*** HON'BLE SRI JUSTICE C.V. BHASKAR REDDY**

+ WRIT PETITION No.5791 of 2011

% Date: 12.12.2023

Between:

Smt. T. Vijayalaxmi. ... Petitioner

AND

Deputy Registrar / Divisional Coop. Officer,
Golconda Division, Hyderabad
and another.

... Respondents

! Counsel for the Petitioner : Sri S. Nageshwar Reddy
learned counsel representing
Sri T. Bala Mohan Reddy

^ Counsel for the Respondents: Govt. Pleader for Cooperation

> HEAD NOTE:

? Cases referred

1) 1992 (3) ALT 50
2) 1994 (2) ALT 39
3) 1998(1) ALD 455 (DB)
4) AIR 2000 SC 3243
5) (2001) 10 SCC 191
6) (2005) 3 SCC 422
7) (2011) 14 SCC 770
8) (2006) 7 SCC 592
9) (2009) 9 SCC 466
10) (2011) 1 SCC 109

THE HONOURABLE SRI JUSTICE C.V. BHASKAR REDDY

WRIT PETITION No.5791 of 2011

ORDER:

This Writ Petition, under Article 226 of the Constitution of India, is filed by the petitioner, seeking the following relief:

> *"....to issue direction or order or writ more so in the nature of Writ of Certiorari calling for the records on the file of Hon'ble Cooperative Tribunal in CTA 56 of 2008 dated 30.09.2010, is illegal, bad, erroneous and against to the probabilities of evidence and passed order without application of mind and without following guidelines and due procedure and needs to be quashed and the impugned order is violative of principles of Natural Justice apart from violative of Articles 14, 21 of Constitution of India and violative of provisions of the A.P Co operative Societies Act, 1964 and quash the same...."*

2. The brief facts that are necessary for disposal of the writ petition are as under:

i) The respondent No.2-Vijaya Cooperative Urban Bank (W) Limited, Road No.1, Banjara Hills, Hyderabad, was registered on 30.03.1997 with registration No.TA 1421 with initial membership of 2037 members and paid up share capital of Rs.20 lakhs. The bank was exclusively organized to cater the financial needs of the women. It started functioning with effect from 14.10.1997. During the course of inspection under Section 35 of the Banking Regulation Act, 1949, as to the working of the Bank, the Reserve Bank of India (Urban

Banks Dept), Hyderabad, observed serious financial irregularities and also noticed serious lapses on the part of the Chartered Accountants (who conducted statutory audit of the Bank), in grading the Bank "A" by completely ignoring the weak status of the bank and requested to conduct an inquiry under Section 51 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short “the Act”) with special emphasis on questionable transactions, alienation of securities, defects in statutory audit and violation of various provisions of the Act, as pointed out in their Inspection report vide R.B.I. Lr.No.UPD. (H), No.705/15.36.01/2002-03, dated 21-08-2002. In pursuance of the same, the Commissioner for Cooperation and Registrar of Cooperative Societies vide Memo No.5551/2001/CB-1, dated 29-08-2002 advised the Joint Registrar(J.R)/District Cooperative Officer(DCO), to order statutory inquiry into the affairs of Bank. Thereupon the J.R/DCO, Hyderabad (Urban), vide his proceedings in RC.No.83/01-UB dated 07-09-2002 ordered an inquiry into the affairs of the bank. The District Cooperative Audit Officer, Hyderabad (Urban) was authorized to conduct inquiry under Section 51 of the Act. The Inquiry Officer conducted the inquiry and submitted his report stating that as against the total deposit of Rs.5,75,57,756-00, an amount of Rs.3,62,21,041-00 is payable to the Cooperative Urban Banks and Employees Cooperative Credit Societies and remaining amount of Rs.2,13,36,715/- is payable to the individual depositors

besides interest and other liability; that an amount of Rs.1,14,31,136/- was deposited in the First City Cooperative Urban Bank, Jawahar Cooperative Bank, which was under liquidation and there is least possibility for realization of those amounts. On the basis of the findings in the inquiry report, the Divisional Cooperative Officer, Golconda Division, Hyderabad, issued show cause notice to the petitioner, Ex-Chairperson of the Bank and Ex-Board of Directors of the Bank on 23.03.2004. The petitioner herein, who is Ex-Chairperson of the Bank, Krishna Kumari and Smt.L.Mithili, who are Ex-directors of the Bank, have submitted their explanations but the other Ex-directors have not submitted their reply to the show cause notice. The respondent No.1 passed surcharge order dated 07.06.2004 against the petitioner for payment of Rs.5,83,06,592.00. Aggrieved by the said surcharge order, the petitioner filed an appeal vide CTA No.121 of 2004 on the file of A.P. Cooperative Tribunal, at Hyderabad, contending that no opportunity was given to her to adduce oral and documentary evidence and surcharge order passed is in gross violation of principles of natural justice. The point for consideration before the Tribunal was, *"whether the surcharge order dated 07.06.2004 suffers from any illegalities or infirmities and liable to set aside".* No oral or documentary evidence was adduced by the petitioner in the said C.T.A. Before the Tribunal, the learned counsel for the petitioner contended that the petitioner was not given proper

opportunity to peruse the record and depose before the inquiry officer for the inquiry under Section 51 of the Act. The records were with the respondent No.1 and the petitioner was not given proper opportunity to peruse the record and consequently the petitioner was prejudiced on account of depriving her to peruse the records and depose before the inquiry officer. It was further contended that the show cause notice dated 23.03.2004 issued under Section 60 of the Act to the petitioner indicates that she was liable to pay an amount of Rs.1,13,13,870/- to the bank and she was asked to submit her explanation within 10 days from the date of receipt of show cause notice. The petitioner submitted her explanation on 19-05-2004 expressing her inability to give para wise reply to show cause notice as she had not perused records, which were in the custody of the Bank. It was further contended before the Tribunal that entire proceedings does not indicate that the petitioner had misappropriated any funds of the bank or there was mismanagement on her part. Further, no notice was issued to other directors of the bank, who are part of the alleged mismanagement of the Bank. Therefore, non-joinder of necessary parties to the inquiry is fatal to the case and inquiry proceedings initiated under Section 51 of the Act and findings recorded in the inquiry report, are illegal and perverse. It was further contended that since no independent inquiry conducted fixing liability on the petitioner, the surcharge order was not only infraction

of statutory provisions but also violation of principles of natural justice. In support of his contentions, the petitioner relied upon the following decisions:

i) ***S. Ramadas vs. The Subordinate Judge and others***[1]

ii) ***Sameeta Rama Subba Rao vs. President, Kalkaluru Irrigation and Power Department Sub-Divisional Employees Coop. Credit Society Limited***[2]

iii) ***Challa Sanyasi Naidu vs. Deputy Registrar of Cooperative Society, Srikakulam***[3]

ii) The learned counsel for the respondents before the Tribunal argued that inquiry under Section 51 of the Act was conducted basing on the records of the bank and the respondent No.1 issued show cause notice to the petitioner on the basis of inquiry report and asked her to submit her explanation within 10 days. The petitioner through her counsel approached the bank several times and perused the records including the inquiry report. The contention of the petitioner that she was not given an opportunity to cross-examine the inquiry officer is devoid of merits and there is absolutely no necessity to cross-examine the inquiry officer who submitted his report under Section 51 of the Act, which is based on documentary evidence. The respondent No.1 after giving ample opportunity and making available

[1] 1992 (3) ALT 50
[2] 1994 (2) ALT 39
[3] 1998(1) ALD 455 (DB)

all relevant records to the petitioner, passed the surcharge order and there are no grounds to interfere with the same and prayed to dismiss the appeal.

iii) The Tribunal has examined the inquiry report and the surcharge order. The Tribunal in Para 14 of its judgment dated 26.04.2006 observed that "*the enquiry report indicates that the enquiry officer had recommended for liquidation of the bank. In respect of the bank loss caused to a tune of Rs.4,79,92,722/-. He has recommended to take action against the petitioner herein under Section 60 of the Act for Rs.1,13,13,870/- only*". In Para 15 and 16, the Tribunal observed as follows:

> *"15. It is further mentioned in the surcharge notice (show cause notice) by the 1st respondent to the following effect.*
>
> *Whereas the Inquiry Officer made the Ex-Chairman of the bank directly responsible for the loss sustained by the bank in respect of the following items and stated that she is liable for action U/s. 60 of the APCS Act 7 of 1964 for realization of the amount as detailed below.*
>
> *1. Due to entering into the MOU with Smt. D. Sukrutha Reddy regarding settlement of the due of World Wide Pharma without deciding the security for balance amount to the extent of*
>
> *Rs. 74,34,614-00*
>
> *2. Sanction of loans to Smt.T.Maniyamma Smt. D. Susheela and Smt. Jayalaxmi without documentation and securities.*
>
> *Rs.17,34,833-00*
>
> *3. Waiver of interest to six institutions sanctioning the loans against the guidelines of RBI. As per the bye-laws the Managing Committee and General Body is competent to fix rate of interest whereas the Chairperson has reduced the rate of interest and caused loss to the Bank to the extent of*
>
> *Rs.18,67,771-00*

4. Car and Scooter hire charges paid to Chief Advisor without Voucher.

Rs. 2,37,400-00

5. Tour expense outside the State

Rs. 39,252-00

Total: Rs.1,13,13,870-00

16. In the show cause notice also, it is clearly mentioned that the appellant is liable for action U/s. 60 of the Act for an amount of Rs.1,13,13,870/-.

17. In the explanation dated 8-5-04 submitted by the appellant to the 1st respondent for the show cause notice, she has clearly mentioned that the Inquiry Officer has not heard the institutions to whom the interest was said to have been waived. The appellant has categorically asserted in her explanation that due procedure was followed while sanctioning the loan and the loans were sanctioned after proper documentation……"

iv) The Tribunal further observed that the petitioner and other Ex-Board of Directors specifically requested the Inquiry Officer to allow them to verify the records to enable them to prove their innocence and to that extent, the petitioner herein has submitted representations dated 06.04.2004 requesting to furnish all the relevant documents so as to submit proper explanation. The respondent No.1 through letter dated 05.05.2004 addressed to the respondent No.2 bank had requested the liquidator of the bank to make available the required material to the petitioner herein for perusal under his supervision. The representation dated 21.05.2004 submitted by the petitioner herein to the respondent No.1 indicates that inspite of repeated requests and follow up action with concerned authority, the inquiry report has not been furnished. Further, the record also does not disclose that the Inquiry Report was furnished to

the petitioner. The Tribunal after verification of the relevant records as well as surcharge notice and order of the respondent No.1 had referred the deposits to the tune of Rs.5,75,57,756-15 and out of the said amount, Rs.3,62,21,041-00 is payable to the Cooperative Urban Banks and Employees Cooperative Credit Societies and the remaining amount of Rs.2,13,36,750/- is payable to the individual depositors, besides the interest and other liability and an amount of Rs.1,14,41,136-00 has been deposited in the First City Cooperative Urban Bank and Jawahar Cooperative Bank. Both the banks are under liquidation and there is least possibility of realization of those amounts. The 1st respondent has not given any finding in respect of those amounts. The Tribunal in Paras 24, 25, 26, 27 and 28 of its judgment dated 26.04.2006, observed as follows:

> *24. The 1st respondent at page 2 of the surcharge order observed as follows:*
>
> > *"whereas the inquiry officer has pointed out 11 cases persons and institutions to whom loans were sanctioned are without proper securities and sureties 'worth amount of Rs.4,79,92,722-00 and also fixed responsibility of Rs.1,13,13,870/- on loans sanctioned irregularly, waiver of interest without any authority, reason and against RBI guidelines of Car and Scooter hire/charges to chief advisor who is the husband of the Chair person without voucher and tour expenses outside the state. On the above points the Ex-Chairperson has replied which is not convincing and held responsible for the recovery of losses to an extent of Rs.1,13,13,870/-".*
>
> *To understand this part of the surcharge order one has necessarily verify either inquiry, report of the surcharge notice. The 1st respondent has no patience to mention the names of the persons or institutions to whom the loan's were sanctioned without proper securities or sureties as alleged in the surcharge notice. When responsibility is fixed on the appellant to a tune of Rs.1,13,13,870/- it is the minimum duty, of the*

1st respondent to clearly mention the names of the persons to whom the amounts were lent without proper securities and sureties. The said finding of the 1st respondent is very vague and ambiguous.

25. The 1st respondent has not at all followed the procedure akin to the Civil Court inquiry as held by the Hon'ble High Court of A.P. in the following three pronouncements.

26. In S. Ramadas Vs. The Subordinate Judge, (Cooperative Tribunal), Kothagudem and others (1992 (3) ALT 50) the Hon'ble High Court of A.P. held:

> *The inquiry under Section 51 of the Act is only an administrative inquiry for the satisfaction of the Registrar as to whether under Section 60 surcharge proceedings have to be initiated or not. Once the proceedings under Section 60 of the Act are initiated, the inquiry thereof should be akin to Civil Court inquiry as the Civil Court's jurisdiction is barred expressly in view of Section 121 of the Act. As no independent inquiry has been conducted by the second respondent herein to pass a decree for realization of the amount, the said order is not only an infraction of the statutory provisions, but also violative of the principles of natural justice."*

27. "In Sammeta Rama Subba Rao Vs. President, Kaikaluru Irrigation and Power Department Sub-Divisional Employees Coop. Credit Society Limited, (1994 (2) ALT 39), the Hon'ble High Court of A.P, held:

> *"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 Section 60(1) of the Act, the rules of fair-play have got to be followed."*

28. In Challa Sanyasi Naidu Vs. Deputy Registrar of Cooperative Society, Srikakulam 1998(1) ALD 455 (DB), a Division Bench of Hon'ble High Court of A.P followed the ratio laid down in S. Ramadas case 1992 (3) ALT 50 and Sammeta Rama Subba Rao case 1994 (2) ALT 39 and held:

> *"Section 60 clearly contemplates an opportunity being given to the delinquent by making a representation. In our view, this is the proper occasion where the officer or the servant has to be given an opportunity of explaining his stand and allow him to participate in the inquiry before a final order is passed. This is a valuable right given to the delinquent which cannot be brushed aside in a routine manner. After the show-cause-notice is served and an explanation is called for, an*

> *opportunity should be given to the affected person to cross-examine the witnesses examined in the course of inquiry u/s 52 or permit him to examine his witnesses to rebut their evidence. Until this is done the spirit of making a representation, as contemplated u/s 60, cannot be fulfilled. Although Section 60 does not prescribe any particular procedure before passing surcharge order, nonetheless, it is mandatory that principles of natural justice shall be followed in the inquiry. Evidence recorded behind the back of the defaulter cannot be relied upon to fasten the liability on him without giving him an opportunity to cross-examine the witnesses. The Registrar in his surcharge proceedings is a Court whose order can very well form the subject-matter of judicial review under Article 226 of the Constitution of India. Therefore, it is in the fitness of things that an opportunity like supply of copy of inquiry report, statements of witnesses recorded during the said inquiry, and also an opportunity to cross-examine those witnesses, or permit him to examine his own witnesses by the delinquent by way of rebuttal should be allowed before an order U/s. 60 of the Act is passed.*

v) The Tribunal considering the above referred judgments and also the material on record, vide judgment dated 26.04.2006 has allowed the appeal by setting aside the surcharge order passed by the respondent No.1 in R.C.No.3315/2004-E dated 07.06.2004 on the following reasons and remanded the matter to the surcharge authority to pass a fresh reasoned surcharge order within 5 months from the date of its judgment:

> *"(I). The Inquiry Officer, has not given any finding in his report U/s 51 of the Act that the loans given to the 11 Institutions or Individuals to the extent of Rs.4,79,92,722/- which are not having proper securities or sureties, is the sole responsibility of the appellant. The inquiry report has pointed that it is the sole responsibility of the appellant in respect of the amount of Rs.1,13,13,870/- and he recommended for action U/s. 60 of the Act against the appellant for the said amount.*
>
> *(II) In the show cause notice also it is not mentioned that the appellant is solely responsible for advancing the loans to 11 institutions/ Individuals to a tune of Rs.4,79,92,722/-, without proper securities and sureties. In the show cause notice it is clearly mentioned that the inquiry officer has made the appellant directly responsible for the loss sustained by the bank In respect of the amount of Rs.1,13,13,870/-.*

(III). The Inquiry Report as well as surcharge notice give an impression that the management of the Bank is responsible for lending the loans to 11 Institutions/persons to a tune of Rs.4,79,92,722/- without proper securities and sureties. They also give an Impression that the appellant is solely responsible for the loss of Rs.1,13,13,870/-.

(IV). The 1st respondent was appointed as Special Officer U/s 34 of the Act to manage the affairs, of the bank by superseding the Managing Committee. He was the Special Officer of the bank during the inquiry U/s 51 of the Act and he was having personal knowledge about this case. The 1st respondent cannot sit in judgment over the matter in which he is having personal knowledge. The possibility of bias and prejudice cannot be ruled out and as such the 1st respondent grossly violated the principles of natural justice.

(V). The appellant was not furnished with the inquiry report along with the show cause notice for submitting an explanation to show cause notice. She was not given ample opportunity to go through the records and formulate her defence. On 21-05-04 the 1st respondent received a representation that she was not furnished with the inquiry report and other records till 18-05- 2004, the 1st respondent has not considered her request and hastily passed the Impugned surcharge order on 07-06-2004. There is absolutely no record to show that the 1st respondent has given ample opportunity to the appellant to put forth her defence. The 1st respondent has not maintained either docket sheet or note file to show that he had given ample opportunity to the appellant. Since huge amount had been involved, the 1st respondent in fitness of things should have given ample opportunity to the appellant. He has not at all examined any witnesses connected with the transactions concerned. Mere observation of the 1st respondent that on perusal of the records and documents of the bank he felt that Ex-Chairperson of the bank has dominated the affairs of the bank and she is directly responsible, as also opined by the inquiry officer is not an answer that the 1st respondent has followed the due procedure akin to Civil Court inquiry as held by the Hon'ble High Court of A.P in the above mentioned three cases. The Inquiry Officer has not at all passed any reasoned order. The order passed by the 1st respondent is not based on any oral and documentary evidence. He has solely depended on the inquiry report and came to an abrupt conclusion that the appellant is liable to pay Rs.5,83,06,592/- with Interest at 18% pa. till the date of recovery."

vi) The respondent No.1 after receipt of the records from the Tribunal has issued notice dated 17.08.2006 to the petitioner, Ex-Chairperson and liquidator of the bank i.e, respondent No.2 herein to appear with relevant documents in support of their contentions. In the meanwhile, challenging the judgment dated 26.04.2006 passed in

CTA No.121/2004 by the A.P Cooperative Tribunal, Hyderabad, the liquidator of the bank filed Writ Petition No.16823 of 2006 on the file of this Court. In the said Writ Petition, this Court vide order dated 25.08.2006 directed the respondent No.1 not to create any encumbrances against the property which was held by the petitioner herein as on that date, during the pendency of the writ petition and finally, the said Writ Petition was dismissed on 21.02.2007. After dismissal of the Writ Petition, the respondent No.1 herein has again issued notice to the petitioner herein and Liquidator of the Bank and initiated surcharge proceedings afresh. On receipt of the notice, the petitioner filed an application on 28.09.2006 to summon the official Liquidator of the Bank and inquiry officer for examination and also filed another application to direct the Liquidator of the bank to produce all the relevant documents in relation to loans sanctioned to i) Worldwide Pharma ii) K.V.Subbaiah and Group iii) Smt.Maniyamma iv) Latha Enterprises v) Raju Gupotha vi) Sudhamani, vii) Smt. Anand Bai viii) Smt.K.V.Ramanamma ix) Smt.Razia Sultana x) Sri K.V. Ramana & Group, and xi) Smt.Leena Lath Enterprises. The Liquidator filed counter and opposed the application. The Liquidator filed his chief examination and also produced the documents and the same were marked as Exs.A.1 to A.21 and according to the bank, still an amount of Rs.4,79,92,722/- has to be recovered from the petitioner herein. The counsel for the petitioner cross-examined the

official liquidator. Thereafter, the petitioner herein has filed another application to summon the inquiry officer and the said application was allowed and the inquiry officer appeared before the respondent No.1 on 14.09.2007 and he was cross-examined by the counsel for the petitioner. According to the inquiry report and the contention of the bank, the petitioner is solely responsible for the loss sustained by the bank to the tune of Rs.4,79,92,772/- and said amount has to be recovered from her. It is further contention of the Bank that petitioner attested all the resolutions of the General Body and no member signed the minutes. Further, as per By-laws of the Bank, the Board of Directors are competent to consider applications for sanction of loans and advances and discounting of Bills and determine the terms and conditions but the petitioner only attested all the resolutions of the General body meetings and no other member signed and there is no evidence in support of issuance of General Body notice by distributing pamphlets. The respondent No.1 after referring various documents and the material on record, by virtue of powers vested in him under Section 60(1) of APCS Act, 1964, has passed surcharge order vide proceedings Rc.No.3315/02-D dated 18.01.2008 and held the petitioner is responsible and liable for the sum of Rs.3,73,63,281/- for causing deficit to the assets of the Bank and directed the petitioner to pay the said amount with interest @ 18% per annum from 01.04.2003 to till the date of recovery.

vii) Questioning the surcharge proceedings in Rc.No.3315/02-D dated 18.01.2008 passed by the respondent No.1, the petitioner herein has filed appeal vide C.T.A.No.56/2008 on the file of Cooperative Tribunal, Hyderabad. Before the Tribunal, the petitioner contended that the Respondent No.1 passed the surcharge order in mechanical fashion without application of mind and without following the guidelines and due procedure. Nowhere in the complaint, the official liquidator made any allegations against the petitioner with regard to any willful negligence or fraudulent intention or misappropriation of any money or property of Respondent No.2 bank. But even then the Respondent No.1 fastened the liability upon the petitioner. The inquiry report is barred by limitation. Though the petitioner filed a memo asking the Respondent No.1 to issue fresh show cause notice clarifying the surcharge amount but no such notice was issued and continued the inquiry basing on the earlier show cause notice. It was further contended by the petitioner that the Respondent No.1 has aggregated two amounts mentioned in the show cause notice, illegally. The official liquidator has also admitted in his cross examination that the property mortgaged for some of the loan accounts were still with the bank and substantial amounts were already realized. With regard to the fault on the part of liquidator regarding some of the loan accounts, responsibility cannot be fastened on the petitioner. The liquidator in his evidence, denied

availability of the mortgaged documents, which is against the record. The liquidator has released some of the documents without complete recovery of the due amounts from the guarantors. The liquidator did not prepare inventory list of the documents in the custody of the respondent No.2 bank. The petitioner could not lead evidence about the material documents as they were available with the bank itself. On the aforesaid grounds, the petitioner prayed the Tribunal to set aside the surcharge order and allow the appeal. The point for consideration before the Tribunal was "whether the surcharge proceedings passed by the respondent No.1 are illegal and liable to be set aside". The Tribunal vide its judgment dated 30.09.2010 dismissed the appeal upholding the order dated 18.01.2008 in surcharge proceedings R.c.No.3315/02-D passed by the respondent No.1 on the observation that there was willful negligence on the part of the petitioner being Chairperson in managing the affairs of the respondent No.2-Bank and that lead to its liquidation and huge monetary loss.

3. Heard Sri S.Nageshwar Reddy, learned counsel representing Sri T. Bala Mohan Reddy, learned counsel for the petitioner and learned Government Pleader for Cooperation for the respondents. Perused the record.

4. The learned counsel for the petitioner has vehemently contended that in the impugned judgment dated 30.09.2010 passed in CTA No.56 of 2008, the Tribunal without discussing the crucial aspects relating to the validity or otherwise of the inquiry conducted under Section 51 of the Act or the show cause notice dated 23.03.2004 issued to the petitioner under Section 60(1) of the Act, vide Rc.No.3315/02-D, wherein the responsibility/liability is fixed only to the extent of Rs.1,13,13,870/- and without considering the findings recorded by the Tribunal in CTA No.121/2004, has erroneously come to conclusion in upholding surcharge proceedings Rc.No.3315/02-D dated 18.01.2008 issued by the respondent No.1. It is further contended that the respondent Nos.1 and 2 have not followed the procedure as prescribed under law. The learned counsel argued that the inquiry report submitted by the inquiry officer exercising powers under Section 51 of the Act is not valid as the said inquiry report was not filed within a period of four months from the date of appointing inquiry officer and therefore, the inquiry report itself is illegal and invalid and the same cannot be considered under any circumstances as the same is opposed to the provisions of the Act. Further, in the absence of extension of time by the competent authority/Registrar or approval of the same by the General Body, the same cannot be relied on while determining the liability on the petitioner under Section 60 of the Act. The learned counsel further

argued that inquiry initiated against the petitioner is not *suo moto* inquiry and basing on the report submitted by the District Cooperative Officer inquiry was ordered against the petitioner and as such inquiry must be completed in terms of the procedure and any deviation to the statutory procedure invalidates the inquiry report and that would not bind on the petitioner. It is further argued that in the show cause notice dated 23.03.2004 issued to the petitioner, she was asked to pay Rs.1,13,13,870/- whereas the respondent No.1 has passed surcharge order dated 18.01.2008 fixing the liability on the petitioner to the tune of Rs.3,73,63,281/-, which is contrary to the amount mentioned in the show cause notice. Therefore, said action on the part of the respondent No.1 amounts to gross violation of principles of natural justice. It is further contended that petitioner alone is not responsible for the affairs of the society, as society being run by the collective members of the managing committee. The Inquiry Officer ought to have distributed the liability on every member/managing director rather than imposing the responsibility/ liability on the petitioner alone. Learned counsel further contended that after remand, the respondent No.1 has mechanically passed orders vide Proceedings Rc.No.3315/02-D dated 18.01.2008. The respondent No.1 failed to consider the findings recorded by the Tribunal in its judgment dated 26.04.2006 passed in CTA No.121/2004, which attained finality as the Writ Petition

No.16823/2006 filed by the liquidator of the bank challenging the said judgment dated 26.04.2006 was dismissed. It is further argued that while conducting subsequent inquiry, the Inquiry Officer is not having any power or authority to traverse beyond the scope of the show cause notice. The learned counsel further argued that both the respondents have failed to take into consideration that inquiry should be confined only to the extent of show cause notice and giving findings or fixing liability/responsibility on the petitioner over and above show cause is not permissible and therefore, the impugned judgment dated 30.09.2010 passed in CTA No.56 of 2008 by the Tribunal confirming the surcharge order dated 18.01.2008 vide Proceedings Rc.No.3315/02-D passed by the respondent No.1 are liable to be set aside by allowing the Writ Petition as prayed for.

5. Per contra, learned Government Pleader for Cooperation has submitted that after following due procedure, inquiry officer conducted inquiry under Section 51 of the Act, and gave a finding that the petitioner is personally liable to pay Rs.1,13,13,870/-. Since the petitioner has discharged her duties as Chairman of the respondent No.2-bank, she is liable to pay entire amounts as determined under Section 51 of the Act. It is further contended that it is not mandatory to seek extension of time or approval of the managing committee for the inquiry conducted under Section 51 of

the Act. The learned Government Pleader submitted that the scope of judicial review under Article 226 of the Constitution of India is very limited and this Court, in exercise of its jurisdiction under Article 226 of the Constitution of India, cannot interfere with the decision of an authority unless it is found that such a decision is capricious, *mala fide*, arbitrary, without jurisdiction or that the decision making process is flawed. There is no illegality or infirmity in the impugned judgment dated 18.01.2008 passed by the Tribunal warranting interference by this Court under Article 226 of the Constitution of India and ultimately prayed to dismiss the writ petition.

6. According to the petitioner, the inquiry report submitted by the inquiry officer exercising powers under Section 51 of the Act is not valid as the said inquiry report was not filed within a period of four months from the date of appointing inquiry officer. Admittedly, inquiry into the affairs of the respondent No.2-bank under Section 51 of the Act was initiated in pursuance of the proceedings in RC.No.83/01-UB dated 07-09-2002 issued by the District Cooperative Officer, Hyderabad (Urban). As per Section 51 of the Act, inquiry shall be completed within a period of four months and the report of inquiry along with the findings of the Registrar thereon shall be communicated to the managing committee of the society. It shall be the responsibility of the managing committee to place the inquiry

report before the General Body or Special General Body convened for the purpose for its information, within a period of one month from the date of communication of the inquiry report by the Registrar. The procedure adopted by the respondents herein is contrary to the procedure prescribed under the Act, and therefore, the same is vitiated and unsustainable.

7. The next contention of the petitioner is that in the show cause notice dated 23.03.2004 issued under Section 60 (1) of the Act, to the petitioner vide Rc.No.3315/02-D, the responsibility/liability of the petitioner is fixed only to the extent of Rs.1,13,13,870/- but contrary to the same, in the surcharge order dated 18.01.2008 passed by the respondent No.1 as well as the impugned judgment dated 30.09.2010 passed in CTA No.56/2008 by the Tribunal, the responsibility/ liability is fixed on the petitioner to the tune of Rs.3,73,63,281/-. It is well settled law that show cause notice should be confined to the specific allegations and the explanation submitted therefor and traversing beyond the scope of show cause notice for the amounts mentioned therein and fixing liability on the petitioner over and above the amount specified in the show cause notice amounts to violation of principles of natural justice and the same is liable to be set aside.

8. In ***Badrinath vs. State of Tamil Nadu and others***[4] and ***State of Kerala v. Puthenkavu N.S.S. Karayogam & another***[5], the Hon'ble Supreme Court observed that once the basis of a proceeding is gone, all consequential acts, actions, orders would fall to the ground automatically and this principle is applicable to judicial, quasi-judicial and administrative proceedings equally.

9. In ***Mangal Prasad Tamoli (dead) by Lrs. v. Narvadeshwar Mishra (dead) by Lrs. And others***[6], the Hon'ble Supreme Court held that if an order at the initial stage is bad in law, then all further proceedings, consequent thereto, will be non est and have to be necessarily set aside.

10. In ***State of Punjab v. Davinder Pal Singh Bhullar and others***[7], the Hon'ble Supreme Court held as follows:

> *"It is a settled legal proposition that if initial action is not in consonance with law, all subsequent and consequential proceedings would fall through for the reason that illegality strikes at the root of the order. In such a fact-situation, the legal maxim "sublato fundamento cadit opus" meaning thereby that foundation being removed, structure/work falls, comes into play and applies on all scores in the present case."*

11. It may further be noted that the Hon'ble Supreme Court in a catena of judgments has held that the grounds, upon which the

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[4] AIR 2000 SC 3243
[5] (2001) 10 SCC 191
[6] (2005) 3 SCC 422
[7] (2011) 14 SCC 770

action is to be taken against a person, are required to be mentioned in the show cause notice. In ***Commissioner of Customs, Mumbai v. Toyo Engineering India Ltd.***[8], the Hon'ble Supreme Court held has under:

> *"16. Learned counsel for the Revenue tried to raise some of the submissions which were not allowed to be raised by the Tribunal before us, as well. We agree with the Tribunal that the Revenue could not be allowed to raise these submissions for the first time in the second appeal before the Tribunal. Neither the adjudicating authority nor the Appellate Authority had denied the facility of the project import to the respondent on any of these grounds. These grounds did not find mention in the show cause notice as well. The Department cannot travel beyond the show-cause notice. Even in the grounds of appeals these points have not been taken.*

12. In ***Commissioner of Central Excise, Bhubaneshwar v. Champdany Industries Ltd.***[9]**,** the Hon'ble Supreme Court has held as under:

> *"38. Apart from that, the point on Rule 3 which has been argued by the learned counsel for the Revenue was not part of its case in the show-cause notice. It is well settled that unless the foundation of the case is made out in the show-cause notice, the Revenue cannot in Court argue a case not made out in its show cause notice. (See Commr. of Customs v. Toyo Engg. India Ltd. [(2006) 7 SCC 592]) Similar view was expressed by this Court in CCE v. Ballarpur Industries Ltd. [(2007) 8 SCC 89] In para 27 of the said Report, learned Judges made it clear that if there is no invocation of the Rules concerned in the show-cause notice, it would not be open to the Commissioner to invoke the said Rules."*

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[8] (2006) 7 SCC 592
[9] (2009) 9 SCC 466

13. In ***Commissioner of Central Excise, Chandigarh v. Shital International***[10]. Relevant paragraph of the said judgment is delineated below:

> *"19. As regards the process of electrifying polish, now pressed into service by the Revenue, it is trite law that unless the foundation of the case is laid in the show-cause notice, the Revenue cannot be permitted to build up a new case against the assessee. (See Commr. of Customs v. Toyo Engg. India Ltd. [(2006) 7 SCC 592] , CCE v. Ballarpur Industries Ltd. [(2007) 8 SCC 89] and CCE v. Champdany Industries Ltd. [(2009) 9 SCC 466]) Admittedly, in the instant case, no such objection was raised by the adjudicating authority in the show-cause notice dated 22-6-2001 relating to Assessment Years 1988-1989 to 2000-2001. However, in the show-cause notice dated 12-12-2000, the process of electrifying polish finds a brief mention. Therefore, in the light of the settled legal position, the plea of the learned counsel for the Revenue in that behalf cannot be entertained as the Revenue cannot be allowed to raise a fresh plea, which has not been raised in the show cause notice nor can it be allowed to take contradictory stands in relation to the same assessee."*

14. The principle that emerges from the above judgments is patently clear that a show cause notice is required to provide details of the nature of the offence and the grounds on which the show cause notice has been issued. Furthermore, the order that is subsequently passed, based on the show cause notice, cannot go beyond the said show cause notice and cannot in any manner penalise the noticee on grounds that were not stated in the show cause notice.

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[10] (2011) 1 SCC 109

15. In the earlier round of litigation, the appeal vide CTA No.121/2004 filed by the petitioner, was allowed vide judgment dated 26.04.2006 by setting the impugned surcharge order passed by the respondent No.1 in R.C.No.3315/2004-E dated 07.06.2004 and the matter was remanded to the original authority to pass a fresh reasoned order within five months from the date of judgment. In Paras 13 and 14 of the said judgment dated 26.04.2006, a specific finding was recorded that the petitioner is liable for action under Section 60 of the Act for an amount of Rs.1,13,13,870/- only but after remand, the respondent No.1 has fixed responsibility/liability on the petitioner to the tune of Rs.3,73,63,281/- and the same was confirmed by the Tribunal vide judgment dated 30.09.2010 passed in CTA No.56/2008. It may be noted that on remand, while re-examining the case, respondent No.1 has no authority or power to go beyond the scope of show cause notice and come to a different conclusion, which action on the part of the respondent No.1 amounts to second inquiry and the same is not permissible. Since the Tribunal in Paras 13 and 14 of its judgment dated 26.04.2006 passed in CTA No.121/2004 has given a specific finding that as per the show cause notice, the petitioner is liable to pay an amount of Rs.1,13,13,870/- only, the respondent No.1 has no power to conduct fresh inquiry. In view of the lapses on the part of the respondents in obtaining necessary permission for extension of time for submitting report as

required under Section 51 of the Act and further, since there is no approval of the general body for the inquiry report under Section 51 of the Act, which is the basis for passing impugned order under Section 60 of the Act, this Court is of the view that the impugned judgment dated 30.09.2010 passed in CTA No.56 of 2008 by the Tribunal confirming the surcharge order dated 18.01.2008 passed vide Proceedings in Rc.No.3315/02-D by the respondent No.1, are liable to be set aside and the matter is liable to be remitted back to the respondent No.1 for conducting fresh inquiry to the extent of fixing the liability on the petitioner as mentioned in the show cause notice.

16. It is the specific case of the petitioner that in the show cause notice dated 23.03.2004 issued to her, she was liable to pay only an amount of Rs.1,13,13,870/- and even if liability/responsibility is fixed on her, she is liable to pay said amount only. Therefore, this Court deems it appropriate to direct the petitioner to furnish the bank guarantee or security for an amount of Rs.1,13,13,870/- along with 18% interest to the respondent No.2-bank.

17. In the result, this Writ Petition is allowed and the surcharge order dated 18.01.2008 passed vide Proceedings in Rc.No.3315/02-D by the respondent No.1 as confirmed by the Tribunal in the impugned judgment dated 30.09.2010 passed in C.T.A.No.56/2008

are set aside and the matter is remitted back to the respondent No.1 for conducting fresh inquiry to the extent of liability of the petitioner as mentioned in the show cause notice dated 23.03.2004 for an amount of Rs.1,13,13,870/-. Further, the respondents are directed to raise the attachment of the properties of the petitioner attached pursuant to surcharge order dated 07.06.2004 in Proceedings R.C.No.3315/2004-E subject to petitioner furnishing bank guarantee/security for an amount of Rs.1,13,13,870/- along with 18% interest to the respondent No.2. The security furnished by the petitioner shall be subject to final adjudication of the surcharge proceedings against the petitioner.

As a sequel, miscellaneous petitions pending if any, shall stand closed. No order as to costs.

C.V. BHASKAR REDDY, **J**

Date: 12.12.2023

Note: L.R Copy to be marked: **YES**/ NO

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