

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.05.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.V.MURALIDARAN

W.P.No.18208 of 2016
and
WMP.No.15953 of 2016

K.S.Asalam
President,
The Transport Employees Co-operative
Thrift and Credit Society,
No.10, Rathina Nagar,
Teynampet, Chennai-600 018. ... Petitioner

Vs.

1. The State of Tamil Nadu,
rep. by the Secretary to Government,
Co-operative Department,
Fort St. George, Chennai - 600 009.
2. The Additional Registrar,
Chennai Region,
Tamil Nadu State Co-operative Societies,
Teynampet, Chennai - 600 018.
3. The Deputy Registrar,
Co-operative Societies (Loan),
Kuralagam, Chennai - 600 108.
4. The Managing Director,
Chennai Central Co-operative Bank Ltd.,
2/5, Broadway,
Chennai - 600 108.
5. The Co-operative Sub Registrar,
The Transport Employees Co-operative
Thrift and Credit Society,
Rathina Nagar, Teynampet,
Chennai - 600 018.

... Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, praying for the issuance of a Writ of
Certiorarified Mandamus, to call for all relevant records

relating to the impugned order issued in Na.Ka.No.1402/2016/E2 dated 12.05.2016 on the file of second respondent herein and quash the same as arbitrary, illegal and violation to the principles of natural justice and thereby directing the respondents to permit the petitioner to continue as the President of the State Transport Employees Cooperative Thrift and Credit Society till his tenure.

For Petitioner : Mr.C.R.Dhasarathan

For Respondents : Mr.L.P.Shanmugasundaram (for R1 to R4)
Special Government Pleader

Mr.M.S.Palanisamy (for R5)

O R D E R

The President of the Transport Employees Co-operative Thrift and Credit Society situated at No.10, Rathina Nagar, Teynampet, Chennai - 600 018 has come forward before this Court challenging the order in Na.Ka.No.1402/2016/E2 dated 12.05.2016 by abolishing the Society and quash the same and thereby directing the respondents to permit the petitioner to continue the Society.

2.The case of the petitioner is that he was the elected President of the Tamil Nadu Transport Employees Co-operative Thrift and Credit Society X-367 having office at No.10, Rathina Nagar, Teynampet, Chennai - 600 018, which is registered under Tamil Nadu Co-operative Societies Act 1983. In the Society, there are about 21,300 members, who have employed throughout Tamil Nadu in various State Transport Corporations as well as Transport Terminus in Kerala, Karnataka and Andhra Pradesh. There are 13 Directors including the Vice President. Apart from the petitioner, who is elected as a President under the tenure of office of the President commences from 09.05.2013 to five years.

3.The petitioner further states that the Auditing Officer has audited the Society for the year 2013-2014 and sent the report dated 02.03.2015 through the Co-operative Auditing Assistant Director, Chennai South and pursuant to the above report, the third respondent in the letter dated 22.04.2015 sent his special report of the Bank's Inspectors for the period 2013-2015 to the first respondent.

4.Pursuant to the above auditing report under the Inspectors report, the fourth respondent appointed the Sub-Registrar / Managing Director of M/s.Ashok Leyland Workers Co-operative (Loan) Society, Chennai as the enquiry officer under Section 81

of the Co-operative Societies Act, 1983 with regard to the irregularities found in the Bank's Inspector report as well as the Auditing report. As per the appointment of the enquiry officer, the enquiry officer started conducting the enquiry under Section 81 of the Co-operative Societies Act 1983 from 27.04.2015 and after completion of the enquiry, he submitted his report on 31.07.2015 beyond the period of three months. The enquiry officer has given his findings is as follows:-

- (i) The Society had purchased crackers for a sum of Rs.53,58,324/- In the year 2013-2014.
- (ii) That the Director's who attended the society meeting were paid sitting fees, refreshment and conveyance fees.
- (iii) Fuel expenses were paid when there is no vehicle to the society.

5. The petitioner further states that on the basis of the findings of the enquiry officer's report, the third respondent by his proceedings in Na.Ka.No.3577/2015 Sa.Pa.1 dated 24.08.2015 initiated surcharge proceedings under Section 87(1) of the Co-operative Societies Act 1983 by issuing show cause notice to the petitioner as well as to the other Directors of the Society. On receipt of the show cause notice, this petitioner also submitted his explanation on 19.01.2016 and in his explanation, this petitioner categorically stated that with regard to fuel expenses there is no explanation in the audit report for the year 2013-2015. In respect of purchase of the crackers for the Deepavali Festival ordered to drop from proceeding with the surcharge proceedings against the petitioner and five employees of the Society. But, the third respondent has passed orders in surcharge proceedings in Na.Ka.No.3577/2015 Sa.Pa.1 dated 22.02.2016 by directing to recovery of Rs.1,13,200/- and Rs.55,000/- towards expenses of alleged sitting fees, refreshment and excess payment of travelling allowances paid to the Directors. The third respondent also directed to recover a sum of Rs.2,66,239/- towards fuel expenses incurred on behalf of the Society's day today official usage. The amount ordered to recover under surcharge proceedings is Rs.4,34,939/- with 14% of interest.

6. Against the surcharge proceedings, the petitioner has filed appeal in C.M.A.No.46 of 2016 before the Co-operative Tribunal viz., the Chief Judge of Small Causes Court, Chennai and the First Additional City Civil Judge, who in-charge of the said Tribunal granted an interim stay in M.P.No.215 of 2016 on condition that this petitioner should pay a sum of Rs.50,000/- on or before 16.06.2016. The said order was passed on 29.04.2016.

7. Simultaneously, the second respondent initiated proceedings in Na.Ka.No.1402/2016/E2 dated 15.03.2016 under

Section 88(1) of the Co-operative Societies Act 1983 for supersession of the said Board of the Society. On the basis of the findings of the enquiry officer as well as the surcharge show cause for the similar set of charges as contemplated.

8. Though, the petitioner has given reply to the show cause notice by stating reasonable sitting fees and the other fees of Rs.1,13,200/- and Rs.55,000/- and sought for the retrospective approval and the fuel expenses reasonably and properly spent by the petitioner to meet the members of the Society, who are in various districts in the State of Tamilnadu and in various terminus in Andhra Pradesh, Karnataka and Kerala.

9. It is the case of the petitioner that accepting the genuine explanation, the third respondent ordered not to proceed further in respect of crackers purchase of Rs.53,58,324/-, but the fourth respondent proceeded to pass final orders as per the proceedings by dissolving the Board of the Societies under Section 88(1) of the Societies Act, 1983 and also appointed the fifth respondent to Administer the Society for six months from assuming the office.

10. Challenging the said order, the present writ petition has been filed by the petitioner stating that the order is against the law on the grounds that though the enquiry officer was appointed and initiated proceedings on 27.04.2015 but the report was given only on 31.07.2015 beyond the period of three months and hence, the report of the enquiry officer is functus officio which cannot be taken into account as per Rule 104 of Co-operative Societies Act. He ought to have taken into consideration of the Deputy Registrar (Loan) who dropped the irregularities or loss to society in respect of purchase of crackers for Deepavali Festival for a sum of Rs.53,58,324/-. Since the whole amount was recovered.

11. The petitioner also pointed out the grounds that there is no loss to the Society against the order of surcharge proceedings, the petitioner also filed an appeal in C.M.A.No.46 of 2016 and the same is pending with interim stay. When similar set of charges parallel proceedings initiated proposed to supersede the Board of the Society which amounts to parallel proceedings initiated and dual punishment of the order of the surcharge.

12. When for the similar set of charges, a surcharge proceedings ordered to recover and the same was challenged before the Tribunal and the same is pending, the same charges of superseding the Board of Society cannot be made, since the Act itself contends that supersede can be made only in extraordinary

situation, but the case in hand i.e. no extraordinary situation arose.

13.The petitioner raised the ground by saying that without giving an opportunity to this petitioner, the impugned order was passed by dissolving the Society and appointed the fifth respondent as Administer of the Society. Therefore, he prayed this Court to set aside the order.

14.Heard Mr.C.R.Dhasarathan, learned counsel appearing for the petitioner and Mr.L.P.Shanmugasundaram, learned Special Government Pleader, appearing for the respondents 1 to 4 and Mr.M.S.Palanisamy, learned counsel appearing for the fifth respondent.

15.It is the case of the petitioner that against the order an appeal has been filed in C.M.A.No.46 of 2016 and the same is pending before the Co-operative Tribunal. The impugned order is passed superseding the Board of Society. Apart from this, for the very same set of charges, which is under the appeal in C.M.A.No.46 of 2016, the present impugned order is passed under Section 88(1) of the Co-operative Societies Act. The petitioner also contends that without affording personal hearing, the impugned order has been passed.

16. Per contra, the learned counsel appearing for the respondents submits that the impugned order has been passed in the proper manner by giving fair opportunity to the petitioner. Apart from this, the impugned order has been passed as per the provision under Section 88(1) of the Co-operative Societies Act and it is valid in the eye of law and this petitioner should not challenge the said order.

17. Show cause notice was issued to the petitioner and for that the petitioner has given his reply dated 19.04.2016 without affording any opportunity to the petitioner to put forth his case before the authorities concerned and without giving him an opportunity of personal hearing, the respondent has passed the present impugned order. On this main ground, this writ petition ought to be allowed.

18. Upon perusal of the materials and records produced by the petitioner and the respondents and upon hearing both sides arguments, I am inclined to pass the following orders:

(a)the impugned order in Na.Ka.No. 1402/2016/E2 dated 12.05.2016 passed by the second respondent is set aside and the writ petition is allowed.

(b)the second respondent is directed to afford an opportunity of personal hearing to the petitioner based on the show cause notice dated 15.03.2016 and the reply dated 19.04.2016 given by the petitioner and pass appropriate orders within a period of 8 weeks from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

vs
To

Sub Assistant Registrar

1. The Secretary to Government,
State of Tamil Nadu,
Co-operative Department,
Fort St. George, Chennai - 600 009.
2. The Additional Registrar,
Chennai Region,
Tamil Nadu State Co-operative Societies,
Teynampet, Chennai - 600 018.
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The Transport Employees Co-operative
Thrift and Credit Society,
Rathina Nagar, Teynampet,
Chennai - 600 018.

+lcc to Mr.M.S.Palanisamy, Advocate, S.R.No.28873
+lcc to Mr.C.R.Dhasarathan, Advocate, S.R.No.28834
+lcc to the Government Pleader, S.R.No.28838

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CA(CO)
CA(08/06/2016)