

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.08.2017

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THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

WP.No.1092 of 2015 and
MP.No.1 of 2015

B.Dorai

..Petitioner

Vs.

1. The Hon'ble District Judge &
Cooperative Tribunal of Nilgris,
Udhagamandalam
2. The Deputy Registrar of
Cooperatives Society,
NCMSM, Udhagamandalam

...Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records of the first respondent culminating in the impugned order dated 25.06.2014 in CMA.No.42 of 2002 and quash the same.

For petitioner : Mr.C.A.Diwakar
For respondents : R1 - Tribunal

: Mrs.T.Girija,
Government Advocate for R2

ORDER:

The learned counsel for the petitioner would submit that the petitioner had been working as a Manager in the Manjoor Branch of the Nilgiris Central Cooperative Bank Limited from 26.12.1996 to 07.08.1997. Following reports of financial irregularities in the Branch, an enquiry was ordered under section 81 of the Tamil Nadu Cooperative Societies Act, 1983. Based on the enquiry report, the Surcharge proceedings No.9 of 2001 and No.10 of 2001 were initiated under Section 87(1) of the Act and orders were passed by the second respondent in Tha.Thi.No.9/2001/Sa.Pa and Tha.Thi.No.10/2001/Sa.Pa dated

19.08.2002. Challenging the said order, the petitioner has filed an appeal in CMA.Nos.42 and 46 of 2002 before the first respondent, which was dismissed. Against the said order, the petitioner has filed writ petitions in W.P.Nos.35677 and 35759 of 2003 and this Court by order dated 23.02.2010 disposed of the same by directing the first respondent Tribunal to consider the matter afresh after due notice to the parties and pass appropriate orders. The Tribunal passed an order dated 09.04.2011, virtually repeating the earlier order dated 24.03.2003. Aggrieved, again the petitioner has filed writ petitions in WP.Nos.2295 and 2297 of 2012, wherein this Court directed the first respondent Tribunal to consider and dispose of the matter in accordance with the directions in the earlier order dated 23.02.2010. After remanding the case to the Tribunal, the petitioner has filed a petition on 19.11.2013 seeking production of certain documents before the first respondent, wherein the second respondent was directed to produce the listed documents namely i) the Attendance Registers for the period 1.6.1995 to 31.8.1997, ii) the Cashier Chitta, iii) Manager Chitta, iv) Day Books, v) Personal registers, vi) Vouchers relating to these registers, vii) Double Lock Registers, viii) Audit reports and ix) Inspection reports of the Bank staff and Department staff. But, only a few of them were produced. Hence, the petitioner has filed the present writ petition before this court.

2. The learned counsel for the petitioner would submit that the petitioner was not provided an opportunity by the first respondent to further cross examine the witness and the petitioner has also raised some others grounds in the writ petition to substantiate his claim.

3. The learned Government Pleader would submit that the petitioner has not impleaded the Nilgiris Central Cooperative Bank Limited as a party in the above appeal. Relying upon the unreported order of this Court made in writ petitions in WP.No.7338 and 7339 of 2012, the learned Government Pleader would submit that as the Nilgiris Central Cooperative society has not been impleaded as a party in the said appeal, the order passed by the first respondent is liable to be set aside.

4. Heard the learned counsel of the respective parties and perused the materials available on record.

5. It is seen from the records that the Tribunal has not impleaded the Cooperative society as a party in the above appeal. There is an unreported order of this Court made in writ petitions in WP.No.7338 and 7339 of 2012, wherein this court has held in paragraphs 8 and 9 as follows.

"8. This is not the first case, wherein this Court has noticed such a flaw committed by Cooperative Tribunals. In a number of cases, within a short of span of one month, I have noticed that many of the Cooperative Tribunals in the State do not follow the said settled procedure, inasmuch as they, in a causal manner, entertain the appeals and dispose of the same without insisting for impleadment of the parties in whose favour the award has been passed under Section 87 of the Act. I am hopeful that atleast hereafter the Cooperative Tribunals in the State shall avoid the shortcomings indicated hereinabove.

9. In view of the foregoing discussion, the writ petitions are allowed; the impugned order of the Cooperative Tribunal, Dindigul, in CMA CS Nos.14 and 16 of 2004, dated 09.12.2010, is set aside and the matter is remanded back to the Tribunal, which shall suo-motu implead the petitioner society as a party respondent in the appeals, afford sufficient opportunity to all the parties concerned and then pass appropriate orders, in accordance with law, within a period of six months from the date of receipt of a copy of this order. No costs. "

6. In view of the facts and circumstances of the case and the decision cited supra, the impugned order passed by the first respondent is quashed and the matter is remanded to the Tribunal namely Cooperative Tribunal of Nilgiris, which shall suo-motu implead the Nilgiris Central Cooperative society as a party in the appeal. Thereafter, the first respondent is directed to dispose of the appeal in accordance with law after affording sufficient opportunity to the parties, preferably within a period of six months from the date of receipt of a copy of this Order.

7. In the result, the writ petition stands allowed and disposed of with the above observations. Consequently, connected miscellaneous petition is closed. No costs.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To

1. The Hon'ble District Judge &
Cooperative Tribunal of Nilgris,
Udhagamandalam

2. The Deputy Registrar of
Cooperative Society,
NCMSM, Udhagamandalam

+1 CC to Mr.C.A. Diwakar, advocate sr 60483

+1 CC to Govt. Pleader sr 61705.

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SKS (CO)
sp (22/09/2017)



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