IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.03.2020

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.14161 of 2011

Orders reserved on 09.03.2020	Orders pronounced on 17.03.2020

S.Kathirvel .. Petitioner

-vs-

1.The Principal District Judge,
Namakkal.

2.The Deputy Registrar of Cooperative Societies,
Tiruchengode Circle,
Tiruchengode.

3.M/s.B.Komarapalayam Primary Agricultural
Cooperative Credit Society,
B.Komarapalayam. .. Respondents

Petition filed Under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari to call for the records pertaining to the impugned judgment in CMA (CS) No.33 of 2002, dated 12.01.2011 (copy received on 11.04.2011) on the file of the first respondent, confirming the surcharge order in Na.Ka.No.1173/97 dated 03.06.1998 on the file of the second respondent and quash the same.

For Petitioner : Mr.R.Thirugnanam
for Mr.S.Umapathi

For Respondents: RR1 & 2 - Ms.T.Girija,
Additional Government Pleader

: R3 - Mr.L.P.Shanmugasundaram,
Special Government Pleader

ORDER

The petitioner, a former salesman in the fair price shop under the control of the third respondent-Society, has filed this writ petition challenging the judgment passed by the Principal District Court-cum-Cooperative Tribunal in C.M.A. (C.S.) No.33 of 2002, dated 12.01.2011, confirming the order of surcharge passed by the second respondent dated 03.06.1998.

2.Heard Mr.R.Thirugnanam, learned counsel for Mr.S.Umapathi, learned counsel for the petitioner, Ms.T.Girija, learned Additional Government Pleader for respondents 1 and 2 and Mr.L.P.Shanmugasundaram, learned Special Government Pleader for the third respondent.

3.The petitioner was employed as a salesman in a fair price shop run by the third respondent-Society and was working in the said shop from 01.09.1993 to 23.04.1995 in Shop No.2 and from 24.04.1995 to 04.07.1995 in Shop No.1. The second respondent ordered an inquiry to be conducted under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 (for brevity "the Act"), on 05.07.1995. A report was submitted on 15.04.1996 stating that the petitioner is liable to make good the loss caused to the Society on account of huge shortage of stock of various items meant for public distribution. This report resulted in a show cause notice under section 87(1) of the Act, dated 16.06.1997. The petitioner submitted his reply to the said order and the second respondent after considering the submissions on 03.06.1998, passed an order of surcharge making the petitioner liable to a total sum of Rs.10,13,902.94 ps. The petitioner, being aggrieved by such order, filed an appeal before the Tribunal, which was dismissed by judgment dated 12.01.2011, which is impugned in this writ petition.

4.Though this petition has been filed under Article 226 of the Constitution of India, in the light of the recent pronouncement of the Hon'ble First Bench of this Court in E.S.Sundara Mahalingam vs. Special Tribunal for Co-operative Cases and others in W.A.No.4021 of 2019, dated 22.11.2019, this petition is to be treated as a petition under Article 227 of the Constitution of India and the Court will examine as to whether there is any error in the decision making process and not substitute itself to the factual finding recorded by the second respondent as well as the Tribunal. The consequence thereof would be that either party will not be entitled to the remedy of intra-court appeal, if they are ultimately aggrieved by the order, that is, to be passed by this Court in this writ petition.

5.Mr.R.Thirugnanam, learned counsel for the petitioner submitted that insofar as the first charge is concerned, the second respondent failed to take into consideration that the entire loss was remitted by the petitioner even much prior to the order of surcharge, which was not taken into consideration by the second respondent while passing the impugned order and erroneously, an amount of Rs.3,64,248.01 ps. has been demanded from the petitioner. So far as the second charge is concerned, the second respondent erroneously made the petitioner liable for the alleged deficit stock, which occurred during the period when one S.K.Ramani was the sales person in the shop and the petitioner could not have been made liable.

6.Further, it is submitted that whatever is the loss caused to the society alone can be recovered, but additional amount as ordered by the Government in G.O.Ms.No.290, dated 16.08.1995 cannot be levied on the petitioner. In support of such contention, reliance was placed on the decision in the case of S.Udayakumar vs. Special Tribunal for Co-operative Cases, (1999) III MLJ 138.

7.Ms.T.Girija, learned Additional Government Pleader appearing for respondents 1 and 2 submitted that whatever amount, which was paid by the petitioner soon after the inquiry under Section 81 has been given due credit and the surcharge amount has been arrived at taking into consideration the loss caused to the society and the penalty was rightly imposed failing which, persons like the petitioner can never be brought to books, when it is a clear case of misappropriation. Further, it is submitted that the petitioner has not paid a single paise as surcharge amount as demanded in the impugned order and the contention that the entire amount demanded has been paid in respect of the first charge is factually incorrect.

8.The first contention to be considered in the instant case is whether, the petitioner had cleared the entire amount, which is demanded as surcharge. On a perusal of the surcharge order dated 03.06.1998, it is seen that the petitioner was working in Shop Nos.1 and 2 for two different spells as mentioned above and he has been responsible for deficit stock to the tune of Rs.3,64,248.01 ps. It was found that 650 bags of rice have become spoiled and was unfit for distribution under the PDS Scheme and on account of this, it caused great loss to the society. The petitioner was also held liable for handing over deficit stock, when he handed over charge to S.K.Ramani and the deficit was a huge quantity, viz., 17268 kgs of raw rice, 15368 kgs of boiled rice, 16674 kgs of common rice, 2478 kgs of sugar, 8948 kgs of wheat, 3661 litres of kerosene, 150 kgs of sooji (rava), and 50 kgs of maida. On a perusal of the surcharge proceedings, it is seen that the petitioner had full effective opportunity to defend himself and he has placed various points, which have been considered by the second respondent in a cogent manner.

9.As rightly pointed out by the learned Additional Government Pleader, the quantum, which was remitted by the petitioner soon after the Section 81 inquiry has been given due credit. Thus, this Court finds there is no error in the decision making process.

10.With regard to the second charge, the petitioner's contention is that S.K.Ramani was the sales person at the relevant time and the petitioner cannot be held liable. However, in the course of inquiry, it came to light that huge quantities of various items meant for public distribution were in deficit, when the petitioner handed over charge to

S.K.Ramani. This aspect has been clearly brought out in the order of surcharge and the petitioner has not been able to controvert the same. Nevertheless, in respect of the period during which S.K.Ramani was sales person, she and the Manager were held jointly and severally liable and for the earlier period, the petitioner and the Manager were held to be jointly and severally liable.

11.The learned counsel for the petitioner placed heavy reliance on a certificate issued by the Special Officer of the third respondent-Society stating that the entire amount of Rs.5,30,403/- has been fully remitted in the year 1995-96.

12.To be noted that this certificate is dated 31.08.2009, much after the conclusion of the surcharge proceedings, which culminated in an order dated 03.06.1998. Furthermore, the certificate is purported to have been issued by the Special Officer in 2009, when the petitioner's appeal was pending before the Tribunal.

13.On perusal of the surcharge order, it is evidently clear that the certificate dated 31.08.2009, issued by the Special Officer of the third respondent-Society does not reflect the correct factual position. Therefore, the said certificate can be of no assistance to the petitioner. The Tribunal, after taking note of the factual issues, had considered the matter in an independent manner, took note of the evidence which was available before the surcharge authority and has recorded a finding that the omissions committed by the petitioner is deliberate, his conduct was reprehensible and therefore, rightly surcharge proceedings were initiated. The facts and the materials available in respect of both the charges were independently considered by the Tribunal and finding has been recorded. The Tribunal has perused the entire materials which were placed before it, also perused the audit report, which showed the stock deficit, the 650 bags of rice which have been spoiled and become unfit for human consumption and therefore, affirmed the order passed by the surcharge authority. In the light of the reasons assigned by the Tribunal, which are independent reasons for affirming the order passed by the second respondent, this Court finds no error warranting interference.

14.The last submission of the learned counsel for the petitioner is with regard to the imposition of penalty, to be noted that the proceedings are initiated under Section 87 of the Act. Parallelly, disciplinary action was also initiated against the petitioner, which has culminated in an order of dismissal. In the criminal case filed against the petitioner, he has been let-off under the provisions of the Probation of Offenders Act, 1958.

15.The contention of the petitioner by placing reliance on S.Udayakumar (supra) does not merit acceptance, because the proceedings under Section 87 is not only with an object of recovering loss caused to the society, but it is penal in nature. The Regulating Authority, viz., the second respondent is entitled to impose penalty. Recovery of the loss from the petitioner is mandatory and the same cannot be called in question. If the proposition put forth by the petitioner is accepted, then every errant employee of the society will commit fraud, cheat the society, cause loss to the society and then submit that he will pay the loss caused to the society and he should be left scot free. That appears to be not the purpose and intent of Section 87 of the Act.

16.As mentioned, there is an inbuilt penal provision in Section 87 of the Act. Penalty can be in various forms. The format adopted by the second respondent is to impose fine, which will be double the cost of the commodity. As an appointing authority/regulating authority, sufficient latitude should be granted to them in the matter of imposing penalties. The fact that the Government had issued G.O.Ms.No.290, dated 16.08.1995, giving instructions as to what will be the quantum of penalty that could be imposed is a clear indicator that large scale fraud is being committed in the fair price shops.

17.In the preceding paragraphs, the quantity of deficit stock has been mentioned, which will show that it is alarming. These products are meant for public distribution. Therefore, the petitioner has committed a public wrong for which, he has to be penalised and to say that he can be let-off by collecting the amount of loss caused to the society would be putting a premium on an illegality. The petitioner has acted against public interest, he has defrauded the society, cheated the public, who are living below the poverty line, who are solely dependent upon the article supplied under the Public Distribution System. Thus, the wrong committed by the petitioner is a wrong against the society. Therefore, he needs to be sternly dealt with. Thus, the argument of the learned counsel for the petitioner cannot be countenanced.

18.In the result, this Court finds that the petitioner has not made out any case for interference with the impugned order.

19.Accordingly, the writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

abr

To

1.The Principal District Judge,
   Namakkal.

2.The Deputy Registrar of Cooperative Societies,
   Tiruchengode Circle,
   Tiruchengode.

3.M/s.B.Komarapalayam Primary Agricultural
   Cooperative Credit Society,
   B.Komarapalayam.

+1cc to Mr.R. Thirugnanam, Advocate, S.R.No.23930
+1cc to Mr.L.P.Shanmugasundaram,, Advocate, S.R.No.24169
+1cc to the Government Pleader, S.R.No.24065

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VGII(CO)
EU 24.06.2020