

(2011) 03 AP CK 0058
In the Andhra Pradesh High Court
Case No : Writ Petition No. 4192 of 2005

K. Kanaka Rao

APPELLANT

Vs

The Chairman, A.P. Cooperative Tribunal, The Deputy
Registrar of Cooperative Societies and The President, Primary
Agricultural Cooperative Credit Society

RESPONDENT

Date of Decision : 01-03-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 300A, 31

Citation : (2011) 1 APLJ 282 : (2011) 8 RCR(Civil) 923

Hon'ble Judges : G. Chandraiah, J

Bench : Single Bench

Advocate : Chintapanti Adithya, for the Appellant; G.P. for Cooperation for
Respondent Nos. 1 and 2 and M. Venkata Diwakar, for the Respondent

Judgement

G. Chandraiah, J.—Heard Mr. C. Aditya, the learned Counsel for the Petitioner and the Assistant Government Pleader for Co-operation.

2. The writ Petitioner worked as Secretary of the 3rd Respondent - The Primary Agricultural Co-operative Credit Society, Salampahad, Bodhan Mandal, Nizamabad, during the period from 1975 to 1987. While so, during the period from 1.7.1984 to 30.06.1985 there was deficit of stock in the rice, sugar, palm oil, wheat, kerosene, fertilizer and cloth, in the consumer shop run by the society and during the said period, one Rama Goud was the sales man, who worked from 5.3.1983 to 9.4.1985. On 9.4.1995, the said sales man proceeded on leave and though the leave expired on 14.4.1985, he did not return. As there was deficit in stock, the Divisional Co-operative Officer, Bodhan, conducted the enquiry u/s 51 of the A. P. Co-operative Societies Act, 1964 (for short "the Act") and submitted report dated 31.1.1994, holding that the value of the deficit stock is Rs. 33,377-86 and fixed the liability on the Petitioner at Rs. 16,688-93. Hence, the Petitioner was given show cause notice u/s 60 of the Act, calling for his explanation and he submitted report and not being satisfied with the same, the

Deputy Registrar of Co-operative Societies, Bodhan, passed surcharge orders u/s 60(1) of the Act on 29.3.1995. Challenging the same, Petitioner filed appeal before the Co-operative Tribunal, Hyderabad u/s 76 of the Act in C.T.A. No. 97/1995. By order dated 6.3.1997, the Tribunal remanded the matter for fresh disposal and thereafter, again the Petitioner was issued fresh notice u/s 60(1) of the Act and he filed his explanation, denying the liability. As per the remand orders dated 6.3.1997 in C.T.A. No. 97/1995 of the Tribunal, the report of the enquiry officer was placed before the general body, and the said body accepted the report and based on the same, the 2nd Respondent - Deputy Registrar of Co-operative Societies, passed the surcharge proceedings in Rc. No. 1319/95-D dated 11.6.1998. Aggrieved by the same, the Petitioner filed appeal in C.T.A. No. 1999/1998 and the Tribunal confirmed the surcharge proceedings passed by the Deputy Registrar by reducing the rate of interest. Now aggrieved by the same, the present writ petition is filed.

3. The learned Counsel appearing for the Petitioner contended that the Petitioner was only the Secretary and it is the salesman Rama Goud, who is looking after the affairs and he applied for leave and did not return on its expiry and that he is solely responsible for the deficit. He vehemently contended that before fixing the liability on the Petitioner, no evidence was recorded and no opportunity was given to cross-examine the witnesses and without recording the evidence and giving opportunity to the Petitioner, fixing the liability on the Petitioner, is in violation of the principles of natural justice. He contended that filing of the civil suit is barred and hence the enquiry under surcharge shall be akin to that of civil court and in the present case, 2nd Respondent, who passed the surcharge proceedings u/s 60, has concluded that there is no need to record the statement of the Petitioner and no independent witnesses were examined, and in the appeal, the Tribunal has held that there is no need to record any evidence and the issue can be decided by hearing the arguments and considering the explanation filed by the delinquent and in support of this conclusion the Tribunal relied on the judgment of this Court in *Borusu Nageswara Rao Vs. Secretary, A.P. Co-operative Tribunal and Others*, . He stated that the said judgment was passed while considering the proceeding issued u/s 51 of the Act, and whereas in the present case, the surcharge proceedings were passed u/s 60(1) of the Act and hence the said judgment cannot be relied upon. In support of his contention that before fixing the liability on the Petitioner by passing the surcharge proceedings u/s 60 of the Act, an independent enquiry has to be conducted, he relied on the judgments of the learned single Judges of this Court reported in *S. Rama Subba Rao v. President, Kaikalur Irrigation And Power Department* 1994(1) APLJ 200 (HC), *Lankala Koderu Co-operative Rural Bank Ltd. Vs. Ungarala Pullaiah Naidu and Another*, *S. Ramadas Vs. The Subordinate Judge and others*, and *V.V. Satyanarayana v. Chebrolu Primary Agricultural Co-Operative Society Ltd* 2009(2) ALD (NOC 23). With these submissions, he sought to set aside the impugned proceedings.

4. The 2nd Respondent - Divisional Co-operative Officer, filed counter affidavit on

behalf of the Respondents and justified the impugned order of the Tribunal and the surcharge proceedings and sought for dismissal of the writ petition. The learned Standing counsel appearing for the Respondents reiterated the averments in the counter affidavit and stated that there is lapse on the part of the Petitioner. He stated that even assuming that the salesman did not turn up after leave, before taking charge of the godown, the Petitioner ought to have conducted panchanama. Since the Petitioner is the Secretary of the Society and is the Chief-Executive in so far as the affairs of the society and in-charge of the maintenance of the accounts and also in-charge of the supervision over the employees of the society, there is lapse on his part. Since, he has taken the charge without panchanama and sold the stock, there is lapse on his part, and this is evident from the material available on record and hence there is no need to record any evidence and both the primary authority and the Tribunal, appreciating this aspect, fixed the liability on the Petitioner, which is only half of the deficit amount on the ground of joint and several liability. He further contended that the Petitioner has not taken the grounds which he is taking in the present writ petition and hence, he cannot be permitted to raise the said grounds. Relying on the Division Bench judgment of this Court reported in Kolluri Bhaskara Rao Vs. Dy. Registrar of Co-operative Societies, Guldivade, Krishna Dist. and Another, the learned Counsel submitted that the Petitioner was given a show cause notice before passing the surcharge orders u/s 60 and he was afforded every opportunity and re-appreciating the entire material available on record, the Tribunal has confirmed the surcharge order and as there are no violation of the principles of natural justice, the impugned orders cannot be interfered with under Article 226 of the Constitution of India. With these submissions, he sought to dismiss the writ petition.

5. From the material available on record, the charges against the Petitioner are that (1) being a chief-executive officer of the society, he failed to check up the stock registers, sales registers and sales bills and took the sale proceeds from the sales man without verifying the sales register with reference to the sales bills and (2) though the keys of godown were with him, he failed to conduct panchanama before he took charge of the stock in the godown and started selling it, when the sales man did not turn up to the duty after expiry of his leave. These charges were held proved in the surcharge proceedings. But from a perusal of the material papers available on record, it could be seen that before holding the Petitioner guilty of the said charges, no evidence was recorded and no opportunity was given to the Petitioner to cross-examine any witnesses and only based on the explanation submitted by the Petitioner, the charges were held proved. Further, the primary authority and the Tribunal concluded that there is no need to record any evidence and the liability can be fixed based on the material available on record. It is to be noticed that there is express bar of the jurisdiction of civil court u/s 121 of the Act and, therefore, the enquiry u/s 60, for fixing the liability, should be akin to civil court enquiry, since the surcharge proceedings are fastening the liability on the Petitioner, which have got the effect

of depriving the right of property of the Petitioner. Therefore, without conducting independent enquiry by recording evidence and giving the opportunity to the Petitioner to cross-examine such witnesses, concluding that the charges against the Petitioner were proved, is contrary to the principles of natural justice.

6. A learned single Judge of this Court in the decision reported in *S. Rama Subba Rao v. President, Kaikaluru Irrigation And Power Department* (2 supra) held as under:

3... It is pertinent to mention that surcharge order fastening liability on any person including that of the Petitioner in such a fashion has got the effect of depriving the right to property which was hitherto a fundamental right guaranteed under Article 31 of the Constitution of India, now transformed into a constitutional guarantee under Article 300A by which no person can be deprived of his property save by authority of law. The authority of law being in the instant case the statutory provision contained u/s 60(1) of the Act, the rules of fair-play have got to be followed. The rules of fair-play imply that there should be an enquiry wherein opportunity is given to elicit the truth by adduction of oral and documentary evidence, opportunity of cross-examination, opportunity to advance arguments and then passing of a well reasoned order. Dealing with analogues principles of law it was held by a Division Bench of this Court in *M. Chennakesava Reddy v. DVL. CO-OP OFFICER* {1972(2) APLJ 16} that a statute requiring affording of opportunity has got to be construed that it implies adherence to the rules of fair-play.

4... Even if the opportunity is afforded at the appellate stage that is not a sufficient compliance of rules of fair-play. It was mandatory on the part of the second Respondent herein to conduct enquiry by calling upon the subject society to lead evidence both oral and documentary affording opportunity to the Petitioner to cross-examine and also to lead rebuttal evidence and hear the arguments and pass well reasoned order. These aspects have not been considered in proper perspective by the lower appellate tribunal.

7. In another judgment, a learned single Judge of this Court in *Lankala Koderu CO-OP. Rural Bank Ltd. v. Ungarala Pullaiah Naidu* (3 supra), in similar circumstances, held as under:

10... It is settled principles of law that no order shall be passed against any person referred to in Section 60(1), unless the person concerned has been given an opportunity of making his reorientation. As held by this Court in above referred decisions, it is mandatory to conduct enquiry upon the subject to lead evidence both oral and documentary affording opportunity to the first Respondent to cross-examine and also to lead rebuttal evidence and then initiate surcharge proceedings after giving show cause notice to make representation.

8. Another learned single Judge of this Court in *S. Ramdas v. Subordinate Judge* (4 supra) held as under:

2... It is admitted that apart from the enquiry conducted u/s 51 of the Act, no independent enquiry was conducted u/s 60 so as to make the Petitioner liable for the enforcement of the surcharge order. It is pertinent to mention that enquiry u/s 51 of the Act is only an administrative enquiry for the satisfaction of the Registrar as to whether u/s 60 surcharge proceedings have to be initiated or not. Once the proceedings u/s 60 of the Act are initiated, the enquiry thereof shall be akin to Civil Court enquiry as the Civil Court's jurisdiction is barred expressly in view of Section 121 of the Act. As no independent enquiry has been conducted by the second Respondent therein, to pass a decree for realization of the amount, the said order is not only an infraction of the statutory provisions, but also violative of the principles of natural justice.

9. Recently, another single Judge of this Court in the decision reported in V.V. Satyanarayana v. Chebroly Primary Agricultural Co-Operative Society Ltd. (5 supra) noted as under:

7. A Division Bench of this Court in Challa Sanyasinaidu Vs. Deputy Registrar of Co-op. Society, Srikakulam, held that enquiry u/s 52 of the Act is only administrative in nature and if the Registrar is prima facie satisfied on the basis of such report that irregularities have taken place, he may initiate surcharge proceedings u/s 60 of the Act, in which, the inspection report may form the basis for the Registrar to issue surcharge proceedings. It is further held that before issuing such proceedings it is incumbent upon the authority to give an opportunity to the delinquent to cross-examine the witnesses, whose statements are recorded by the Inspecting Officer and reliance is placed thereon. It also held that although Section 60 of the Act does not prescribe any particular procedure before issuing surcharge proceedings, nonetheless, it is mandatory that principles of natural justice shall be followed in the enquiry and that evidence recorded behind the back of the defaulter cannot be relied upon to fasten the liability on him without given an opportunity to cross-examine the witnesses.

10. In view of the above judgments of this Court, I am of the view that the impugned orders fastening the liability on the Petitioner without conducting an independent enquiry by recording the evidence and without giving the opportunity to the Petitioner to cross-examine them, amounts to violation of the principles of natural justice and hence the same cannot be sustained.

11. The Division Bench judgment of this Court in Kolluri Bhaskara Rao v. Dy. Registrar Of Co-Operative Societies, Gudivada, Rksihan Dist (6 supra) is concerned, the same is not applicable to the facts of the present case, since aspects with regard to bar of jurisdiction of the civil court u/s 121 of the Act and the earlier judgments of the Division Bench which held that conducting of independent enquiry before passing the surcharge proceedings u/s 60 of the Act is mandatory, were not discussed. Further, the judgment relied on by the Tribunal below in Borusu Nageshwara Rao's case (1 supra), was dealing with the proceedings passed u/s 51 of the Act, which are administrative in nature and since in the present case, the surcharge proceedings are passed u/s 60 of the

Act, the decision cannot be made applicable.

12. For the foregoing reasons, the impugned orders are set aside and the matter is remitted back to the 2nd Respondent to hold fresh enquiry, in compliance with the principles of natural justice, as laid down by this Court and complete the same and pass a well reasoned order in accordance with law, within a period of two months from the date of receipt of a copy of this order.

13. The writ petition is accordingly disposed of. No costs.