(2005) 03 AP CK 0094

In the Andhra Pradesh High Court

Case No : Writ Petition No. 16136 of 1993

S.U.M. Prasad — APPELLANT

Vs

A.P. State Federation of Co-operative Spinning Mills Ltd. and Others — RESPONDENT

Date of Decision : 23-03-2005

Acts Referred:

Constitution of India, 1950 — Article 12, 226
Penal Code, 1860 (IPC) — Section 405

Citation : (2005) 3 ALD 649 : (2005) 4 ALT 278

Hon'ble Judges : G. Bikshapathy, J

Bench : Single Bench

Advocate : M. Pandu Ranga Rao, for the Appellant; V.T.M. Prasad, for the Respondent No. 1 and G. Shiv Kumar, for the Respondent Nos. 2 and 3, for the Respondent

Judgement

G. Bikshapathy, J.—The writ petition is filed challenging the order of dismissal passed by the 1st respondent in Proceedings No. 863/90-A, dated 30-8-1990 as confirmed by the appellate authority.

2. Petitioner was selected as Mill Manager by the Federation of Andhra Pradesh Co-operative Spinning Mills Limited and he was posted to Rajahmundry Spinning Mills by an order dated 28-7-1987. He was appointed in the scale of Rs. 1800-75-2400 with other allowances as admissible. He was governed by the Rules and Regulations framed by the Federation. The appointment order, however, contained that the appointment was on contract basis for a period not exceeding three years and he was put on probation for a period of one year. After completion of the probation, increments were also released to him.

3. While so, he was placed under suspension on 25-4-1990 alleging certain irregularities in discharge of his duties. Thereafter, an Enquiry Officer was appointed to conduct enquiry into the misconducts alleged against the petitioner. The Enquiry Officer visited the Rajahmundry Mill on 19-6-1990 and gathered

some information. Thereafter, he issued a charge-sheet on 22-6-1990. Petitioner submitted an explanation to the said charge-sheet on 30-6-1990. Thereafter, the Enquiry Officer only recorded the statement of the petitioner and found the petitioner guilty of the charges vide Enquiry Officer dated 22-7-1990. A show-cause notice was issued on 23-7-1990 enclosing the report of the Enquiry Officer and petitioner submitted his representation seeking grant of extension of time. But, however, on 30-8-1990, the orders were passed by the Vice-Chairman and Managing Director dismissing him from service. Thereafter, he filed an appeal before the Board of Directors under Rule 19 of Service Rules on 20-9-1990. The appeal was not considered for a considerable time. In the meanwhile, a criminal case was filed against the petitioner before the II Judicial First Class Magistrate, Rajahmundry for the offence u/s 405 IPC. But, however the criminal case was withdrawn on the ground of mistake of law. Therefore, he filed writ petition challenging the order of dismissal dated 30-8-1990 passed against him.

4. A preliminary objection was taken as to the maintainability of the writ petition against Co-operative Society. A learned Single Judge of this Court on the basis of the decision reported in M/s. Baroda Cotton Company, Bombay Vs. The A.P. State Federation of Co-op. Spinning Mills Ltd. and another, referred the matter to Full Bench. A Full Bench of this Court on 12-10-2001 held that the writ petition was not maintainable against a Co-operative Society as it did not fall within the definition of State or instrumentality of State under Article 12 of the Constitution of India. Against the said judgment of the Full Bench, the matter was carried in appeal by the petitioner before the Supreme Court and the Supreme Court in SLP No. 64461 of 2002 set aside the judgment of the Full Bench and remanded the matter for consideration on merits. When the matter was listed before the Full Bench, it was directed that the same should be placed before the learned Single Judge for disposal as to how the case was come up for final disposal before this Court.

5. In the counter filed on behalf of the respondents, it is stated that the petitioner has committed serious misconduct and therefore, an enquiry was conducted giving opportunity to him to defend his case and finally the competent authority dismissed him from service. Under those circumstances, the order of the dismissal cannot be said to be illegal or contrary to Rules.

6. It is also brought to the notice of this Court that the Liquidator has been appointed for Co-operative Spinning Mills Federation and he has been impleaded as a party respondent.

7. As far as the maintainability of the writ petition is concerned, it is no more res integra. When the Full Bench of this Court held that the writ petition was not maintainable against the Society, the matter was carried in appeal before the Supreme Court and the Supreme Court has set aside the Order and remanded the matter for consideration on merits. The following is the order of the Supreme Court:

"Leave granted.

A writ petition filed by the petitioner herein was not entertained by the High Court on a finding that the Andhra Pradesh State Federation of Co-operative Spinning Mills is not a ''State'' within the meaning of Article 12 of the Constitution. There is already a judgment of this Court in A.P. State Federation of Co-operative Spinning Mills Ltd. and Anr. v. P.V. Swaminathan, (CA No. 5037 of 1997) dated 31st January, 2001, wherein it has been held that a writ petition against the Federation would be maintainable. There has also been a Larger Bench decision of this Court in Pradeep Kumar Biswas and Others Vs. Indian Institute of Chemical Biology and Others, , that it is a ''State'' within the meaning of Article 12 of the Constitution. At any rate, a petition under Article 226 of the Constitution is entertainable not only against the state, but also against other authorities. This being the position, we are of the opinion that the High Court committed error in not deciding the merits of the petition and dismissing the petition on the ground of maintainability. We, therefore, set aside the impugned order and remit the matter to the High Court for consideration on merits.

The civil appeal, is accordingly, disposed of.

No costs."

8. Therefore, the only issue that has to be considered is whether the order of dismissal passed by the Respondent No. 1 is legal and valid?

9. As can be seen from the records, the petitioner was appointed on 28-7-1987 as Mill Manager on contract basis for a period of three years with the following terms and conditions:

"1. He shall be on trial for a period of one year on duty from the date of his joining which may be extended at the discretion of the Management at any time for further period or periods not exceeding one year. During the extended period or periods of trial if any, his increment will also be stopped for a like period without cumulative effect.

2. During the period of trial, including the extended period or periods if any, his appointment will be liable for termination at any time without notice or assigning reasons.

3. The contract appointment shall be for a period not exceeding three years commencing from the date of his joining the post.

4. During the contract period, he shall not take up any employment elsewhere without specific consent of the Federation.

5. At the end of the contract period, the Federation and the employee may renew the service contract for a further period of three years at mutually agreeable terms and conditions.

6. The services of the employee are liable for termination at anytime during the

period or periods of the service contract with one month''s notice or salary in lieu thereof.

7. He shall be liable to be transferred to any office/Member Mills of the Federation.

8. He shall be governed by the Rules and Regulations of service, conduct rules, discipline and appeal rules and Standing Orders of the concerned Member Mills/ Federation, which are in force now or as may be framed, amended, altered, or extended from time to time.

9. He shall not engage or interest himself either directly or indirectly in any trade or business or take up any employment with any other company, firm, individual concern or body, while he is in service of the Federation.

10. If, at anytime, it comes to the notice of the Federation that false information has been furnished or that there has been suppression/concealment or evasion of any factual; information, notwithstanding anything contained in Clauses (2), (3) and (6) above, his services will be terminated forthwith without any notice or assigning reasons.

11. No T.A./D.A. shall be paid for joining the service or on terminating thereof.

12. He will be entitled to the benefit of the Contributory Provident Fund as per the Rules of the Federation in force from time to time.

13. The Security Deposit of Rs. 15,000/-furnished by him shall be forfeited to the Federation along with interest accrued thereon in case he leaves the service of the Federation/its Member Mills before completion of a period of three years on duty from the date of joining subject to satisfactory work and performance."

However, while he was continued in service an Enquiry Officer was appointed to cause the enquiry in respect of certain irregularities. Accordingly, one Mr. Chalapathi Rao was appointed as Enquiry Officer. After preliminary inquiry, he issued the following charge-sheet dated 23-7-1990:

"1. He has made purchase of cotton lint from the open market in gross violation of the instructions of the Federation and without approval from the Managing Committee of the Rajahmundry Cooperative Spinning Mills. Moreover, transaction of procurement of cotton was found to be not advantageous to the mills and not in the interest of the mills since it involved excessive expenditure in the procurement of cotton lint while ginning of cotton worked out to be cheaper and when cotton lint was available at lesser rates he has resorted to ginning operations at higher cost.

2. He has resorted to sale of yarn to private parties at rates less than the rates fixed by the Federation for ''APCO'' in violation of the instructions issued by the Federation vide their Circular No. 7078/ 86/C-2, dated 9-1-1987. He has not obtained specific permission of the Federation for sale of Yarn at lesser rates. This has resulted in avoidable loss of Rs. 3,84,880/- to the mills.

3. Due to his failure to make use of the funds available within the mills judiciously keeping in view the priorities the mills had to pay an amount of Rs. 6.81 lakhs towards carrying charges to the C.C.I. from 1988-89. This has resulted an avoidable loss of Rs. 6.81 lakhs to the mills.

4. He has made purchase of stores material worth Rs. 10,000/- at a time and Rs. 1,00,000/- in a year without the approval of the Board of Directors as provided for in Clause No. 12 of Bye-Law No. 28 of the Rajahmundry Co-operative Spinning Mills.

5. He has failed to convene meetings of the Managing Committee of the Mills once in a quarter as required under Bye-Law No. 29 of the mills. As a result the Managing Committee of the mills could not discharge its functions as laid down in the provisions of the Bye-laws.

6. During the year 1988-89, he has sold cotton seed worth Rs. 18.62 lakhs to private parties in the open market without calling for tenders in violation of the instructions issued by the Federation.

7. He has failed to review the utility or otherwise of the Guest House maintained by the mills and allowed to continue it by spending an amount of Rs. 60,618/- during the year 1987-88 to 1989-90.

8. He has away from the mills on tours for unduly long periods resulting in ineffective supervision on working of various departments in the mills and resulting in abnormal expenditure in the maintenance of car and telephone.

9. He has failed to take effective action for the recovery of a huge amount of Rs. 95.45 lakhs recoverable towards credit sales allowed by the mills."

Petitioner submitted the explanation denying the charges. After taking the explanation of the petitioner, the Enquiry Officer recorded the statement of the petitioner and found the petitioner guilty of the charges on the basis of which the order of dismissal was passed by the authorities dated 30-8-1990. It was the principal contention of the learned Counsel for the petitioner that the procedure adopted by the Enquiry Officer is illegal and in gross violation of principles of natural justice as also the rules framed by the Federation. He refers to one incident that the Enquiry Officer gathered the information behind his back and did not record the statements of any witnesses. He also refers to the admissions made in the counter in Para 7 filed by the A.P. Federation, it has been categorically accepted that no statement of the witnesses were recorded and the only deposition of the petitioner was recorded and the following is the deposition:

"With regard to Para 7 it is true that the enquiry was fixed at Rajahmundry and that is was only at the request of the petitioner, the enquiry was scheduled to be conducted at Hyderabad. The Enquiry Officer recorded the sworn statement from the charged officer on 15-7-1990 at Hyderabad on the various allegations in the presence of seven witnesses or whom the Chief Accounts Officer who conducted the preliminary enquiry was one. No depositions or statements were however recorded by the Enquiry Officer from the witnesses present on 16-9-1990 at Hyderabad. The Enquiry Officer having conducted the enquiry with reference to the examination of the connected records and other material at the Mills level concluded that the petitioner was guilty of the allegations."

10. The issue that arises for consideration is whether the enquiry conducted by the Enquiry Officer was legal and valid? and whether it is in violation of the principles of natural justice?

11. As can be seen from the report of the Enquiry Officer, he appears to have visited R.C.S. Mills and examined the records relating to procurement of cotton etc. He also contacted the in-charge Managing Director and gathered necessary information and framed the allegations against the petitioner. After receiving his explanation, the Enquiry Officer recorded the deposition of the petitioner only and held the petitioner guilty of the charges. In such circumstances, can it be said that the enquiry is fair and proper and petitioner was given fair opportunity. We need not go into the allegations and the explanation, but the very preamble of the report of the Enquiry Officer reveals that the procedure as adopted by the Enquiry Officer is in gross violation of the principles of natural justice. When once the charge-sheet has been framed by the Enquiry Officer, even assuming that the Enquiry Officer is competent to frame charges, it is for the department to establish the charge, but it is not open for the Enquiry Officer to hold the petitioner guilty of the charges on the basis of the explanation and the deposition. The following is the extract from the Enquiry Officer''s Report:

"I have been appointed as Enquiry Officer to conduct departmental enquiry (vide proceeding Rc.No. 863/90-A, dated 16-6-1990) enquiry into the work and conduct of Sri S.U.M. Prasad, Mill Manager under suspension Rajahmundry Co-operative Spinning Mills, Rajahmundry. I have visited to the R.C.S. Mills on dated 19-6-1990 and examined the records relating to procurement of cotton, sale of yarn, final audit reports issued by Chief Auditor and certain other records available in the mills. I have also contacted the In-charge Managing Director of the Mills, the Accounts Officer and also examined the Junior Assistants dealing with procurement of cotton and sale of yarn and gathered necessary information for the enquiry. On the basis of the evidence gathered during my visit to the R.C.S. Mills I have framed certain allegations against Sri S.U.M. Prasad and issued a notice along with a statement of allegations and called upon him to offer his explanation for the allegations levelled against him. As the whereabouts of the accused officer are not known, I had to send special messenger to the addresses given by him for the serving of this notice and also to publish the notice in the newspapers also. Shri S.U.M. Prasad has sent his explanations through a messenger to reach me on 2-7-1990 at Hyderabad.

I have issued notice to Shri S.U.M. Prasad and also to several other officers of the Rajahmundry Co-operative Spinning Mills and of the Federation to appear before me on 16-7-1990 at the Rajahmundry Cooperative Spinning Mills, Rajahmundry and to give evidence in the matter. Shri S.U.M. Prasad has requested in his telegram dated 13-7-1990 for holding the enquiry at Hyderabad in view of certain personal difficulties. At his request, the venue of the enquiry has been changed to the Office of the A.P. State Federation of Co-operative Spinning Mills Limited, Hyderabad. Shri S.U.M. Prasad appeared before me at 11.00 a.m. on 16-7-1990 at the office of the A.P. State Federation of Co-operative Spinning Mills Limited, Hyderabad.

I have examined him on oath and taken his deposition on the evidence he proposed to give against the charges levelled against him.

The Enquiry Report along with my findings is given hereunder:

Sri S.U.M. Prasad has stated in his sworn deposition that he worked as Managing Director of the R.C.S. Mills from 31-7-1987 to 24-5-1990 and that he discharged his functions as Chief Executive of the Mills in accordance with the bye-laws of the mills. He has stated that he is aware of the provisions of the bye-laws of the mills."

Thereafter, the Enquiry Officer referring to the allegations and explanation offered and findings were recorded. It is pertinent to note that he did not record the evidence of any departmental witness nor placed any documents in the enquiry. But, however, he referred to various documents and statements of other persons without allowing the petitioner to cross-examine the person whose statement was relied on by him. In respect of the Allegation No. 2, the Enquiry Officer records finding as follows:

"On the strength of the incidence produced before me by the charge-sheeted officer and the witnesses and the information available on record placed before me, it is clear that the charge-sheeted officer had resorted to the sale of yam during 1987-88 to private parties at rates lesser than those fixed by APCO because of tight financial position and slackness in the open market."

It is also noticed from the report, he referred to various documents, which were neither put in the enquiry nor put on to the notice of the petitioner. It is appropriate to extract the discussion of the Enquiry Officer relating to the allegations, which are as follows:

"1. Allegations:

(a) during the year 1987-88, the Managing Dkector of the Mills has purchased 11,480 quintals of cotton lint (40s count) at a cost of 2,71,32,000/- and 654 Qtls. (40s count) of cotton kappas from the growers at a cost of Rs. 14.14 lakhs. But, the Federation has given clear instructions to all the Mills including the R.C.S. Mills (vide Rc.No. 4406/ 88/C-2 dated 19-12-1988 of the Federation) to the effect that cotton should be procured in the form of kappas from the growers only and that cotton in any other form should not be procured and that violation of these instructions would attract disciplinary action by the Federation. During the year 1988-89, the Managing Director of the Mills has purchased 5,981 quintals of cotton lint at a cost of Rs. 1,35,00,000/-and 3,655 bales of cotton kappas from the growers. Again during the year 1989-90 the Managing Dkector of the Mills has purchased 13,379 quintals of cotton lint at a cost of Rs. 3,13,72,000/- as against 3,200 bales of cotton kappas from the growers purchase of cotton lint has been done in sheer violation of the instructions issued by the Federation. Moreover, during the year 1987-88 the per kg cost of cotton ginned by the Mills works out to Rs. 21.55 paise of a cotton lint purchased from the open market, thus, paying Rs. 2.08 per kg in excess and Rs. 21.65 lakhs on 10,82,600 Kgs of cotton lint purchased from the market during 1987-88 and the mills was put to a loss of Rs. 21.65 lakhs on this transactions.

(b) During the year 1988-89 the rate per kg cost ginned at Ganapavaram ginning unit was Rs. 22.75 while the cotton lint purchased from the market was costing only Rs. 2257 - thus an amount of Rs. 0.18 was incurred in excess per kg of cotton resulting in a loss of Rs. 65,790/- on the transaction of purchase and ginning of 3,655.00 kgs of cotton.

Explanation offered. The mill is not able to purchase kappas on each and carry basis because of adverse financial position. In the interest of the mills, because of the fact that the mill has been dealing in the purchase of cotton and kappas since a long time and established reputation in the area, some of ryots (Growers) of the area came forward to supply lint on credit basis allowing 60 to 70 days credit and therefore, lint was purchased at Ginning Unit and the stock forwarded to the mills. It is only to continue the activity of the mills without a grinding halt on account of financial disability, this was adopted. When I took over the mills in/ August, 1987 there was no cotton and the then Managing Director of the Federation has deputed the Administrative Officer and Manager (Commercial) to Rajahmundry to hold negotiations with the growers for purchase of lint bales. When this system was thought to be advantageous to the Mills, the issue was placed before Federation Chairman for effective purchase in the above manner and he orally agreed and asked the Mill Manager to go ahead with the system as it is beneficial to the Mills without the need to borrow funds from the outside. The quantity of cotton purchased was very good and the yarn produced was acceptable to all the weaver societies. There were no complaints on the yarn produced and the yarn was the best amongst all the Cooperative Spinning Mills and stood the competition of private sector mills. The cotton was purchased only to bring the mill out of financial problems and save from closure.

Findings of the Enquiry Officer on allegation-I:

He has stated that purchase of cotton is one of the basic activities of the mills and that he used to purchase cotton in the form of kappas from growers at rates on par with market rates. His attention was drawn to the instructions issued by the Federation (vide Rc.No. 4406/88/C2 dated 19-12-1988) to the effect that cotton should be procured in the form of kappas from the growers only and that cotton in any other form should not be procured, and that violation of these instructions would attract disciplinary action by the Federation. In spite of these instructions it is found that Sri S.U.M. Prasad has resorted to purchase of cotton lint. In his statement, Shri S.U.M. Prasad has stated that since there was no stock of cotton with the mills he had to purchase lint from the grower as per recommendations of the committee consisting of Manager (Commercial) and Administrative Officer of the Federation. Purchase of cotton lint went on from August, 1987 to February, 1988. At the request of the mills, the Federation has granted permission to the R.C.S. Mills during January, 1988 to take ginning units on lease and to take up ginning of cotton kappas purchased from the growers. The ginning activity could not be carried on for long due to paucity of funds and he has sent proposals in his letter dated 11-4-1988 to the Federation indicating the need for outside purchase of cotton lint on credit. He has stated that the Federation has granted permission during the year 1988 to purchase cotton lint. A perusal of the Letter No.C2/4980/87, dated 25-5-1988 of the Federation reveals that the R.C.S. Mills was permitted to buy cotton lint from the growers during extreme situations and, that too, in very limited quantities. It is also mentioned in the said letter that the names of the parties, addresses should be furnished to the Federation along with the variety, quantity of cotton purchased from them in the enclosed proforma. It was also clearly mentioned in the said letter that under no circumstances cotton should be purchased from the traders and that permission is granted to the mills for procurement of lint cotton keeping in view the extreme cotton situation and as and when the purchases are made, permission of the Managing Director, Spinfed should be obtained. Contrary to the instructions issued in the said letter Shri S.U.M. Prasad while working as Managing Director of the R.C.S. Mills has passed huge quantities of cotton lint from time to time during the year 1988-89, 1989-90 without specific permission of Managing Director of the Federation. He has also failed to send the information in the proforma prescribed in the above said letter. Shri S.U.M. Prasad has stated that he has obtained oral permission from the then Chairman of the Federation Shri K. Narayanaiah towards possession of cotton lint during the year 1988-89, 1989-90. As to the question as to why he did not obtain written Orders from the Chairman in this regard, he has stated that because it was a common solution given by the Chairman to this problem raised by several other co-operative mills also, he did not insist on written Orders. He did not inform this position to the M.D. of the Federation as he presumed that the Chairman would have discussed the matter with the Managing Director of the Federation. He has stated that the periodical reports of cotton were sent to the Federation regularly, but it is found that this reports did not indicate clearly the quantity of cotton lint purchased. He has stated that the entire purchase of cotton lint was only from growers either at pressing units, ginning units, private godowns or at houses of the growers where the stocks of cotton lint was stored by the growers. On questioning, he has stated that it was not exactly possible (at the point of purchase at pressing/ ginning units or private godowns) to ascertain whether the entire quantity of lint purchased was from actually cotton growers. Unless a thorough probe is made, it will not be possible to know the lint was purchased only from growers or not. The transactions relating to purchase of cotton for the period from May, 1988 to September, 1989 were placed, at a time, before the Managing Committee of the mills held on 15-11-1989 but the subject was deferred by the Committee. Subsequently also the approval of the Managing Committee was not obtained.

As regards the poor realization of lint, Shri S.U.M. Prasad has stated that there is no established standard for lint realization and that the standard of 34% shown by the Chief Accounts Officer of the Federation in his preliminary inspection report is not having any basis. The Manager (Commercial) and the General Manager (Tech) of the Federation, on questioning, have stated that there is no established standard on the realization of lint from kappas and that it varies from 32% to 35% depending on moisture content, quality and variety of kappas and the place of cultivation. The Chief Accounts Officer of the Federation has stated that he has adopted the standard/norm of 34%, lint realization basing on the previous performance of the unit and on the information obtained orally from the A.P. Cotton Association, Shri S.U.M. Prasad has stated that the realization of the lint obtained by the R.C.S. Mills in all the 3 years is higher than the near by Cooperative Spinning Mills i.e., the Sathavahana Cotton Growers Co-operative Spinning Mills Limited, Sattenapalli.

On the strength of the evidence gathered from the charge-sheeted officer and the witnesses present and the information available on records produced before me it is evident that the R.C.S. Mills was permitted to buy lint from the growers from August, 1987 to January, 1988 only and that purchase of lint from February, 1988 to May, 1990 was done in violation of the instructions issued by the Federation (except the cotton lint allotted by the Federation and purchased from various institutions during this period). Moreover, Shri S.U.M, Prasad has resorted to the purchase of cotton lint at a higher cost when per kg cost of ginning worked out to be less and he chose ginning operation at a higher cost when cotton lint costed less per kg. (The cost of lint was Rs. 23.63 paise from open market when per kg cost of cotton ginned by the mills from its own unit worked out to Rs. 21.55 paise i.e., paying Rs. 2.08 per kg in excess in the year 1987-88. During the year 1988-89 also, while the cotton lint purchased from the open market cost at only Rs. 22.57 paise the cost of ginning in its unit worked out to Rs. 22.75 paise). It is evident that Shri S.U.M. Prasad has not made any sincere attempt to work out the economics of the transactions relating to procurement of cotton by direct purchase of lint and by conversion of cotton kappas into lint and to avoid incurring the avoidable excessive expenditure in this regard. He has not brought this situation specifically to the notice of the Federation at any time. Neither the deviation from the procedure approved by the Federation in procurement of lint was to the advantage of the mills. Though he has given certain compelling reasons for the purchase of lint in violation of the instructions of the Federation and without approval of the Managing Committee. I am of the firm opinion that the transaction was not in the best interests of the mills. Hence, the charge is held proved.

Allegation (2) : The Managing Director of R.C.S. Mills has resorted to sale of yarn to dealers at lesser rates than the prevailing market rates and the rates fixed by the Federation on 1-3-1989 yarn was sold to APCO at Rs. 208/- while the rate fixed by the Federation Rs. 221/- on 27-3-1989, 50 bales of yarn was sold to M/s. Subramanyam and Company at Rs. 210/-whereas the prevailing market rate range between Rs. 215/- and Rs. 228/-. Huge quantity of yarn was sold to dealers at Rs. 202/- on 2-7-1988 as against the prevailing market rate of Rs. 213/-. The transaction of selling yarn at rates lower than the prevailing market rates has resulted in heavy losses to the mills.

Explanation offered : The allegation is not based on facts. Yarn was sold to then prevailing market rates, which could be examined from the records of the mills. A number of times the yarn was sold at prices higher than the prices fixed by the Federation when some of the new mills were requesting for permission to sell at lower rates. The APCO rate is fixed by the Federation and accordingly I have despatched the yarn. The Y.P.C. rate during the period was Rs. 210/- and I sold at Rs. 210/- to M/s Subramanyam. The rate is Rs. 2/- lesser than the APCO rate and not Rs. 221/- as stated in the memo.

Findings of the Enquiry Officer. On the strength of the incidence produced before me by the charge-sheeted officer and the witnesses and the information available on record placed before me, it is clear that the charge-sheeted officer had resorted to the sale of yarn during 1987-88 to private parties at rates lesser than those fixed by APCO because of tight financial position and slackness in the open market. He has brought this to the notice of the Federation from time to time - by talking to Executive Director of the Federation over phone and giving telegrams and sending reports. The Federation has ratified the action of the Managing Director, R.C.S. Mills on 2 occasions i.e., on 2-7-1988 and 25-8-1988 for sale of yarn at less than APCO rates and on the other occasions during 1988 it was reviewed by the Federation and certain observations were made - though such action of the Managing Director was neither clearly objected to nor positively ratified by the Federation. On two occasions i.e. during September, 1987 and October, 87 though the M.D. of R.C.S. Mills has written to the Federation quoting his telephonic talk with Executive Director, the Federation has not confirmed the same. Sri S.U.M. Prasad could not produce any evidence of writing to the Federation for their permission or for ratification. During September, 88 (on 22-9-1988) he sold 128 bales of 40''s yarn at Rs. 190/- to private parties as against APCO rate of Rs. 201/-resulting in a loss of Rs. 56,320/-. Again on 3-10-1988 he sold 338 bales of 40'' yarn to private parties against the APCO rate of Rs. 193/- thus resulting in a loss of Rs. 40,560/-. He should have obtained specific permission from the Federation in this behalf. I am of the opinion that Sri S.U.M. Prasad can be held guilty of this charge to the intent that he sold yarn to private parties without permission or approval of Federation during September, 87 (resulting in a loss of Rs. 1,20,000/-) October, 87 (resulting in a loss of Rs. 1,68,000/-), September, 88 (resulting in a loss of Rs. 56,320/-) and October, 88 (resulting in a loss of Rs. 40,560/-).

Allegation (3) : An amount of Rs. 6.81 lakhs was paid as carrying charges to

Cotton Corporation of India, Guntur and Waranal during the year 1988-89 towards the receipt of 3,700 cotton bales valued at Rs. 1.47 crores. While the mill has adequate funds at its command during that year there was no need for incurring a huge amount of expenditure towards carrying charges. Had the mill taken steps for lifting of the stocks in time as per schedule the payment of carrying charges to the tune of Rs. 6.81 lakhs would have been avoided. Thus the mills was put to a loss of Rs. 6.81 lakhs in this regard.

Explanation offered : Due to non-availability of the funds in time, we could not lift the stocks as per schedule. However, we have paid less carrying charges and interest to Cotton Corporation of India on par with other Co-operative Spinning Mills. There was no funds available, with the mills and even the APCO yarn sale proceeds were directly diverted to C.C.I. for lifting cotton.

Finding of the Enquiry Officer : It is gathered during the enquiry (from the charge sheeted officer and from the records of the mills/Federation produced before) that the R.C.S. Mills was enjoying a OCC limit of R.40.00 lakhs from Andhra Bank during the year 1988-89 towards general business and that the mills had drawn the entire limit for general operations. In addition to the OCC, the mills enjoyed a KCC limit of 25.00 lakhs and Bills Discounting facility of Rs. 30.00 lakhs from the Andhra Bank. The C.C.I. also allowed a revolving credit of Rs. 10 to 15 lakhs for the mills to lift cotton allotted by the Federation. The mills could have lifted cotton from the C.C.I. to the extent of revolving credit, kept it in the K.C.C. account of the Andhra Bank and rotated the funds so as to avoid payment of carrying charges to the C.C.I. No serious efforts have been made by the charge-sheeted officer in this direction. Hence, the charge is held proved.

Allegation 4 : The Managing Director of the Mills has made purchase of stores material in excess of the limit of Rs. 10,000/-per month and Rs. 1,00,000/- in a year, in violation of Clause XII of Bye-law No. 28 of the mills and in violation of instructions of the Federation.

Explanation offered : The Bye-law was adopted more than a decade back The activities of the mill have been expanded significantly after adoption of the above bye-law improving of the business to a sizable extent. There was a necessity at times to purchase stores material in excess of the prescribed limit because of directions need and unavoidable circumstances, the main aim of which was to improve the business statistics of the working of the mills go to prove amply the significant improvement effected besides recouping the earlier loss. The violation was in no way harming factor to the mill as it has no adverse impact.

Findings of the Enquiry Officer: The argument that the Bye-laws are dated and purchase of stores was necessitated to improve the business of the mills and that it was in no way harmful to the mills is not maintainable. The Managing Director is expected to run the mills according to the bye-laws in force. The Clause XII of the laws provided that whenever the Managing Director wanted to purchase stores material over and above the limits prescribed, they should obtain approval of the Board of Directors. Shri S.U.M. Prasad, while working as Managing Dkector of the Mills, had purchased stores material worth Rs. 21.57 lakhs during the years 1987-88 and Rs. 18.42 lakhs during the year 1988-89 without approval of the Board of Directors.

Moreover, as against the purchase of stores worth Rs. 21.57 lakhs, the actual consumption of stores was only Rs. 11.53 lakhs during 1987-88 while the consumption of stores material was worth Rs. 8.26 lakhs during the year 1988-89 against the actual purchase of stores worth Rs. 18.42 lakhs. Thus, the information record shows that the stores material was purchased during the year 1987-88 and 1988-89 for in excess of the actual requirement and, that too without approval of the Board of Directors in violation of provisions of Clause XII of Bye-laws No. 28 of the mills.

Allegation 5 : As a result of ineffective supervision by the Managing Director, the analysis of the conversion of cotton into yarn has shown that (a) invisible loss of cotton went upto 1.9% as against the standard of 0.5% and for the 3 years 1987-88-89 the invisible loss of cotton calculated is kgs. 91,863 confirming that excess than norm is kg. 58,900 and at Rs. 24/- per kg. of raw cotton, the loss is around Rs. 14.13 lakhs., (b) the lint realization was- only 31.92% during 1989-90 as against the standard of 34%.

Explanation offered : (1) It is not correct to say that the invisible loss of the cotton went upto 1.9%. If a thorough checking of the accounts of the mill by the competent authorities is made the fact will come to light

(b) There is no standards for lint realization. It depends upon various factors like the fertility of land, seasonal rain, moisture and other various factors. However, during the year 1987-88 and 1988-89, I have achieved better realization on par with other Co-operative Spinning Mills situated near the place. I achieved good lint realization.

Findings of the Enquiry Officer: On the strength of evidence adduced before me and the information available on record, it is noticed that the invisible loss worked out to about 1.16%. The SITRA norms are placed before me for perusal according to which 0.5% is good, 1.20% is average. The G.M. (I) of the Federation has stated the permissible percentage of invisible loss can vary from 0.5% to 1.20% in normal conditions depending on the quality of cotton and condition of the machinery. I am therefore, of the opinion that Sri S. U.M. Prasad cannot be held guilty of the charge.

Allegation 6 : During the year 1988-89, the Managing Director of the mills has purchased plant and machinery worth Rs. 2.25 lakhs without obtaining administrative sanction from the competent authority (Clause XIII of Bye-law No. 28 of the mills).

Explanation offered : It is not a fact that purchase of plant and machinery worth Rs. 2.25 lakhs was made without obtaining administrative sanction. In fact the machinery purchased was only to the tune of Rs. 1.5 lakhs for which administrative sanction was already obtained from the Federation and the machinery in the mill store was made use of intelligently. Hence, this allegation is far from truth.

Findings of the Enquiry Officer: The contention of Sri S.U.M. Prasad that the plant and machinery worth only Rs. 1.50 lakhs was purchased during the year 1988-89 is not correct. The final audit report of the mills for the year 1988-89 shows that during the year the Mill Managing Dkector has purchased plant and machinery worth Rs. 2.25 lakhs without obtaining administrative sanction of the competent authority. According to the provisions of Clause Nos. XII and XIII of Bye-law No. 28 of the mills, purchase of plant and machinery worth above Rs. 10,000/- at a time and Rs. 1,00,000/- in a year, should be done after obtaining approval of the Board of Directors and the Federation. It is therefore, proved that S.U.M. Prasad has violated the provisions of Bye-law No. 28 of the mills in the purchase of plant and machinery.

Allegation 7 : During the year 1988-89, the Managing Director of the mills had convened only two Board meetings, while he is required to convene a Board meeting atleast one in every quarter as per Bye-law No. 29 of the mills. Similarly, Board meetings were not held once in a quarter during the years 1987-88 and 1989-90 also in violation of the statutory provisions in the Bye-laws of the mills.

Explanation offered: There are two important reasons for not convening periodically the Board meetings. Firstly, the Chairman of the Mills is a sitting M.L.A., and District President of the party. Secondly, the Chairman was not feeling well for long time and was admitted in Nizams Hospital for treatment. Many of the members of the Board including Chairman are important dignitaries with various preoccupations and residing outside the area of the mill. Their presence could not be secured for convening more than two meetings during the period. I was fully engrossed with the improvement of the working of the mill and in the above extraordinary circumstances two meetings could only be held. However, no issue was held up on account of violation of the Bye-law alleged in the Memo.

Findings of the Enquiry Officer: The statement of Sri S.U.M. Prasad is not true. According to provisions of Bye-law No. 29 of the mills the Managing Director of the mills is required to convene a Board Meeting atleast once in every three months and as frequently as may be necessary. In pursuance of this Bye-law, the Managing Director is required to circulate the matter to the Chairman of the Mills to obtain a date for convening of the Board meeting. Sri S.U.M. Prasad has not produced any evidence to show that he has circulated a note to the Chairman for fixation of the Board meeting and to show that Chairman given an endorsement to the effect that it was not convenient for him to hold meetings, as suggested by the Managing Director. According to provisions of Bye-law No. 10 the Management of the mills vest in the Board of Directors and as per Bye-law No.

17 the Board of Directors shall meet once in a quarter or oftener to conduct the affairs of the mills. Provisions of Bye-law No. 20 of the mills show that several important matters are left to be discussed and decided by the Board of Directors in the day to day management of the mills. It is very essential to convene the Board meetings as laid down in the Bye-law of the mills. It is proved that Sri S.U.M. Prasad had failed in his basic duty to convene meetings of the Board of Directors once in 3 months during the years 1987-88 and 1989-90.

Allegation No. 8 : During the year 1988-89, the Managing Director of the mills has sold cotton seed worth Rs. 18.62 lakhs to private parties in open market without calling for tenders in violation of the instructions of the Federation.

Explanation offered : Quotations were ensured for the sale of cotton seed and there was no violation in the matter.

Findings of the Enquiry Officer: The statement of Sri S.U.M. Prasad to the fact that the quotations were ensured for the sale of cotton seed is not true. According to the final Audit Report for the year 1988-89 cotton seed worth Rs. 18.62 lakhs was sold to private parties, without calling for tenders. The Federation has issued instructions to all the mills from time to time that the mills should call for quotations or tenders before they finalise sale of any material belonging to the mills. Sri S.U.M. Prasad has not produced any documentary evidence to show that he has called for tenders/quotations as per prescribed procedure in this regard.

Allegation No. 9 : During the year 1988-89 huge amount of interest was paid to Bank by the mills towards belated release of stores material.

Explanation offered : Because of nonavailability of funds the store material could not be released in time. The documents of stores material were released from the Bank periodically on receipt of yarn sale proceeds. There were no instances where the mills have not released the store material when funds were available.

Findings of the Enquiry Officer: The contention of Sri S.U.M. Prasad that for want of funds the stores material could not be released in time, is not true. The mills was enjoying comfortable credit limits from Andhra Bank. Had the funds been judiciously used keeping in view the priorities, payment of interest to banks towards belated release of stores material could have been avoided. An amount of Rs. 2.91 lakhs is shown in the final Audit Report for the year 1988-89 as have been paid to the Banks as charges and a major part of this amount could have been saved, had the stores material been released by the mills in time. Hence, the allegations is proved.

Allegation No. 10 : The Managing Director of the Mills has spent an amount of Rs. 60,618/- during the years 1987-88 and 1990 towards maintenance of Guest House situated 31/2 kms away from the mills and engaged one attender at a monthly salary of Rs. 1,187/- to be Incharge of Guest House. The necessary and utility of the Guest House is not established and the mills is put to loss to that extent.

Explanation offered : The Guest House was being maintained by the mills with an attender for the last many years. I have not taken the guest house but continued to maintain it. The then Chairman of the Mills advised me to upkeep the buildings and the same was done. The amount of Rs. 60,618/- referred relates to rent, current and necessary amenities which any office has to agree when a guest house is maintained by any institution. I have recently received instructions to close the guest house and accordingly gave notice to the landlady for taking back possession.

Findings of the Enquiry Officer : Sri S.U.M. Prasad has stated that he has not taken the guest house but he has only continue to maintain it. An amount of Rs. 60,618/- has been spent by Sri S.U.M. Prasad during the years 1987-88, 1988-89 and 1989-90 towards maintenance of guesthouse. The expenditure is found to be heavy towards maintenance of guest house. He should have reviewed the utility or otherwise of the guest house and taken effective steps to either close the guest house or minimize the expenditure in this regard. He has failed to review the position at any time during the 3 years period he worked as Managing Director of the Mills and allowed the expenditure to go on. Hence, the allegation is proved.

Allegation No. 11: The Managing Director of the Mills used to be away on tours for unduly long periods (ranging from 20 to 25 days in a month) during his tenure from 1987 to May, 1990. As a result, he failed to have effective supervision over the working of the mills. This resulted in abnormal expenditure (that could be avoided) on the maintenance of telephone and car used by the Managing Director as follows:

used by the Managing Director as follows: Year Monthly average Guests Amount spent on Phone Car Rs. Rs. 1987-88 11,000 4,600 4,400 1988-89 10,800 12,150 5,100 1989-90 12,900 8,800 1,675 Explanation offered : 1 was called on and often by the Federation Authorities to attend the office personally and on phone and the expenditure had to be incurred for the upkeep of the dignity of the institution. My utilization of telephone and vehicle are purely for official purpose to keep myself afresh of the cotton and yarn markets to procure quality cotton and sell the finished product at higher value. The telephone and vehicle were never utilized for personal purpose, I have paid the bills and have taken receipts. I totally deny the allegation that excess expenditure was made by me towards telephone, vehicle etc.

Findings of the Enquiry Officer : The argument of Sri S.U.M. Prasad that he was called on often by the Federation Authorities to attend the finding office personally is not supported by any documentary evidence. His absence from the headquarters on tour for unduly long periods ranging from 22 to 25 days in a month has resulted in ineffective supervision over the working of the mills and in abnormal expenditure on the maintenance of office car and telephone. The average monthly expenditure on a telephone has exceeds Rs. 11,000/- during the years 1987-88, 1988-89 and 1989-90 while the monthly average expenditure on the office car was Rs. 4,600/- in 1987-88 Rs. 12,550/- during 1988-89 and Rs. 8,000/-in the year 1989-90. It is quiet abnormal. Hence, the allegation is proved.

Allegation No. 12 : An amount of Rs. 95.45 lakhs was found to be recoverable as on 31-3-1990 towards credit sale of yarn. No effective steps have been taken by the Managing Director of the Mills during the years 1987-88, 1988-89 and 1989-90 for recovery of these amounts.

Explanation offered : No credit sale of yarn was made by me. The old dues may pertain to yarn sales made by my predecessors a decade back. Yet, it was being perused periodically by issue of legal notices etc.

Findings of the Enquiry Officer: The statement of Sri S.U.M. Prasad that action was perused periodically by issue of notices etc. for recovery of old dues towards credit sale of yarn is not correct. During the years 1987-88 to 1989-90 no amount was recovered towards credit sale of yarn to various Weavers Co-operative Societies. Mere issue of legal notices by the Managing Director of the mills would not give tangible results. Hence, it is proved that Sri S.U.M. Prasad has failed to take any effective steps and to recover any amount towards the credit sale of yarn during the 3 years period he worked as Managing Director.

Allegation No. 13 : The mills had on its rolls 911 workers (including 275 repatriates) and the average attendance in the mills is found to be 568. This has resulted in the failure of the mills to achieve optimum production (Clause XV of Bye-law No. 28.)

Explanation offered: The production achieved by the mills is the highest amongst all Cooperative Spinning Mills as the capacity utilization, production to gms/ spindle shift, yarn realization, percentage etc., are the highest. The mills during my tenure achieved SITRA standard of production and capacity utilization and the same was recorded in the periodical reviews.

Findings of the Enquiry Officer : The argument of Sri S.U.M. Prasad that the mills achieved SITRA standard of production during his tenure has no relevance to the fact that the labour force was not used to ensure optimum utilization as was evident from the fact that the average attendance of workers in the mills was only 568 as against the total strength of 911. To this extent, it is evident that Sri S.U.M. Prasad has failed to exercise proper control in the management of the mills as laid down in Clause 15 of the Bye-law No. 28.

Conclusion : In the end I come to the firm conclusion that Sri S.U.M. Prasad, Mill Manager (under suspension) of the R.C.S. Mills has failed to discharge his duties to the best advantage of the R.C.S. Mills during the years 1987-88 to 1989-90. His action on the procurement of cotton incurring excessive expenditure and in the sale of yam at rates lesser than the rates prescribed by the Federation is found to be highhanded, irresponsible and amounted to breach of trust resulting in huge loss to the mills. His failure to furnish periodical reports and information on the purchase of cotton lint, from time to time to the Federation amounted to wilful suppression of essential information to the Federation and his failure to (a) convene meetings of Board of Directors as per Bye-law for obtaining their approval for the business transactions of the mills (b) purchase of stores material and plant and machinery without sanction from competent authority and disposal of cotton seed without calling for tenders amounts to gross negligence of duties cast on him under Bye-law of the Mills."

12. Under Rule 18 of Service Rules, clear procedure has been prescribed which reads thus:

"18. Procedure for punishment:--(1) For punishment under Clause 19(1)(a), the Managing Director may take such action as may be necessary after giving an opportunity to the employee concerned to explain.

(2) Before disciplinary action amounting to stoppage of increments or promotion or demotion to lower grade or discharge or dismissal is taken under 17(1)(b) to (e) action on the following lines shall be taken.

(a) The Managing Director or any other person authorized shall frame a charge-sheet.

(b) On receipt of the explanation of the employee or on the expiry of the time limit whichever is earlier or under special circumstances at the time of issuing the charge-sheet the appointing authority may enquire into the matter himself or where necessary shall appoint an Enquiry Officer.

(c) On receipt of the findings and/or recommendations of the Enquiry Officer, the appointing authority shall decide the punishment to be awarded. In awarding the punishment, the appointing authority shall take into account the gravity of this misconduct, the previous record if any of the employee and any other extenuating or aggravating circumstances that may exist. After the Managing Director has arrived at a provisional conclusion in regard to the penalty to be imposed, the person charged shall be supplied with a copy of the report of the Enquiry Officer and be given a reasonable opportunity of making representation within a reasonable time not ordinarily exceeding one month on the penalty proposed. Any representation made in this behalf by the person charged shall be duly taken into consideration by the Managing Director before the final orders are passed. The decision regarding the punishment shall be communicated to the employee in writing.

(d) The Managing Director shall be authorized to put off duty or suspend or divert the employee to any other section for a reasonable period to enable enquiry to be conducted and during the enquiry, he shall be paid his full pay and allowances for the period he was put off duty or suspended.

(e) An employee cannot insist as a matter of right to be represented by a Lawyer in disciplinary proceedings against him. When he makes a request for engaging a Counsel in any such disciplinary proceedings, the Enquiry Officer should take into account all the circumstances and decide whether the denial of professional help will prejudice the accused employee in his defence and if so, the Enquiry Officer must allow him to be represented by a Counsel."

13. We need not consider the way in which the Enquiry Officer has conducted himself. But, suffice, it to say that the procedure adopted by the Enquiry Officer is not only contrary to the Service Rules, but in gross violation of the principles of natural justice. The Enquiry Officer has transgressed all cannons of fair enquiry. Firstly, we find that he is not competent to frame charges and he can only conduct enquiry when authorized by the Managing Director. Even otherwise, when charges were framed, it is for the department to adduce evidence both oral and documents to establish the charge. But, in this case Enquiry Officer virtually acted as a Prosecutor and the Judge. Such an enquiry cannot be upheld under any circumstances.

14. Thus considering the material on record, I find that the enquiry is completely defective and not sustainable in law. The bare fundamental principles of conducting enquiry are lacking in this case. Under those circumstances, I find that the order of the dismissal passed by the authorities is wholly illegal and not sustainable in law. Accordingly it is set aside.

15. It is sought to be contended by the management that the petitioner was only a contract employee and he cannot claim any right and no notice or enquiry is necessary to terminate the services. This contention cannot be accepted, when once the charges were framed and he was dismissed from service on the ground that the charges were proved. In fact, the Service Rules are made applicable to the petitioner and he was placed under dismissal from service under Rule 17(e) of the Service Rules. Under those circumstances, it cannot be said that the orders of dismissal cannot be challenged by him.

16. The issue now that arises for consideration is whether the petitioner is entitled for reinstatement?

17. It is seen that the petitioner approached this Court as early as in 1993 and the matter is pending in the Court on the issue of maintainability of writ petition. The scenario is now changed that the R.C.S. Mills was privatized and the Co-operative Society Federation is under liquidation and the Liquidator was appointed and in fact the appointing authority is the Federation of the Co-operative Spinning Mills. The petitioner was posted as Mill Manager of Rajahmundry Co-operative Spinning Mills by the Federation and the said finding is under liquidation. It is also stated that the person who worked in R.C.S. Mills at the time of privatisation were given voluntary retirement benefits. The petitioner was not an employee of R.C.S. Mills, he was only posted at R.C.S. Mills having been appointed by the Federation. Inasmuch as, the Liquidator has been appointed, no useful purpose will be served by directing reinstatement and back

wages, which is ordinarily granted and on the other hand, the petitioner also attained the age of superannuation. He was kept under suspension in 1990 and had he not been dismissed from service, he would have been continued in service for a period of nearly 12 years. It is also on record that he was drawing a sum of Rs. 3,200/- per month at the time of his appointment. The scale in which he was employed initially was revised. Under those circumstances, keeping in view, the situation that the reinstatement is neither possible nor feasible, this Court feels that appropriate compensation would meet the ends of justice. Accordingly, this Court finds a sum of Rs. 3,50,000/-(Rupees three lakhs and fifty thousands only) towards the compensation in lieu of reinstatement is just and reasonable in view of the circumstances of the case. The 1st respondent-A.P. State Federation of the Co-operative Spinning Mills represented by its Liquidator is directed to pay the compensation.

18. No costs.

