published in Eenadu Telugu Daily Newspaper on 16-11-2014 that benami loans were given in large scale in this society without verification of land details etc.

3. The 3rd respondent along with the Divisional Cooperative Officer/Deputy Registrar of Cooperative Societies, Parvathipuram, Vizianagaram District, visited the society and verified veracity of news item.

4. Thereafter, 3rd respondent issued proceedings dt.26-11-2014 ordering an enquiry under Section 51 of the AP Cooperative Societies Act, 1964 into the affairs of the society with regard to its constitution, working and financial conditions and appointed 5th respondent as enquiry officer.

5. The 5th respondent conducted a statutory enquiry under Section 51 of the said Act and claimed to have examined several

persons. Some of whom are mentioned in an annexure to Ex.P-4 and submitted a report adverse to the petitioners. He diverted appropriate action to be initiated against petitioners who are members of the managing committee and staff of the society.

6. The 4th respondent was appointed as Sur-Charge Officer.

7. Show cause notices were issued by 4th respondent on 08-07-2015 asking the petitioners to show cause why order under Section 60 (1) of the Act should not be passed against them, making them liable jointly and severally for a sum of Rs.1.79 crores with interest thereon and other charges for the loss allegedly caused to the society.

8. Objections were filed by the petitioners on 23-01-2016. *Inter alia*, while denying the liability, the petitioners requested for a regular trial to be conducted as per the judgment of this Court in **Challa Sanyasinaidu Vs. Deputy Registrar of Co-Op. Societies, Srikakulam**¹ and sought opportunity to cross examine the enquiry officer who conducted Section 51 enquiry and the persons from whom he recorded statements during the course of said enquiry. Later they also filed memo on 10-02-2016 before 4th respondent reiterating the same and sought a direction to the officer who conducted Section 51 enquiry to produce the witnesses who made statements adverse to the petitioners in the said enquiry to face cross examination by the petitioners. To the said memo, the names of the loanees from whom

¹ 1998 (1) ALT 482 (DB)

the enquiry officer under Section 51 recorded statements and who have to be produced for cross examination, were set out.

9. Petitioners even filed W.P.No.30738 of 2017 in this Court contending that such opportunity was being denied by 4th respondent in spite of specifically being sought. No interim order was passed in the said Writ Petition.

10. A memo was again filed on 16-09-2017 by the petitioners before 4th respondent similar to the earlier memo dt.10-02-2016.

11. The impugned order was passed on 05-10-2017 holding the petitioners responsible for the amount shown in the show cause notice. Curiously in the impugned order, the request made by the petitioners for production of the witnesses for cross examination by them is not even adverted much less dealt with. It is merely stated there that the respondents and the Chief Executive Officer of the society failed to produce witnesses even after ample opportunity was given to them.

12. Therefore, petitioners have filed these Writ Petitions contending that 4th respondent was obligated to produce the witnesses from whom statements were recorded adverse to the petitioners in the Section 51 enquiry, that petitioners were denied an opportunity to cross examine the said persons, and this is a grave violation of principles of natural justice.

13. Though other contentions on merits were also raised, I am not inclined to go into the other contentions for the present.

14. This Court on 23-10-2017 in all three Writ Petitions directed the respondents not to take any coercive steps against the petitioners. The said order was extended from time to time. In the meantime, the present W.V.M.Ps. have been filed by the respondents to vacate the said order.

15. In the vacate stay petitions, it is stated that the petitioners requested the 4th respondent and surcharge authority for cross examination of the loanees; that the instructions were given to the Chief Executive Officer of the society to produce the loanees for cross examination by the petitioners, but he was unable to produce the loanees since they were busily engaged with agricultural operations. It is stated that the enquiry officer who conducted the Section 51 enquiry was examined and cross examined by the petitioners and the petitioners did not produce any evidence. It is therefore contended that petitioners cannot be granted any relief in the Writ Petition. Alternatively, it is also contended that petitioners have an alternative remedy under Section 76 of the Act before the Cooperative Tribunal and the petitioners should be directed to approach the said Tribunal. It is stated that there is misappropriation of funds by raising of benami loans in the name of 238 members and the order passed is correct and valid.

16. I have noted the contentions of both sides.

17. The Division Bench of this Court in **Challa Sanyasinaidu** (1 supra) has dealt with the scheme of Section 60 of the Act and held that the report under Section 52 may form basis for the Registrar to proceed under Section 60 and issue surcharge order eventually, but when such report is sent, the person against whom it is sent under Section 52 had no opportunity to meet the allegations against him and he is not allowed to cross examine the witnesses from whom the statements were recorded implicating his involvement and he cannot also adduce rebuttal evidence. It held that Section 60 contemplates an opportunity to be given to the delinquent by making representation and it is the proper occasion where the officer or the servant has to be given an opportunity of explaining his stand and be allowed to participate in the enquiry before a final order is passed. The Bench declared that this valuable right given to the delinquent cannot brushed aside in a routine manner and after show cause notice is served and explanation is called for, an opportunity should be given to the affected person to cross examine the witnesses examined in the course of an enquiry under Section 52 and also to examine his witness to rebut their evidence. It held that until this is done, the spirit of making a representation as contemplated under Section 60 cannot be fulfilled. It observed that though Section 60 does not prescribe any particular procedure before passing the surcharge order, nonetheless, it is mandatory that principles of natural justice shall be followed in

the enquiry and 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. It opined that the Registrar in his surcharge proceedings is a Court whose order can form the subject matter of judicial review under Article 226 of the Constitution of India and therefore the principles of natural justice referred to above are required to be followed. This principle has been reiterated subsequently in **Mandadapu Sivarama Krishnayya Vs. Dy. Registrar of Co-operative Societies, Eluru, West Godavari District and another²**, **V.V.Satyanarayana Vs. Chebrolu Primary Agricultural Co-op. Society Limited and others³** and **K.Kanaka Rao Vs. Chairman, A.P. Co-operative Tribunal, at Hyderabad and others⁴**.

18. This legal position is not disputed by the Government Pleader for Cooperation.

19. A reading of the impugned order dt.05-10-2017 passed by the 4th respondent clearly indicates that the Chief Executive Officer of the Society who is supposed to be the prosecuting officer in the Section 60 proceedings failed to produce witnesses for cross examination by the petitioners.

20. This is admitted even in the counter affidavit filed by 4th respondent, wherein at page-8, it is stated that C.E.O. of the society

² 2009 (1) ALD 254

³ 2009 (5) ALT 92

⁴ 2011 (3) ALT 586

was asked to produce loanees before the surcharge authority for cross examination of the petitioners, but he expressed his inability to do so. Thus, it is clear that the petitioners have been denied an opportunity to cross examine the persons who had made statements adverse to them in the Section 51 enquiry. So there has been a clear violation of principles of natural justice and the law declared by this Court in the above decisions.

21. Once this is so, the contention of the Government Pleader for Cooperation that the petitioners should be relegated to the alternative remedy cannot be countenanced since it is settled law since where there is violation of principles of natural justice, existence of alternative remedy is not a bar. So this Court to entertain the Writ Petition. (**Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others**⁵).

22. Learned Government Pleader for Cooperation's further contention that the other evidence on record such as the statement of enquiry officer is sufficient to sustain the findings of guilt against the petitioners also cannot be countenanced since the evidence of the enquiry officer who conducted Section 51 would only be *hear-say* evidence.

23. The petitioners cannot be condemned on the basis of material collected behind their back and on the basis of *hearsay* evidence.

⁵ (1998) 8 SCC 1

24. In this view of the matter, I am of the opinion that the impugned order cannot be sustained. It is accordingly set aside; the matter is remitted back to the 4th respondent to conduct fresh enquiry and comply with the principle laid down in the above decisions by directing the CEO of the petitioner society to produce the persons who gave adverse statements against petitioners in the Section 51 enquiry for the purpose of cross examination by the petitioners; the petitioners are also given opportunity to lead rebuttal evidence, if they wish. The 4th respondent shall pass a reasoned order in accordance with law and communicate the same to the petitioners. This exercise shall be completed within four months from the date of receipt of a copy of this order.

25. In the result, all the Writ Petitions are disposed of with the above directions. Consequently, all the W.V.M.Ps. are rejected and the interim orders are made absolute. No costs.

26. As a sequel, the miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S.RAMACHANDRA RAO

Date: 26-06-2018
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