

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:25.11.2015

C O R A M

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.11563 of 2003

T. Marimuthu

...Petitioner

Vs.

1. The Regional Manager,
TNHL Weavers Coop. Society Ltd.,
Office of the Regional Manager,
Coimbatore.

2. The Assistant Director of
Handloom and Textiles,
No.4/2, Bharathi Park,
2nd Cross Road, Saibaba Colony,
Coimbatore-11.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the entire records in so far relates it to Co-operative CMA.No.96/2000 dated 25.09.2002 on the file of the Principal District Court, Coimbatore (Co-operative cases) and quash the same.

For Petitioner : Mr. C.Prakasam

For RR1 : Mr.Jayaraman
for Jayaraman Associates

For RR2 : Mr.K.Muralidharan

सत्यमेव जयते
O R D E R

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mr. C.Prakasam, learned Counsel appearing for the petitioner, Mr.Jayaraman, learned counsel for the first respondent and Mr.K.Muralidharan, learned counsel appearing for the second respondent.

3.Challenge in this Writ Petition is to the Judgment of the Principle District Court cum Tribunal under the Co-operative Societies Act in respect of the surcharge proceedings initiated against the Writ petitioner.

4.The petitioner was working as a Manager of Avinashi Emporium, Coimbatore District and while he was in service, a charge memo was issued on 10.06.1988, for the following misconduct :

"i) That he has effected credit sales to the tune of Rs.1,34,794/- to the employees of M/s.Nithyakalyani Stationeries, Avinashi by violating the rules of State Society.

ii) He has cheated the officials of state society.

Iii) That he has effected the Janatha Sales on Whole Sale in the names of the employees of M/s.Nithyakalyani Stationeries, Avinashi by violating the State Society rules.

iv) He has accepted the sales return for the goods supplied during Deepawali 87 returned by M/s.Nithyakalyani Stationeries, Avinashi without the proper permission of the Regional Office.

v) That he has misappropriated the funds of the state society."

The explanation submitted by the petitioner was found to be not satisfactory and therefore an enquiry officer was appointed to conduct the domestic enquiry. The enquiry officer after affording opportunity to the petitioner, found him guilty of charges. Consequently, the petitioner Management dismissed the petitioner from service on 03.09.1999 and it appears that the order of dismissal has not been questioned by the petitioner. In the meantime, the Management filed an Arbitration Case before the second respondent on 29.12.1991 for recovery of Rs.62,735.13/- from the petitioner being the loss caused by the petitioner to the Society.

5.The Management contended that in the domestic enquiry, the petitioner flouted the instructions given by Co-optex in effecting the credit sales of Janata goods by using bogus rubber stamp of the concern called Nithyakalyani Stationeries, Avinashi. The proprietor of the said concern appeared before the domestic enquiry officer and gave a written statement stating that he does not have any employee and he is a one man establishment and

the Rubber Stamp of Nithyakalyani Stationeries, said to have been used are all bogus. Thus, it was contended by the Management that the petitioner has committed fraud by using the fabricated rubber stamp of Nithyakalyani Stationeries, and showing as Janata goods to be sold to fictitious employees.

6.The petitioner was therefore charged of effecting bogus credit sale to the tune of Rs.1,34,794/- alleged to have been sold through the Nithyakalyani Stationeries and after four months he made entries in the record and he has taken back the goods from those fictitious employees. Further, it was placed on record that the returned goods were not Janata goods, but they are Bed Sheets, Polyester Sarees, Lungies, Towels etc. Ultimately, the second respondent who adjudicated the claim filed by the Management passed an Award on 24.12.2000, directing the petitioner to pay a sum of Rs.44,267.68/-, together with interest at 12.5% p.a., Though the Management had made a claim for Rs.62,735.13/-, the Award was only for Rs.44,267.68. Therefore, the petitioner preferred an appeal before the Tribunal viz. Principal District Judge, Coimbatore, raising all legal and factual contentions, which has been discussed by the impugned order.

7.Heard the learned counsel for the parties and perused the materials placed including the copy of the charge memo, the letter of the Proprietor of Nithyakalyani Stationeries, dated 28.3.1989 and the report of the enquiry officer dated 8.12.1992.

8.There is no challenge to the domestic enquiry conducted by the enquiry officer and the validity of the same has not been questioned. The enquiry officer after giving full and effective opportunity to the petitioner who examined himself as a witness apart from producing one other witness on his side and after considering the entire documents, recorded a finding of guilt stating that the petitioner has violated the Rules and Regulations and he has used bogus rubber stamp and put forged signature and misappropriated the funds of the society.

9.As long as the findings recorded by the domestic enquiry officer are not put to challenge raising any sustainable legal plea, the petitioner would have no case to contest. However, it has to be noted that the Tribunal which is the First Appellate Authority has once again re-appreciated the evidence which is placed on record and came to the conclusion that the second respondent has cogently

considered the entire factual matrix and arrived at a conclusion and that conclusion is neither erroneous nor unsustainable.

10. In the light of the same, this Court exercising jurisdiction under Article 226 of the Constitution of India will not act as a Second Appellate Authority over the findings of the Tribunal and re-appreciate the evidence on record. Unless and until it is established that there is perversity in the order passed by the Tribunal, the question of interfering with the same does not arise. The petitioner has not been able to demonstrate as to any error which is apparent on the face of record on the order passed by the Tribunal and hence no grounds are made out to set aside the impugned order.

11. Accordingly, the Writ Petition fails and the same is dismissed. Pursuant to the interim order granted by this Court on 16.4.2003, the petitioner has deposited a sum of Rs.15,000/- and the respondent Society is entitled to withdraw the said amount and the balance payable as per the Award shall be paid to the respondent Society by the petitioner, within a period of six weeks from the date of receipt of a copy of this order. No costs.
rpa

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

1. The Regional Manager,
TNHL Weavers Coop. Society Ltd.,
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Coimbatore.
2. The Assistant Director of
Handloom and Textiles,
No.4/2, Bharathi Park,
2nd Cross Road, Saibaba Colony,
Coimbatore-11.
3. The Principal District Court,
(Co-operative Cases), Coimbatore.

+ 1 cc to Mr.C.Prakasam, Advocate SR 64318
+ 1 cc to Govt.Pleader SR 64547

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