IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date of Reserving Order 19.09.2017	Date of Pronouncing Order 21.12.2017

CORAM:

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.16309 of 2013 and
MP No.1 of 2013

A.Logambal ..Petitioner

Vs.

1. The Presiding Officer,
Cooperative Tribunal
(Principal District Judge)
Coimbatore

2. The Deputy Registrar,
Office of the Deputy Registrar of
Cooperative Societies,
Collectorate Compound,
Coimbatore.

3. The Special Officer,
K-1611, Kovai Murugan Mills Labourers
Cooperative Credit Society,
Coimbatore ..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari calling for the records from the file of the second respondent relating to the impugned order dated 18.12.2009 in petition No.32 of 2009 and the fair and decreetal order of the first respondent herein dated 12.09.2012 in CMA.No.118 of 2010 and quash the same.

For Petitioner : Mr.N.V.Prassanna
for M/s.Sai Bharath and Ilan

For Respondents : R1 - Tribunal
: Mr. L.P.Shanmuga Sundaram,
Special Government Pleader
for R2 & 3

ORDER:

According to the petitioner, she was working as a Clerk in the third respondent society during the period 1998 - 1999. In the aforesaid period, the society passed a resolution to provide LPG connection from Hindustan Petroleum Corporation Limited (HPCL) to the members of the society under the Tatkal scheme. During the said period, one Mr.Ramasamy was the Vice President and Mr.C.Gunasekaran was the Director of the third respondent society and the petitioner was working as Clerk under them. While so, the third respondent passed a resolution to provide Gas connection to the members of the society. On the basis of the resolution, 49 members of the society were given gas connections by HPCL through its distributor, M/s.Rukmani Gas Agency, Coimbatore. All the connections were given under the Tatkal scheme for which a non-refundable deposit of Rs.4,000/- to be paid to the HPCL and in addition to the same, a refundable deposit of Rs.1900/- has to be paid by the members. On the request of the M/s.Rukmani Gas Agency, by its letters dated 28.12.1999 and 10.01.2000 under the instructions of the Vice President and the Director of the third respondent society, cheques were issued to M/s.Rukmani Gas Agency for a sum of Rs.1,00,000/- on 22.10.1998 vide cheque No.002668, a sum of Rs.1,00,000/- on 30.11.1998 vide cheque No.002699, a sum of Rs.1,00,000/- on 01.03.1999 vide cheque No.004175, a sum of Rs.80,000/- on 10.05.1999 vide cheque No.005171 and a sum of Rs.14,450/- on 10.05.1999 vide cheque No.005172. The first two cheques were issued for a sum of Rs.2,00,000/- in favour of M/s.Rukmani Gas Agency. The remaining three cheques were issued in favour of M/s.Supreme Associates as requested by M/s.Rukmani Gas Agency, since they are sister concerns. The receipt was also issued by M/s.Rukmani Gas Agency with regard to the gas connections to 49 members of the society. After due payment, all the members were given gas connections by M/s.Rukmani Gas Agency. Enquiry was order under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983, that too after a period of seven years. Therefore, the enquiry proceedings is barred by limitation under Section 90 (8) (ii) of the said Act. According to the petitioner, entire payments were made as directed by the Vice President and the Director of the third respondent society. The entire fact was also recorded in the minutes book. A sum of Rs.1,94,450/- was paid to M/s.Supreme Associates as requested by M/s.Rukmani Gas Agency, since the Supreme Associates was also a sister concern of M/s.Rukmani Gas Agency. They also issued receipts for the entire sum of Rs.3,94,450/- for providing gas connection for its members. Therefore, there is no loss to the society nor any misappropriation of money. Therefore, the order of the respondents are liable to be set aside.

2. According to the learned counsel for the petitioner, enquiry proceedings initiated by the second respondent is barred by limitation under Section 90 (8) (ii) of the said. Secondly, the members of the society have repaid the loan amount. Therefore, there is no loss caused to the society. According to the learned counsel for the petitioner, there is no misappropriation of the aforesaid amount by the petitioner and they have not proved that the petitioner misappropriated the funds of the society. Hence, Challenging the order of the second respondent, the writ petitioner has filed an appeal before the first respondent Tribunal. The Tribunal without appreciating the case of the petitioner, has accepted the contention of the respondents and dismissed the said appeal. Therefore, the petitioner has filed the present Writ petition before this Court.

3. The learned counsel for the respondent society would submit that a detailed enquiry was conducted. On the basis of the documentary evidence, report was submitted to second respondent stating that the writ petitioner and two others namely A.Ramasamy, Ex-Vice President and then Director, late C.Gunasekaran were held responsible for the loss caused to the society.

4. Heard the learned counsel for both sides and perused the materials available on record.

5. The society has passed a resolution to provide LPG connection from Hindustan Petroleum Corporation Limited (HPCL) to 49 members of the society under the Tatkal scheme through M/s.Rukmani Gas Agency. The society has paid a sum of Rs.2,00,000/- to the Gas Agency. Subsequently, three cheques were issued by the petitioner and others on behalf of the third respondent society in favour of Supreme Associates namely, the fourth defendant. The fourth defendant is the Proprietor of Supreme Associates Agency. Subsequently, 31 connections were given to the members at the cost of Rs.2,49,550/- paid to M/s.Rukmani Gas Agency under Tatkal Scheme. But the said amount was paid to M/s.Rukmani Gas Agency. But it has been said the connection has been provided by the fourth defendant namely M/s.Supreme Associates. The fourth defendant is not authorised by the society to provide gas connection to its members of the society. It is seen from the order passed by the respondent Tribunal that the letter dated 26.06.2007 issued by the Hindustan Petroleum Corporation Limited clearly shows that only 18 gas connections were made under Tatkal Scheme and the remaining 31 connections were made under normal scheme. For

tatkal scheme, the members have to pay additional contribution. The society has also paid additional amount under Tatkal scheme. It is an admitted fact that the defendants had issued cheques in favour of M/s.Supreme Associates. There is no necessary materials placed before the respondent 1 & 2 to prove that the said purchase of the gas connection from sister concern of M/s.Rukmani Agency has been approved by the society. The said fact has not been disputed by the revision petitioner nor the defendants at the time of enquiry or before the Tribunal. The writ petitioner / defendants have contended that the M/s.Supreme Associates is a sister concern of M/s.Rukmani Gas Agency. Only on the request of M/s.Rukmani Gas Agency, the said cheques have been issued in the name of M/s.Supreme Associates and also supplied gas connection to the members of the society by M/s.Supreme Associates. The writ petitioner being the Clerk of the society, is responsible for the cheques issued in favour of M/s.Supreme Associates. The writ petitioner also issued the following cheques to the Supreme Associates, a company no way connected with the supply of gas connection.

S.No	Cheque No. Dated	Amount	In favour of
1	04175 01.03.1999	Rs.1,00,000/-	Supreme Associate
2	005171 10.05.1999	Rs.80,000/-	Supreme Associate
3	005172 10.05.1999	Rs.14,450/-	Supreme Associate
	Total	Rs.1,94,450/-	

6. The then Vice President, the Director and the petitioner were also held responsible for creating falsification of records by issuing the cheques for providing gas connection to the 49 members of the Society under Tatkal Scheme. Therefore, both the second respondent as well as Tribunal have gone into the facts and held that the petitioner and two others are held jointly and severally responsible for the loss caused to the society due to their wilful negligence by creating wrong claim.

7. According to the petitioner, the society has filed the arbitration under Section 90 of the Act before the second respondent with a condone delay application under the provisions of Tamil Nadu Cooperative and Societies Act, 1983 for filing the suit and the second respondent admitted the dispute after condoning the delay under Section 90 (9) (b) of Tamil Nadu

Cooperative Societies Act, 1983 and the order was passed. Therefore, the said contention of the petitioner is liable to be rejected. Therefore, there is no warrants to interfere with the orders passed by the Tribunal as well as there is no perverse or illegal in the order.

8. Therefore, the orders passed by the first and second respondents are confirmed and accordingly, in view of the above said facts and circumstances of the case, the writ petition fails and accordingly stands dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

-Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

1. The Presiding Officer,
Cooperative Tribunal
(Principal District Judge)
Coimbatore

2. The Deputy Registrar,
Office of the Deputy Registrar of Cooperative Societies,
Collectorate Compound,
Coimbatore.

3. The Special Officer,
K-1611, Kovai Murugan Mills Labourers Cooperative Credit Society,
Coimbatore

- 1 cc to M/s.Sai Bharath & Ilan, Advocate Sr.No. 92149
- 1 cc to The Government Pleader Sr.No.91970

Pre-delivery Order
in W.P.No.16309 of 2013 and
MP No.1 of 2013

CO(KJI)
KP 05/02/2018