IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.S. RAMESH

W.P.Nos.12727 & 12728 of 2003

1.E.S.Sundara Mahalingam ...Petitioner in W.P.No.12727/2003

2.S.Ponniah ...Petitioner in W.P.No.12728/2003

Vs.

1.The Special Tribunal for
Co-operative Cases (District Judge),
Tirunelveli.

2.The Deputy Registrar of
Co-operative Societies,
Cheranmadevi,
Tirunelveli District.

3.The Administrator,
Vallioor Co-operative Primary Agricultural
& Rural Development Bank Ltd.,
D.R.L. (E) II, Panagudi,
Tirunelveli District. ...Respondents in both W.Ps.

COMMON PRAYER: Writ Petitions filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the entire records in connection with the order of the second respondent made in his proceedings E.Po.Na.Ka.No.15/1998-99 dated 21.06.2019 as confirmed by the judgment and decree dated 20.02.2003 made in CMA (CS) No.109/1999 on the file of the first respondent and to quash the same.

For Petitioner : Mr.R.Sreedharan
(in both W.Ps.)

For Respondent-2: Mrs.T.Girija, GA

For Respondent-3: Ms.Swadhi Subramaniam

COMMON ORDER

The surcharge proceedings of the second respondent made in E.Po.Na.Ka.No.15/1998-99 dated 21.06.2019, as confirmed by the judgment and decree dated 20.02.2003 made in CMA (CS) No.109/1999 by the first respondent, are under challenge in the present Writ Petitions.

2. Heard Mr.R.Sreedharan, learned counsel for the petitioners and Mrs.T.Girija, learned Government Advocate appearing on behalf of the second respondent, as well as Ms.Swadhi Subramaniam, learned counsel for the third respondent.

3. The brief facts of the case which is as follows:

The third respondent herein is a Co-operative Primary Agricultural & Rural Development Bank (hereinafter referred to as 'bank'). It came to be found that 96 gold jewel loans extended by the bank were found to be passed on spurious jewels and thereby, the loss was estimated at Rs.12,75,400/-. Based on a report under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the Act'), an inquiry under Section 87 was conducted against the petitioner in W.P.No.12727 of 2003 and WP.12728 of 2003, who were the Secretary and Supervisor respectively, at the relevant point of time, in the third respondent bank. Apart from these petitioners, the proceedings were initiated against the jewel Appraiser of the bank also. The charge against the petitioners was that they had caused loss to the bank on account of the jewel loans extended on the basis of spurious gold jewels. In the surcharge proceedings, the petitioners herein along with the Appraiser were held to be jointly responsible for the loss caused to the bank and that the amounts were misappropriated and thereby the amount of loss was directed to be repaid along with interest. Accordingly, an order dated 21.06.1999 was passed by the second respondent herein. As against the same, an appeal was filed before the first respondent/Tribunal in CMA.(CS) No.109 of 1999, which was also dismissed through a common judgment and decree dated 20.02.2003. The common order of the second respondent in the surcharge proceedings dated 21.06.1999, as confirmed in the judgment and decree dated 20.02.2003 in CMA (CS) No.109 of 1999, are under challenge in both the Writ Petitions. Since these orders are common and the issue involved in these Writ Petitions are one and the same, a common order is passed in these Writ Petitions.

4. Earlier, the challenges made in these Writ Petitions came to be rejected and the present Writ Petitions were dismissed by a learned Single Judge of this Court, through an order dated 08.02.2010, as against which, the petitioners in W.P.No.12727 of 2003 & W.P.No.12728 of 2003 had filed an appeal

in WA.1889 of 2011 & W.A.No.627 of 2010 respectively and a Division Bench of this Court, while considering the grounds raised in the Appeals, had set aside the order passed by the learned Single Judge and remitted back the matter for the limited purpose of deciding the question with regard to the scope and ambit of Bye-Law No.32(4)(a)(ii) on merits and as per law. In this background, the learned counsels appearing for the parties in the Writ Petitions were heard.

5. As observed earlier, the petitioners herein were holding the posts of Secretary and Supervisor in the third respondent's bank at the relevant point of time when the charges came to be framed against them, for the loss caused to the bank on account of loans advanced on spurious gold jewels. It is the contention of the petitioners that the procedure for advancement of jewel loans requires to be certified by the jewel Appraiser and as per Bye-Law 32(4)(a)(ii), the Appraiser alone will be responsible for any loss arising out of negligence and as such, the petitioners herein, who were holding the post of Secretary and Supervisor cannot be held responsible for the loss.

6. The learned Government Advocate, as well as the learned counsel for the third respondent on the other hand, submitted that, the report under Section 81 of the Act, reveals the involvement of the Secretary and the Supervisor in the misappropriation. According to the learned counsels, it is incorrect to state that the Appraiser of the bank alone is responsible for the loss incurred, as the petitioners herein actually disbursed the jewel loans and had taken custody of the spurious jewels. The spurious jewels were under the custody of the Secretary under a double lock system. The Secretary and the Appraiser had joined together in sanctioning and disbursement of 96 gold jewel loans on accepting the spurious jewels. The Supervisor had acted as a cashier of the bank and responsible for the day-to-day payments and disbursement of the cash for maintaining the records. Apart from that, since his role was to supervise the day-to-day activities, there is no infirmity in the report under Section 81, holding both of them liable for the loss to the bank.

7. Pursuant to the order of the Hon'ble Division Bench dated 19.06.2017, the issue for consideration has been limited to decide the question with regard to the scope and ambit of Bye-Law 32(4)(a)(ii). For the sake of convenience, the relevant portions of the Bye-Law 32(4)(a)(ii) is extracted hereunder:-

> "4. Jewels proposed to be pledged shall be valued by the Appraiser. In appraising their value the gold contents alone will be taken into account. Precious stones set in them, if any should be ignored.

7. The Appraiser shall be responsible for any loss arising out of negligence or error in his valuation.

8. Based on the valuation arrived at under Regulation above, the Chief Executive or any other Employee authorized by the Board in the absence of the former may sanction and disburse loans to the members. The sanction of such loans shall be placed before the Committee for ratification at its next Meeting.

9. The sanctioning Authority mentioned in regulation No.8 may either accept value determined by the Appraiser or reduce it but he shall have not power to increase the value.

10. The sanctioning Authority and the Appraiser shall be held responsible for any loss that the Bank may sustain in the loans issued arising out of negligence or errors in valuation.

14. The pledged jewels shall be under the Joint custody of the Chief Executive and the Senior Government Employee of the Society or Accountant or Supervisor as may be fixed by the Board. The Gold jewels shall be kept under double lock system in a strong iron safe, kept in a safe room. One key shall be with the Chief Executive and other with the senior most employee as may be decided by the Board."

8. It is the specific stand of the petitioners that the Appraiser alone has to be held responsible for any loss that the bank may sustain in connection with the loans sanctioned and that the petitioners being the Secretary and Supervisor of the bank cannot be held responsible. The portions of the Bye-Law extracted above, when read co-jointly provides otherwise. While Regulation Nos.4 & 7 of the Bye-Law states that the jewels proposed to be pledged should be valued by the Appraiser, who shall be responsible for any loss arising out of negligence or error in his valuation, Regulation No.8 stipulates that the Chief Executive or any other Employee authorized by the Board may sanction and disburse the loans to the members based on such valuation by the Appraiser. The Secretary of the bank is the Chief Executive.

9. Regulation No.10 of the aforesaid Bye-Law stipulates that the Secretary and the Appraiser shall be held responsible for any loss that the bank may sustain in the loans issued, arising out of negligence or error in valuation. Regulation 14 of the Bye-Law stipulates that such pledged jewels shall be under joint custody of the Secretary or the Supervisor. By placing reliance on the Bye-Law 32(4)(a)(ii), the petitioners contended that they were not in a position to verify the genuineness of the gold jewels pledged. As such, the

responsibility can be cast only on the Appraiser and not on these petitioners.

10. Regulation 10 of Bye-Law 32(4)(a)(ii) implicates the responsibility on the sanctioning Authority and the Appraiser, for the loss incurred by the bank. By relying upon this Bye-Law, the learned counsel for the petitioners submit that since the Regulation 7 of the Bye-Law provides for action against the Appraiser alone, the impugned orders are contrary to the Bye-Law and therefore, liable to be set aside.

11. The submission of the learned counsel for the petitioners may not be correct, in view of Regulation 10, which holds the sanctioning Authority as well as the Appraiser responsible for any such loss. As discussed earlier, the petitioners being the Secretary/Chief Executive of the bank and the Supervisor of the bank are entrusted with the overall management and supervision. While Regulation 10 implicates the Secretary, in view of the fact that the Supervisor has also acted as a cashier of the bank and was also in-charge of the overall supervision and in view of the findings that the Supervisor as well as the Secretary had joined together with the Appraiser and had committed the misappropriation, resulting in loss to the bank, it can be said that both of them are liable to be proceeded with under the Bye-Law.

12. Even otherwise, Section 87 of the Act, authorizes the concerned Registrar to proceed against any person, who may have caused loss, during the course of an inquiry under Section 81. It is a settled proposition of law that the Bye-Laws cannot be contrary to the provisions of the Act. As a matter of fact, Section 9(1)(e) of the Act provides that the Bye-Law of the bank should be in conformity with the provisions of the Act and in the contrary, the registration of bank itself, would become impermissible. Since Section 87 provides for action against any members of the bank, the submission of the petitioners that the Secretary and the Supervisor are beyond the scope of Bye-Law 32 (4)(a)(ii), would run contrary to Section 9(1)(e) and hence untenable. Since the present Bye-Law has been approved at the time of registration of the bank, it can only be construed that Bye-Law is in conformity with Section 87 of the Act. As such, it can only be held that Bye-Law 32(4)(a)(ii) is in conformity with Section 87 which empowers the Registrar to initiate proceedings against any person of the bank including both the petitioners.

13. The Surcharge Officer had, during the course of inquiry, found that these petitioners, along with the Appraiser, had jointly caused loss to the bank and that they were jointly responsible for such loss. It was further seen that during the course of inquiry, due opportunity was given to the petitioners to examine and cross examine the witnesses on

more than one occasion and the records were also perused by them. From the evidences available, the second respondent had held that both these petitioners, as well as the Appraiser, had co-jointly caused loss to the bank, by permitting advancement of gold loans on spurious jewels and thereby caused loss to the bank. These findings were re-examined by the first respondent/Tribunal and the decision in the surcharge proceedings came to be confirmed in the Appeal. While confirming so, the Tribunal had held that there was a duty cast upon these petitioners to verify the certificate issued by the Appraiser before sanctioning the jewel loans. The Tribunal had gone to the extent of observing that there were 56 loan applications and that these petitioners could have verified the genuinity in atleast one or two cases and thereby avoided huge loss incurred by the bank. It was also the findings of the Tribunal that since these petitioners were the custodian of the jewels pledged by the loanees of the bank, their responsibility is much more than the Appraiser, who had only issued the certificate. Since the petitioners herein are responsible officers of the bank, who ought to have verified the genuineness of the certificate issued by the Appraiser, the Tribunal refused to interfere with the findings of the second respondent herein. As Regulation 10 of the Bye-Law 32(4)(a)(ii) stipulates that the sanctioning Authority and the Appraiser shall be held responsible for any loss that the bank may sustain in connection with the loans issued by negligence or error in valuation and also that the facts of the case reveals that the Supervisor as well as the Secretary colluded with the Appraiser for the purpose of not only sanctioning loans on spurious gold jewels but also done such an act for misappropriating the funds, it cannot be said that Bye-Law 32(4)(a)(ii) would hold the Appraiser alone responsible for the loss but will also include such persons, who were involved in causing such loss to the bank. As such, this Court is not inclined to interfere with such facts found on the basis of a full pledged inquiry conducted.

14. The substance of the arguments of the learned counsel for the petitioners amounted to seeking for a review of the findings of the inquiry conducted by the second respondent herein, as well as the subsequent confirmation of the judgment of the Tribunal. The scope of such interference under Article 226 of the Constitution of India is very limited, as held in various decisions of the Hon'ble Apex Court as well as this Court.

15. The Hon'ble Apex Court in the case of Commissioner of Income Tax, Bombay & Others V. Mahindra and Mahindra Ltd., & Others reported in 1983 (4) SCC 392 had held that if the executed action or decision is perverse or is such that no reasonable body or persons, properly informed, could come to or

has been arrived at by the Authority misdirecting itself by adopting a wrong approach or has been influenced by irrelevant or extraneous matters, the Court would be justified in interfering with the same.

16. The findings of the authorities can be held to be perverse only when the same has been arrived at by ignoring or excluding relevant materials or by taking into consideration the irrelevant/inadmissible materials. The findings may also be said to be perverse, if it is against the weight of evidence or if the findings outrageously defies logic as to suffer from the vice of irrationality. If a decision is arrived at on the basis of no evidence or thoroughly unreliable evidence and no reasonable person would act upon it, the order would be perverse in such circumstances also. This position has been reiterated in various decisions of the Hon'ble Apex Court including in the case of Rajinder Kumar Kindra Vs. Delhi Administration reported in 1984 (4) SCC 635.

17. In the case of Tata Cellular Vs. Union of India [1994 (6) SCC 651], the Hon'ble Supreme Court held that the Courts can exercise the power of judicial review, if there is a manifest error in the exercise of power or if the exercise of power is manifestly arbitrary or if the power is exercised on the basis of facts which do not exist and which are patently erroneous.

18. It is not the case of the petitioners that the action or decision of the authorities are perverse or arbitrary or there is a manifest error in the exercise of power. In such an event, it would not be proper for this Court, exercising its powers under Article 226 of the Constitution of India to review the decisions which is based on recorded evidences and hence, is unable to reappreciate such evidences in the absence of various parameters prescribed for interference through the aforesaid decisions.

19. In the case of High Court of Judicature of Bombay V. Uday Singh reported in 1997 (5) SCC 129, the Hon'ble Supreme Court held that the Courts must keep in mind that judicial review is not akin to adjudication on merits by reappreciating the evidence as an Appellate Authority. Thus, this Court is devoid of the power to reappreciate the evidence and come to its own conclusion on the proof of a particular charge, as the scope of judicial review is limited and cannot add its own independent findings. The learned counsel for the petitioners had attempted to place the submission on various factual aspects to establish that the findings rendered by the second respondent in the inquiry is contrary. In view of the above discussions of this Court, on the scope of judicial review, I am unable to appreciate the submissions made by the learned counsel for the petitioners.

20. For all the foregoing reasons, I do not find any reason to interfere with the impugned orders passed by the respondents 1 and 2. Consequently, the Writ Petitions stand dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

DP

To

1.The Special Tribunal for
Co-operative Cases (District Judge),
Tirunelveli.

2.The Deputy Registrar of
Co-operative Societies,
Cheranmadevi,
Tirunelveli District.

3.The Administrator,
Vallioor Co-operative Primary Agricultural
& Rural Development Bank Ltd.,
D.R.L. (E) II, Panagudi,
Tirunelveli District.

+2ccs to Mr.R.Prem Narayan, Advocate, S.R.No.13978
+1cc to the Government Pleader, S.R.No.14602

W.P.Nos.12727 & 12728 of 2003

VD(CO)

RRS(02/08/2019)