
(2008) 11 AP CK 0061

In the Andhra Pradesh High Court

Case No : Writ Petition No. 23585 of 2000

V.V. Satyanarayana

APPELLANT

Vs

Chebrolu Primary Agrl. Co-op. Society Ltd. and Others

RESPONDENT

Date of Decision : 10-11-2008

Acts Referred:

Citation : (2009) 2 ALD 6 : (2009) 5 ALT 92 : (2008) 4 APLJ 139

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : Srinivas Polavarapu, for the Appellant; S.A. Razzack and Asst. Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This writ petition is filed for a writ of certiorari to quash order, dated 14-03-2000 passed by respondent No. 3 in O.A. No. 14 of 1994, by which, it confirmed order, dated 31-01-1994 passed by respondent No. 2.

2. Heard Sri Srinivas Polavarapu, learned Counsel for the petitioner, the learned Assistant Government Pleader for Co-operation for respondent No. 2 and Sri S.A. Razzack, learned Counsel for respondent No. 3.

3. At the relevant time, the petitioner worked as Secretary of respondent No. 1 society. An inspection was conducted into the affairs of the said society and Inspection report, dated 24-12-1992 was submitted by the Inspecting Officer to respondent No. 2. The Inspecting Officer found several irregularities having been committed by the petitioner. Respondent No. 2 issued a show cause notice on 24-08-1993 to the petitioner calling upon him to submit his explanation. In response thereto, the petitioner submitted his explanation on 21-10-1993, wherein he denied all the allegations made against him. After purporting to consider the said explanation, respondent No. 2 passed order, dated 31-01-1994 u/s 60 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short "the

Act"), wherein the petitioner was directed to pay a sum of Rs. 1,63,141.84 ps with interest @ 18% per annum. Feeling aggrieved by the said order, the petitioner filed O.A. No. 14 of 1994 before respondent No. 3, who by his order, dated 14-03-2000, dismissed the same. Questioning the said two orders, the petitioner filed the present writ petition.

4. At the hearing, Sri Srinivas Polavarapu raised many contentions touching the merits of the case. Having carefully considered the entire case, I am of the view that it is not necessary for this Court to adjudicate on the contentions raised by the learned Counsel for the petitioner on merits. One of the contentions raised by the learned Counsel is that respondent No. 2 did not hold independent enquiry before passing the impugned surcharge order and that he had merely referred to and relied upon the findings of the Inspecting Officer rendered during the course of inspection conducted by him u/s 52 of the Act.

5. Sri S.A. Razzack, learned Counsel for respondent No. 1, however, controverted the said contention and submitted that respondent No. 2 having held enquiry, passed the impugned surcharge order. He relied on paragraph 7 of the counter-affidavit filed on behalf of respondent No. 1 in support of his contention.

6. In order to resolve this controversy, this Court on 22-09-2008 directed the learned Assistant Government Pleader to produce record. Today, at the hearing, the learned Assistant Government Pleader produced the enquiry report submitted by the Inspecting Officer to respondent No. 2. No other record is produced including the record pertaining to surcharge proceedings initiated by respondent No. 2. No other record is produced including the record pertaining to surcharge proceedings initiated by respondent No. 2. In the absence of any material to show that respondent No. 2 held an independent enquiry. I have no option other than accepting the contention of the learned Counsel for the petitioner that respondent No. 2 has not held independent enquiry.

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

8. I have perused the enquiry report, which is huge and voluminous.

9. It is clear from the Inspection Report that the Inspection Officer recorded the statements of several persons on the basis of which he found that the petitioner committed several irregularities. While conducting proceedings u/s 60 of the Act, it is the obligation of respondent No. 2 to give an opportunity to the petitioner to rebut the statements made by several witnesses in the inspection, by permitting him to cross-examine such witnesses. As respondent No. 2 failed to follow this procedure, the order passed by him and confirmed by respondent No. 3 suffers from serious procedural Illegality.

10. For the above-mentioned reasons, the writ petition is allowed. The impugned orders are quashed. Respondent No. 2 is directed to hold a fresh enquiry, complete the same and pass an order, after giving the petitioner an opportunity to cross-examine the witnesses, whose statements were recorded by the Inspecting Officer, within a period of three (3) months from the date of receipt of a copy of this order. It is made clear that the amount deposited by the petitioner in pursuance of the interim order shall remain with respondent No. 2 till the enquiry is, completed.