

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2017

Coram

The Honourable Mr. Justice D. KRISHNA KUMAR

W.P.Nos.7535 and 7536 of 2015

The Special Officer/
Managing Director,
Chennai Central Co-operative Bank Ltd.,
215, Prakasam Salai,
Chennai - 600 108 Petitioner in both the petitions

vs

A. Rangarajan ... 1st respondent in W.P.No.7535 of 2015

M.R. Mani ... 1st respondent in W.P.No.7536 of 2015

The Deputy Registrar of Cooperative
Societies (Credit)
Kuralagam Complex,
Chennai-600 108

Special Tribunal for Cooperative Society Cases/
Chief Judge,
Court of Small Causes,
Chennai - 104

.... Respondents 2 and 3 in both the petitions

Writ Petitions filed under Article 226 of the Constitution of India, praying for the issuance of Writs of Certiorari to call for the records of the third respondent Tribunal relating to its common order in C.A.Nos.22 and 23 of 2010 dated 28.08.2014 and quash the same.

For Petitioner : Mr.P. Anbarasan
For R.1 : Mr.G. Thangavel
For R.2 : Mr.V. Selvaraj
AGP
For R.3 : Tribunal

COMMON ORDER

The petitioners have filed the writ petitions seeking to issue Writs of Certiorari to call for the records of the third

respondent Tribunal relating to its common Order in C.A.Nos.22 and 23 of 2010 dated 28.08.2014 and quash the same.

2. According to the petitioner, surcharge proceedings were initiated under Sec.7 of the Tamil Nadu Cooperative Societies Act, 1983. After enquiry, surcharge order was passed by the second respondent. Challenging the said order, the first respondents in both the writ petitions filed appeals in C.M.A.Nos.22 and 23 of 2010 under Sec.152(1)(a) of the Tamil Nadu Cooperative Societies Act, 1983. According to the petitioner, the first respondents in both the writ petitions have raised grounds in the appeals by stating that copies of certain documents and the enquiry report were not furnished by the second respondent to the first respondent in both the writ petitions and there is a violation of provisions of the Act and Rule, by not completing the enquiry within six months time. Therefore, the entire proceedings has to be held to be vitiated, since six months time to complete the enquiry is prescribed under the Act. On the aforesaid ground, the Tribunal has set aside the order passed by the second respondent. Challenging the said Order, the Central Co-operative Bank Limited has filed the present writ petitions.

3. According to the learned counsel for the petitioner, the Tribunal has not considered the decision of this Court reported in the case of S.V.K. Sahasraman vs Dy.Registrar of Cooperative Societies (W.A.No.949 of 2008) reported in 2008 (8) MLJ 231, which was subsequently followed by the Division Bench of this Court in the case of S. Ramadevi vs The Special Officer, Ambur Cooperative Sugar Mills and Ors reported in 2016 (4 LW 452), wherein, it is held that the time limit prescribed under the Act to complete the enquiry is within six months is not mandatory and it is only discretionary. The other contention also raised by the petitioner on the ground of non-furnishing of enquiry report, vitiated the entire proceedings. The Tribunal ought to have remitted back the matter to the second respondent for furnishing copy of the report and to decide on merits. Without considering the above grounds and without remanding the matter, the Tribunal, straight away allowing the appeals, would be against the interest of society. On these two grounds, the order passed by the Tribunal is to be set aside.

4. Per contra, the learned counsel for the first respondents in both the writ petitions, submitted that as per the first contention is concerned, the period prescribed as per the Act, was considered by the Tribunal and it was held that it was mandatory and not directory. The other contention that the enquiry report has not been furnished, the Court below rightly came to the conclusion, by setting aside the order passed by the second respondent, warranting no interference.

5. The learned counsel for the petitioner would submit that now the enquiry report has been enclosed in the typed set of papers.

6. Heard both counsel appearing for the parties and perused the materials available on record.

7. The points for consideration before this Court are whether the period fixed by the Court below is mandatory or directory and whether non-furnishing of the enquiry report vitiates the entire proceedings.

8. As far as the first contention is concerned, the issue involved is squarely covered by the decision of the Division Bench of this Court rendered in the case of S.V.K.Sahasramam vs. The Deputy Registrar of Co-op. Societies, Tiruvannamalai District and Others) decided on 29.08.2008, which was followed subsequently in the case of S. Ramadevi vs The Special Officer, Ambur Cooperative Sugar Mills and Ors reported in 2016 (4 LW 452). In S.V.K.Sahasramam's case, the Division Bench of this Court held as follows:

11. We are constrained to hold that even though no appeal has been taken to us from the said judgments, yet having regard to the well settled legal position which has been referred to herein above, the finding of the learned Judges in these two judgments that the period of six months in the second proviso to Section 87 of the said Act is mandatory is not a correct finding in law. We find that even though before the learned Judge of the Writ Court those two judgments of the learned single Bench were cited, the learned Judge of the Writ Court was not swayed by those two decisions and came to a correct finding, relying upon the well settled proposition laid down by the Supreme Court as pointed above herein above."

The Division Bench in S. Ramadevi's case has held as follows:

20. Learned counsel for the appellant while making his submissions accepted that the issue of surcharge proceedings being barred by limitation has obviously not been canvassed before any of the authorities below, as that is not even being an aspect which is discussed. He, however, submits that in ground (7) of the writ appeal grounds, the issue was sought to be raised

and since it was a question of limitation, it could be raised any time.

21. On the other hand, learned counsel for the first respondent sought to submit that use of the expression 'shall' in the proviso should be read as 'may' since it is a case where public funds are involved and sometimes proceedings may take time. In support of her contention, she has relied upon the judgment of the Division Bench of this Court in W.A.No.949 of 2008 (between S.V.K.Sahasramam vs. The Deputy Registrar of Co-op. Societies, Tiruvannamalai District) and Others) decided on 29.08.2008. The factual matrix related to an enquiry under Section 81 of the said Act. The issue which was examined was whether the period for completion of enquiry as provided under Section 81 of the said Act was mandatory or not and whether the word 'shall' has to be construed as mandatory. In that context, the Division Bench observed that the expression used in the section whether mandatory or not would be decided on various factors and mere expression of the word 'shall' alone is not decisive in the matter. In this behalf, a reference was made to the celebrated case of Montreal Street Railway Company vs. Normandin, AIR 1917 Privy Council 142, quoting as under:

'The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statutes must be looked at.'

22. The Division Bench also made a reference to two judgments of Hon'ble Supreme court in State of U.P. vs. Babu Ram Upadhyaya, AIR 1961 SC 751 and the Constitution Bench judgment in State of U.P. vs. Manbodhan Lal, AIR 1957 SC 912. After discussing the issue, the Division Bench opined that the enquiry under Section 81 of the said Act could not be compared to an enquiry against an individual employee and such enquiry is to be followed by a proceeding under Section 87 of the said Act.

A categorical finding was given that both the period under Section 81 and the second proviso to Section 87 could not be held to be mandatory, especially as allegations of embezzlement and misappropriation of public funds are involved and the members of general public who have been cheated have no control over those who hold the enquiry in respect of the time limit and thus, holding such enquiry as time barred would be great injustice. The time period was, thus, held not to be mandatory.

9. As far as the second contention of non furnishing of the enquiry report is concerned, the petitioner raised in the grounds of appeal before the Tribunal that certain documents and enquiry report have not been furnished. Without considering the said ground, the Tribunal allowed the Appeal. Therefore, by considering the facts and circumstances, the Tribunal ought to have remitted back to the second respondent to consider the matter afresh, after furnishing a copy of the enquiry report. The learned counsel for the respondents submitted that, in the event of remand to the Tribunal, an opportunity shall be given to the first respondent in both the writ petitions to place all the facts before the Tribunal.

10. In view of the reasons stated above the impugned common order passed by the Tribunal in C.M.A.Nos.22 and 23 of 2010 dated 28.08.2014 is set aside and the matter is remanded to the Tribunal to consider afresh and pass appropriate orders after providing opportunity to the parties. The first respondents in both the writ petitions are at liberty to place all the facts before the Tribunal. With the above observations, the writ petitions are allowed. No costs.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

sr

To

1. The Deputy Registrar of Cooperative Societies (Credit)
Kuralagam Complex,
Chennai-600 108

2. The Special Tribunal for Cooperative Society Cases/
Chief Judge,
Court of Small Causes, Chennai - 104

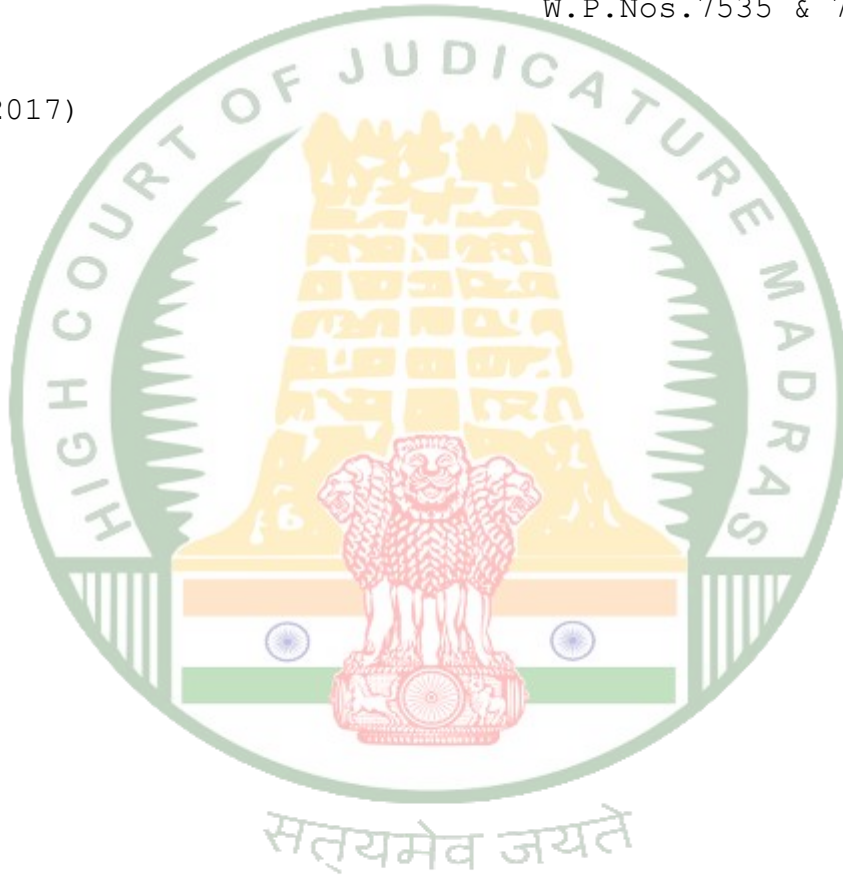
+2 Ccs to Mr.P. Anbarasan, Advocate sr 54529,54528.

+1 CC to Govt. Pleader sr 55727.

+2 Ccs to Mr.G. Thangavel, Advocate sr 55205.

W.P.Nos.7535 & 7536 of 2015

SSI (CO)
sp(27/09/2017)



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