

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 19961 of 2012

The Managing Director
Salem District Co-op. Milk
Producers' Union Limited ... Petitioner

Vs.

1. The District Judge,
Salem.
2. The Deputy Registrar (Dairying),
Salem.4.
3. S.P. Narayanan ... Respondents

Prayer: This Writ petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, to call for the records pertaining to the order of the 1st respondent dated 05.07.2010 in C.M.A. (C.S) No.3 of 1997 and quash the same and pass such further or other orders.

For Petitioner : Ms. G. Devi

For Respondents : R1 - Court
Mr. L.P. Shanmugasundaram,
Spl. Govt. Pleader for R2
Mr. G. Jermiah for R3

ORDER

This Writ Petition is filed seeking to quash the order of the 1st respondent dated 05.07.2010 in C.M.A. (C.S) No.3 of 1997.

2. The learned counsel for the petitioner submitted that the 3rd respondent was an employee of the petitioner Union. During the inspection conducted by the Management on 23.09.1994, it was found that there was shortage of milk powder to the tune of 5.056 metric tons. The 3rd respondent along with two others

were held responsible. Admitting their guilt, they paid equal contribution to the loss caused to the society. Subsequently, on various other aspects, proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 was initiated against them and they were jointly and severely, held liable to pay a sum of Rs.85,618/- to the society. Against the said order, the 3rd respondent and the other two employees filed an appeal before the 1st respondent in CMA (CS) Nos. 2 to 4 of 1997. Since the appeals were allowed by the Tribunal on 26.04.1999, the petitioner Union filed W.P. No.3642 of 2002 before this Court, challenging the common judgement. By order dated 23.12.2009, this Court set aside the order of the Tribunal and remitted the matter to the Tribunal for fresh consideration, on the reasoning that the surcharge report has not been properly considered by the Tribunal. Again the matter was considered afresh by the 1st respondent Tribunal. Before the Tribunal, the third respondent herein, in support of his contentions, relied upon the following decisions :

1. 2000 (II) CTC 659 (T.V. Ekambaram and two others v. Co-operative Tribunal, Madurai and two others),
2. 2003 (3) CTC 23 (Gabriel v. Deputy Registrar (Housing), Cuddalore and another),
3. 2004 (3) LW 53 (S.N.R. Kamalam and D.R. of Co-operative Societies, Thakkalay and two others) and
4. 2005(2) LLN 503 (V. Subramaniam V. Assistant Director, Sugar Project and another).

The Tribunal by considering the aforesaid decisions held that under Section 87 of the Act, the period of six months prescribed to complete the enquiry is mandatory and that in the present case the department has not completed the enquiry within the said six months period. On the said ground, the entire proceedings were set aside and the appeal was allowed. Challenging the said judgement, the petitioner has filed the present Writ Petition before this Court.

3. The learned counsel for the petitioner would submit that the aforesaid ground has already been raised before the Appellate Tribunal and further it is not mandatory but only discretionary. The Tribunal has failed to take into consideration the scope of the order passed by this Court in W.P. No. 3642 of 2002, remanding the matter to the Tribunal for fresh consideration. Therefore, the judgement dated 05.07.2010 passed by the Appellate Court is liable to be set aside.

4. The learned counsel for the 3rd respondent would submit that the Tribunal has considered the decisions of this Court and has rightly come to a conclusion and has set aside the entire award proceedings passed against the petitioner.

5. Heard the rival submissions of the learned counsel for the petitioner as well as the respondents and perused the records.

6. The point for determination in the present writ petition is that the entire surcharge proceedings initiated under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 is vitiated on the ground that the enquiry was not completed within the prescribed period, as contemplated under Section 87 of the Act. The Tribunal has considered the reliance placed upon the decisions in the case of P.V. Ekambaram & 2 others vs. Co-operative Tribunal, Madurai reported in 2000 (2) CTC 659, wherein this Court has held that second proviso to Section 87 of the Act is mandatory in nature and that the surcharge proceedings should be completed within a period of 6 months and if it exceeds beyond the period of six months, extension must have been obtained from the higher authority and if the officer has not obtained extension from the higher authority, the action initiated under Section 87 of the Act has to be held as non-est in the eye of law. In the other decisions of this Court in the case of Gabriel vs. Deputy Registrar (Housing), Cuddalore & anr., reported in 2003 (3) CTC 23 and S.N.R. Kamalam and D.R. of Co-operative Societies, Thakkalay and two others, reported in 2004 (3) LW 53, it is held that surcharge proceedings completed after the mandatory period of six months is barred by limitation and the same is liable to be quashed. Therefore, it is mandatory that within the prescribed period, the enquiry has to be completed. In the light of the aforesaid decisions of this Court and the Appellate Court, the Tribunal has set aside the award passed by the 2nd respondent.

7. However, in the light of the decision of this Court, reported in 2016 (4) LW 452 in the case S.Ramadevi Vs. The Special Officer, Ambur Cooperative Sugar Mills, Vadapudupet, Vellore District and others, wherein this court has also followed the earlier Judgement of the Division Bench of this Court in the case of SVK Sahasramam Vs. Deputy Registrar of Coop Societies, Tiruvannamalai Circle and held that period under the second proviso of the Section 87 is not mandatory and the same is only discretionary. Therefore, the findings rendered by the Tribunal is liable to be set aside.

8. In view of the above said decisions, this Court warrants interference with the order passed by the Tribunal and hence the impugned order of the First Appellate Court, namely, the Tribunal in C.M.A. (C.S) No.3 of 1997 dated 05.07.2010 is set aside. The Writ Petition is allowed and the matter is remanded to the Tribunal to be considered afresh on merits, in accordance with law, as expeditiously as possible, preferably

within a period of six months from the date of receipt of a copy of this order. No costs.

avr

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

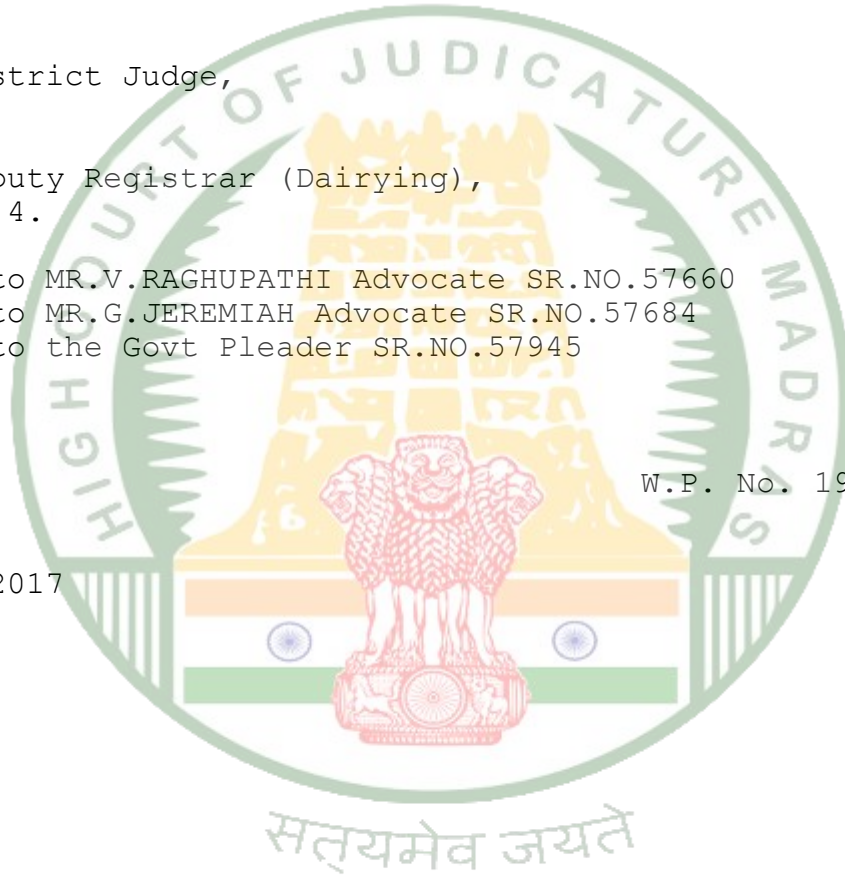
To

1. The District Judge,
Salem.
2. The Deputy Registrar (Dairying),
Salem.4.

+1CC to MR.V.RAGHUPATHI Advocate SR.NO.57660
+1CC to MR.G.JEREMIAH Advocate SR.NO.57684
+1CC to the Govt Pleader SR.NO.57945

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MK:27/10/2017



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