

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 19.09.2017

Orders Pronounced on : 21.12.2017

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No. 48725 of 2006

and

M.P No. 1 of 2006

C. Chandrasekar

.. Petitioner

vs.

1. The Principal District Judge
Vellore District
Vellore.

2. The Secretary
Vellore North Co-operative
Town Society Ltd.,
Vellore.

3. Co-operative Sub Registrar
(Stores)
Deputy Registrar Office
Vellore (Circle), Vellore.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent Tribunal dated 09.10.2006 made in CTA No.18 of 2004 confirming the suo moto surcharge order passed in surcharge case No.8/2003-2004 (suo moto) dated 31.10.2003 and consequently forbearing the respondents from initiating any other proceedings before the CCIW both by way of attachment or by way of criminal proceedings and pass further orders.

For Petitioner : Mr. M.K. Hidayatullah

For Respondents : R1 - Court
Mrs. S. Anitha for R2
Ms. T. Girija, Govt. Advocate R3

ORDER

The petitioner has filed this writ petition seeking to quash the order of the 1st respondent Tribunal dated 09.10.2006 made in CTA No.18 of 2004 confirming the order passed in surcharge case No.8/2003-2004 dated 31.10.2003 and consequently forbear the respondents from initiating any other proceedings before the CCIW both by way of attachment or by way of criminal proceedings.

2. The learned counsel for the petitioner submitted that the Board of Directors of the 2nd respondent Bank were elected by the members of the Bank (which was subsequently called as Society) in the year 1996. The petitioner was elected as a President of the 2nd respondent society, by the Board of Directors. After the petitioner took over the Management of the Society, as a President, he appointed the following 8 employees on casual basis, temporarily, for the efficient performance of the Society:

(1) Ramamurthy; (2) Anandan; (3) Kotteeswari; (4) Padmini; (5) Kalaiselvi; (6) Subramani; (7) Jayakumar; and (8) Ranjini. Subsequently, on their own, most of them left services voluntarily, except two employees. Due to the efforts taken by the petitioner, there was increase in the business transaction of the Society. However, the 3rd respondent initiated enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, against the petitioner. Subsequently, surcharge proceedings were initiated and was concluded holding that the petitioner is liable for the loss caused to the Society, to a tune of Rs.1,94,969/-, towards the payment of salary to the employees. Challenging the said surcharge proceedings, the petitioner filed an appeal in C.M.A. No. 18 of 2004 before the 1st respondent Tribunal. The Tribunal dismissed the appeal and hence the present writ petition is filed before this Court.

3. According to the petitioner, the Tribunal has failed to consider that under Section 81(4) of the Act, it is mandatory for the respondents to complete the enquiry initiated under Section 81, within a period of six months. Further, under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, the enquiry shall be completed within a period of three months from the date of ordering enquiry or if exceeding three months, with the permission of higher authority it may be extended, but not exceeding six months in total. Without considering the decisions of this Court, the Tribunal has erroneously dismissed the appeal.

4. The next contention of the learned counsel for the petitioner is that after taking over charge as President of the Society, in the year 1996, all efforts were taken by him to

improve the Bank and due to his efforts the net profit of the Bank increased to Rs.60,191/-, after all the expenses. It is further submitted that the salary paid to those employees, was duly accounted and paid by the Bank, as per the payment schedule. There is no gain or profit to the petitioner, from the salary of those employees. There is no willful negligence on the part of the petitioner. Further, on this ground the respondents have not established that the loss is sustained to the society, on the ground of willful negligence by the petitioner.

5. Counter affidavit has been filed by the second respondent. It is the submission of the learned counsel for the respondents that the petitioner has appointed the employees without getting the approval of the higher authorities, which is in violation of the Rules. Thereby, the petitioner has caused loss to the Society and hence the order passed by the Society needs no interference.

6. The learned Government Advocate appearing for the 3rd respondent, reiterated the stand taken by the 2nd respondent that loss has been caused to the society by the petitioner.

7. On perusal of the surcharge proceedings passed by the 3rd respondent, it is seen that due to urgency the petitioner has appointed 8 employees, on temporary basis, on consolidated pay, in the interest of the Society. It is also true that the petitioner has appointed those 8 employees, without following the provisions prescribed under Rule 149 (2) of the Tamil Nadu Cooperative Societies Rules, 1988 and due to which loss has been sustained by the society. Therefore, the said appointment is illegal and contrary to the provisions of the Rules.

8. With regard to the first contention of the petitioner, that as per the decision in the case S.Ramadevi Vs. The Special Officer, Ambur Cooperative Sugar Mills, Vadapudupet, Vellore District and others, the enquiry should have been concluded within a period of six months, this court has 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, reported in (2008) 8 MLJ 231 and held that the proviso of Section 81 and second proviso of Section 87, is not mandatory. In view of the aforesaid legal position, the contention of the petitioner is liable to be rejected.

9. This Court has considered the wilful negligence in the loss caused to the society, in the case of S.Ramadevi Vs. The Special Officer, Ambur Cooperative Sugar Mills, Vadapudupet, Vellore District and others, reported in 2016-4-L.W.452, the paragraph 4 of the order is as follows:

"4. As a consequence of the aforesaid enquiry report and the loss having been caused, the surcharge proceedings under Section 87 of the said Act were initiated. Suffice to say that in so far as fixation of liability for surcharge from the appellant is concerned, the same could have been based only on "willful negligence" as per the said provisions. The relevant provision reads as under:

"87. Surcharge - (1) Where in the course of an audit under Section 80 or an enquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83 or the winding-up of a Society, it appears that any person who is or was entrusted with the organisation or management of the Society or any past or present officer or servant of the Society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the Society or has caused any deficiency in the assets of the Society by breach of trust or wilful negligence or has made any payment which is not in accordance with this Act, the Rules or the Bylaws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the Board, Liquidator or any creditor or contributor may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned in the case of a deceased person, to the representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the Society by way compensation in respect of the misappropriation, mis-application of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are not in accordance with this Act, the Rules or the By-laws as the Registrar or the person authorised as aforesaid thinks just:
Provided that no action shall be commenced

under this sub-section after the expiry of seven years from the date of any act or omission referred to in this sub-section.

Provided further that the action commenced under this sub-section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate." (emphasis supplied).

In the present case on hand, a specific ground has been raised that the petitioner has not received any communication stating that there is a ban for appointment of staff and that there is no loss caused to the society. The said appointment is only on daily wages basis and subsequently they have voluntarily left the service, except two of the employees. Even for the sake of argument, there is negligence on the part of the petitioner, it is not willful negligence. As per the decisions of this Court, 'Wilfulness' or 'wantonness' imports pre-meditation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission to act. In this case, the appointment of employees did not result in any loss to the society.

10. As rightly pointed out by the learned counsel for the petitioner, the judgment of this Court in the case of K. Ajay Kumar Gosh v. Tribunal for Co-operative Cases, reported in 2009 CJ (Mad) 4901, the relevant paragraph 9, reads as follows :-

"9. A detailed discussion has been made by making reference to various judgments on this aspect in another judgment reported in Sathyamangalam Cooperative Urban Bank Ltd. vs. Deputy Registrar of Cooperative Society and Another, (1980) 2 MLJ 17, it is held thus: 'The degree of negligence that is contemplated under Section 71 (1) of the Tamil Nadu Cooperative Societies Act is not mere negligence, but wilful negligence. The word 'wilful' has not been defined in the Act. 'Wilfulness' or 'wantonness' imports pre-meditation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission to act. It imports a constructive intention as to the consequences which, entering into the wilful act, the law imputes to the offender and in this way a charge, which otherwise would be mere negligence, becomes by reason of a reckless

disregard of probable consequences, a wilful wrong. The act done or omitted to be done must be intended or must involve such reckless disregard of security and right as to imply bad faith. In examining whether there is wilful negligence, it has to be seen first whether the person concerned is guilty of negligence and if so, whether the said wilful negligence is the proximate cause of the injury or loss sustained.''

11. In the light of the aforesaid judgement, in the absence of any materials and since no findings has been recorded by the 3rd respondent/ Sub Registrar in the surcharge proceedings that the petitioner has caused loss to the society due to his wilful negligence in the appointment of the employees, the order passed by the 2nd respondent/ Deputy Registrar, confirmed by the Tribunal is liable to be set aside.

12. In fine, the writ petition is allowed and the impugned surcharge order passed in case No.8/2003-2004 dated 31.10.2003, confirmed by the 1st respondent Tribunal in CTA No.18 of 2004 dated 09.10.2006, is set aside. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

s/d-
Assistant Registrar (CS VI)

True Copy

Sub-Assistant Registrar

avr

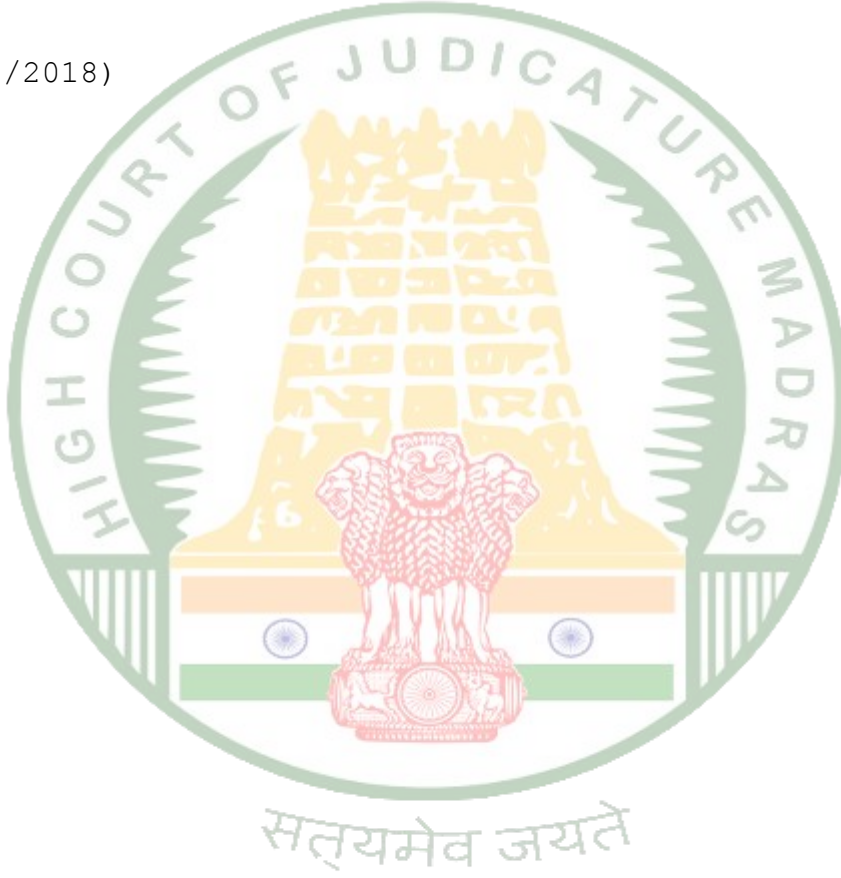
To

1. The Principal District Judge
Vellore District
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2. The Secretary
Vellore North Co-operative
Town Society Ltd.,
Vellore.
3. The Co-operative Sub Registrar
(Stores)
Deputy Registrar Office
Vellore (Circle), Vellore.

+1cc to M/s.M.K. Hidayatullah, Advocate, SR No.91544
+1cc to The Government Pleader, SR No.41971

W.P.No.48725 of 2006
and
M.p. No. 1 of 2006

MP (CO)
rsi (03/02/2018)



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