
(1993) 09 AP CK 0028

In the Andhra Pradesh High Court

Case No : Writ Petition No. 12631 of 1992

Sammeta Rama Subba Rao

APPELLANT

Vs

President, Kaikaluru Irrigation and Power Department Sub-divisional Employees Co-op. Credit Society Ltd. and others

RESPONDENT

Date of Decision : 15-09-1993

Acts Referred:

Constitution of India, 1950 — Article 14, 300, 31

Citation : AIR 1994 AP 77 : (1994) 2 ALT 39 : (1994) 1 APLJ 200

Hon'ble Judges : Subhashan Reddy, J

Bench : Single Bench

Advocate : Mr. V. Parabrahma Sastri, for the Appellant; Mr. G. Suryanarayana Murthy, Govt. Pleader, for Co-operation, for the Respondent

Judgement

Subhashan Reddy, J.—Challenging the Surcharge Order passed under S. 60(1) of the A. P. Cooperative Societies Act, 1964, in proceedings Re. No.4277/86-D dated 10-7-1991 by the Second Respondent this Writ Petition is filed. Before initiation of proceedings under S. 60(1) of the Act, inspection was conducted by the officer concerned under S. 52 of the Act. The Inspection report pointed out that the petitioner was to be surcharged. Basing on the same, proceedings were initiated under S. 60(1) of the Act. Show cause notice dated 24-4-1991 was issued to the petitioner to show cause why surcharge order should not be passed for realisation of Rs. 41,164 /- as opined by the Inspecting Officer. The petitioner filed a reply dated 6-5-1991 denying his liability to pay the same. Strictly speaking, he disputed all the allegations levelled against him in the show cause notice issued for surcharging him. In such cases, as a necessary corollary, an enquiry ought to have preceded the surcharge order. The principal point in the instant case is whether any enquiry took place before the passing of surcharge order and if any such enquiry conducted, whether it conforms to the rules of fair-play. The only consideration of the Deputy Registrar who passed the surcharge order is to the following effect:

"Now, therefore, after careful examination of records and inspection report etc. the Deputy Registrar of Co-operative Societies, Gudivada by virtue of powers vested in him under S. 60(1) of the Andhra Pradesh Co-op. Societies Act 7 of 1964 hereby orders that Sri S. Ramasubha Rao Ex-President of Kaikaluru Irrigation and Power Department, Sub-Divisional Employees Co-operative Society Ltd., No. Y 397 has to make good the following amounts to the subject society together with interest at Rs. 18% from the date of receipt of the amounts till the date of realisation of the amounts as he is held responsible for payment of the amounts."

2. While Mr. Parabrahma Sastry, learned counsel for the petitioner contends that no enquiry has been conducted before surcharging the petitioner as contemplated under law, the learned Government Pleader and Mr. G. Suryanarayana Murthy appearing for the subject society advanced arguments to the contra.

3. According to the respondents, the enquiry whatever conducted during inspection under S. 52 of the Act is sufficient and surcharge order can be passed on the said inspection report and no further enquiry is contemplated to pass a surcharge order under S. 60(1) of the Act. I do not accede to these contentions. Report under S. 52 only enables the Registrar to initiate the surcharge proceedings. On such initiation, the regular enquiry has got to be conducted, The Registrar while dealing with the provisions under S. 60(1) of the Act to surcharge a person is a Court. His order is only appellable under S. 76 of the Act, but civil court's remedy by way of suit is barred. 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 Art. 31 of the Constitution of India, now transformed into a constitutional guarantee under Art.300-A 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 under 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 analogous principles of law it was held by a Division Bench of this Court in *M. Chenna-kesava 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. The further argument of Mr. G. Suryanayana Murthy to the effect that even though opportunity was not afforded at the stage of passing of surcharge order but the same was afforded at the appellate stage is also untenable for the reason that no evidence was adduced by the subject Registrar at the appellate stage and the opportunity which has to be afforded at the original stage cannot be by passed to say that opportunity will be provided only at the appellate stage. 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 then hear arguments and pass well reasoned order. These aspects have not been considered in proper perspective by the lower appellate tribunal. It is also pertinent to mention that any order passed under S. 60, though appellable under S. 76 of the Act is subject to the bar under S. 121 of the Act from questioning otherwise. For that reason it was mandatory on the part of the second respondent to follow the procedure mentioned above.

5. For the foregoing reasons, I set aside the order passed by the second respondent dated 10-7-1991 in Rc No. 4277/86D and the order passed by the appellate tribunal dated 20-3-92 in C.M.A. 2 of 1991. The matter is remitted back to the second respondent to make an enquiry afresh in the light of what is indicated supra after issuing notice to both parties. The second respondent shall dispose of the matter within two months from the date of receipt of this order.

The writ petition is accordingly allowed. No costs.

6. Petition allowed.