

Surcharge orders U/s. 60(1) of the TCS Act, 1964 of the Additional Registrar/Managing Director, Telangana State Dairy Development Cooperative Federation Ltd., Hyderabad

**Present : G.Srinivasa Rao,
Additional Registrar**

Rc.No. 2580/2015/JR/SA/DCCB-NLG-7

Dated :21.11.2019

Sub : Coop – Dept Nalgonda DCCB Ltd., Nalgonda, Devarakonda Branch – Irregularities in disbursement of loans during 2009 -13 in PACS, Chitriyala – Statutory Inquiry U/S. 51 of the Act conducted – show cause notice U/S. 60(1) of the TCS Act 1964 issued to S.Venugopala Chary– the then CEO of PACS, Chitriyala – Surcharge proceedings finalised - orders issued – Regarding.

- Ref :**
1. Proceedings Rc.No. 19567/ 2013-CR2, dt. 14-2-2014 of the CC and RCS, erstwhile A.P., Hyderabad.
 2. Proceedings Rc.No. 19567/ 2013-CR2, dt. 26-8-2014 of the CC and RCS, Telangana, Hyderabad.
 3. Proceedings Rc.No. 19567/ 2013-CR2, dt. 12-9-2014 of the CC and RCS, Telangana, Hyderabad.
 4. Lr.Rc.No. 23491/2013-C, dt. 20.10.2014 of the DCO, Nalgonda of the Inquiry Officer.
 5. Lr.Rc.No. 23491/2013-C, dt. 2.02.2015 of the DCO, Nalgonda of the Inquiry Officer.
 6. Review in Rc.No. 19567/ 2013-CR2, dt. 16-2-2015 of the CC and RCS, Telangana, Hyderabad.
 7. Lr.Rc.No. 23491/2013-C, dt. 06.03.2015 of the DCO, Nalgonda of the Inquiry Officer.
 8. Review in Rc.No. 19567/2013-CR2, dt. 18.03.2015 of the CC and RCS, Telangana, Hyderabad.
 9. Show cause notice no. 2580/2015- JR/SA/DCCB-NLG, dt. 15.04.2015, 15.06.2015.
 10. Show cause notice no. 2580/2015- JR/SA/DCCB-NLG, dt. 27.08.2015 of Surcharge Authority.
 11. Lr. Rc.No.16/SDLCO/DVK/2015, dt. 14.09.2015 of SDLCO, Devarakonda along with returned postal cover of Sri.S.Venugopala Chary, The then CEO, Chitriyala.
 12. Show cause notice no. 2580/2015- JR/SA/DCCB-NLG, dt. 15.06.2015 of Surcharge Authority.
 13. Lr.Rc.No. 2491/2013-C, dt. 14.09.2015 of DCO, Nalgonda along with acknowledgment of Sri.S.Venugopala Chary – The then CEO, Chitriyala in token receipt of show cause notice U/S 60(1) of TCS Act, 1964 Rc.No. 2580/2015- JR/SA/DCCB-NLG, dt. 15.06.2016.
 14. Lr. Dt. 06.08.2015 & 12.08.2015 of Sri.S.Venugopala Chary – The then CEO, Chitriyala and Others.
 15. Summons issued U/S 55(2) of the Act in Rc.No. 2580/2015- JR/SA/DCCB-NLG, dt. 27.01.2016.
 16. Memo filed by counsel for S.Venugopala Chary dt. 27.01.2016.
 17. Lr.Rc.No. 2491/2013-C, dt. 24.02.2016 of the DCO, Nalgonda furnishing the acknowledgement dt. 07.02.2016 of S.Venugopala Chary.

18. Vakalath dt. 17.02.2016 filed by Smt.Nama Umadevi, Advocate to defend the case on behalf of S.Venugopala Chary and (3) others.
19. Vakalath dt. 14.03.2016 filed by Smt.Naseeb Afshan, Advocate to defend the case on behalf of S.Venugopala Chary and (3) others.
20. Summons issued U/S 55(2) of the Act in Rc.No. 2580/2015- JR/SA/DCCB-NLG, dt. 20.04.2016.
21. Written Statement dt. 20.06.2016 filed by counsel for S.Venugopala Chary the then CEO, PACS Chitriyala.
22. Summons issued U/S 55(2) of the Act in Rc.No. 2580/2015- JR/SA/DCCB-NLG, dt. 04.06.2016.
23. Lr.Rc.No. 2491/2013-C, dt. 22.06.2016 of the DCO, Nalgonda furnishing the acknowledgement of S.Venugopala Chary .
24. Chief Affidavit of Examination in Chief Rc.No. Estt./E3/F292/2016-17, dt. 04.07.2016 filed by CEO, Nalgonda DCCB Ltd., Nalgonda.
25. Summons issued U/S 55(2) of the Act in Rc.No. 2580/2015- JR/SA/DCCB-NLG, dt.16.07.2016.
26. Cross Examination of Section 51 Inquiry Officer by counsel for Sri. S.Venugopala Chary dt.26.11.2016.
- 27 Arguments dt. 25.11.2017 of counsel for Sri.S.Venugopala Chary.

ORDER :

Whereas, in the references 1st to 3rd read above, an Inquiry U/S. 51 of the Cooperative Societies Act, 1964 was ordered in to the alleged irregularities in the disbursement of loans to Seven (7) Primary Agriculture Cooperative Societies by Devarakonda Branch of Nalgonda DCCB Ltd., during the years 2010 – 2013, with special reference to the allegations levelled in the complaint made by Sri.R.Ravindra Kumar, Ex-MLA Devarakonda constituency and Sri.Kethavath Bilyanaik, TDP President Devarakonda. The District Cooperative Officer, Nalgonda was authorised to conduct the said Inquiry.

Vide references 4th 5th and 7th read above, the District Cooperative Officer / Inquiry Officer submitted his report. Commissioner for Cooperation and Registrar of Cooperative Societies in the reference 6th and 8th read above issued review on Inquiry Report and authorised the Joint Registrar (Now Additional Registrar)/ Chief Auditor to take action as per provisions of Section 60(1) of TCS Act duly following the prescribed procedure for recovery of the loss caused to the Bank and PACS from the concerned.

As per the Inquiry Report submitted by the Inquiry Officer Sri.S.Venugopala Chary, CEO, Chitriyala, misappropriated the funds of the Bank in disbursement of SAO / CKCC loans to the Members of PACS Chitriyala under the control of the Devarakonda branch of DCCB. The said misappropriation caused a loss to the extent of Rs.71,78,073/-. Sri.S.Venugopala Chary, the CEO of PACS Chitriyala has also purportedly supported B.Ramaiah the then Branch Manager of Devarakonda Branch, DCCB Nalgonda in irregular sanctioning of loans. The details of irregularities reported by the statutory Inquiry Officer in respect of loans sanctioned to PACS Chitriyala, is as follows.

S. No.	Category of Fraud	Persons responsible (Colluded with B.Ramaiah)	No.of Loan accounts	Amount of Misappropriation	Enclosed Statement No.	Mark ed Item No.
1	Loans issued without title deeds	1. B.Ramaiah, Branch Manager, Devarakonda Branch 2. S.Venugopala Chary, Ex-CEO. 3. V.Bikku Naik, Ex-President	156	71,78,073	13	24



The Inquiry officer fixed responsibility on Sri.S.Venugopala Chary, Ex-CEO of PACS, Chitriyala jointly and severally for recovery of the above misappropriated amount.

A show cause notice was issued in the reference 9th read above, directing Sri.S.Venugopala Chary, Ex-CEO of PACS, Chitriyala to show cause as to why action U/S. 60(1) of the TCS Act should not be initiated against them for recovery of the above amounts along with interest at the rate of 18% p.a. Notices were also issued to all the delinquents including Sri. S.Venugopala Chary, directing them to attend in person along with the statement of defence with connected documents for Surcharge Inquiry.

Duly following the procedure under CPC, the following draft issues for consideration were framed.

1. Whether the complainants are entitled for recovery of amounts as stated in the complaint / surcharge notice for the delinquents if so to what extent.
2. Whether the statutory inquiry which formed the basis for surcharge proceedings was conducted by following due procedure or not.
3. Whether the delinquents committed misappropriation of funds of petitioner society or not if so to what extent.
4. Whether there is any irregularity on the part of the delinquents in disbursing CKCC loans? What is the role of Managing Committees of delinquent PACS in such irregularities in such case?
5. Whether the Ex and Present employees and Managing Committee members of the PACS i.e., delinquent societies are jointly and severally liable for the misappropriated amount or not.
6. What is the role and responsibility of employees of petitioner society in the alleged misappropriation of funds of the said petitioner society? If so what is their liability.

The petitioner bank filed the Chief Affidavit and documents (A1 to A32) were marked in support. Copies of Inquiry Report and Chief Affidavit were supplied to the counsels of all respondents including R13 i.e. Sri.S.Venugopala Chary, Ex-CEO of PACS, Chitriyala. The Inquiry Officer was present during the proceedings as independent witness and his statement recorded under oath as Chief. The Counsels for all respondents including Sri.S.Venugopala Chary, Ex-CEO of PACS, Chitriyala were provided with an opportunity for cross Examination of Inquiry Officer. Opportunity was provided for the petitioners and the respondents including Sri.S.Venugopala Chary, Ex-CEO of PACS, Chitriyala to produce their witness. Petitioner produced Smt. K.Narmadha, GM, H.O., Sri.M.Karunakar Reddy, Manager, Nalgonda Branch, Sri.K.Madhusudhan Reddy, Manager Retired Nalgonda, Sri.P.Nageshwar, Manager, H.O.Branch, Smt.P.Laxmamma, DGM, Nalgonda DCCB, Sri.K.Shanker Reddy, Asst. Manager, Tripuraram Branch, as witnesses and filed chief. The respondent reported no witnesses. Opportunity was provided for cross Examination of the petitioner witness by the counsel of respondents including Sri.S.Venugopala Chary, Ex-CEO of PACS, Chitriyala. Counsel for petitioner bank submitted oral arguments and counsels for all respondents including Sri.S.Venugopala Chary, Ex-CEO of PACS, Chitriyala submitted their written and oral arguments.

Respondents counsel was provided an opportunity for rebuttal of the petitioner's counsel's arguments. Petitioner counsel submitted two citations

- a. 1988 (2) ALT, 248
- b. 1997 (1) ALD, 500

In the Chief Affidavit, the petitioner submitted that an amount of Rs. 71,78,073/- against 156 loan accounts were issued under CKCC loans without any title deeds during the period when Sri.S.Venugopala Chary, was CEO of PACS, Chitriyala.



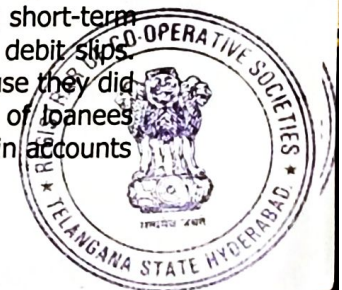
Sri.S.Venugopala Chary, Ex-CEO of PACS, Chitriyala, misappropriated the funds of the bank to the tune of Rs. 71,78,073/- in collusion with the President of PACS Chitriyala. The Chief Affidavit identifies 1 categories of frauds in PACS Chitriyala alleged to have been committed by the respondent. Summary of the category wise alleged fraud in the society amount of misappropriation is as following:

S. N o.	Category of Fraud	Persons responsible (Colluded with B.Ramaiah)	No.of Loan accounts	Amount of Misappropriation	Enclosed State ment No.	Mark ed Item No.
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The Inquiry Officer, in his deposition in Chief stated that, he conducted the Inquiry by verifying the books of accounts and related documents that are available at Devarakonda Branch and the PACS Chitriyala. He relied on the information from the Revenue Authorities for verifying the genuineness of the title Deeds of the loanees. The Inquiry Officer also stated that, he has conducted an open forum at the seat of the PACS Chitriyala and elicited information about SAO loans, while taking assistance of 4 officers of Cooperative Department for the purpose.

The Inquiry Officer (Court witness) in his cross examination by the counsel for respondent Sri.S.Venugopala Chary, Ex-CEO of PACS, Chitriyala stated that the respondent is not employee of DCCB and also informed that, there was no complaint against respondent. The Inquiry Officer further submitted that, the name of respondent was not appeared in the preliminary Inquiry Reports submitted by DGMs of DCCB. He further denied that, the role of CEOs is no where mentioned in the Inquire Report. He informed that, page no. 2 of Inquiry Report shows the role of CEOs. He also informed that, money has been transferred into accounts of bank officers and also in to the other officers accounts. He further informed that, the respondent was included in his inquiry based not on the letter written by Sri.Bhasker Rao, CEO, DCCB. He further submitted that, money has been transferred in to the accounts of bank officials and other non members also. He further accepted that, there is no provision for signature of CEOs on the bank debit slips, but, the CEOs of PACS has to attest on the reverse side of debit slips for identification. He further informed that amount is disbursed based on debit slips from the cash counter of the bank.

The Respondent (S.Venugopala Chary, Ex-CEO of PACS, Chitriyala) in his written statement submitted that, he joined as clerk in PACS Chitriyala in 2009 and after transfer of CEO K.Ramulu the respondent was appointed as CEO Chitriyala PACS on 12 .02.2013 and continuing till date. He further informed that, as he has no knowledge of CEO duties, Bikku Naik, the then newly elected President of PACS Chitriyala, and B.Ramaiah Branch Manager, DCCB Devarakonda used to perform his duties and they used him as their assistant and thereby limited his duties to write the cash book only. he further submitted that, he received summons calling for inquiry, during the course of inquiry and he gave his deposition before the inquiry officer on 30.07.2014 in detailed regarding misappropriation committed by the AGM, B.Ramaiah from 2009-2014 and the liability of misappropriation lies on the branch manager and he only accomplished to the commission of offence without his fault. He further informed that, whenever B.Ramaiah sought for his signatures, he kept them under threat, all the transactions were captured by AGM B.Ramaiah in that period and the procedure of releasing loans also decided by B.Ramaiah, he further submitted that, his signature on bank vouchers cannot be permitted because loan amounts will be transferred to the farmers accounts from the cash counter and farmers can en-cash Loan amount through SB accounts only. He further submitted that all financial transactions pertaining to Chitriyala Society, Branch Manager B.Ramaiah, and President Bikku Naik managed and after granting short-term loans, lapse of months period they sought signatures of the respondent on debit slips. But, on all occasions, the respondent informed that, he refused to sign because they did not follow the procedure in granting loans like as there are no title deeds of loanees and their names are not in the credit limit and the amounts used to deposit in accounts



of manager, President and also in to the accounts of private persons. He further informed that, whenever, he rejected to sign on debit slips the said B.Ramaiah, and Bikku Naik used to threaten him that they will initiate SC and ST atrocities case against him and also threatened by private person that they will see the end of himself and his family members and thereby obtained his signatures, whenever they required.

He further submitted that, loans shall be disbursed as per the resolutions of the management committee. The loans shall be granted basing on permitted credit limit only, as per the loan procedure there must be 6 months time for issue of loans after registration of new members and loans must be advanced through savings accounts of members, but not in any other way, in PACS Chitriyala the above said procedures are not followed.

The counsel for respondent in his written and oral arguments before the surcharge authority stated that irregularities in disbursement of loans amounts is the work of bank / branch and it is not connected to PACS and there is no provision for signature of CEO of PACS on the back side of debit slips. Inquiry officer did not produce anything to show the Rule for counter signature of CEOs on the backside of debit slip. Bank also not showing any rule. He also informed that, no evidence is filed regarding sanction limits, PACS wise by the DCCB. Credit limit PACS wise has to be furnished by the bank/ Inquiry officer. Both Inquiry Officer / bank is not sure of credit limit. Regarding, fake title deeds no witness was examined by inquiry officer, and no authority declared the title deeds as fake. With regard to disbursement of SAO/ CKCC loans deviation from credit limits at PACS level will be verified at bank level. PACS is not disbursing authority, loan is disbursed at bank level by the cashier. PACS has only post office job, if anything wrong, bank should have rejected the credit proposals of PACS. With regard to obtaining title deeds by PACS, for title deeds verification no rule exists, bank shall verify the title deeds and loan application. The Inquiry Officer did not arrive at individual liability. Misappropriation is a culmination of chain of events. Bank is throwing the incapacity of its officials on to the PACS. Bank failed to check the exceeding of sanction limits by PACS. Misappropriation amount transferred to third parties and bank did not seize such amounts. Officers of the bank have not been examined.

The petitioner bank in the written submission stated that, the Inquiry Officer followed the procedure contemplated under Act and Rules. No specific procedure is provided under the Act for conducting Sec.51 Inquiry and the alleged misappropriation is intentional and deliberate for wrongful gain.

The learned counsel for petitioner in his oral submissions reiterated that, the Inquiry was conducted as per the provision of Acts and Rules and no specific procedures is provided for under Section 51 of TCS Act, 1964, the respondent failed to attribute or prove any malafide intentions on the part of the Inquiry Officer. The learned counsel refers to Section 83-C of the Act, which provides that the court shall presume the statement recorded by the Registrar or the person authorised by him as a statement within the meaning of the Indian evidence act 1872.

The learned counsel for the petitioner in his oral submission vehemently argued that CEO is the custodian of the cash book and he is responsible for the loans distributed during the tenure of the CEO. Ample opportunity was provided to the respondent u/S 60 and the respondent did not produce their witnesses before the surcharge authority in spite of ample opportunities.

Heard both sides and perused the record of DCCB, H.O., DCCB, Devarakonda Branch and record of PACS Chitriyala and conducted an independent verification of the records and correlated them with the Chief Affidavit, counter, Statements of witnesses and Statements of cross examination.

Records of the Bank, PACS and depositions of the members given before the Inquiry officer prove beyond doubt, the misappropriation of funds of PACS Chitriyala. The issue to be settled is whether the respondent, who is CEO of Chitriyala PACS is responsible for the misappropriation or not. It is pertinent to understand the process of



sanction of loans at the PACS at this juncture. To begin with at the primary society level, the Management of the PACS, procures the loan applications from the member – farmers duly noting the extent of land, survey number, and eligibility as per scale of finance and is placed before the board and forwarded to Branch Manager for sanction of loans. The Branch Manager, along with supervisor verifies the genuineness of the applications and after scrutiny forwards the same to the Head Office. The duties and responsibility of the PACS CEOs are clearly laid down by the Act. As per provisions of sub- section (1) of Section 55 A of TCS Act, 1964 read with Rule 59 of TCS Rule 1964, the CEO of the Society and the President of the society jointly and severally shall be bound to keep maintain or cause to maintain the books of accounts up to date. The respondent Sri. K.Ramulu, CEO of PACS, Chitriyala is responsible for the transactions held in the society during his tenure.

The respondent failed to submit any material record to show that he has scrutinised the loan applications before forwarding them to the Bank. Records of PACS, records of DCCB and the evidences submitted by the petitioners, shows that the respondent has forwarded the loans to the DCCB fully knowing well that the loan applications are not in the order. Without collusion, misappropriation of such large scale cannot take place. It is pertinent to examine, whether loss is caused only to the PACS Chitriyala or loss is caused to the Bank also. PACS and Bank are the two tiers of three tiered Cooperative Credit Structure with PACS at the base, TSCAB at the APEX Level and DCCB functioning as a link between these two. The misappropriation caused in PACS Chitriyala invariably effects the books of accounts of DCCB. The misappropriation amount will be shown as "amount non-recoverable" and accordingly provisioning is made in the books of accounts which would result in loss to PACS and DCCB.

Present case is not bad loaning (NPAs) but rather bogus loaning, which resulted in ultimate loss to the PACS. Therefore the CEO of PACS cannot be absolved of their duty in protecting the interest of the PACS. The PACS which is registered under the Cooperative Societies Act. When misappropriation is committed in collusion and through team work, the responsibility shall be shared jointly and severally u/S 60 of the Act. The learned counsel for respondent failed to produce any material record in defence to show that, he has discharged his duties as per the job chart and that he is not responsible for the misappropriation caused. Loss caused to the PACS due to dereliction of the duties on part of its CEO has to be made good by themselves jointly and severally. On the one hand, the respondent submits that he was not provided opportunity during statutory inquiry and questions the procedure adopted for statutory inquiry. But, on the other hand failed to produce any record or material facts, before the surcharge authority in his defence contradicting the petitioner's claim of misappropriations and loss caused to the PACS.

In view of the above, the surcharge petition is allowed and respondent is hereby directed to pay an amount of Rs. 71,78,073/- jointly and severally along with (02) others with a simple interest of 18% p.a. by way of compensation to the PACS.

These orders are issued u/S 60 of TCS Act, 1964.

(GIVEN UNDER MY HAND AND SEAL ON THIS 21st DAY OF NOVEMBER, 2019)




Additional Registrar

To,
Sri. S.Venugopala Chary, CEO, PACS, Chitriyala.
Copy to the District Cooperative Officer, Nalgonda for necessary action.
Copy to the Chief Executive Officer, Nalgonda.
Copy submitted to the CC and RCS, TS, Hyderabad