(1992) 07 AP CK 0001

In the Andhra Pradesh High Court

Case No : Writ Petition No. 18960 of 1988

S. Ramadas APPELLANT

Vs

The Subordinate Judge and others RESPONDENT

Date of Decision : 09-07-1992

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 1993 AP 6 : (1992) 3 ALT 50

Hon'ble Judges : Subhashan Reddy, J

Bench : Single Bench

Advocate : M/s. Koka Raghava Rao, Kum. G. Rohini and S. Kishore, for the Appellant; G.P. for Co-operation and Mr. S. Venkata Reddy, for the Respondent

Judgement

Subhashan Reddy, J. 1. This is a peculiar case where a retired Tahsildar who was hitherto holding the post of Deputy Tahsildar and was deputed as Manager, Girijan Primary Co-operative Society, Bhadrachalam, is sought to be proceeded against for realisation of the amount by invoking the provisions contained under Sec. 60 of the A. P. Co-operative Societies Act, 1964 ("the Act" for short). Some allegations are levelled against the petitioner who held the post of Manager mentioned supra for the period from 10-12-1965 to 25-7-1967, that either he has not remitted some amount or that there were acts of dereliction of duty on his part and consequently the Society suffered monetary loss to the tune of Rs. 59,830.39 ps. The same was appealed against before the Co-operative Tribunal (Subordinate Judge, Kothagudem) in C.T.A. No. 3 of 1982 and the appeal was partly allowed reducing the amount to Rs. 9,916.10 ps. Of course, in both the orders 18% interest is levied from the dates specified therein. But the levy of interest will depend upon the principal liability.

2. In-so-far as the misappropriation aspect is concerned, it is alleged that Rs. 100/-towards sales-tax which is said to have been collected, is not reflected in the account books. The other acts relate to dereliction of duties. The acts relating to dereliction of duties re not stated with precision. The explanation of the

petitioner is that he is not liable for payment of any of the amounts claimed against him including the above amount of Rs. 100/- found to be deficient on account of the sales tax collection. His explanation is that there was a regular accountant who was managing the accounts and that he was no way concerned with any of the amounts mentioned in the surcharge proceedings. It is admitted that apart from the enquiry conducted under S. 51 of the Act, no independent enquiry was conducted under S. 60 so as to make the petitioner liable for the enforcement of the surcharge order. It is pertinent to mention that enquiry under S. 51 of the Act is only an administrative enquiry for the satisfaction of the Registrar as to whether under S. 60 surcharge proceedings have to be initiated or not. Once the proceedings under S.60 of the Act are initiated, the enquiry thereof should be akin to Civil Court enquiry as the Civil Court''s jurisdiction is barred expressly in view of S . 121 of the Act. As no independent enquiry has been conducted by the second respondent herein to pass a decree for realisation of the amount, the said order is not only an infraction of the statutory provisions, but also violative of the principles of natural justice. That apart, the initiation of proceedings under S. 60 are hopelessly time barred. It is curious to note that the petitioner was on deputation for the period from 10-12-1965 to 25-7-1967, allegations were levelled against him with regard to the dereliction of duties for the above said period. The petitioner was repatriated on 25-7-1967, promoted as a Tahsildar during the year 1975 and had also retired from service with effect from 30-11-1978. Admittedly, a show cause notice was issued for the first time under S. 60 of the Act and served on the petitioner only on 27-8-1980. By no stretch of imagination can the authorities be permitted to sleep over the matter that long and then initiate proceedings, that too, penal in nature, at their sweet will and pleasure and as and when they want. Even according to the Society, because of the long lapse of time, most of the records were not traceable. For the reasons that no independent enquiry which ought to be conducted by the second respondent was not conducted in exercise of his powers under Sec. 60 of the Act and that the surcharge proceedings under Sec. 60 of the Act were initiated at a much belated stage, that too, after the retirement of the petitioner-from service, the same are held as unsustainable. In the circumstances, the orders passed by the second respondent and partially confirmed by the first respondent are set aside and consequently the petitioner is exonerated of the financial liability.

3. The amount which was deposited by the petitioner pending the writ proceedings, shall be paid back to him by the second respondent within two months from the date of receipt of this order.

4. The writ petition is accordingly allowed. No costs. Advocate''s fee Rs. 250/-.

5. Petition allowed.