

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.21303 of 2016
and
W.M.P Nos.18238 & 18239 of 2016

S. Sridharan

.. Petitioner

/Vs/

1. The Special Tribunal for
Co-operative Cases/
Principal District Court
Thiruvarur.
2. The Deputy Registrar of
Cooperative Societies,
Kasukara Chetty Street
Mannargudi,
Thiruvarur District.
3. D.174 E, Athichapuram Primary
Agricultural Co-operative Bank
rep. By its Special Officer/
Management, Athichapuram Post
Mannargudi Taluk,
Thiruvarur District.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records in pursuant to the impugned order issued by the 2nd respondent in Na.Ka.No.2062/2007 Sa.Pa. Dated 28.09.2007 and the impugned appellate order passed by the 1st respondent in Co-operative Civil Miscellaneous Appeal No.34/2008 dated 05.04.2016 and quash these orders and to pass further orders.

For Petitioner : Mr. R. Prem Narayan

For Respondents : Mrs.T.Girija,
Government Advocate

ORDER

This Writ Petition has been filed seeking to quash the order passed by the 2nd respondent in Na.Ka.No.2062/2007 Sa.Pa. dated 28.09.2007 and the impugned appellate order passed by the 1st respondent in Co-operative Civil Miscellaneous Appeal No.34/2008 dated 05.04.2016.

2. Learned counsel for the petitioner submitted that while the petitioner was working as a Clerk in the 3rd respondent society, an enquiry under Section 81 of the Tamil Nadu

Cooperative Societies Act, 1983 was conducted. Based on the report, surcharge proceedings were initiated against the petitioner for misappropriation of funds. But, copy of the enquiry report was not furnished to the petitioner. Therefore, the petitioner requested the 2nd respondent to furnish a copy of the report. On 16.7.2007, he sent a letter to the petitioner stating that a copy of the enquiry report would be furnished on payment of charges. The 2nd respondent passed the order on 28.09.2007 against the petitioner.

3. Against the said award, the petitioner preferred an appeal before the Tribunal by raising the ground that copy of the enquiry report was not furnished to him, inspite of his request for the same. According to the petitioner, it is the duty of the Deputy Registrar of Co-operative Societies to furnish a copy of the enquiry report, without any charges. Hence, no opportunity was given to the petitioner to contest the matter, on merits. In the enquiry they have not examined any of the witnesses to substantiate the surcharge order passed by the 2nd respondent against the petitioner. The said ground when raised before the

Tribunal was not considered and there is no findings on the aforesaid ground. Therefore, the order passed by the Tribunal is perverse and infirm and the same is liable to be set aside.

4. Per contra, learned Additional Government Pleader would submit that the Tribunal has considered the charges on the basis of the enquiry report. The Tribunal has considered in detail and had dismissed the appeal. So, nothing warrants to interfere with the order passed by the 2nd respondent under Section 87 of the Tamil Nadu Cooperative Societies Act. Thus, the orders passed by both the authorities are perfectly valid and this writ petition is liable to be dismissed.

5. Heard learned counsel for the petitioner and learned counsel for the respondents and perused the material available on record.

6. As submitted by the counsel for the petitioner, when the petitioner requested by his letter dated 26.06.2007, to furnish a copy of the enquiry report, the 2nd respondent has

informed that the petitioner has to pay charges for furnishing the copy of the enquiry report. According to the petitioner, as per law, a copy of the enquiry report should be furnished to the petitioner, since he participated in the enquiry held by the 2nd respondent. Therefore, it is clear that the petitioner has not been furnished with a copy of the enquiry report, by the 2nd respondent. Eventhough, the said ground of non-furnishing the enquiry report, has been raised before the Tribunal in Co-op. C.M.A. No.34/2008, there is no discussion about the same. In view of non-furnishing of the enquiry report, the order passed by the 2nd respondent and the Tribunal has to be set aside. It is the submission of the learned Additional Government Pleader that as per law the petitioner is entitled for a copy of the enquiry report only on payment of charges. Admittedly, the said enquiry report was not furnished by the 2nd respondent, at the time of enquiry. Thus, the 2nd respondent has not followed the provisions of Section 87(4) of the Tamil Nadu Cooperative Societies Act.

7. Therefore, I have no hesitation to set aside the order passed by the 2nd respondent as well as the Tribunal, on

the ground of non-furnishing of the enquiry report. In so far as the other grounds are concerned, no witnesses have been examined by the 2nd respondent, examining the witnesses will not arise at this stage.

8. Considering the above said submission, the impugned order issued by the 2nd respondent in Na.Ka.No.2062/2007 Sa.Pa. dated 28.09.2007 and the impugned appellate order passed by the 1st respondent in Co-operative Civil Miscellaneous Appeal No.34/2008 dated 05.04.2016, is set aside and the matter is remanded back to the 2nd respondent. The 2nd respondent is directed to furnish a copy of the enquiry report to the petitioner and conduct the enquiry afresh, as per Section 87(4) of the Tamil Nadu Co-operative Societies Act.

9. This writ petition is disposed of, with the above directions. Consequently, connected Miscellaneous Petitions are closed. No costs.

[2nd charge – recovery amount of Rs.1,19,280/-)

19.04.2017

Index : Yes / No

Speaking order/ Non-speaking order

avr

To

1. The Special Tribunal for
Co-operative Cases/
Principal District Court
Thiruvavarur.
2. The Deputy Registrar of
Cooperative Societies,
Kasukara Chetty Street
Mannargudi,
Thiruvavarur District.
3. D.174 E, Athichapuram Primary
Agricultural Co-operative Bank
rep. By its Special Officer/
Management, Athichapuram Post
Mannargudi Taluk,
Thiruvavarur District.

D. KRISHNAKUMAR J.

avr

W.P. No.21303 of 2016
and
W.M.P Nos.18238 &
18239 of 2016

17.04.2017