08.04.2025
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Sl. No. 04
Ct. No. 07

WPA 6500 of 2025

Soumen Muhuri
Vs.
The State of West Bengal & ors.

Mr. Pradumna Sinha, Sr. Advocate
Mr. Sidhant Chowdhury
Mr. Sannidhya Datta
Ms. Anjali Roy
.... for the petitioner
Mr. Santanu Kr. Mitra
Ms. Anandamoyee Ghosh
... for the State
Mr. Srijan Nayak
Mr. Ankit Surekha
Mr. Partha Sarathi Pal
.....for the respondent No. 2
Mr. Arnab Ray
..... for the respondent Nos. 3,4 & 5
Mr. Shirsho Banerjee
.....for the respondent No. 6

1. Challenging the enquiry report dated 28th August, 2024 which was served on the petitioner by cover of letter dated 4th March, 2025, the present writ petition has been filed. In order to appreciate the challenge in the present writ petition, it is necessary to appreciate the facts leading to the filing of the same. It is the petitioner's case that he was appointed as Computer Assistant by the respondent No. 3 (society) vide appointment letter dated 28th July, 2014. Such appointment was confirmed by an office order dated 21st August, 2017.
2. In the interregnum, on 30th January, 2016, the petitioner was assigned the role of the accountant-in-charge whereupon he assumed the charge in respect thereof, and such fact would corroborate from a charge report dated 30th January, 2016. It is also the petitioner's case that although, he assumed the

charge of accountant-in-charge yet for all practical purpose, Ram Chandra Sutradhar, since deceased, continued to function as the accountant of respondent No. 3 till 22nd October, 2016 as he had died on 23rd October, 2016.

3. According to the petitioner, said Ram Chandra Surtradhar had never handed over charge of the accountant to the petitioner. Later, one Abhishek Banerjee was appointed as Chief Executive Officer of the respondent No. 3 vide notification dated 23rd May, 2017 and immediately thereafter by letter dated 12th June, 2017 addressed to the Branch Manager of State Bank of India, Malda Branch, he altered the authorized signatory of the respondent no.3 in his favour and continues to act as an authorized signatory in respect of the Bank account of the respondent No. 3 maintained by the State Bank of India, Malda Branch.

4. According to the petitioner, in around January, 2020 financial scam was detected in the aforesaid co-operative society inasmuch as an amount of Rs. 52,00,000/- (fifty two lakhs) only was found to have been unauthorizedly transferred from the Bank account of the said respondent maintained with the State Bank of India to the personal account of one Kalyan Brata Ghosh, an employee of the respondent No. 3, who used to look after the account, on diverse dates between the April and September, 2018. According to the petitioner, at the relevant point of time, the accounts were not looked after by the petitioner but by the aforesaid Abhishek Banerjee and Kalyan Brata Ghosh who also happened to be erstwhile office stationary and section in-charge of accounts of the said respondent No. 3.

5. Following a police complaint lodged on 10th January, 2020 and still later on 14th May, 2020, a show cause notice was issued whereunder the petitioner was

required to show cause why the accounts of the financial years 2017- 2018 and 2018-2019 were prepared and placed before the authority without considering the statements of the account No. 11175355442 lying with the State Bank of India. It appears that the petitioner had duly responded to the said show cause and had called for certain documents. Ultimately, on 1st September, 2020, a charge sheet was issued. Particulars of the charges leveled against the petitioner as would appear from the above charge sheet is extracted herein below:

"Article of Charge 1

Sri Soumen Muhuri has been working for gain under Assistant Cadre as Accountant-in-Charge of Malda Wholesale Consumers' Co-operative Society Limited since 30/01/2016.
It is revealed from the Resolution adopted in the Meeting of the Board of Directors of Malda Wholesale Consumers Co-operative Society Limited held on 06.02.2016 under the Fourth Agenda Miscellaneous (B) that Sri Soumen Muhuri, took the charge of Accountant (as Accountant - In - Charge) from Sri Ram Chandra Sutradhar on 30.01.2016 in the afternoon in terms of Order No. 201/98-B/2015-16 dated 21.01.2016. This Charge Report was placed before the meeting and read out and unanimously accepted & approved.
Service of Sri Soumen Muhuri as Accountant-in-Charge has been confirmed as per resolution of the Pay & Allowance Committee meeting held on 02/08/2017 and ratified in the subsequent BOD meeting held on 12/08/2017 and it has been communicated to Sri Soumen Muhuri under the signature of Sri Prabir Lahiri, Chairman of Malda Wholesale Consumers' Co-operative Society. Ltd.
vide Memo No.109/98-B/2017-2018 dated 21/08/2017.
It is evident from the Accounts of Malda Wholesale Consumers' Co-operative Society Ltd. for the Financial Year 2017-2018 and 2018-2019 that Sri Soumen Muhuri, Accountant-in-Charge has prepared the accounts for the said two Financial Years and put his signature on the Cash Account, Trading Account, Profit & Loss Account and Balance Sheet.
Misappropriation so happened has not been reflected in the accounts as Bank Reconciliation has not been made during preparation of Cash Accounts, Trading Account, Profit & Loss Account and Balance Sheet which is a gross violation of Accounting norms.
Being Accountant-in-Charge Sri Muhuri has prepared Accounts for the Financial Year 2018-2019 of Malda Wholesale Consumers' Co-operative Society Limited. Closing Stock as on 31/03/2019 shown in the Trading, Profit & Loss Account for the year ended 31st March 2019 is Rs.86,48,298.72. But Actual Closing Stock as on 31/03/2019 was Rs.1,15,22,408.37 (PDS Rs. 28,74,109.65, S.S.U. Rs.86,48,298.72, O.S.S.- Nil). He has shown PDS Closing Stock as on 31/03/2019 Rs.18,95,695.22 in place of Actual Stock Rs.28,74,109.65.

He has misled the undersigned & Special Officer of the Co-operative Society by placing the faulty Accounts for Signature. It is a kind of malpractice and conspiracy. Stock under PUBLIC DISTRIBUTION SYSTEM has been manipulated by him purpose of which is better known to him.

Sri Soumen Muhuri working for gain under Assistant Cadre as Accountant-in-Charge of Malda Wholesale Consumers' Co-operative Society Limited (hereinafter referred to as the Co-operative Society) was asked to Show Cause under Memo No.27/399-A/2020-2021 dated 14/05/2020 for his failure to act with due diligence, sincerity and responsibility befitting to his assignment and post which turned out to be a commissioning of fraud upon the Co-operative Society and his actions/inactions tantamount to lack of devotion to duty causing huge loss/harm to the Co-operative Society and interest of the Institution.

Had Sri Soumen Muhuri being Accountant-In-Charge of the Co-operative Society cast strict Vigil upon preparation of the Bank Reconciliation Statements, any misappropriation from the account of the Co-operative Society could have been detected much earlier (Misappropriation of Fund Rs. 92.29 Lakh during the period from 12.01.2017 to 25.12.2019, detected so far).

THUS, loss of substantial amount has been caused to the Co-operative Society and the said happening indicates lack of devotion to duty on the part of Sri Muhuri.

Article of Charge 2

This act of Sri Muhuri indicates his failure to act with due diligence, sincerity and responsibility befitting to his assignment and post.

Article of Charge 3

*Loss of confidence on the concerned Employee by the Employer being Business Organization and Service Provider (Co-operative Society).***”**

6. Although the petitioner had duly responded to the said charge-sheet by communication in writing dated 24th September, 2020, the enquiry proceedings did not proceed further until the time hereinafter mentioned. After a gap of 4 years, a notice was issued on the petitioner on 8th August, 2024 intimating that the enquiry in connection with the above charge-sheet dated 1st September, 2020 shall be held on 9th August, 2024 at 11:30 a.m. onwards at the office premises of the respondent No. 3. According to the petitioner since the aforesaid communication dated 8th August, 2024 was an extremely short notice, the petitioner by letter dated

9th August, 2024 requested the enquiry officer to adjourn the hearing for at least 15 days.

7. Acceding to the request of the petitioner, the enquiry officer by communication in writing dated 10th August, 2024 intimated that the next date of hearing of the enquiry would be fixed on 28th August, 2024 at 11:30 a.m. Following the above, an enquiry was held. Later, the copy of the enquiry report dated 28th August, 2024 was served on the petitioner by cover letter dated 4th March, 2025.

8. Mr. Sinha, learned senior advocate representing the petitioner by drawing attention of this Court to the enquiry report would submit that although the enquiry report was prepared on 28th August, 2024, it took the respondents nearly 6 months' time to serve the same on the petitioner. The same has been prepared in a predetermined manner. He would submit that enquiry was not conducted by following due procedure. Although, the enquiry officer had proceeded on the basis of the statements given by the petitioner during the enquiry, none of such statements had been recorded during the enquiry proceeding. There is no signature of the petitioner on such statements. He has also questioned the competence of the respondents to proceed with the enquiry after a period of five years from the date of issue of the charge-sheet.

9. In the facts noted hereinabove, he would submit that the enquiry held by the enquiry officer is no enquiry on the eye of law. The same suffers not only from procedural irregularities but also from violation of principles of natural justice and the aforesaid enquiry should not be permitted to be proceeded further. By drawing attention to the enquiry report, he would further submit that no specific finding had been returned by the enquiry officer as regards the

charges leveled against the petitioner and as such no meaningful reply can be offered by the petitioner.

10. *Per contra,* Mr. Roy, learned advocate representing the respondent Nos. 3, 4 and 5 in terms of the directions passed by this Court on 2nd April, 2025 has produced the records of this case. He would submit that the delay in proceeding with the enquiry was primarily due to the time consumed by the society in appointing an enquiry officer. Initially although, the respondent no.3 had appointed one particular enquiry officer but since the said enquiry officer had refused to act, another enquiry officer had to be appointed. According to him although, Mr. Sinha has questioned the enquiry report and claim the same to have been prepared in pre-determined manner, the recording made on the first page of the enquiry report that the enquiry report is dated 9th August, 2024 is only a typographical error. He would submit that the enquiry officer had only recorded that on the said date the enquiry proceeding had started and at the instance of the petitioner, the same had been adjourned. In response to a query from the Court, he would submit that although, the enquiry officer did not return any positive finding but the views of the enquiry officer are clear to hold the petitioner guilty of the charges as the enquiry officer has expressly stated that he thinks that the society may take action against the petitioner, which cannot be ignored. He submits that at this stage only a response has been called for. The writ petition is premature. In the facts noted above, no interference is called for.

11. I have considered the submissions made by the learned advocates for the parties and have noted the materials on record. I find, in the instant case initially a show cause was issued in connection with financial irregularities of the respondent No. 3. The

said show cause was subsequently followed up by a formal charge-sheet. It is true that the charge-sheet did not proceed for some time. However, in my view a mere delay in proceeding with the charge-sheet does not and cannot interfere with the rights of the respondent No. 3 to conclude the proceeding especially when the same concerns financial irregularities. On the aspect of violation of principles of natural justice and procedural irregularities committed by the enquiry officer and the failure on the part of the disciplinary authority to make available the copy of the enquiry report to the petitioner immediately after such report was prepared, I am of the view that there is no appropriate explanation forthcoming from the respondents as to why the enquiry report was held back by the authorities for a period of approximately six months.

12. Be that as it may, upon going through the enquiry report, it would transpire that there are no specific findings returned by the enquiry officer as regards the charges leveled against the petitioner, only certain observations have been made by the enquiry officer that too on the basis of the statements given by the petitioner. This in my view cannot constitute a reasonable finding on the charges.

13. In my view, the enquiry officer ought to have decided on the charges leveled against the petitioner. It is true, as rightly pointed out by Mr. Roy learned advocate representing the respondent Nos. 3 to 5 that ordinarily when an enquiry report is supplied without the delinquent responding to such report, no interference is called for. However, having regard to the peculiar facts of the case and upon examining the enquiry report, I am of the view that the above enquiry report which does not give any definite finding as regards the charges, cannot be sustained

and is accordingly set aside. The aforesaid, however, cannot impede upon respondent No. 3's rights to conclude the enquiry in accordance with law.

14. Having regard thereto, and noting the objection raised by the petitioner to the appointment of the enquiry officer and its request for appointing an independent enquiry officer and upon ascertaining the views of Mr. Roy, learned advocate representing the respondent Nos. 3 to 5, I am of the view that liberty should be granted to the said respondent no.3 to appoint a fresh enquiry officer and start the enquiry from the stage of issuance of charge-sheet and the reply thereto filed by the petitioner and to conclude the same in accordance with law within a period of four months from the date of communication of this order with an undertaking from the petitioner that he shall cooperate with the enquiry officer.

15. With the above observations, the writ petition is disposed of without any order as to costs.

(Raja Basu Chowdhury, J.)