

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.09.2016

CORAM

THE HONOURABLE MR.JUSTICE M.DURAIWAMY

C.R.P.(NPD).Nos.59 & 60 of 2015

C.R.P.(NPD).No.59 of 2015:

1.T.P.Mariappan
2.V.M.Peerbasha

... Petitioners

Vs

1.The Registrar of Co-operative Societies,
Omalur, Salem District.

2.T.P.K.Balamurugan

... Respondents

C.R.P.(NPD).No.60 of 2015:

1.V.Anbanandham
Deputy Registrar/Special Officer

2.K.R.Latchumanan
Secretary

... Petitioners

Vs

The Deputy Registrar of Co-operative Societies,
Omalur, Salem District.

... Respondent

Civil Revision Petitions under Article 227 of the Constitution of India against the judgment dated 24.02.2014 made in C.M.A.(CS).Nos.14 & 15 of 2008 on the file of the District Co-operative Tribunal, Salem.

For Petitioners : Mr.M.S.Palaniswamy
(in both C.R.Ps)

For Respondents : Mr.T.Jeyaramaraj,
Government Advocate
(R1 - C.R.P.(NPD).59/2015
& sole respondent in C.R.P.(NPD).60/2015)
R2 - C.R.P.(NPD).59/2015 - Given up

C O M M O N O R D E R

C.R.P.(NPD).No.59 of 2015 arises against the judgment and decree passed in C.M.A.(CS).No.14 of 2008 on the file of the District Co-operative Tribunal, Principal District Judge, Salem. C.R.P.(NPD).No.60 of 2015 arises against the judgment and decree passed in C.M.A.(CS).No.15 of 2008 on the file of the District Co-operative Tribunal, Principal District Judge, Salem.

2.The petitioners in C.R.P.(NPD).No.59 of 2015 are not members of the Society and they are hired by the Society to transport Kerosene from the Depot. The petitioners in C.R.P.(NPD).No.60 of 2015 are the Special Officer and the Secretary of the Society.

3.It is the case of the respondents that contrary to the proceedings of the District Collector, Salem dated 16.11.2001 and 21.01.2002 fixing a sum of Rs.16/- per Barrel for transporting Kerosene, the petitioners awarded Rs.30/- per Barrel and thus incurred loss to the Co-operative Bank to the tune of RS.1,28,905/-.

4.According to the petitioners, the surcharge order passed by the respondent is erroneous and that the respondent has not conducted the enquiry in a proper manner. The petitioners have not incurred any loss to the Co-operative Bank. The Co-operative Tribunal confirmed the order passed by the respondent and dismissed both the appeals, against which the petitioners have filed the above Civil Revision Petitions.

5.Heard Mr.M.S.Palaniswamy, learned counsel for the petitioners in both the Civil Revision Petitions and Mr.T.Jayaramaraj, learned Government Advocate for the 1st respondent in C.R.P.(NPD).No.59 of 2015/respondent in C.R.P.(NPD).No.60 of 2015.

6.Mr.M.S.Palaniswamy, learned counsel appearing for the petitioners submitted that the petitioners in C.R.P.(NPD).No.59 of 2015 are not the members of the Society and they are hired by the Society to transport

Kerosene from the Depots and hence, no proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act can be initiated against them. Further, the learned counsel submitted that surcharge proceedings cannot be initiated against them and surcharge proceedings suffers for want of jurisdiction. The learned counsel also submitted that the petitioners have not caused deficiency in the assets of the Society because they received higher charges and they are eligible to receive the existing rates fixed by the District Collector, Salem.

7.In C.R.P.(NPD).No.60 of 2015, the Special Officer and the Secretary of the Society are the petitioners. The learned counsel submitted that the payment for transport of Kerosene was made by the petitioners as per the then existing rate fixed by the District Collector, Salem by his proceedings dated 23.01.1998 and by the Joint Registrar of Co-operative Society, Salem in proceedings dated 18.02.1998 and 22.02.2001 and also by the order of the Special Commissioner of Civil Supplies and Consumer Protection Department dated 09.11.2000.

8.Admittedly, the 1st petitioner was the Special Officer of the Society from 25.05.2001 to 02.10.2001 during which the payment of Rs.30/- per Barrel was the existing rate in vogue when the petitioners made payments

after the approval of the Special Officer of the Society on 01.11.2001 and 23.11.2001. The revision of the transport charges at Rs.30/- per Barrel from Rs.16/- per Barrel was made on 08.12.2001 by letter dated 08.12.2001 by the Joint Registrar of the Co-operative Society, Salem. When the payments were made on 03.09.2001, 07.09.2001 by cheques and the cash payments made on 01.11.2001, 23.11.2001 to the transporters, the revision of charges was made only on 08.12.2001 by the Joint Registrar of the Co-operative Society. Therefore, it is clear that even prior to the revision of charges, the payments were made by the petitioners. The revision of the charges cannot have retrospective effect and the payments made as per the rates approved at the time of payment cannot be retrospectively questioned and become a subject matter of the surcharge proceedings. That apart, at the time of revision of rate fixed by the District Collector and the Joint Registrar of the Co-operative Society, the 1st petitioner was not the Special Officer of the Society. He was Special Officer of the Society only between the period from 25.05.2001 to 02.10.2001.

9.The learned counsel appearing for the petitioners submitted that the respondent had dropped the surcharge proceedings for the reason that the entire amount in question was recovered. In support of his contention the learned counsel also produced the relevant documents, which were

obtained by him under the Right To Information Act.

10.Mr.T.Jayaramaraj, learned Government Advocate appearing for the respondent also submitted that the surcharge proceedings initiated against the petitioners were dropped.

11.The learned counsel appearing for the petitioners, in support of his contention relied upon an unreported order of this Court ***dated 25.07.2008 passed in W.P.No.992 of 2006***, which reads as follows:

“...

6.However, it must be noted that Section 90 proceedings are available only in particular contingencies mentioned under Section 90 and there is no proof that even non member can be summoned for an arbitration proceedings under Section 90. In this case, admittedly, the transaction which defrauds the Society takes place before the petitioner become a member and therefore, the issuance of summons under Section 90 is improper. The summons issued under Section 90 was not proper. The petitioner can be proceeded in other means provided under the Act. In such circumstances, the Writ Petition stands allowed and the summons issued against the petitioner alone will stand quashed. No costs. Consequently, connected miscellaneous petition is closed.”

12.The ratio laid down in the said order squarely applies to the facts and circumstances of the present case. The Tribunal, without taking into consideration all these aspects, erroneously dismissed the appeals.

13.For the reasons stated above, I am of the considered view that the judgment and decree passed in C.M.A.(CS).Nos.14 & 15 of 2008 are liable to be set aside. Accordingly, the same are set aside. The appeals in C.M.A.(CS).Nos.14 & 15 of 2008 stand allowed. The Civil Revision Petitions are allowed. No costs.

Index : No
Internet : Yes
va

26.09.2016

To

The District Co-operative Tribunal,
Salem.

M.DURAIWAMY,J.
va

C.R.P.(NPD).Nos.59 & 60 of 2015

26.09.2016