

IN THE HIGH COURT OF JUDICATURE AT MADRAS

JUDGMENT RESERVED ON : 07.01.2016

JUDGMENT DELIVERED ON : 27.01.2016

CORAM

THE HON'BLE MR. SANJAY KISHAN KAUL, CHIEF JUSTICE
and

THE HON'BLE SMT. JUSTICE PUSHPA SATHYANARAYANA

Writ Appeal Nos. 1205 to 1212 of 2015

Durai Munusamy

... Appellant in all W.As

Vs.

1. The Deputy Registrar of Co-op. Societies
4th Cross, Co-op. Colony
Krishnagiri
 2. The S. 495 Krishnagiri TK Agricultural
Producers Co-op. Marketing Society Ltd.
Rep. By its Special Officer
Pochampalli Post
Krishnagiri
 3. The Tribunal for Co-op. Cases
(Principal District Judge)
Krishnagiri
- Respondents in both W.As

Prayer:- Writ Appeals filed under Clause 15 of the Letters Patent against the common order dated 03.09.2014 made in W.P. Nos. 8967, 8968, 8969, 8977, 12229, 12231, 12234 and 12314 of 2013 respectively.

Writ Petitions filed under Article 226 of the Constitution of India praying for the issuance of Writ of Certiorari, to call for the records relating to the order dated 17.11.2012 of the 3rd Respondent made in C.M.A.(Co-op.Society) Nos.47, 46, 48, 50, 43, 49, 44 and 45 of 2005 respectively along with the Surcharge Order Nos.07/2000/Sa Pa, 06/2000/Sa Pa, 08/2000/Sa Pa, 10/2000/Sa Pa, 03/2000/Sa Pa, 09/2000/Sa Pa, 04/2000/Sa Pa and 05/2000/Sa Pa respectively dated 20.07.2004, 30.07.2004, 30.07.2004, 30.07.2004, 20.07.2004, 30.07.2004, 20.07.2004 and 30.07.2004 respectively of the 1st Respondent, quash all these orders insofar as the Petitioner is concerned.

For Appellant : Mr. S. Venkataraman

For RR 1 & 2 : Mr. L.P. Shanmugasundaram
Special Government Pleader

COMMON JUDGMENT

PUSHPA SATHYANARAYANA, J.

Heard the learned counsel appearing for the parties and perused the records.

2. Since the issue involved in all these Writ Appeals is one and the same, they are disposed of by this common judgment.

3. These Writ Appeals have been filed challenging the common order of a learned Judge of the writ court dated 03.09.2014 by which the learned Judge declined to quash the common judgment dated 17.11.2012 passed by the Tribunal for Co-operative Cases (Principal District Court), Krishnagiri, and the Surcharge Orders passed by the Deputy Registrar of Co-operative Societies on various dates in respect of the concerned Co-operative Society.

4. While the writ petitioner, who is the appellant before us, was entrusted with the work of selling cotton bags to the highest bidder in his capacity as a Sub-Registrar and Secretary of the second respondent Society during 28.12.1995 to 12.06.1997, an enquiry was ordered against him and others under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 [for short, "the Act"]. After completion of the enquiry and submission of the enquiry report, surcharge proceedings were initiated under Section 87 of the said Act in which the appellant was held liable for the loss and directed to compensate the same. Challenging the same, the appellant preferred Miscellaneous Appeals before the Tribunal for Co-operative Cases (Principal District Court), Krishnagiri, wherein the impugned orders passed by the first respondent were set aside. Aggrieved by the same, the Society filed Writ Petitions and this Court, by order dated 11.10.2010, reversed the orders passed by the Tribunal and remanded the matter to the Tribunal to dispose of the same on merits. During the second round of hearing, the Tribunal upheld the Surcharge Orders against which the appellant filed Writ Petitions in W.P. Nos. 27310 to 27317 of 2011 and this Court, vide order dated 13.03.2012, setting aside the orders, remanded the case back to the Tribunal. The Tribunal, once again, passed fresh orders upholding the Surcharge Orders passed by the first respondent

holding that the appellant is also jointly liable for the loss caused to the Society which lead to the filing of the Writ Petitions.

5. The only contention of the learned counsel for the appellant is that the appellant was not given opportunity to examine and cross-examine the witnesses at the time of inquiry under Section 81 of the Act.

6. Indisputably, the appellant has allowed the delivery of cotton to the highest bidder on credit basis without ensuring the receipt of payment. As per Rule 6(2) of the By-law, credit facility can be provided only to the approved merchants. Firstly, the action of the appellant in delivering the cotton without conducting the auction proceedings, is in flagrant violation of the provisions of the By-law. It is also seen that the surcharge proceedings under Section 87 of the Act were initiated only after enquiry under section 81 of the Act in which the appellant also participated. Not even a whisper has been made under what authority or provisions, the appellant released the materials without collecting amount, more particularly, when By-law 42 (6) to (8) is very specific in this regard. The general rule is that when a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions, any deviation of the same amounts to violation of Rules. It cannot be disputed that an enquiry under Section 81 of the said Act is an enquiry in public interest in order to find out whether the affairs of a co-operative society are conducted legally. Nor is it the case of appellant that he has taken concurrence of the Board of Directors to fix the maximum credit limit before delivering the goods. Therefore, it is to be construed that if the appellant had acted as per the by-law, he would not have delivered the goods without collecting the amount and loss to the Society could have been avoided. As such, the action of the appellant amounts to dereliction of duty.

7. Secondly, if at all the appellant is very particular with regard to cross-examination of the witnesses, he should have raised the same before the Tribunal especially when the matter was remitted twice. It is settled that if the conclusion arrived at is found to be perverse, it is for this Court to interfere with the same and if the finding has been rendered on some evidence, this Court will not interfere with the same as the domain of re-appreciation of evidence is not with this Court in the writ jurisdiction. In this regard, the learned single Judge in the penultimate paragraph of the order, has clearly observed that when an enquiry under Section

81 is made, the question of cross-examination does not arise as it is only a fact finding enquiry and no oath is administered on any witness. As such, the contention of the learned counsel for the appellant that he was not afforded opportunity to cross-examine the witnesses, cannot be sustained.

8. From the materials available on record, it is clear that already the Tribunal has upheld the surcharge proceedings twice and thereafter, the said decision was concurred by this Court in its judicial order dated 03.9.2014 impugned herein. The learned single Judge while confirming the order of the Tribunal and surcharge proceedings, has discussed the provisions of By-law elaborately and dealt with the issue in detail and no interference of this Court is warranted to the well-considered order.

The Writ Appeals, being devoid of any merit, are accordingly dismissed. But, in the circumstances of the case, there shall be no order as to costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Registrar of Co-op. Societies
4th Cross, Co-op. Colony
Krishnagiri
2. The Special Officer
S. 495 Krishnagiri TK Agricultural
Producers Co-op. Marketing Society Ltd.
Pochampalli Post, Krishnagiri
3. The Tribunal for Co-op. Cases
(Principal District Judge)
Krishnagiri

+8cc's to Mr.S. Venkataraman, Advocate, S.R.Nos.5049 to 5056
+1cc to Mr.L.P. Shanmugasundaram, Advocate, S.R.No.4671
+1cc to the Government Pleader, S.R.No.5140

W.A. Nos. 1205 to 1212 of 2015

CA(CO)
CA(26/02/2016)