

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.3747 of 2010

Nilgiri District Weaning Food Manufacturing
Women Industrial Society Ltd.,
Rep.by its Special Officer,
Nilgiri District.

...Petitioner

.Vs.

1. The Special Tribunal for Co-operative
Society Cases, Chennai
in the Court of Small Causes Court, Chennai.
2. Director of Social Services, Chennai.
3. The Surcharge Officer/Special Officer,
Readymade Garments Women Manufacturing
Industrial Co-operative Society,
Paramathivellore,
Namakkal District.
4. The Project Co-ordinator,
World Bank, ICDS, Chennai.
5. S.Basha.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records on the file of the 1st respondent in
C.M.A.No.2 of 2007 dated 08.11.2008.

For Petitioner : Mr.K.Prem Kumar

For Respondents: Mr.D.Venkadachalam
Additional Government Pleader
(Co-op)
for R2 and R4.
M/s.T.P.Savitha for R3.
Mr.K.Ravi Anantha Padmanaban,
Senior Counsel for R5.

O R D E R

This writ petition has been filed for issuance of a writ of Certiorari, calling for the records on the file of the 1st respondent in C.M.A.No.2 of 2007 dated 08.11.2008 and quashing the same.

2. The case of the petitioner is that one T.J.Bojan and the 5th respondent herein were posted as Special Officer and Secretary respectively in the petitioner's society during the period 1994-1996 and 1996-1997. Surcharge proceedings were initiated by the Industrial Officer at Nilgiri District Weaning Food Manufacturing Women Development Limited, Udhagamandalam, and the Registrar of Women Development Co-operative Society ordered enquiry under Section 81, on 28.10.1997, to go into the irregularities committed by the 5th respondent and Mr.T.J.Bojan. The enquiry was conducted by the District Social Welfare Officer, Coimbatore and a report was filed, as per which the 5th respondent and Mr.T.J.Bojan have committed loss to the society by incurring expenditure, without proper vouchers and through stock and cash deficit and by cash payment and advance. The Director of Social Welfare Service, the respondent herein, on the basis of such enquiry report ordered surcharge proceedings under Section 87(1) of Tamil Nadu Co-operative Societies Act, by order dated 05.06.1998, Special Authorize, against the 5th respondent and T.J.Bojan.

3. On 26.11.1998, the 2nd respondent by his proceedings replaced the surcharge officer and authorized Industrial Co-operative Officer, Annai Indira Weaning Food Manufacturing and Women Development Co-operative Society at Salem, to conduct the surcharge proceedings against the 5th respondent and Mr.T.J.Bojan.

4. It is submitted that the 3rd respondent herein initiated the surcharge proceedings by issuing notice to the delinquents on 20.01.2000, to appear for hearing and to produce appropriate documents in support of the defence for misappropriation to the tune of Rs.6,76,074.26/-. However, the surcharge proceedings were completed on 20.07.2000, holding the 5th respondent liable for Rs.3,66,981.02/-. However due to the administrative delay and change in special officer continuously, the petitioner society was not able to issue the order on the 5th respondent immediately. The surcharge order was communicated to the 5th respondent on 12.06.2006 in Na.Ka.No.76498/NC/2(1)97.

5. It is submitted that the 5th respondent aggrieved by the surcharge order, filed C.M.A.No.2 of 2007 on the file of the 1st respondent herein. The 1st respondent has allowed the Civil

Miscellaneous Appeal by order dated 08.12.2008. The main contention of the 5th respondent was on the basis of delay and latches in communicating the order passed by the 3rd respondent herein to the 5th respondent and there was no sufficient opportunity given to substantiate his defense before the 3rd respondent. The first respondent misconstrued the delay and came to the conclusion that the delay in communication of the surcharge proceedings dated 20.07.2000, which was communicated on 12.06.2006, purported to be completed only on 12.06.2006, which is contrary to the time stipulated under the Act. Aggrieved by the same, the present writ petition is filed.

6. The learned counsel for the petitioner would submit that the order of the 1st respondent is wrong and contrary to well established principle that delay in communicating the order does not mean to vitiate the entire surcharge proceedings under Section 87(1) of Tamil Nadu Co-operative Societies Act, 1983. The observations made by the 1st respondent that the enquiry report was not furnished to the 5th respondent is against the principles of natural justice for the reason that the 5th respondent had at any point of time not sought for the enquiry report from the petitioner. The Tribunal decided the matter without going into the merits and quashed the surcharge proceedings which is illegal and arbitrary. This Court may issue a direction to the second respondent to remand the matter for fresh consideration and pass appropriate orders.

7. The learned counsel for the respondents would refute the allegations raised by the petitioner and justified the impugned order.

8. Considering the facts and circumstances of the case, the petitioner's society initiated the surcharge proceedings against the 5th respondent and T.J.Bojan, for irregularities committed by them and the enquiry was conducted by the District Social Welfare Officer, Coimbatore on 28.10.1997. On the basis of such enquiry, ordered surcharge proceedings under Section 87(1) of Tamil Nadu Co-operative Societies Act, dated 05.06.1998, to initiate surcharge proceedings against the 5th respondent and Mr.T.J.Bojan. Thereafter, the 3rd respondent herein initiated surcharge proceedings by issuing notice to the delinquents on 20.01.2000 and to produce the appropriate documents in support of their defence for the misappropriation to the tune of Rs.6,76,074.26/-. The petitioner society was not able to issue the order on the 5th respondent immediately. The surcharge order was communicated to the 5th respondent only on 12.06.2006 in Na.Ka.No.76498/NC/2(1)97.

9. Aggrieved by the said order, the 5th respondent has filed C.M.A.No.2 of 2007 on the file of the 1st respondent herein. The

1st respondent allowed the Civil Miscellaneous Appeal by an order dated 08.12.2008, on the ground that sufficient opportunity was not granted to the 5th respondent.

10. However, this Court has to consider whether the issues raised by the Co-operative Tribunal is correct or not. The very same issues raised before this Court in W.P.No.4486 of 2004 dated 07.07.2017 and the relevant paragraph No.5 is extracted here under:

5. The learned counsel for the petitioner submits that the issue is squarely covered by a decision of this Court in the case of S.V.K.Sahasramam v. Deputy Registrar of Co-operative Societies reported in (2008) 8 MLJ 231 wherein paragraph Nos.10 to 13 are as under:

'10. Before the learned Judge of the writ court, the appellant relied on two learned single Bench judgments of this Court rendered in the case of T.V.Ekambaram v. Co-operative Tribunal-cum-District Judge, Madurai 2000 (2) CTC 659 and in the case of Gabriel v. Deputy Registrar (Housing), Cuddalore (2003) 2 MLJ 624 : 2003 (3) CTC 23. In both these two judgments, the provisions of Section 87 of the said Act which relate to surcharge proceedings were examined and the learned Judges in both the aforesaid judgments construed the following proviso to Section 87:

'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.'" Considering the said time limit of six months, the learned Judges came to the conclusion that the said period of six months is mandatory.

11. We are constrained to hold that even though no appeal has been taken to us from the said judgments, yet having regard to the well settled legal position which has been referred to hereinabove, the finding of the learned Judges in these two judgments that the period of six months in the second proviso to Section 87 of the said Act is mandatory is not a correct finding in law. We find that even though before the learned Judge of the writ Court those two judgments of the learned single Bench were cited, the learned Judge of the writ Court was not swayed by those two decisions and came to a correct finding, relying upon the well settled proposition laid down by the Supreme Court as pointed above hereinabove.

12. We, therefore, affirm the order of the learned single Judge in this case. We are of the view that in a case where there are allegations of embezzlement and misappropriation of public funds, the members of general public who have been cheated have no control over those who hold the enquiry in respect of the time limit. To hold that such an enquiry which has been continued beyond the time limit is bad would cause great injustice.

13. Therefore, if such enquiry is continued beyond the time limit mentioned in the relevant statute, the said time cannot be held to be mandatory in view of the principles laid down in Montreal Street Railway Company v. Normandi (Supra), which has been affirmed by the Supreme Court.''

11. In view of the above decision, this Court is inclined to remand the matter back to the original authority for fresh consideration and to pass appropriate orders, after affording sufficient opportunity to the 5th respondent as well as the petitioner, within a period of six months from the date of receipt of a copy of this Order.

12. With the above terms, the writ petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.
ssb

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Tribunal for Co-operative Society Cases, Chennai
in the Court of Small Causes Court,
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Chennai.
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Paramathivellore,
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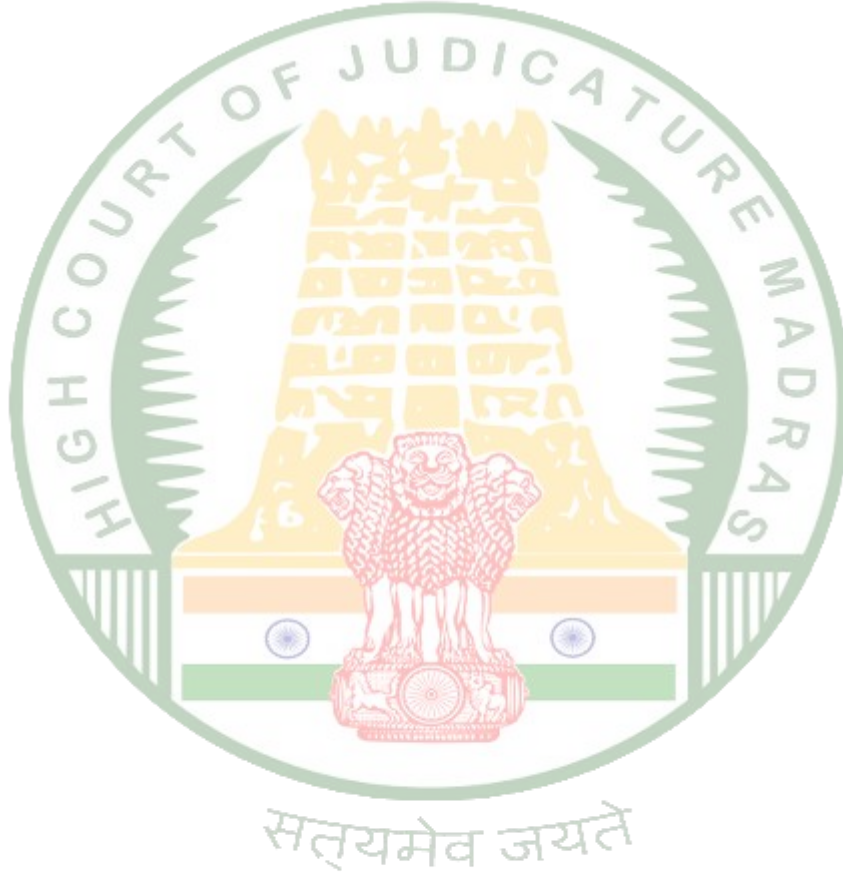
5. The District Social Welfare Officer,
Coimbatore.

+1cc to M/s.T.P.Savitha, Advocate, SR.No.73261

+1cc to Mr.K.Prem Kumar, Advocate, SR.No.72578

W.P.No.3747 of 2010

Kak(10/10/2019)



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