

THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 9940 OF 2007

O R D E R :

Petitioner – Society challenges the order dated 31.08.2006 in C.T.A.No. 11 of 2005 on the file of the 4th respondent - A.P. Cooperative Tribunal at Warangal, which set aside the surcharge order dated 19.04.2005.

Heard learned counsel for the petitioner as well as learned Government Pleader for Cooperation.

Proceedings were initiated in terms of Section 60 of the Telangana Cooperative Societies Act, 1964 (for short, 'the Act') against the 1st respondent – Secretary based on the report emerged pursuant to the inspection conducted under Section 52 of the Act and an order dated 23.11.1999 was passed by the 2nd respondent for Rs.80,654.55 ps. with interest at 18% per annum. The said surcharge proceedings were challenged in CTA No. 95 of 2000 before the Co-operative Tribunal at Hyderabad, on the sole ground that without examining the witnesses independently and without conducting enquiry as required under Section 60 of the Act, no surcharge proceedings could be issued. The said Appeal was allowed by order dated 23.11.1999 and the matter was remanded to the petitioner for conducting enquiry afresh. On remand once again, the impugned order was made in C.T.A.No. 11 of 2005, without examining the President and Secretary against whom surcharge proceedings were issued. The Tribunal in para 12 of the said order recorded as under:

“It is a known fact that in every Cooperative Society the President is a top person in his profile as per the statute and byelaws. He is the custodian of all properties of the Society. Further, the President of a Society is obliged under the statute to monitor the financial matters and to safeguard the interest of all members of the Society. The situation being such, he is the best witness to speak on the affairs of the Society. In the case on hand, the Respondent No.1 never made any attempt to examine the President and to record his finding on whether the financial irregularities allegedly committed by the appellant were true. There were not any such circumstances as that the Respondent No.1 in the course of the enquiry under Section 60 of the Act summoned the President of the Society to appear before him and examined him. In view of the circumstances apparent on the record, we are of the opinion that there was no application or complaint from the Society insofar as the financial irregularities as detailed in the surcharge notice dated 03.03.2005 were concerned and that therefore none put their appearance on behalf of the Society to speak on the financial irregularities allegedly committed by the appellant. With this view, we conclude that the impugned order of surcharge issued by the Respondent No.1 has suffered from an infirmity and therefore, cannot be held as sustainable under law.”

As can be seen from the above extracted paragraph, virtually, there was no evidence adduced before the Tribunal with respect to the allegations made against the President and the Secretary. The Tribunal being the last fact-finding authority and there being no evidence establishing the misfeasance on the part of the President and Secretary, the order of the Tribunal cannot be found fault. Though learned counsel for the petitioner pleads that as a matter of fact, the President had admitted the charge of retaining huge amount with him and he himself requested to reduce the interest, no document in support thereof is produced either before the Tribunal or this Court. At this stage, the learned counsel for the petitioner seeks some more time to produce the same, however, this Court is not inclined to grant, considering the

fact that the Writ Petition is of 2007 and further, the said document cannot be introduced before this Court without producing the same before the Tribunal which was the last fact-finding authority.

In that view of the matter, there is no merit in the Writ Petition and the same is accordingly, dismissed.

The miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

09th December 2019

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