



**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI
(Special Original Jurisdiction)**

[3328]

MONDAY ,THE FIFTH DAY OF MAY
TWO THOUSAND AND TWENTY FIVE

PRESENT

**THE HONOURABLE SRI JUSTICE GANNAMANENI RAMAKRISHNA
PRASAD**

WRIT PETITION NO: 25007/2006

Between:

- 1.S.S. KARRI & ANOTHER, RETIRED EMPLOYEE R/O RING ROAD,
VIZIANAGARAM,. VIZIANAGARAM DISTRICT.
- 2.K.S.SARMA S/O S.S. KARRI, BUSINESS R/O RING ROAD,
VIZIANAGARAM,. VIZIANAGARAM DISTRICT.

...PETITIONER(S)

AND

- 1.DEPUTY REGISTRAR 2 OTHERS, VIZIANAGARAM DISTRICT.
- 2.EAST COAST RAILWAY EMPLOYEES CONSUMER COOPERATIVE
STORES, LIMITED, VIZIANAGARAM, REP BY SUB-DIVISIONAL CO-
OPERATIVE OFFICER-CUM-LIQUIDATOR, VIZIANAGARAM,
VIZIANAGARAM DISTRICT.

...RESPONDENT(S):

Counsel for the Petitioner(S):

- 1.VENKAT CHALLA

Counsel for the Respondent(S):

- 1.GP FOR COOPERATION

The Court made the following ORAL ORDER:

Heard Sri P. Ravi Kanth, learned Counsel appearing on behalf of Sri Venkat Challa, learned Counsel for the Writ Petitioners and Sri A. Krishna Kishore, learned Assistant Government Pleader for Co-operation.

2. The present Writ Petition is filed seeking following relief :

“.....to issue a Writ of Mandamus, or any other appropriate Writ, order or direction, declaring the action of the 1st respondent in issuing the Notice U/Sec.60(1) of the A.P.C.S. Act, in Rc.No.2/3125/2002-C, dt 16.10.2006 as illegal, arbitrary and without jurisdiction and for a consequential order directing the respondents to drop all further proceedings pursuant to the above Notice and to pass such other order or orders as may deem fit and proper in the circumstances of the case”

3. The facts as projected in the present Writ Petition are as under:

3.1. The Surcharge Proceeding has been initiated against the Writ Petitioners herein vide Proceedings dated 29.03.2004 bearing Rc.No.3/3125/2002-C. This Proceeding was challenged by the Writ Petitioners before the A.P Co-operative Tribunal, Visakhapatnam (for short the ‘Tribunal’) in O.A.No.2 of 2005. Vide Order dated 18.05.2006, the Tribunal was pleased to allow O.A.No.2 of 2005 filed by the Writ Petitioners by remanding the matter to the Deputy Registrar of Cooperative Societies, Vizianagaram with a direction to make a fresh enquiry in the light of the observations made by the Tribunal.

3.2. The Tribunal in the said Order dated 18.05.2006 had held that an opportunity like supply of copy of Enquiry Report, Statements of witness recorded during the said enquiry and also an opportunity to cross-examine those witnesses or permit the Writ Petitioners to examine their own witnesses by way of rebuttal should be allowed before an Order under Section 60 is passed.

3.3. During the pendency of the O.A.No.2 of 2005 before the Tribunal, Liquidator was appointed under Section 65 of A.P Cooperative Societies Act, 1964 (for short the ‘Act’). Thereafter, the notice came to be issued by the

Deputy Registrar of Co-operative Societies under Section 60(1) of the Act on 16.10.2006 (Ex.P.2) once again initiated Surcharge Proceedings as indicated by the Tribunal in O.A.No.2 of 2005, thereby directing the Writ Petitioners to file the written counter and also statement on oath in connection with the Surcharge trial.

4. At this stage, the alleged delinquents have filed the present Writ Petition on 24.11.2006. This Court had passed an Interim Order in W.P.M.P.No.32020 of 2006 by suspending the Impugned Proceeding dated 16.10.2006 vide Order dated 01.12.2006.

5. The contention of the Writ Petitioners is two-fold. Learned Counsel for the Writ Petitioners would contend that the Official Respondents have not furnished any Surcharge Proceeding on 16.10.2006.

6. The second contention is to the effect that when once Liquidator has been appointed under Section 65 of the Act, the Surcharge Proceeding initiated against the Writ Petitioners does not survive, and therefore, the Surcharge Proceeding must be dropped.

7. Section 60 of the Act empowers the competent authority to initiate Surcharge Proceeding. For ready reference, Section 60 of the Act is extracted hereunder:

“60. Surcharge:

(1) Notwithstanding anything contained in any other law for the time being in force where in the course of an audit under Section 50 or an inquiry under Section 51 or an inspection under Section 52 or Section 53, **to the winding up of a society**, it appears that any person who is or was entrusted with the organisation, 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 willful 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 authorised by him in this behalf, of his own motion or on the application of the committee, **liquidator** or any creditor or contributor, 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 authorised 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 retention, breach of trust, or willful negligence as the Registrar or the person authorised as aforesaid thinks just : Provided that no order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representation.

(2) Any sum ordered under this section to be repaid to a society or recovered as a contribution to its assets may be recovered on a requisition being made in this behalf by the Registrar to the Collector in the same manner as arrears of land revenue.

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act."

(emphasis supplied)

8. Learned Counsel for the Writ Petitioners has also taken this Court through the relevant provisions of law with regard to the appointment of Liquidator (Section 65 of the Act) and the Powers of the Liquidators (Section 66 of the Act). Learned Counsel for the Writ Petitioners would submit that the Liquidator shall have the power to institute and defend suits and other legal proceedings on behalf of the society by the name of his office (Clause (a) of Sub-clause (1) of Section 66 of the Act).

9. Learned Counsel for the Writ Petitioners has submitted that in a similar matter, this Court had allowed W.P.No.23337 of 2006, where similar notice issued by the Respondent No.1 under Section 50 of the Act has been questioned.

10. Admittedly, the impugned proceedings are not issued under Section 50 of the Act, but it was issued under Section 60 of the Act initiating Surcharge Proceeding, and thereafter, the Order passed by this Court in W.P.No.23337 of 2006, though has not been placed on record, would have no effect on the impugned proceeding dated 16.10.2006, inasmuch as the impugned proceeding is initiated under Section 60 of the Act.

11. Section 60 of the Act, extracted hereinabove, specifically refers to the power of the competent authority to initiate Surcharge Proceeding during the winding up of a society. The said provision clearly stipulates that the Registrar himself, or any person specially authorised by him in this behalf, of his own motion or on the application of the Committee, **Liquidator** or any Creditor or Contributor, may inquire into the conduct of such person or officer or servant and make an order requiring him to repay or restore the money etc.,.

12. The above provision clearly indicates that the Surcharge Proceeding can be initiated even by the Liquidator. The said provision would also clearly indicate that the Surcharge Proceeding would go on even during the process of winding up of the Society.

13. In view of the very clear wording indicated in Section 60 of the Act, the submission of the learned Counsel for the Writ Petitioners pales-away, inasmuch as the said submission is directly in conflict with the Section 60 of the Act. Unfortunately, the impugned proceeding that was challenged way back in the month of November, 2006, stood suspended by an Interim Order on 01.12.2006 (almost 19 years ago).

14. In view of the above analysis, this Court is of the considered view that the Surcharge Proceeding under Section 60 of the Act can be initiated by the competent authority and to be proceeded with even during the course of the liquidation process.

15. In this view of the matter, the present Writ Petition is not only devoid of any merit but also an abuse of process, inasmuch as the Writ Petitioners have approached this Court challenging the very impugned notice dated 16.10.2006, which notice is in fact issued as per the direction of the Tribunal in O.A.No.2 of 2005 on 18.05.2006. The contention of the Writ Petitioners is that the material has not been supplied to the Writ Petitioners. The same is also frivolous in nature, inasmuch as the Writ Petitioners have never made any

application to the competent authority namely the Deputy Registrar of Co-operative Societies seeking any material documents after the impugned notice came to be issued. Even on this score, the present Writ Petition is devoid of any merit and also an abuse of process. Accordingly, the Writ Petition is dismissed. There shall be a direction to both the Writ Petitioners to pay Costs of Rs.10,000/- each within three weeks from today. There shall be a direction to deposit the Costs in favour of A.P High Court Advocates' Association, High Court Buildings, Amaravati. The President, A.P High Court Advocates' Association is directed to purchase the Law Books from the said amount and add them to the Association's Library. Registry is directed to transmit the copy of this Order to the President, A.P High Court Advocates' Association for effective compliance. No Order as to Costs.

16. Interlocutory Applications, if any, stand closed in terms of this order.

GANNAMANENI RAMAKRISHNA PRASAD, J

Dt: 05.05.2025

JKS

HON'BLE SRI JUSTICE GANNAMANENI RAMAKRISHNA PRASAD

WRIT PETITION No. 25007 OF 2006

05.05.2025

JKS