IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.12.2019

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THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.16686 of 2013

A. Mani .. Petitioner

-vs-

1. The Presiding Officer,
   Co-operative Tribunal/
   Principal District Judge,
   Krishnagiri.

2. The Deputy Registrar of Co-op Societies,
   Krishnagiri Circle,
   Krishnagiri.

3. The Management,
   D.K.81, Chennachandiram Primary,
   Agricultural Co-op Credit Society Ltd.,
   Rep by its President,
   Avalapalli Post,
   Krishnagiri District. .. Respondents

Petition under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the 1st respondent judgment in CMA.(cs).No.29/2008 dated 20.11.2012 and confirming the order passed by the 2nd respondent in surcharge No.7/2007/Sa.Pa1 dated 29.04.2008 quash the same.

For Petitioner : Mr.V.Ravichandran

For Respondents: R1 - Tribunal
Ms.T.Girija [R2]
Mr.L.P. Shanmugasundaram
Special Government Pleader [R3]

ORDER

Heard Mr.V. Ravichandran, learned counsel for the petitioner, Ms.T.Girija, learned counsel for 2nd respondent and Mr. L.P.Shanmugasundaram, learned Special Government Pleader for third respondent.

2. With the consent of learned counsel on either side, the writ petition itself is taken up for final disposal.

3. This writ petition has been filed by the Special Officer, who was appointed for managing the affairs of the Co-operative Society for a period of one year, challenging the order dated 20.11.2012 passed by the Co-operative Tribunal in CMS(cs).No.29 of 2008 on the file of the Co-operative Tribunal, Krishnagiri(District Court) wherein the order of surcharge passed by the second respondent dated 29.04.2008, was confirmed.

4. The petitioner had been made a delinquent in respect of the allegations No.5 to 9 in the surcharge proceedings, which is combined proceeding initiated against the Secretary, Assistant Secretary and two other officers of the Co-operative society. The common allegation in respect of all charges is that the petitioner being a Special Officer did not properly supervise the entries in the records made by the Secretary and Assistant Secretary of the Society, which according to the Department were bogus records. The petitioner has filed his objections. Nevertheless an order of surcharge was passed on 29.04.2008 and challenging the same he had filed an appeal before the Co-operative Tribunal.

5. Parallely, the Department initiated disciplinary action against the petitioner for the very same charges by issuing a charge memo dated 26.11.2007. The petitioner had submitted his reply and the enquiry officer held that the charges are not proved. The findings of the enquiry officer was placed before the disciplinary authority, namely, the Joint Registrar of Co-operative Societies, Krishnagiri, who by order dated 27.07.2012, held that there is no ground to disagree with the findings of the enquiry officer and accordingly, held that the charges are not proved and the entire disciplinary proceedings were dropped. Though such an order passed by the Joint Registrar of Co-operative Societies, Krishnagiri, it is not clear as to whether the order was placed before the Co-operative Tribunal, which heard the petitioner's appeal along with other connected appeals,

6. Be that as it may, learned Government Advocate appearing for the respondent submitted that in terms of the circular issued by the Registrar of Co-operative Societies dated 06.06.2001 referring to Sub-Section(3) of Section 88 read with Sub-Section(2) of Section 89, it has been clearly informed that the Special Officer shall have the power to exercise all or any of the functions of the Board or of any officer of the society and to such action as may be required in the interest of the society. In the circular, the statutory duties cast upon the

Special Officers appointed under Section 89(1) have been set out which were also relied and it is submitted that the Special Officer have to exercise all the functions of the Board; the exercise all or any of the functions of any officer of the society and to take such action as may be required in the interest of the society. Therefore, it is submitted by the learned Government Advocate that the petitioner is negligent in not scrutinising the records in a proper manner and if the same had been done, the loss could have been averted to the Society.

7. Under normal circumstances, the said argument made by the learned Government Advocate could have been taken into consideration, but, however, to sustain the order of surcharge, what is required to be established is "wilful negligence". This aspect has been elucidated by the Hon'ble First Bench of this Court in the case of S.Ramadevi Vs. The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore and Ors. [reported in (2016) 4 L.W. 452]. The Court while considering as to what would mean by 'Willful Negligence" has held as follows:

> "25. The third and the last plea is actually the most crucial as to whether the appellant could be said to have acted with willful negligence. In this behalf, the learned counsel for the appellant has relied upon two judgments of this Court in S.Subramanian Vs. The Deputy Registrar of Co-operative Societies (Housing), Cuddalore & others 2002-3-L.W. 185, and K. Ajay Kumar Gosh and Others Vs. Tribunal for Co-operative Cases, (2009) 4 MLJ 992, to contend that when requirements of Section 87 had not been satisfied, which warrants initiation of surcharge proceedings, the liability cannot be fastened. There has to be willful and wanton premeditation with a view to cause loss to the assets of the Society and "mere negligence cannot be a ground for surcharge and it must be willful negligence or intentional negligence and not mere carelessness or intention or inadvertence or a single lapse by oversight". We extract the observations in the case of K.Ajay Kumar Gosh, supra, as hereunder:
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> > "19. A detailed discussion has been made by making reference to various judgments on this aspect in another judgment reported in Sathyamangalam Co-operative Urban Bank Ltd Vs. Deputy Registrar of Co-operative 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 Co-operative 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."
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> 20. In the light of the decisions referred to above, it is clear that to pass surcharge order under Section 87 of the Act, appellants should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances. In the absence of such categorical finding by the respondents, it is not possible to mulct the appellants with the loss caused to the Society."

8. Thus, in terms of the law laid down in the above decision what requires to be considered was wilful and wanton premeditation with a view to cause loss to the assets of the society and "mere negligence cannot be a ground for surcharge and it must be willful negligence or intentional negligence and not mere carelessness or intention or inadvertence or a single laps by over sight."

9. In the case on hand, the very same allegations was framed as a charge under Section 17-B and disciplinary action was initiated and in the enquiry proceedings, the Department could not establish any negligence much less willful negligence on the part of the petitioner. In such circumstances, the petitioner, who is a Government servant, could not have been fastened with the liability and the order passed by the Co-operative Tribunal in CMS(cs).No.29 of 2008 on the file of the Co-operative Tribunal, Krishnagiri(District Court) confirming the order of surcharge passed by the second respondent dated 29.04.2008, would call for interference.

10. Thus, in the light of the fact that no willful negligence has been brought out by the respondents to hold that the petitioner guilty for payment of the surcharge amount coupled with the fact that the disciplinary authority namely Joint Registrar of Co-operative Societies, Krishnagiri, has exonerated the petitioner from the very same charges framed under Rule 17-B, this Court has no hesitation to hold that the impugned order of surcharge framed as against the petitioner is not sustainable in law.

11. For the above reasons, the writ petition is allowed and the impugned proceedings as against the petitioner are quashed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To
1.The Presiding Officer,
Co-operative Tribunal/
Principal District Judge,
Krishnagiri.

2.The Deputy Registrar of Co-op Societies,
Krishnagiri Circle,
Krishnagiri.

3.The Management,
D.K.81, Chennachandiram Primary,
Agricultural Co-op Credit Society Ltd.,
Rep by its President,
Avalapalli Post, Krishnagiri District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.104462
+1cc to Mr.V.Ravichandran, Advocate SR.104075
+1cc to the SPL Government Pleader(CO-OP) SR.104482

W.P.No.16686 of 2013

KK(CO)
CB(29/01/2020)