



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 29.01.2018

CORAM

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

W.P. (MD) No.1625 of 2018

and

W.M.P (MD) Nos.1716 & 1717 of 2018

WEB COPY

1.M.R.Hari Govindhan
2.K.R.Krishna Moorthy
3.M.K.Sivaraman
4.G.N.Thanalakshmi,
5.K.S.Manjula
6.G.R.Nagarajan

... Petitioners

-vs-

1.The Department of Handloom and Textiles
represented by The Commissioner of handlooms and textiles,
Commissionerate of Handlooms and textiles,
Kuralagam,
II Floor,
Chennai-600 108.

2. The Joint Director of Handlooms,
O/o. The Joint Director of Handlooms,
Kuralagam,
Chennai-600 108.

3.The Assistant Directors of Handlooms and Textiles
cum Enquiry Officer,
Madurai-Mandapam Road,
Paramakudi,
Ramanathapuram District.

4.The Ganapathi Weavers Cooperative production and sale society,
represented by its Managing Director,
12/253, S.S.Kovil Street,
Paramakudi,
Ramanathapuram District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of certiorari to call for the records pertaining to the impugned order in Ta.Na.01/2017/E, dated 15.11.2017 on the file of the respondent No.3 and quash the same in so far as the petitioners are concerned.

For Petitioner

<https://hcservices.ecourts.gov.in/hcservices/>
For Respondents

: Mr.T.Lajapathi Roy

: Mr.Ayiram K. Selvakumar

Additional Government pleader

O R D E R

The order passed by the third respondent vide proceedings, dated 15.11.2017 under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 is under challenge in this writ petition.

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2. Heard Mr.T.Lajapathi Roy, learned counsel appearing for the petitioners and Mr.Ayiram K.Selvakumar, learned Additional Government Pleader appearing for the respondents.

3. The order impugned in this writ petition, dated 15.11.2017 is enclosed in Page No.76 of the typed set of papers filed along with this writ petition. The order was issued by the Assistant Director/Surcharge Officer under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983.

4. Section 87 of the Tamil Nadu Co-operative Societies Act deals with the Surcharge proceedings. The competent authority under the provisions of the Tamil Nadu Co-operative Societies Act is empowered to initiate surcharge proceedings under Section 87 of the said Act based on the Audit conducted under Section 80 or an inquiry conducted under Section 81 or an inspection conducted under Section 82 or an inspection of books under Section 83. In all such circumstances, if any irregularities, illegalities or misappropriation or loss of property is found in a Co-operative Society, the surcharge proceedings can be initiated by the competent authority.

5. In the present writ petition, the surcharge proceedings were initiated and after conducting the detailed enquiry, the final order under Section 87 of the said Act was passed by the respondents.

6. Against the order passed under Section 87 of the Act, the appeal is provided under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983.

"Section 152 reads as under:-

152.Appeals - (1)Any person aggrieved by-

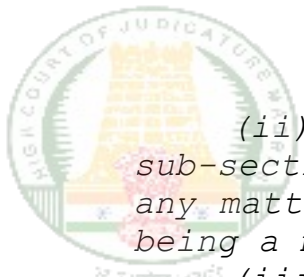
(a)any decision or award passed or order made or proceedings taken under sub-section (1) of section 87, sub-section(2), sub-section(3) or sub-section(4) of section 90, section 118, section 119, section 143, section 144 or section 167; or

(b)any award of an arbitrator or arbitrators under sub-section (2) or sub-section(3) of section 90;

(c)any award of an arbitrator under section 100, may appeal to the Tribunal;

Provided that nothing contained in clause(a) or clause(b) of this sub-section shall apply to-

(i)any decision, order or award under sub-section(2), sub-section(3), or sub-section(4) of section 90 in respect of any matter relating to, or in connection with, the constitution of a board including any election thereto; or



(ii) any decision, order or award under sub-section (2), sub-section (3) or sub-section (4) of section 90 in respect of any matter relating to, or in connection with, any matter not being a money claim;

(iii) any order of transfer, reference, withdrawal or re-transfer of a dispute under sub-section (2) or sub-section (3) of section 90.

(2) (a) Any person aggrieved by any-

(i) decision under section 7, sub-section (4) of section 23, sub-section (6) of section 34; or

(ii) refusal to register the society under section 9 or the amendment of the by-laws under section 11; or

(iii) registration of amendment of the by-laws under sub-section (2) of section 12; or

(iv) approval of or refusal to approve the expulsion of a member under sub-section (2) of section 25, the proposal to take loan under clause (c) of sub-section (1) of section 105, the decision of the board under clause (ii) of sub-section (1) of section 106, the regulations under section 108 or the removal of a member under the proviso to section 109; or

(v) order under section 14, clause (ii) of sub-section (2) of section 21, section 36, sub-section (1) of section 88, sub-section (1) of section 89, section 137 or section 181, may appeal if such decision, refusal, registration, approval or refusal to approve or order is that of-

(A) the Registrar for the State, to the Government; or

(B) any other person, to the Registrar.

Explanation - For the purposes of this clause, "Person aggrieved" means in relation to section 11 or section 12, the registered society.

(b) Any person, who is refused admission to a registered society under sub-section (2) of section 21 or who is aggrieved by any order of the liquidator under section 139, may appeal to the Registrar.

(3) Any appeal under sub-section (1) or sub-section (2) shall, subject to the other provisions of the Act, be preferred within sixty days from the date of communication of the decision, order, award, refusal, registration or approval complained of, but the appellate authority may admit an appeal preferred after the said period of sixty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(4) In disposing of an appeal under this section, the appellate authority may, after giving the parties an opportunity of making their representations, pass such order thereon as the appellate authority may deem fit.

(5) Subject to the provisions of section 153 and 154, the decision or order of the appellate authority on appeal shall be

final



(6) The appellate authority may pass such interlocutory order pending the decision on the appeal as the appellate authority may deem fit.

(7) The appellate authority may award costs in any proceedings before the appellate authority to be paid either out of the funds of the registered society or by such party to the appeal as the appellate authority may deem fit.

7. As against the order passed under Section 87 of the said Act, the appeal is to be filed under Section 152 before the Co-operative Tribunal.

8. The District Judges are designated as Co-operative Tribunal for the purpose of entertaining the appeal against the surcharge order. Thus, the writ petitioner is at liberty to approach the Designated Co-operative Tribunal under the provisions of Section 152 of the Tamil Nadu Co-operative Societies Act, 1983 and the writ petition under Article 226 of the Constitution of India is not maintainable against the surcharge order. When the judicial forum is constituted for the purpose of dealing with the particular subject, the writ petitioner cannot approach this Court under Article 226 of the Constitution of India, directly.

9. In these views of the matter, the present writ petition stands dismissed as the petitioner has not exhausted the remedy contemplated under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-

Assistant Registrar (CSI)

/True Copy/

Sub-Assistant Registrar

To

1. The department of handloom and textiles represented by The Commissioner of handlooms and textiles, Commissionerate of Handlooms and textiles, Kuralagam, II Floor, Chennai-600 108.
2. The joint Director of Handlooms, O/o. The Joint Director of Handlooms, Kuralagam, Chennai-600 108.
3. The Assistant Directors of Handlooms and Textiles cum Enquiry Officer, Madurai-Mandapam Road, Paramakudi, Ramanathapuram District.
4. The Managing Director, The Ganapathi Weavers Cooperative production and sale society, 12/253, S.S. Kovil Street, Paramakudi, Ramanathapuram District.

+One cc to Mr. T. Lajapathi Roy, Advocate, SR.No.44713

+One cc to The Special Government Pleader, SR.No.44786

am/pnn

RL/7C/4P/KKR/SAR4/12/2/2018

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