

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2017

CORAM

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.32417 of 2015

and

M.P.No.1 of 2015

1.A.Vijayan

2.R.K.Manoharan

3.R.Arasu

4.S.Jagadeesan

... Petitioners

-Vs-

1.D D 151, Karimangalam Labour  
Contract Society,  
Karimangalam,  
Palacode,  
Dharmapuri District,  
Rep. by its President.

2.The Deputy Registrar  
of Co-operative Societies,  
(Full additional charge),  
Dharmapuri.

सत्यमेव जयते...Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorarified Mandamus to call for the records relating to the proceedings in Na.Ka.No.2085/15/SA Pa 2 dated 12.06.2015 of the second respondent herein, quash the same in so far as the petitioners are concerned and consequently, direct the second respondent not to precipitate any penal action under the Criminal Law against the petitioners in respect of the issue covered under the surcharge notice, which would be violative of Articles 14 and 21 of the Constitution of India.

For Petitioners : Mr.S.Venkataraman

For Respondents : Mr.M.S.Palanisamy  
for R.1  
Mr.L.P.Shanmuga Sundaram  
Additional Govt. Pleader  
for R.2

O R D E R

The writ petition has been filed to call for the records relating to the proceedings in Na.Ka.No.2085/15/SA Pa 2, dated 12.06.2015 of the second respondent herein, quash the same and consequently, direct them not to precipitate any penal action under the Criminal Law against the petitioners in respect of the issue covered under the surcharge notice, which is in violation of Articles 14 and 21 of the Constitution of India.

2.The case of the petitioners is as follows:

(i)The first respondent society is a Labour Contract Society, which was registered with Panchayat Union and the Panchayat Union gives various works to the society, who in turn, gets the work done by its members. After receiving the payment from the Unions, the society gives the same to its members after deducting 3% commission for functioning of the society.

3.In such circumstances, an enquiry was ordered by the second respondent under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 against the petitioners. Based on the same, an enquiry was conducted and a report dated 03.02.2015 was submitted to the second respondent. According to the said enquiry report, the petitioners were given show cause notices dated 12.06.2015 as to why the amounts of Rs.1,44,966/-, 70,235/-, 33625/- and 70,676/- respectively should not be recovered from them for the alleged loss caused by them to the Society along with one Thiru K.Mohan, Assistant/Secretary (I/c) of the society for not crediting 3% commission to the society from 1.4.2008. Hence, the present writ petition.

4.The learned counsel appearing for the petitioners has submitted that the petitioners are not responsible for the

alleged loss sustained by the society as stated in the show cause notices. Further he has submitted that the entire amount of Rs.5,38,229/- has been paid to the first respondent - society by K.Mohan, Assistant/Secretary (I/c) of the society. However, the second respondent insisted the petitioners to pay the amount. Therefore, the petitioners have come forward with the present writ petition.

5.The learned counsel appearing for the first respondent has submitted that the first respondent society had already recovered the above said surcharge proceedings amount from Mohan, Assistant/Secretary (I/c) of the society. Therefore, as on today, no amount is pending for recovery from the petitioner.

6.The learned Special Government Pleader appearing for the second respondent has submitted that the impugned notice issued by the second respondent to the petitioners is only a show cause notice. For the said show cause notice, the petitioners have already sent their explanations dated 06.07.2015 stating that the aforesaid amount of Rs.5,38,229/-has been settled to the first respondent - society by K.Mohan, Assistant/Secretary (I/c) of the society, for which, the first respondent society has also sent a communication dated 6.7.2015 to the second respondent. But, the interest amount has not been paid by the petitioners. Therefore, the petitioners are liable to pay the interest to the Principal surcharge amount as per Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983. However, the second respondent - society shall consider the explanations submitted by the petitioners and the communication sent by the first respondent - society and pass the appropriate order on merits and in accordance with law.

7.I have heard Mr.S.Venkataraman, learned counsel appearing for the petitioners, Mr.M.S.Palani Samy, learned counsel appearing for the first respondent and Mr.L.P.Shanmuga Sundram, learned Special Government Pleader, appearing for the second respondent.

8.According to the petitioners, the amounts mentioned in the impugned notices have been recovered from Mohan, Assistant/Secretary (I/c) of the society. The first respondent - Society has also sent a communication to the

second respondent. Therefore, according to them, no amount is pending for recovery from the petitioners and the matter has already been settled.

9. According to the second respondent - society, the interest amount has not been paid by the petitioners and though the first respondent submitted that the entire amount has been recovered from Mohan, Assistant/Secretary (I/c), they have not recovered the interest amount. Therefore, on the basis of the explanation and the communication sent by the petitioners and the first respondent respectively, the second respondent will consider the same and pass appropriate orders on merits and in accordance with law.

10. Taking into consideration the above said fact, the first respondent is directed to submit a fresh representation to the second respondent within a period of two weeks from the date of receipt of a copy of this order. On receipt of the said representation, the second respondent is directed to consider and pass orders on merits and in accordance with law within a period of eight weeks thereafter. Till such time, the second respondent is directed not to take any coercive steps against the petitioners.

11. With the above said direction, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar

/True copy/

Sub Assistant Registrar

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To

1.D D 151, Karimangalam Labour  
Contract Society,  
Karimangalam,  
Palacode,  
Dharmapuri District,  
Rep. by its President.

2.The Deputy Registrar  
of Co-operative Societies,  
(Full additional charge),  
Dharmapuri.

+1cc to Government Pleader SR.No.17740

+1cc to Mr.S.Venkataramani, Advocate SR.No.17721

+1cc to M/s.M.S.Palaniswamy, Advocate SR.No.17558

SDR 24.04.2017

W.P.No.32417 of 2015



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