
(2002) 07 AP CK 0013

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3542 of 1999

Lankala Koderu Co-operative Rural Bank Ltd.

APPELLANT

Vs

Ungarala Pullaiah Naidu and Another

RESPONDENT

Date of Decision : 23-07-2002

Acts Referred:

Citation : (2002) 6 ALT 380

Hon'ble Judges : E. Dharma Rao, J

Bench : Single Bench

Advocate : C. Ramachandra Raju, for the Appellant; D.V. Sitharam Murthy and G.P. for Co-operation, for the Respondent

Final Decision : Dismissed

Judgement

E. Dharma Rao, J.—The petitioner-The Lankala Koderu Co-operative Rural Bank limited, Palacol, West Godavari District, represented by its Secretary filed this writ petition, aggrieved of the order dated 30-4-1997 passed in O.A.No. 252 of 1994 by the 2nd respondent Co-operative Tribunal, Vijayawada, which was directed against the order of surcharge proceedings issued by the Deputy Registrar, Co-operative Societies, on the basis of report of enquiry conducted u/s 51 of the A.P. Co-operative Societies Act, 1964 (for brevity, the Act). The Co-operative Tribunal interfered with the order impugned therein on the ground that the Deputy Registrar, Bhimavaram has not conducted regular enquiry as contemplated u/s 60 of the Act before passing surcharge order and directed the first respondent herein to refund an amount of Rs. 2,96,784.40 Ps. collected from 57 loanees of the petitioner-Bank, which was found to be misappropriated by the first respondent. Accordingly, the Tribunal remanded the matter to the Deputy Registrar, Co-operative Societies, Bhimavaram, to conduct enquiry into the matter.

2. Aggrieved of the said order, the present writ petition is filed mainly raising two grounds by Mr. C. Ramachandra Raju learned Counsel for the petitioner firstly the second respondent proceeded on the assumption that the enquiry contemplated

u/s 60 of the Act is akin to trial of the suit and consequently held that the surcharge order passed by the Deputy Registrar is bad for want of regular trial, but in fact, the enquiry contemplated u/s 60 of the Act is summary in nature. It is next contended that when the first respondent has confessed his guilt before the Enquiry Officer as well as in his explanation to the surcharge notice that he manipulated the loan ledgers at the instance of one Sri V.V. Narasimha Raju and he did not ask the Deputy Registrar to examine the Enquiry Officer or any other person as witnesses and also did not ask for examining any witness on his behalf, the question of violation of principles of natural justice does not arise. It is also submitted that when once the surcharge order is passed based on record and which was not disputed by the first respondent, it is highly improper on the part of the 2nd respondent in laying down guidelines as to how the enquiry has to be conducted by the Deputy Registrar.

3. The brief facts of the case, in narrow compass, are that the first respondent worked as clerk in the petitioner-Bank and during the enquiry into the affairs of the petitioner-Bank, it was found that the petitioner collected loan amount of 57 loanees and the loan ledgers were rounded off, showing nil balance, and thus he committed serious irregularities and misappropriated a sum of Rs. 2,96,784.40 Ps. The District Co-operative Officer, during the course of elaborate enquiry, found that the first respondent has rounded off the respective entries in the loan ledgers without crediting the amounts in the cash book and without issuing receipts to the loanees in collusion with others and thereby misappropriated the amounts of the petitioner-Bank to the tune of Rs. 2,96,784.40 Ps. and thus caused huge loss to the petitioner-Bank. On receipt of the Enquiry Report, the Deputy Registrar, Co-operative Societies, satisfied himself that the findings of the Enquiry Officer are true and accordingly gave show-cause notice dated 16-6-1993, directing the first respondent to submit his explanation u/s 60(1) of the Act. On consideration of the explanation submitted by the first respondent, decided to pass final order and hence issued surcharge proceedings on 29-4-1993 in exercise of the powers conferred u/s 60 of the Act. Against that order, the first respondent filed OA. No. 252 of 1994 before the second respondent, which after enquiring into the matter and on appreciation of both oral and documentary evidence, by the order impugned, remanded the matter for fresh disposal according to law with a direction to follow the procedure while conducting enquiry u/s 60(1) of the Act. In remanding the matter, the second respondent has considered the decision reported in S. Ramadas Vs. The Subordinate Judge and others, wherein this court has ruled that the 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 and once proceedings u/s 60 of the Act are initiated, enquiry thereof should be akin to Civil Court as the Civil Court's jurisdiction is barred expressly in view of Section 121 of the Act. the Tribunal also considered the decision of this court in Primary Agricultural Co-operative Credit Society Limited, Rudrur v. V.M. Gangadhar and others (1988 (2) APLJ 51) wherein a Division Bench of this court

held that a mere reading of the order therein passed by the Deputy Registrar, who has exercised the powers vested in him u/s 60 of the Act shows that no enquiry was conducted by him, but he simply relied upon the report of the Inspection and there is no material to show on what basis the Inspecting Officer came to the conclusion. The persons in whose names certain monies are found due to the Society have to be examined during the enquiry after giving a reasonable opportunity. The second respondent further considered the decision Valupalli Mani Appa Rao and four Ors. v. The Co-operative Tribunal Authority-cum-Principal District Munsif, Gudivada, Krishna District and two Ors. 1995 (2) ALT 22 of this Court and remanded the matter.

4. Applying the ratio laid down in the above decisions to the facts and circumstances of the case, the second respondent was satisfied that the Deputy Registrar, Co-operative Societies, Bhimavaram, has not conducted regular enquiry u/s 60(1) of the Act and, therefore, while setting aside surcharge proceedings, remanded the matter to make enquiry afresh in accordance with the guidelines indicated. As stated earlier, it is this order which is impugned in this writ petition.

5. Against that order, the present Writ Petition was filed.

6. The learned counsel for the first respondent Sri D.V. Seetharamamurthy, submitted that the first respondent worked in the petitioner-Bank for 30 years without any adverse remarks till the initiation of surcharge proceedings, that during the period 1987-88 to 1991-92 he never worked as Cashier and was not dealing in cash transactions of the petitioner-Bank, that he worked under the instructions of the Accountant, Cashier and Secretary of the bank, that he was entrusted with the posting of loan ledgers and subsidy ledgers, that the Accountant has given a list of names and directed him to make entries in the ledger, that the entries were made without reference to the receipts, as he was directed to do so by the Accountant and that he was compelled to do what was directed by the Accountant, that when he questioned the Accountant for the said action, he was threatened to dismiss from service. So under coercion, undue influence and economic duress, he was made to round-off the names without reference to actual receipts. It is further submitted that he has not admitted the guilt of misappropriation of the funds of the petitioner-bank. It is further contended that even the charges framed against the first respondent are contrary to his duties. It is contended that admittedly the first respondent was a clerk in-charge of posting of loan ledgers and subsidy ledgers, but the charge was framed as if he has collected loan amounts with interest from the loanees without issuing receipts and made postings in the loan ledger and thus misappropriated the loan amount so collected and thus caused deficiency of Rs. 2,96,784.40 Ps. And this amount was attributed to the first respondent, clerk of the petitioner-bank. Therefore, once the first respondent is not the in-charge of the collection of loan amounts from the loanees, the finding of the Enquiry Officer and the allegations in the show-cause notice issued u/s 60(1) of the Act

contemplating surcharge and recovery proceedings are bad in law. With regard to the admission of misappropriation by the first respondent is concerned, it is not explicit, clear and unambiguous admission of the charge levelled against him. The admission is conditional. When the first respondent has asserted that at the instruction of the Accountant, he has rounded off the loanees names without seeing the receipt, in view of non-examination of loanees and the records by the Enquiry Officer, it cannot be held that the respondent has admitted his guilt. In support of this contention, reliance is sought to be placed on a decision of the Privy Council in AIR 1939 47 (Privy Council) wherein the Privy Council while considering the question of confession held that an admission of a gravely incriminating" fact is not itself a confession, but a confession must either admit in terms of the offence or at any rate substantially all the facts which constitute the offence. He further placed reliance on a decision of the Supreme Court Jagdish Prasad Saxena v. State of Madhya Pradesh AIR 1961 SC 1070 wherein the Apex Court has held that as the statements made by the appellant did not amount to a clear or unambiguous admission of his guilt, failure to hold a formal enquiry constituted a serious infirmity in the order of the dismissal passed against him, as the appellant had no opportunity at all of showing cause against the charge framed against him and so the requirement of Article 31/1920 was not satisfied. It is further held that it is utmost important that in taking disciplinary action against a public servant, a proper departmental enquiry must be held against him after supplying him with a charge-sheet and he must be allowed a reasonable opportunity to meet the allegations contained in the charge-sheet.

7. Reliance is also sought to be placed on S. Ramadas Vs. The Subordinate Judge and others, and Challa Sanyasinaidu Vs. Deputy Registrar of Co-op. Society, Srikakulam, .

8. I have gone through the entire material placed on record. As can be seen from the facts and circumstances of the case, the first respondent while working in the petitioner-bank is said to have committed serious irregularities and misappropriated a sum of Rs. 2,96,784.40 Ps. by collecting the loan amounts from 57 loanees, but did not credit to the account of the petitioner-bank and based on the enquiry report dated 31-1-1993 conducted u/s 51 of the Act, the Deputy Registrar, Co-operative Societies, Bhimavaram, satisfied himself that it is a fit case to initiate surcharge proceedings and thus issued surcharge notice dated 29-4-1993 directing the first respondent to give his explanation and after considering the same, since it was not convincing, on 16-6-1993 served surcharge order u/s 60 (1) of the Act.

9. A plain reading of Section 60 of the Act reveals that where in the course of an audit u/s 50 or any inquiry u/s 51 or an inspection u/s 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 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 authorized by him in this behalf, liquidator or any creditor or contributory, 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 authorized as aforesaid thinks just or to contribute such sum to the assets of the society or by way of compensation, in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence as the Registrar or the person authorized as aforesaid thinks just. Before passing the order, on the basis of the said report, Registrar or the person authorised who has come to the conclusion that punishment can be imposed on a person who is said to have misappropriated or is said to have misapplied funds, fraudulently retained, committed breach of trust or wilful negligence, has to issue show-cause notice and opportunity to make his representation. Therefore, provision of law obligates the Registrar to initiate enquiry by himself or through authorized person when he satisfies on the basis of audit report u/s 50, inquiry u/s 51 or an inspection u/s 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 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 authorized by him in this behalf, liquidator or any creditor or contributory, 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 authorized as aforesaid thinks just or to contribute such sum to the assets of the society or by way of compensation, in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence as the Registrar or the person authorized as aforesaid thinks just. But there is a proviso to this sub-section, which obligates the Registrar or any person authorized, to give an opportunity to the delinquent officer to make his representation before taking any action and that no order shall be passed unless he is given opportunity to make representation. This is the legal position bearing on the issue involved in this writ petition. Merely on the basis of the enquiry report conducted by the District Co-operative Officer, on satisfaction of the finding arrived at by the Enquiry Officer that the first respondent, a clerk in the petitioner-bank, was entrusted with the organization and management of the affairs of the society, has misappropriated the amounts collected from the 57 loanees, but failed to credit the same to the account of the society. Therefore, prima facie, the Deputy Registrar was satisfied, as contemplated u/s 60 of the

Act, that the said amount has to be recovered from the first respondent. Thus initiated surcharge proceedings and issued show-cause notice. On consideration of the explanation submitted by the first respondent and on the basis of the admissions made by him, thought no further enquiry contemplated u/s 60 of the Act be conducted, hence issued the surcharge proceedings. But that exercise of power is contrary to the intent of the Legislature u/s 60 of the Act. When once the Deputy Registrar who is acting as Registrar u/s 60 of the Act is satisfied that on the basis of the enquiry report conducted u/s 51 of the Act, he should have either enquired into the matter or entrusted it to a authorized person to conduct enquiry envisaged u/s 60 of the Act, to satisfy the intent of the Legislature, and the principles of natural justice, as the first respondent is confronted with civil consequences and his right to service and, thereafter, an opportunity should have been given to submit his explanation for imposition of punishment.

10. It is also pertinent to note, as seen from the material placed on record, that the second respondent (sic. Deputy Registrar) has not conducted a regular enquiry examining witnesses, verification of records and affording an opportunity to the first respondent to cross-examine the witnesses, nor he has scrutinized the documents on record. It is a settled principle 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 representation. 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. Therefore, I hold that the impugned order of surcharge proceedings to compensate the funds misappropriated by the delinquent officer i.e., the first respondent herein is issued without conducting enquiry u/s 60 of the Act by the second respondent (sic. Deputy Registrar) and since he has not discharged his mandatory obligation conferred u/s 60 of the Act, and failed to conduct independent or regular enquiry to satisfy himself and give opportunity to the first respondent to defend himself and put forth his case, the order is liable to be set aside for not following the procedure contemplated u/s 60 of the Act when the statements do not amount to clear admission of guilt, removal from the service without holding fresh enquiry, it cannot be said that the requirements of Article 311 (2) were satisfied.

11. Coming to the second contention raised by the learned counsel for the petitioner that no enquiry before initiating surcharge proceedings u/s 60 of the Act, need be conducted in view of the first respondent admitting the guilt that at the instance of the Accountant, he has rounded off the names of the loanees without verifying the receipts is concerned, the admission by the first respondent is not in unequivocal terms. The admission is conditional admission that at the instance of Accountant, out of fear of losing the job, he closed the loan accounts. The further allegation of the first respondent is that the Enquiry Officer u/s 51 of the Act has not examined the said loanees and did not verify the records.

Therefore, under those circumstances, when the first respondent has not voluntarily admitted his guilt and in the absence of non-examination of loanees and without scrutiny of the records, on the basis of the enquiry alone, surcharge proceedings should not have been initiated without conducting regular enquiry. In view of the categorical assertion of the first respondent, the second respondent (sic. Deputy Registrar) should have conducted regular enquiry.

12. The Supreme Court in Jagdish Prasad Saxena's case (3 supra) held that when the charge-sheet was laid against the Government servant on the basis of the statements made by him in enquiry held against other Government servant and

13. The facts therein are that the appellant was permanently employed as Distillery Inspector, and he was furnished with a charge-sheet on the basis of alleged admissions he made in the course of enquiry, directed against some other Government servants in connection with the commission of certain offence and the result of the enquiry was that the appellant was absolved from any complicity in the commission of the offence. Later, he was removed from service on the strength of the alleged admissions without holding a formal enquiry as required by the Service Rules.

14. On consideration of these facts, the Apex Court held that the admissions made by the appellant did not amount to clear or unambiguous admission of his guilt, failure to hold a formal enquiry constituted a serious infirmity in the order of dismissal passed against him, as the appellant had no opportunity at all of showing cause against him and so the requirement of Article 311(2) was not satisfied. It is further observed that even if the appellant had made some statements which amounted to admission, it was open to doubt whether he could be removed from service on the strength of the said alleged admissions without holding a formal enquiry as required by the rules. It is of the utmost importance that in taking disciplinary action against a public servant, a proper departmental enquiry must be held against him after supplying him with a charge-sheet, and he must be allowed a reasonable opportunity to meet the allegations contained in the charge-sheet. It was further held that the Departmental enquiry is not an empty formality, it is a serious proceeding intended to give the officer concerned a chance to meet the charge and to prove his innocence. In the absence of any such enquiry, it would not be fair to strain facts against the appellant and to hold that in view of the admissions made by him, the enquiry would have served no useful purpose. That is a matter of speculation which is wholly out of place in dealing with cases of orders passed against public servants terminating their services.

15. Applying the ratio laid down by the Supreme Court in the above decision to the facts and circumstances of the case, since the alleged admissions of the first respondent are not explicit, not clear and unambiguous, a regular Departmental enquiry should have been conducted, as contemplated u/s 60 of the Act. Therefore, I hold that when there is no admission of explicit, clear and

unambiguous nature, by the person like the first respondent who is in-charge of the management of the affairs of the Co-operative Society, without conducting regular enquiry as contemplated u/s 60 of the Act, the surcharge proceedings should not have been issued by the Registrar or any authorized person on his behalf. It is relevant to note that even according to the first respondent, he was a clerk in the petitioner-bank and he was entrusted with the duties of posting the ledgers and he was not in-charge of money transactions or disbursement of the loan amounts or recovery of the same. On the other hand, the allegation in the charge-sheet is that he has collected amount from 57 loanees but failed to remit those amounts to the account of the petitioner-bank. Therefore, he has misappropriated the amount and caused deficiency in the assets of the Society by breach of trust. Therefore, the said charge is not germane to the duties entrusted to the first respondent, when he was not in-charge of either disbursement or recovery of the loan amount. That apart, there is no material to establish that he has collected the amounts from the loanees. It is the specific contention of the first respondent that at the instance of Accountant, he has rounded off the names of loanees and closed their account. Therefore, it cannot be held that he has misappropriated the said sum. Thus, at the most, the action of the first respondent may fall under the expression wilful negligence appearing in Section 60(1) of the Act, in discharge of his duties, but cannot be held to be guilty of misappropriation. Therefore I am of the view that during the course of enquiry u/s 51 of the Act if the delinquent employee has not made any explicit, clear and unambiguous admission of his guilt, a regular enquiry should be conducted, as contemplated u/s 60 of the Act herein and the Registrar is empowered to inquire into the conduct of such person or officer or servant and make an order enquiring him 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 retainer, breach of trust or wilful negligence as the Registrar or the person authorized, (except) after giving an opportunity to the delinquent officer to make his representation.

16. Therefore, in view of the above discussion, I am not able to appreciate the contentions raised by the learned counsel for the petitioner. Therefore, I do not see any illegality or infirmity in the order passed by the Tribunal in setting aside the surcharge proceedings issued by the respondent (Deputy Registrar) and remanding the matter for fresh disposal for imposing of punishment u/s 60 of the Act. If the respondent (Deputy Registrar) is contemplating to proceed with the enquiry, the same has to be completed and final orders to be passed within a period of six months from the date of receipt of a copy of this order.

17. The writ petition accordingly fails and is dismissed. No order as to costs.