

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 19.07.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.44144 of 2016

and

W.M.P.Nos.37977 and 37978 of 2016

S.Tamilarasan

... Petitioner

- Vs -

1. Deputy Registrar of Co-operative Societies /
Surcharge Officer,
Tiruvarur Circle,
Tiruvarur (PO) & (Dt.),

2. Principal District Judge,
Co-operative Tribunal,
Tiruvarur (PO) & Dt.),

3. The Management of Tiruvarur
Co-operative Consumer Wholesale Stores Ltd.,
Represented by its Managing Director,
Tiruvarur, Tiruvarur District.

(R3 is impleaded as per order
dated 04.04.2017 by DKKJ
in WMP No.2222/2017
in W.P.No.44144/2016.)

... Respondents

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records of the First Respondent relating to his
order Rc.No.5529/2002 Ku.Na dated 10.05.2004 and the records of
the Second Respondent relating to the order in CCMA No.12/2008
dated 23.03.2016 and quash both the orders.

For Petitioner	:	Mr.P.Anbarasan
For 1 st Respondent	:	Mr.V.Selvaraj Addl.Government Pleader
For 2 nd Respondent	:	Tribunal
For 3 rd Respondent	:	Mr.L.P.Shanmugasundaram Special Government Pleader

O R D E R

This writ petition is filed challenging against the order passed by the First Respondent relating to his order Rc.No.5529/2002 Ku.Na dated 10.05.2004 and the records of the Second Respondent relating to the order in CCMA No.12/2008 dated 23.03.2016 and quash both the orders.

2. According to the petitioner, he was working as salesman in the Velankanni Branch of the Tiruvarur Co-operative Wholesale Stores Ltd., Tiruvarur. In the year 2000-01, there were heavy sales on the eve of local Madha festival. There was some backlog in the accounting of supply, and sale of commodities. There was also lack of prompt reconciliation of accounts, in the Head Office, and certain books of accounts was also not traceable. Therefore, the 1st respondent has ordered enquiry in to the society under Section 82 of the Tamil Nadu Co-operative Societies Act. The Enquiry Officer has conducted the enquiry and arrived at a loss sustained to the society for Rs.10.88 lakhs. Pursuant to the said enquiry report, the 1st respondent has issued a surcharge notice for the amount against General Manager and Accounts Manager in the Head Office and also against 9 employees including the petitioner. The 1st respondent passed an order of surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act against the General Manager and Accounts Manager and other staff of the society for Rs.17.37 lakhs including interest. The 1st respondent has filed a criminal complaint against seven persons in C.C.No.82/2011 before the Judicial Magistrate-I, Nagapattinam.

3. Subsequently, on the basis of the report, according to them, they dropped the said criminal proceedings by the Judicial Magistrate-I, Nagapattinam. Challenging the said surcharge order passed the petitioner has preferred the appeal before the Tribunal under Section 152 of the Tamil Nadu Co-operative Societies Act. The petitioner has raised a ground that the Tribunal has rejected the appeal without considering the grounds raised by the petitioner by examining whether the notice mentioned by the 1st respondent has sent to the petitioner and the same was served to the petitioner or not. Therefore, the order passed by the Tribunal is liable to be set aside. On this ground alone the petitioner ought to have given an opportunity to put forth his grounds. The Tribunal ought to have consider that the notice was not served to the petitioner.

4. The learned Additional Government Pleader would submit that by relying on the counter affidavit filed by the 3rd respondent, in paragraph 10(c) would shows that it is the bounden duty of the petitioner to intimate the new address of

his residence to the 1st and 3rd respondent. But, he was wantonly evaded and failed to furnish his address. Therefore, the contention of the petitioner is liable to be rejected.

5. The learned counsel for the petitioner has raised a ground before this Court that no opportunity was given to the petitioner to contest the case before the 1st respondent after furnishing the copy of the document to the petitioner. Unless the opportunity is given to the petitioner, the same shall be placed before the 1st respondent and to decide it on merits. In the present case, according to the respondents, notice has been served. In the counter they have admitted that the petitioner has not furnished the new address for intimation, if the notice has not been served to the petitioner, the respondent ought to have taken the notice as per the procedure as contemplated by the provisions of law. Therefore, it is clear that notice has not been served to the petitioner and hence, the respondents has violated the principles of natural justice.

6. At this stage, both the parties have agreed that the matter can be remitted back to the Tribunal and the same shall be considered afresh in accordance with law.

7. In view of the facts and circumstances of the case, this writ petition is allowed and the impugned order is quashed and the case is remitted back to the Tribunal. The Tribunal is directed to consider the appeal afresh after furnishing copy of the document and after providing opportunity to the parties concerned as expeditiously as possible, preferably within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ssn

To

1. Deputy Registrar of Co-operative Societies /
Surcharge Officer,
Tiruvarur Circle,
Tiruvarur (PO) & (Dt.),

2. Principal District Judge,
Co-operative Tribunal,
Tiruvarur (PO) & Dt.),

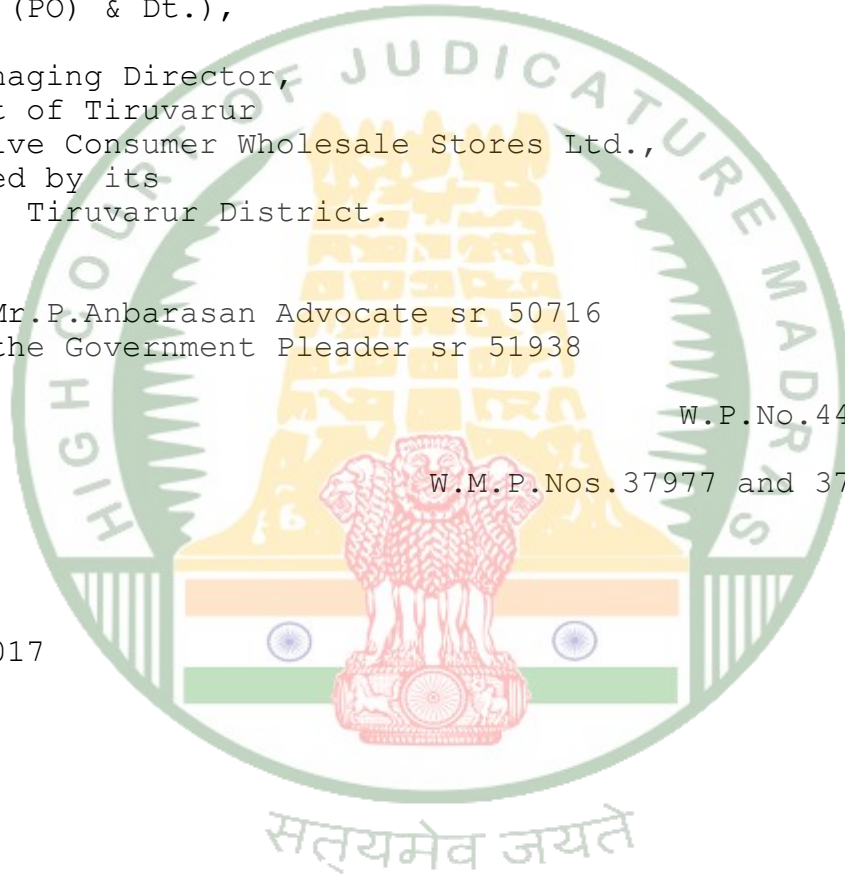
3. The Managing Director,
Management of Tiruvarur
Co-operative Consumer Wholesale Stores Ltd.,
Represented by its
Tiruvarur, Tiruvarur District.

+1 cc to Mr.P.Anbarasan Advocate sr 50716
+1 cc to the Government Pleader sr 51938

W.P.No.44144 of 2016
and

W.M.P.Nos.37977 and 37978 of 2016

kj(co)
aa15/09/2017



WEB COPY