

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.07.2017

CORAM

THE HONOURABLE Mr. JUSTICE D.KRISHNAKUMAR

W.P.No.21176 of 2016  
and WMP.Nos.18102 & 18103 of 2016

N.Shankar

.. Petitioner

Vs.

1.The Co-operative Tribunal  
(Principal District Judge)  
Dharmapuri.

2.The Deputy Registrar of  
Co-operative Societies  
Dharmapuri Circle,  
Dharmapuri.

3.S.749, Sandapatty Primary Agricultural  
Co-operative Credit Society Ltd.,  
Rep. by its President,  
Sandhapatty Post, Harur Taluk,  
Dharmapuri District.

.. Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the records relating to the impugned judgment and decree made in C.M.A.(CS) No.23 of 2010 dated 18.04.2016 passed by the first respondent in confirming the award made in Na.Ka.No.4858/2002.Sa.Pa.2 dated 28.01.2003 passed by the 2nd respondent.

For Petitioner : Mr. M.Dhanaram  
for Mr.G. Ethirajulu  
For Respondents : R1- Tribunal  
Mr.V.Selvaraj  
Additional Govt. Pleader [ for R2]  
Mr. L.P.Shanmugasundaram  
Special Govt. Pleader [for R3]

ORDER

By consent, the writ petition is taken up for disposal.

2. The writ petition has been filed praying for an issuance of writ of certiorari to quash the records of the impugned judgment and decree made in C.M.A.(CS) No.23 of 2010 dated 18.04.2016 passed by the first respondent in confirming the award made in Na.Ka.No.4858/2002.Sa.Pa.2 dated 28.01.2003 passed by the 2nd respondent.

3. The case of the petitioner is that he was appointed as Secretary in the third respondent -Society on 05.08.1989. In the year 2001, a statutory enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 was ordered , in which it was held that the petitioner, the then President, and other salesman have caused monetary loss to the Society to the tune of Rs.6,25,263.90p. Based on the enquiry, a report was submitted to the second respondent. Pursuant to which, the second respondent initiated surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, against all of them, issuing a show cause notice dated 29.07.2002, and following charges were framed against them viz., (i) no accounts was submitted for the gunny bags entrusted to the Society worth Rs.1,29,263.90p (ii) during the inspection conducted on 10.4.2001, there was a shortage of materials to the tune of Rs.3,70,000/- (iii) Rs.70,000/- was shown as miscellaneous account in the name of the President.

4. In view of the charges framed in the said proceedings, the petitioner had made a request to the second respondent to furnish copies of the certain relevant documents including the enquiry report. But without furnishing the same, the second respondent passed an award on 28.01.2003, holding that the petitioner and the then President were responsible for the monetary loss to the Society. Aggrieved by the award dated 28.01.2003, the petitioner preferred an appeal in C.M.A.(CS). No.23 of 2010 on the file of the Principal District Judge, Dharmapuri, to quash the award. The petitioner raised several grounds in the appeal to prove his case, but the first respondent without considering his contentions has dismissed the appeal vide order dated 18.04.2016, stating that the petitioner has not extended his co-operation in the enquiry, inspite of several opportunities given to him. Challenging the said writ order of dismissal, the petitioner has filed the present writ petition.

5. The learned counsel appearing for the petitioner would submit that the order passed by the first respondent is unsustainable in law for the reason that the petitioner had made representations to the second respondent to furnish a copy of the enquiry report so as to enable the petitioner to submit his explanation. Despite his requests, the second respondent, without giving an opportunity to the petitioner, passed the award. The petitioner filed an appeal before the Principal District Court, Dharmapuri, the first respondent herein. The petitioner also raised a specific plea in the appeal that the second respondent has not furnished the copy of the relevant records including the enquiry report, therefore, he was not in a position to participate in the enquiry and submit his explanation. It is further contended that the second respondent has not given reasonable opportunity to him to enable him to prove that the allegations levelled against him are false, and it is against the principles of natural justice and it is a clear violation

of the provisions under Section 87 of the Tamil Nadu Co-operative Act. Secondly, the learned counsel for the petitioner has drawn the attention of the Court to paragraph No.11 of the memorandum of appeal filed by the petitioner, in which it is clearly stated that the petitioner/appellant himself had written a letter dated 28.10.2000 to the President for non-remittance of sale proceeds of the empty gunny bags, and also addressed the second respondent vide his communications dated 24.01.2005 and 12.05.2001 that the President has not remitted any amount due to the society towards sale of empty gunny bags. It is contended by the petitioner that the first respondent failed to consider the aforesaid grounds raised by him and there is no discussion in the order of the Tribunal on the aforesaid points raised by him. Hence, according to the petitioner, the award passed by the second respondent is untenable and the appeal confirming the said award is liable to be set aside.

6. Per contra, the learned Additional Government Pleader appearing for the second respondent would submit that the first respondent has considered the grounds raised by the petitioner/appellant and held that inspite of several opportunities given to the petitioner during enquiry, he failed to appear for the enquiry and hence the appeal filed by the petitioner was dismissed. Therefore, there is no infirmity in the order passed by the respondents warranting interference by this Court.

7. The learned Standing Counsel appearing for the third respondent also filed his counter affidavit and opposed the writ petition filed by the petitioner. It is contended by the learned Standing Counsel that the petitioner along with President of the Society has misappropriated the funds of the Society, in addition to causing deficit of assets to the Society. It is represented that there was stock deficit of empty gunny bags, which caused monetary loss to the tune of Rs.1,29,263.90p to the Society. Generally, the salesman of the fair price shops, which are run by the Society, will hand over the empty gunny bags to the Secretary and the said person will arrange for the sale of empty gunny bags. It is submitted that the President of the Society has directly received the gunny bags, but no amount was deposited with regard to the sale of empty gunny bags. It is further submitted that the Tribunal has observed that there was no proof of remittance of amount by the President and there is no evidence to show that the Secretary has taken steps for the remittance of said amount to the Society's bank account. It appears that the petitioner in collusion with the President of the Society has swindled the money of the Society and therefore, prays for dismissal of the writ petition.

8. According to the petitioner, a statutory enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 and a report has been submitted to the

second respondent. The second respondent initiated action under Section 87 (1) of the Tamil Nadu Co-operative Societies Act. On receipt of notice from the second respondent, the petitioner requested the second respondent to furnish a copy of the report to submit his explanations. But, the second respondent without providing the report and other records required by the petitioner, has passed an award against the petitioner. Challenging the said award, the petitioner had filed an appeal in CMA.(CS) No23 of 2010 before the learned Principal District Judge, Dharmapuri, in which, the petitioner had raised two main grounds, one is that the second respondent has not furnished the copy of the relevant documents and enquiry report required by the petitioner to defend his case; and the other contention is that petitioner himself has sent written communication to the President of the Society with regard to non-remittance of sale proceeds of the empty gunny bags, which proves that the petitioner is not liable for any loss sustained by the Society.

9. On a perusal of the records placed before it, the Tribunal has not considered the ground raised by the petitioner for non-furnishing of the documents as contemplated under Section 81(3) r/w Rule 104(7) of the Tamil Nadu Co-operative Rules 1983. The counsel for the petitioner also placed reliance on the decision of this Court in WP.Nos.7648, 16617 and 31309 of 2015 [C.Kamaraj and Others Vs. The Registrar of Co-operative Societies and Others] reported in 2017(1) CTC 258, 2017-2-LW419 = MANU/TN/0101/2017, and has referred to paragraph No.40 of the said order, which is extracted as under:

"40. Section 36 of the Act empowers the Registrar to take action against the delinquent to disqualify him permanently from holding in future any office in any registered Society, but, before taking such action, an enquiry under Section 81 or inspection under Section 82 should be undertaken to find out whether a member of a Board has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the Society. Admittedly, in the present case, enquiry was held by appointing one Mr.S.Murugesan, Co-operative Sub-Registrar, as Enquiry Officer, who, in turn, admittedly submitted his report on 28.04.2014 to the third respondent. But, unfortunately, a copy of the said report has not been furnished to the petitioner. Admitting non-furnishing of the report to the petitioner, learned counsel for the fourth respondent stated that there is no provision under the Act to furnish a copy of the report made under Section 81 of the Act. Such an contention of the learned counsel for the fourth respondent/approach of the second respondent in superseding the Board is erroneous, in the light of subsection of 2 of Section 36, which categorically says that no person shall be

disqualified or removed under sub-section (1) of Section 36, without being given an opportunity of making his representation. For, while interpreting sub-section 2 of Section 36, this Court in Vallipattu's case (cited supra) has rightly held that the Registrar is duty bound to communicate necessary details available in the report of enquiry to the delinquent before taking action against the officer or servant. Therefore, when a copy of the report filed under Section 81 of the Act was admittedly not furnished to the petitioner, it is highly impossible for anyone to give explanation to the Registrar requesting not to take action under Section 36 (1) of the Act."

10. Considering the submissions made by both sides and on perusing the records, this Court is of the opinion that the respondent has not furnished the enquiry report as contemplated under proviso of the Act and the other contention raised by the petitioner is concerned, it is true that even though the said ground has been raised in the appeal and also the document has been produced along with the appeal to prove that the petitioner is not responsible for the loss sustained to the Society, the same has not been considered by the Tribunal and there is no finding in the order of the Tribunal/first respondent with regard to the aforesaid ground.

11. In view of the aforesaid facts and decisions cited supra, I am inclined to pass the following orders :

(i) the order passed by the first respondent dated 18.04.2016 C.M.A.(CS) No.23 of 2010 is liable to be set aside, and the matter is remitted back to the first respondent/Co-operative Tribunal for consideration and to pass order in the appeal on merits and in accordance with law as expeditiously as possible.

(ii) The second respondent is directed to furnish a copy of the said report to the petitioner before the commencement of the hearing of the appeal suit in C.M.A. (CS) No.23 of 2010 before the Co-operative Tribunal.

13. With the above observation and directions, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ds

To:

1.The Co-operative Tribunal  
(Principal District Judge)  
Dharmapuri.

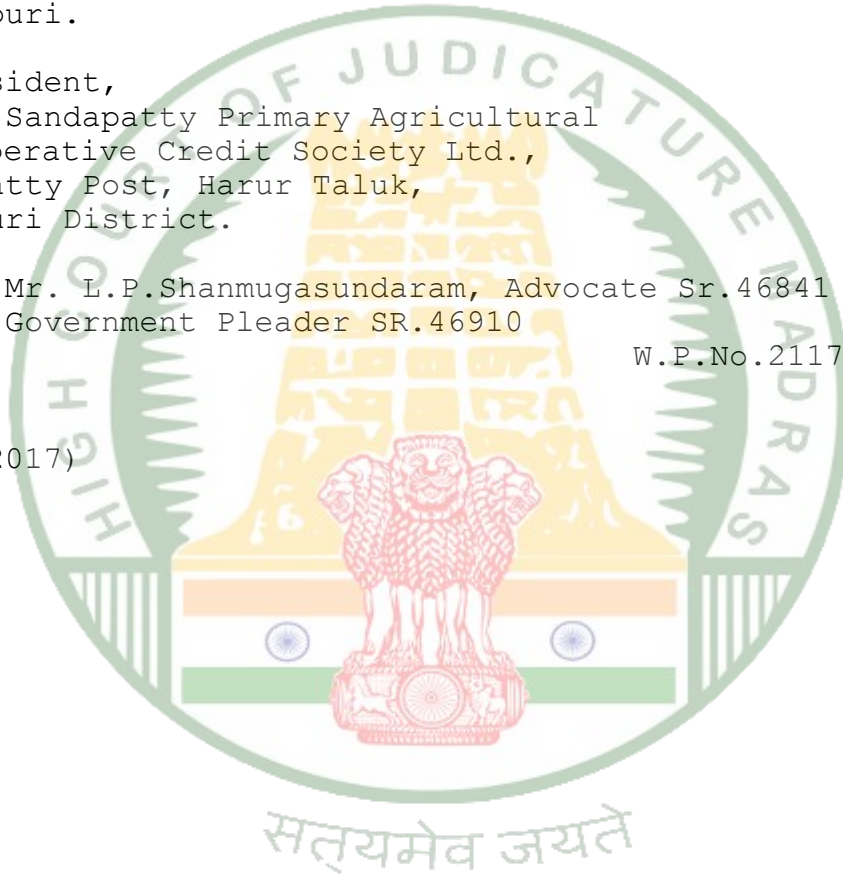
2.The Deputy Registrar of Co-operative Societies  
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Dharmapuri.

3.The President,  
S.749, Sandapatty Primary Agricultural  
Co-operative Credit Society Ltd.,  
Sandhapatty Post, Harur Taluk,  
Dharmapuri District.

+ 1 cc to Mr. L.P.Shanmugasundaram, Advocate Sr.46841  
+ 1 cc to Government Pleader SR.46910

W.P.No.21176 of 2016

SSI (CO)  
EU (05/10/2017)



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