THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

WRIT PETITION No. 26164 of 2019

O R D E R :

The proceedings dated 30.08.2019 issued by the Deputy Registrar of Cooperative Societies, Mancherial, the 1st respondent herein, is challenged before this Court.

The case of the petitioner is that he is the legal heir of one Sri Puskur Narsing Rao, who was President of the 4th respondent Cooperative Society. Alleging certain omissions and commissions on the part of the father of the petitioner, enquiries were conducted under Sections 50 and 52 of the Telangana Co-operative Societies Act, 1964 (for short, 'the Act') and based on the report, liability was sought to be fastened on him on account of the fact that his father passed away on 04.06.2015. It is the assertion of the petitioner that the very notice for conducting enquiry against his father, under Section 52 of the Act, was dated 06.06.2015, hence, the report emanated from the said enquiry itself is null and void and based on such report, no proceedings could have been initiated against him. It is his further case that though the show cause notice was issued on 20.08.2019 invoking Section 60 of the Act proposing to conduct enquiry duly providing time for filing explanation / objections up to 29.08.2019, the 1st respondent had passed the impugned proceedings without conducting enquiry as stated in the notice.

Learned counsel for the petitioner submits that the legal heirs of the office bearer of the Society cannot be made liable for the omissions and commissions of the office bearer (see ***G. Anasuyamma v. Kandulapuram Primary Agricultural***

***Society*[1])**. The learned counsel, placing reliance on the judgment of the Division Bench of this Court referred to by the learned Single Judge in the 1st cited judgment, would assert that the proceedings under Section 60 of the Act are akin to a suit and a detailed enquiry is required to be conducted duly providing the opportunity of examining and cross-examining the witnesses and the material available therefor. According to him, no action could be taken directly based on either the report under Section 51 or the one under Section 52 of the Act without conducting independent enquiry.

Learned Government Pleader for Co-operative Societies *Sri Durga Reddy*, opposes the Writ Petition and submits that in terms of Section 76 of the Act, there is an effective alternative remedy of Appeal to the Cooperative Tribunal. He places reliance on the judgment of the Supreme Court in ***Commissioner of Income Tax v. Chhabil Dass Agarwal*[2]** and submits that the Writ Petition is liable to be dismissed relegating the petitioner to avail the remedy of Appeal under the Act. The learned Government Pleader draws attention to the provisions of Section 60 existing as on today, as per which even legal heirs of a deceased office bearer is liable for the proceedings under Section 60 of the Act.

After hearing the learned counsel on both sides, this Court does not consider it necessary to invite counter from the respondents as the issue raised is a pure question of law, hence, the matter is being disposed of at the admission stage itself.

The argument of the learned counsel for the petitioner that the proceedings initiated against the father of his client are non-est

---

[1] 2004(1) ALD 526
[2] (2014) 1 SCC 603

in the eye of law does not hold good for the reason, the purpose of the enquiry under Sections 50, 51 and 52 of the Act is only for preliminary ascertainment of facts and as such, at that stage, there is no question of fixing any liability on any individual. With respect to inspection under Section 52, there is no requirement of issuing any notice except where there is a requirement of ascertainment / eliciting clarifications. In that view of the matter, even assuming for argument sake that the petitioner's father is no more by the time of inspection, the inspection report, by itself, does not get invalidated as the same is the only basis and *prima facie* material for enquiry under Section 60 of the Act.

Secondly, the argument of the learned counsel for the petitioner that the legal heir of the deceased office bearer cannot be proceeded, also does not hold good, particularly in view of amendment to Section 60 wherein, specifically, the legal heirs have been roped in. For the purpose of clarity, Section 60, prior to and after the amendment, may be noticed:

> 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 organisation, 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 wilful 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 specially authorised 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 authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retention, breach of trust, or wilful negligence as the Registrar or the person authorised 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.

Section 60, after amendment, reads as under:

60. **Surcharge:**- 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 specially authorized by him in this behalf, of his own motion or on the application of the committee, liquidator or any creditor or contributory, may inquire into the conduct of such person or officer or servant and make an order requiring him/her or his/her legal heir 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 assets 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 in the manner as prescribed by the Registrar from time to time.]

It may be noted that the order of the learned Single Judge on which reliance has been placed by the learned counsel for the petitioner is of 2004 and the amendment came into effect with effect from 20.05.2016.

It is to be seen, the notice was dated 20.08.2019 under which the petitioner was provided an opportunity and time up to 29.08.2019 for submitting explanation / objections along with necessary evidence. The petitioner had submitted the explanation. Thereafter, no enquiry was conducted as required under Section 60 of the Act, as is evident from the fact that the impugned order was passed on 30.08.2019 i.e. within 24 hours of the submission of the explanation. In this context, Proviso to Section 60 of the Act may be noted, as under:

> " 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 in the manner as prescribed by the Registrar from time to time."

The word *"prescribed"* is defined under Section 2(l) of the Act which means *'prescribed by rules made under this Act'.*

Further, the Division Bench of this Court in *Challa Sanyasinaidu v. Deputy Registrar of Co-op. Societies*[3] had occasion to notice the scheme of Section 60, in para 9, as follows:

> " The Scheme of Section 60 of the Act in our view unfolds itself as follows :
>
> 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 the 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,

---

[3] 1998(1) ALT 482 (D.B.)

> 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, we respectfully agree with the view taken by the learned Judge in S. Rama Subba Rao v. President, Kaikaluru, Irrigation and Power Department Sub-Divisional Employees Co-operative Credit Society Limited (supra). Even in Mohd. Ghouse v. Deputy Registrar of Cooperative Societies, Vikarabad and others (supra) the learned Judge has rightly observed that the proviso to Section 60 mandates adequate opportunity before passing the order, and the issuance of notice proposing to fix the liability under Section 60 is imperative and as such there is no breach of principles of natural justice. Having said so, the learned Judge went on observing that Section 60 is an immediate and necessary consequence of enquiry and audit and inspection and the enquiry for the second round is considered to be superfluous and the affected person is not prejudiced or disadvantaged as the enquiry is done in anterior proceedings. These later observations of the learned Judge appear to strike a contrary note, and we do not therefore subscribe to the same."

The impugned order does not indicate that the course, as held by this Court in the judgment cited supra, was followed by the 1st respondent. On that ground, the impugned order is liable to be set aide.

As regards contention of violation of the principles of natural justice, in the case on hand, no detailed enquiry was conducted, as is evident from the fact that the last date for filing the objections was 29.08.2019 and the impugned order was passed on 30.08.2019, which itself would indicate that there is clear violation of the principles of natural justice.

Sofar as the contention of the learned Government Pleader that the petitioner may be relegated to avail the alternative remedy of Appeal to the Tribunal is concerned, it may be noted that the Hon'ble Supreme Court had made an exception with respect to non-availment of alternative remedy, in its judgments as early as in ***The State Of Uttar Pradesh v. Mohammad Nooh***[4] which was followed innumerable times including the one in ***Whirlpool Corporation v. Registrar of Trade Marks, Mumbai***[5].

For the aforesaid reasons, the impugned proceedings is set aside, giving liberty to the 1st respondent - Deputy Registrar to conduct *de novo* enquiry strictly in terms of the provisions of the Act, by giving adequate opportunity to the petitioner.

The Writ Petition is accordingly, allowed. No costs.

Consequently, the miscellaneous Applications, if any shall stand closed.

CHALLA KODANDA RAM, J

27th November 2019

L.R.Copy.
ksld

---

[4] AIR 1958 SC 86
[5] AIR 1999 SC 22