

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
21.09.2017	15.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.30481 of 2014 and
M.P.No.2 of 2014

M.Karuppannan

S/o.Late Marappagounder,
Sembuthampalayam,
Periyapuliyur-638455,
Kavundapadi, Bhavani Taluk,
Erode District.

Petitioner

Vs.

1 The Special Tribunal for Co-op. cases
(Principal District Court)
Erode.

2 The Deputy Registrar (Dairying),
O/o. Deputy Registrar (Dairying)
Erode-1 Erode District.

3 The Special Officer
E.D.285 Sembuthanpalayam Milk Producers
Cooperative Society Ltd.,
Sembuthampalayam, Bhavani Taluk,
Erode District. ...

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records pertaining to the surcharge order dated 06.02.2013 made in Na.Ka.No. 2032/2004/Aa passed by the 2nd respondent confirmed in the Judgment and Decree dated 05.09.2014 made in CMA (CS) No.24 of 2013 on the file of the 1st respondent quash the same.

For Petitioner : Mr.N.Manokaran

For Respondent No.1 : Tribunal

For Respondent No.2 : Ms.T.Girija, G.A.

For Respondent No.3 : Mr.R.Balaramesh

O R D E R

The petitioner was elected as President of the 3rd respondent Society in the year 1997 and he was in the office during the year 1997 to 2001. Subsequently, elected board was superceded by the Government and the Special Officer was appointed to look into the administration of the third respondent society. On the basis of the report under Section 81 of the Tamilnadu Co-operative Societies Act, the second respondent has issued show cause notice under Section 87(1) of the Act for the alleged loss caused to the society to the tune of Rs.1,17,284/-. The petitioner has submitted his reply for the aforesaid show cause notice and requested the second respondent to furnish copy of enquiry report and other connected documents relied upon by the enquiry officer to submit his explanation. The second respondent without furnishing documents sought for and without giving opportunity to the petitioner, passed an order in proceedings No.Na.Ka.No.3428/99/B, dated 17.7.2001. Challenging the aforesaid order, the petitioner has filed an appeal before the first respondent under Section 152 of the Tamilnadu Co-operative Societies Act in C.M.A.No.75 of 2001. By an order, dated 19.2.2004, the tribunal dismissed the appeal. The writ petitioner has filed W.P.No.23373 of 2004 before this court and aforesaid writ petition was allowed and remanded the matter back to the first respondent for fresh disposal with due compliance of Section 87(4) of the Act, 1983. According to the petitioner, pursuant to the order passed by this Court in the said writ petition, the petitioner has made an objection in writing on 9.8.2012 and statement was also recorded on 8.10.2012. However, the third respondent neither produced any material nor any evidence was adduced as per section 87(4) of the Act. Therefore, the second respondent has not followed the procedure as contemplated under section 87(4) of the Act, even after the direction issued by this Court in W.P.No.23373 of 2004. The appellate court also confirmed the order passed by the third respondent in C.M.A.No.24 of 2013. Challenging the order passed by the respondents 1 and 2, the petitioner has filed the present writ petition to set aside the impugned order.

2 According to the learned counsel for the petitioner, the provision under Section 87(4) of the Tamilnadu Co-operative Societies Act has not been followed and also direction issued by this court in W.P.No.23373 of 2004. Therefore, the order passed by the tribunal is liable to be set aside. It is specifically contended by the counsel for the petitioner that the petitioner was not given an opportunity to cross examine the witnesses of the third respondent society and thereby violates the principles of natural justice.

3 On the contrary, the learned counsel for the respondent would submit that in the light of the earlier order passed by this court, sufficient opportunity was given to the petitioner and therefore, the tribunal has considered in detail the grounds raised by the petitioner and rightly come to the conclusion that there is wilful negligence on the part of the petitioner and fixed liability against the petitioner for the loss sustained to the society. All the five charges framed against the petitioner have been proved against the petitioner. Therefore, there is no warrant to interfere with the order passed by the tribunal.

4 Heard the learned counsel for the petitioner, the learned Government Advocate for the respondents 1 and 2 and the learned counsel for the respondent No.3 and perused the materials available on record.

5 According to the learned counsel for the petitioner, the impugned order has been passed without complying Section 87(4) of the Tamilnadu Co-operative Societies Act by wilfully disobeying the direction issued by this court in W.P.No.23373 of 2004. In support of his contention, the learned counsel for the petitioner relied upon the following judgments of this court:

1. M.Karuppannam Vs. The Deputy Registrar (Dairying), Erode Taluk and District and others (2012 (1) CWC 794)
2. Krishnasamy vs. The Asst. Director, Handloom and Textiles, Coimbatore and another [2016(1) T.N.C.J. 799 MAD]
3. S.Ramadevi vs. The Special officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District and others (2016-4 L.W.452)

6. In M.Karuppannam Vs. The Deputy Registrar (Dairying), Erode Taluk and District and others (2012 (1) CWC 794) this court in para 18 and 19 held as under:

"18. As pointed out earlier, whether there has been compliance of Section 87(4) of the Act and whether the first respondent has made out a case of wilful negligence on the part of the petitioners, has to be seen by examining the factual issues. The underlying principle of the nature of the enquiry under Section 87(4) of the Act is akin to the manner in which Civil Court conducts a matter. The first respondent had issued notices to the parties and the parties, except G.K.Krishnasamy, the petitioner in W.P.No.33769 of 2013, were all

represented by their counsels. There were nine hearings of the proceedings and there was oral and documentary evidence placed before the first respondent. The documents which were marked before the first respondent were not disputed for its correctness or veracity, by the petitioners."

The aforesaid decision rendered by this Court in the earlier round of litigation filed by the writ petitioner.

7 In Krishnasamy vs. The Asst. Director, Handloom and Textiles, Coimbatore and another [2016(1) T.N.C.J. 799 MAD] this Court in para 18 and 20 held as under:

"18. It is pertinent to note here that sub-section (4) of Section 87 of the Act envisages that the Registrar or the person authorised by him shall, when acting under this section, have all the powers of Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) with respect of the following matters namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath,

(b) requiring the discovery and production of any documents.

(c) reception of evidence on affidavits,

(d) requisitioning any public record from any Court or office

(e) issuing Commission for examining of witnesses

19.....

20. Sub-Section (4) of Section 87, thus made clear that the Officer, who was authorised to conduct an enquiry under Section 87 shall have power of Civil Court and so far as this case is concerned Mr.N.Manokaran, learned counsel appearing for the revision petitioner has unambiguously demonstrated that sufficient opportunity was not given to the revision petitioner to put forth his contention

effectively. It is apparent from the records that no evidence either oral or documentary was recorded on the side of the revision petitioner. The Enquiry officer is expected to record the evidence on whole and atleast he should receive evidence on affidavit."

8 In S.Ramadevi vs. The Special officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District and others (2016-4 L.W.452), this court held as under:

"26. We are, thus, of the view that as the legal principles are quite settled, we have to only look into the application of the same in the facts of the present case. We are of the view that the appellate authority was right in coming to the conclusion that there is no wilful negligence in the case of the appellant and this aspect has really not even been seriously touched upon by the learned Single Judge. Merely because loss is caused would not suffice. The appellant is not the beneficiary. There is no such wilful negligence attributed to her. This is apparent from even the enquiry report, which we have referred to aforesaid. Mere use of the words "negligence and careless with sufficient motive for gain" would not suffice when actually the facts do not make out such a case. Thus, the surcharge officer certainly fell into an error in imposing the liability on the appellant. The enquiry report discussed aforesaid itself shows that it is the third respondent who is found to have taken advantage of the situation in seeking to obtain illegal gain for himself. The pay bill was prepared by the third respondent in the computer and the abstract of the department wise pay bill alone used to be furnished to the Accountant and the Chief Accountant (appellant) and signatures obtained. Thus, both of them had been signing on the department wise pay bill abstract without seeing the pay bills. The third respondent/Mr.A.Kabali, thus, took advantage of the fact that it was not possible for others to verify the cheques and test the salary list which was running into 300 pages. It is in these circumstances that the fourth respondent has been exonerated of the liability even though the abstract pay bill was required to be verified by him as an Accountant and he alone was supervising each and every matter. The cheques signed by the appellant are

actually in the nature of counter-signature and the Accountant himself had been exonerated. Merely because the appellant was the head of the department, the liability could not be fastened on her as no case of wilful negligence is made out."

9 In the light of the aforesaid judgments, loss caused to the society alone is not suffice to prove wilful negligence and there is no evidence to show that the loss caused to the society is due to wilful negligence of the petitioner. Therefore, the impugned order passed by the first respondent is liable to be set aside.

10 In so far as the enquiry report is concerned, the appellate Court has recorded a finding that the writ petitioner admitted that sufficient time was given and documents as sought for by the petitioner has been furnished. Further, it was held that on the basis of the documents furnished to the petitioner, he submitted his explanation. Therefore, there is no force in the contention of the petitioner that he was not given sufficient opportunities and the report under section 81 of the Act has not been furnished.

11 The other contention raised by the learned counsel for the petitioner that procedure as contemplated under Section 87 (4) of the Act has not been followed and the direction of this court in W.P.No.23373 of 2014 has not been complied with. In M.Karuppannam Vs. The Deputy Registrar (Dairying), Erode Taluk and District and others (supra) this Court held that whether there has been compliance of Section 87(4) of the Act and whether the second respondent has made out a case of wilful negligence on the part of the petitioners, has to be seen by examining the factual issues. The underlying principle of the nature of the enquiry under Section 87(4) of the Act is akin to the manner in which Civil Court conducts a matter. In the case in hand, the tribunal had not considered the order passed by the second respondent, in consonance with Section 87(4) of the Act. Therefore, without any hesitation, the impugned order passed by the tribunal is liable to be set aside.

12 In the light of the decisions cited supra and in view of provisions contemplated under Section 87(4) of the Act, the impugned order is set aside and the appeal is remanded to the tribunal. The tribunal is directed to dispose of the appeal in accordance with law after giving opportunity to the parties, as expeditiously as possible, preferably within a period of six months from the date of receipt of copy of this order.

13. In the result, the writ petition stands allowed to the

above extent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

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To

- 1 The Special Tribunal for Co-op. Cases
(Principal District Court)
Erode.
- 2 The Deputy Registrar (Dairying),
O/o Deputy Registrar (Dairying),
Erode-1 Erode District.
- 3 The Special Officer
E.D.285 Sembuthanpalayam Milk Producers Cooperative
Society Ltd., Sembuthampalayam, Bhavani Taluk,
Erode District.

+1cc to Mr.R.Bala ramesh, Advocate, S.R.No.89366
+1cc to Mr.N.Manokaran, Advocate, S.R.No.89858
+1cc to the Government Pleader, S.R.No.89911

W.P.No.30481 of 2014
and M.P.No.2 of 2014

RK (CO)
RRK (11/01/2018)

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