

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.9.2017

CORAM:
THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.4183 of 2012

P.G.27 THOOKKANAICKENPALAYAM GENERAL WORKERS
COOP. THRIFT AND CREDIT SOCIETY
REP BY ITS SPECIAL OFFICER,
THOOKKANAICKENPALAYAM,
GOPI TALUK, ERODE DISTRICT

...PETITIONER

Vs.

1 V. SENTHILKUMAR
S/O.VETRIVEL NO.262 NADU STREET BUNGALOW
PUDUR POST THOOKKNAICKENPALAYAM VIA GOPI
TALUK ERODE DISTRICT

2 THE DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES,
GOPI CIRCLE, GOPICHETTIPALAYAM,
ERODE DISTRICT

3 THE PRINCIPAL DISTRICT JUDGE,
ERODE DISTRICT ERODE

...RESPONDENTS

Prayer: Writ petition filed under Article 226 of the
Constitution of India, praying for the issuance of a Writ of
Certiorari, to call for the records relating to the order of the
Principal District Judge Erode District Erode passed in C.M.A.
No.81/2009 dt 14.2.2011 and to quash the same.

For Petitioner : Mr.G.Sankaran

For Respondent No.1 : Mr.MA.P.Thangavel

For Respondent No.2 : Mr.V.Selvaraj
Addl. Govt. Pleader

O R D E R

According to the petitioner, the first respondent Senthil Kumar was employed as Secretary in the petitioner society. During the relevant period, he has committed serious irregularities and lapses causing huge loss to the society. An enquiry under section 81 of the Tamilnadu Cooperative Societies Act was conducted and found that the first respondent misappropriated a sum of Rs.35,57,533/- and he was suspended from service. On the basis of the enquiry report, Surcharge proceedings was initiated against the first respondent under Section 87(1) of the Act and an order was passed on 31.5.2004 holding that the first respondent was solely responsible for the loss incurred by the society to the tune of Rs.28,48,551/-. Aggrieved by the order passed by the second respondent, dated 31.5.2004, the first respondent has preferred an appeal under Section 152 of the Act before the Co-operative Tribunal in C.M.A. No.5 of 2005 to quash the Surcharge order. The tribunal remitted the matter back to the second respondent to conduct a fresh enquiry after giving the copy of the enquiry report under section 81 of the Act to the first respondent and by giving sufficient opportunity to him.

2 The first ground raised by the learned counsel for the petitioner is that the period prescribed for concluding enquiry under section 87(1) of the Act is not mandatory, it is only a directory. The other ground raised by the petitioner is that the tribunal has not properly appreciated the facts and there is no discussion about the contention raised by the petitioner in the judgment passed by the tribunal. Therefore, the judgment passed by the tribunal is liable to be set aside.

3 In support of his contention, he relied on the decision of the Division Bench of this Court in the case of S.V.K.Sahasram Vs. Deputy Registrar of Cooperative Societies, Tiruvannamalai Circle, Tiruvannamalai and others (2008) 8 MLJ 231) and S.Ramadevi vs The Special Officer (2016-4 L.W. 452).

4. The learned counsel for the first respondent would submit that the tribunal has considered the appeal on merits and held that no witness was examined and no documents were marked. The tribunal further held that that first respondent/second respondent herein has not given reasonable opportunity to the appellant/first respondent herein to adduce oral and documentary evidence on his side and the said order has been passed mechanically by the second respondent herein/first respondent before the tribunal. The learned counsel for the first respondent further contended that the tribunal has held that

there is no discussion or reason in the judgment passed by the tribunal, as to how the huge amount of Rs.12,84,463/- has been arrived by the second respondent herein. The second respondent herein has simply recorded the statements and without properly explaining the difference occurred, passed the impugned Surcharge order. Therefore, the tribunal has rightly allowed the appeal.

5. In so far as the first limb of the contention of the petitioner, in the light of the decision of this Court in S.V.K.Sahasramam Vs. Deputy Registrar of Cooperative Societies, Tiruvannamalai Circle, Tiruvannamalai and others (supra) and S.Ramadevi vs The Special Officer (supra), it is settled legal position that under section 87(1) of the Act, period prescribed in the Statute is not mandatory, it is only directory. Therefore, the finding of the tribunal is liable to be set aside. The second limb of the contention of the petitioner is that the tribunal has not properly appreciated the case of the petitioner that there is loss sustained to the Society. Without any discussion of the documents or materials placed, the tribunal has set aside the order passed by the second respondent herein. Further, finding of the tribunal that there is huge difference between the amount quoted in the earlier order and the present Surcharge order is unsustainable.

6. The tribunal while setting aside the Surcharge order passed by the second respondent herein, dated 21.11.2008, has held that there is no explanation as to how the first respondent/second respondent herein has arrived such huge amount of Rs.12,84,463/- and mechanically passed the impugned order.

7. The Deputy Registrar, Second respondent herein by considering the statement of the Secretary (Incharge) of the Society and the explanation submitted by one Senthil kumar and also considering the documents placed before him, found that total loss of Rs.12,84,463/- caused to the petitioner society. Even there is discussion in para 10 and 11 of the judgment rendered by the tribunal, but the tribunal has not considered the statement of the Secretary (Incharge) and other witnesses, documents and the enquiry report submitted on the side of petitioner society. Even though documents have been considered by the second respondent, there is no discussion about such documents while setting aside the impugned order passed by the second respondent. In the interest of justice, accepting the contention of the petitioner, this Court is inclined to interfere with the judgment and decree passed by the tribunal.

8 In view of the above, the impugned judgment, dated 14.2.2011 passed by the tribunal is set aside and the appeal is remanded to the tribunal to consider the appeal afresh and pass judgment in accordance with law, as expeditiously as possible, preferably, within a period of three months from the date of receipt of a copy of this order. However, liberty is granted to the parties concerned to file appropriate application if so advised before the tribunal. Both the parties undertaken that they will cooperate before the tribunal to dispose of the appeal within the period fixed by this Court.

The writ petition is allowed on the above terms. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vaan

- 1 THE DEPUTY REGISTRAR OF COOPERATIVE SOCIETIES,
GOPI CIRCLE, GOPICHETTIPALAYAM, ERODE DISTRICT
- 2 THE PRINCIPAL DISTRICT JUDGE,
ERODE DISTRICT, ERODE

+1cc to Mr.G.Sankaran, Advocate, S.R.No. 68644

+1cc to Mr.MA.P.Thangavel, Advocate, S.R.No. 68940

+1cc to the Government Pleader, S.R.No. 69442

WEB COPY

W.P.No.4183 of 2012

GMI (CO)
PSI 28/10/2017