

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 22.08.2019

Pronounced on: 28.08.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.24673 of 2019
& W.M.P.No.24338 of 2019

S.Paulraj,
No.29, Kommangipuram,
Sangrapandi Post, Venbakkottai Taluk,
Virudhunagar District - 626 201.

... Petitioner

/versus/

1. The Deputy Registrar of Co-operative Societies,
Office of the Deputy Registrar of Co-operative Societies,
Attur Circle, Salem District.
2. S.672, The Attur Agriculture Producers Co-operative Marketing
Society, Attur, Salem District by its President.
3. K.Paramasivan,
The Deputy Registrar of Co-operative Societies Attur Circle,
Attur-cum-Managing Director of S.672, the Attur Agriculture
Producers Co-operative Marketing Society, Attur,
Salem District.
4. P.Kathirvel,
Former Secretary, S.672, The Attur Agriculture Producers,
Co-operative Marketing Society, Attur, 208, Mittapudur,
Behind Ganga kaveri Gas Godown Convent Road,
Salem 16.
5. L.Thirupathi,
Former Manager, S.672, The Attur Agriculture Producers
Co-operative Marketing Society, Attur, 3/76, Akkichetti
Palayam, Palaniyapuri Post, Attur Taluk, Salem District.
6. P.Kumar,
Former Assistant Secretary, S.672,
The Attur Agriculture Producers,
Co-operative Marketing Society, Attur 94-25,
Palanivel Cheety Street,
Bazar Road, Jalakandapuram Post,
Mettur Taluk, Salem District.

7. K.Selvaraj,
Now Manager (Sales),
S.672, The Attur Agriculture Producers Co-operative
Marketing Society,
Attur, Salem District.
8. P.Mathiyalagan,
Now Godown Superintendent,
S.672, The Attur Agriculture Producers Co-operative Marketing
Society, Attur, Salem District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorari, to call for the records relating to the surcharge order in Na.Ka.3697/2004 Sa Pa dated 26.06.2019 of the 1st respondent made under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 quash the same so far as the petitioner is concerned and pass orders.

For Petitioner : Mr.S.Venkataraman

For R1 & R2 : Mr.L.P.Shanmugasundaram,
Special Government Pleader

O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Counsel for the Respondents.

2. The petitioner herein was employed as Deputy Registrar/Special Office of the Attur Agricultural Producers Co-operative Marking Society, Attur, Salem. In connection with, loss to the Society to a tune of Rs.81,97,628/- enquiry under Section 81 of the Act, 1983, was initiated against the petitioner and others which culminated in holding the petitioner and others jointly and severally responsible for the loss to the Society. Subsequent to the enquiry under Section 81 of the Tamil Nadu Co-operative Society, 1983, surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Society Act, 1983 was initiated. Immediately, the petitioner herein has approached this Court to issue Writ of Certiorari, calling for the records relating to the surcharge proceedings and quash the same. The said Writ Petition No.18826 of 2009 when taken up for final hearing on 23.10.2018, the petitioner has sought permission of the Court to withdraw the Writ Petition. Hence, the Writ Petition was dismissed as withdrawn. Subsequently, after dismissal of the Writ Petition, the 1st respondent has caused notice to the petitioner to appear and participate in the surcharge proceedings. On receipt of the said notice dated 03.01.2019, the petitioner has sought permission to engage

advocate and thereafter, he has also approached this Court, after making a request seeking Legal Assistance vide letter dated 19.01.2019, he has filed the Writ Petition in W.P.15537 of 2019 for a Mandamus. This said Writ Petition was allowed on 12.06.2019. Meanwhile, the petitioner has submitted his explanation through letter dated 11.03.2019. Also sought for certain documents vide letter dated 14.03.2019, the 1st respondent has duly responded for the request of the petitioner through letter dated 03.05.2019.

3. In the above said circumstances, when the petitioner was summoned to attend the enquiry on 26.06.2019, the petitioner instead of attending the enquiry has sought adjournment through letter dated 26.06.2019. However, on the date of enquiry, he was present before the 1st respondent at 11.00 o'clock and sought one hour time on the pretext that his Advocate is on the way but after 12 o'clock, he has requested for adjournment. While the other delinquents were present and participated in the enquiry, the 1st respondent alone under some pretext sought for adjournment. The 1st respondent, based on the explanation given by the delinquents including the petitioner herein has proceeded with the enquiry and has passed surcharge order on 26.06.2019.

4. The petitioner herein challenge the surcharge order passed by the 1st respondent dated 26.06.2019, on the ground that no affair opportunity was given to him during the surcharge proceedings his request for adjournment to get assistance of his Advocate, not considered and the lengthy order running through 62 pages delivered on the same day indicates that the 1st respondent has predetermined. Therefore, even if there is an alternate remedy, the Hon'ble High Court can entertain the Writ Petition, based on the dictum laid down in Whirlpool Corporation case reported in 1998 8 SCC page 1. The learned Counsel also relies upon the judgment of the Hon'ble Supreme Court in Kumaon Mandal Vicas Nigam Ltd Vs. Girija Shankar Pant reported in (2001) 1 SCC 182 to attack the lengthy order in short time.

5. The learned Special Government Pleader appearing for the Respondents 1 & 2 would submit that the petitioner along with others have caused loss to a tune of Rs.81,97,628/-. Therefore, enquiry was initiated under Section 81 of the Act, 1983 and having found guilty of causing loss to the Society, the Society proceeded with surcharge proceedings. The petitioner by filing Writ Petition prevented the Authorities from proceeding further. Thereby delayed the surcharge proceedings unnecessarily for nearly 9 years. Thereafter, instead of perusing his Writ Petition, he has withdrew the Writ Petition.

From January 2019, the petitioner was given opportunity to participate in the enquiry proceedings and put forth his defence. The petitioner is not the only delinquent but there are five others who are jointly and severally liable for the loss caused and facing the surcharge proceedings. The petitioner after giving his explanation and the pretext of engaging Advocate had failed to co-operate in the progress of the Surcharge proceedings. Hence, the 1st respondent/Deputy Registrar, has proceeded with the proceedings based on his written explanation and passed the final order. If at all the petitioner is aggrieved, he has statutory remedy and can approach the Appellate Authority under Section 152 of the Tamil Nadu Co-operative Society Act. The writ petition is not the remedy.

6. In support of his submission, the Learned Special Government Pleader appearing for the respondents 1 and 2 would rely upon the judgment of the division bench of this Court rendered in A.Balaraman and others Vs. Deputy Registrar and others, Cheyyar, in W.A.No.1101 of 2008, dated 11.12.2008.

7. On considering the rival submissions, this Court finds that the petitioner herein has not approached this Court with clean hands. Though, he alleges fair opportunity was not given to him, the records indicates otherwise. He at all stages had put spokes to the fair proceedings. Having permitted to have legal Assistance, he should have been present along with his counsel on the date of enquiry. Having failed to avail that opportunity, he cannot blame the respondents for proceeding with the Surcharge proceedings which obviously being pending for nearly 14 years. The charged delinquent cannot taken his own time to face the proceedings and thereafter, lament that he is very old and opportunity should be given as per his wish and well.

8. Regarding the merit of the order passed by the 1st respondent, this Court need not advert to it since the petitioner has appeal remedy under the statute and the impugned order of the 1st respondent can be tested before the Appellate Authority as division bench of this Court held in W.A.No.1101 of 2008 referred above. The relevant paragraphs of the division bench judgment in A.Balaraman and others. Vs. Deputy Registrar, Cheyyar, cited supra are extracted below.

4. Learned Judge has not accepted the submissions made by the writ petitioners, and in our view, rightly so. The appellate provision

under Section 152 of the said Act has been very widely worded. The said right of appeal has been given from orders passed under various provisions. The appellate provision is very comprehensive in nature. Section 152(1) of the said Act clearly says that any person aggrieved by 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 may appeal to the Tribunal. The meaning of the word any means all. So, any person who is aggrieved by any of the proceedings mentioned in Section 152(1)(a) of the said Act, can file an appeal. The said appeal is to be heard and disposed of by the Co-operative Tribunal, which consists of a senior District Judge.

5. Therefore, the remedy of the writ petitioners/appellants was to file an appeal before the said high powered Tribunal, which has the trappings of a civil Court. Bypassing the said Tribunal, this writ petition has been filed, which, in our view is totally mis-conceived. It is not only the question of availing the statutory remedy. Here, what is in issue is where the statute is specific and creates a special right which creates a remedy whether for enforcing the said rights, such remedy has to be invoked. Here, the rights and remedies have been granted unto flato.

9. Insofar the judgment cited by the petitioner, the fact of the case in K.Kumaon Mandal Vikas Nigam Ltd., Vs.Girja Shankar Pant is that the Managing Director, of the Appellate Company was not well disposed towards the respondents. Therefore, he withdrew the financial and administrative power from the respondents, issued show cause notice appointed an enquiry Officer and pass order on the same day. The enquiry was conducted at 4.00 p.m on that day, final order was passed on 7.30 p.m in that context the Hon'ble Supreme Court upholding the judgment of the Hon'ble High Court held that the violation of natural justice principle and bias is palpably seen from the records. Whereas, the present case as pointed out earlier for the past 14 years, the Department is not able to complete the Surcharge proceedings. The petitioner is solely liable for the delay. He cannot blame the respondents for not adjourning the case on 26.06.2019.

10. For the above said reasons, the Writ Petition is dismissed. Observations made in this case shall not stand in the way of petitioner herein to approach the Appellate Authority and if any appeal filed by the petitioner, it shall be dealt independently on its own merits. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

bsm

To

1. The Deputy Registrar of Co-operative Societies,
Office of the Deputy Registrar of Co-operative Societies,
Attur Circle, Salem District.
2. Attur Agriculture Producers Co-operative Marketing
Society, S.672, Attur,
Salem District.

+1 cc to Mr.S.Venkataraman, Advocate, S.R.No.73855

Writ Petition No.24673 of 2019

SR(CO)
SSM(29/08/2019)

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