

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.3.2020

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

Writ Petition No.23086 of 2012

The Dharmapuri District Consumer
Wholesale Stores Limited, rep.by
its Special Officer ...Petitioner

Vs

1. The Presiding Officer, District
Cooperative Tribunal (Principal
District Court), Dharmapuri.
2. The Deputy Registrar of
Cooperative Societies, Dharmapuri
District.
3. Tmt.V.Radhamani ...Respondents

PETITION under Article 226 of The Constitution of India
praying for the issuance of a Writ of Certiorari to call for the
records in order and decretal order dated 16.8.2010 made in CMA
(Cooperative Society) No.15 of 2009 on the file of the first
respondent and quash the same.

For Petitioner : Mr.S.Siva Shanmugam
For Respondent-2: Mr.L.P.Shanmugasundaram, SGP
For Respondent-3: Mr.K.Selvaraj

ORDER

I have heard Mr.S.Siva Shanmugam, learned counsel for the
petitioner, Mr.L.P.Shanmugasundaram, learned Special Government
Pleader appearing for the second respondent and Mr.K.Selvaraj,
learned counsel appearing for the third respondent.

2. In this writ petition, the petitioner cooperative society
has challenged an order passed by the first respondent namely
the Presiding Officer, District Cooperative Tribunal (Principal
District Court), Dharmapuri (for brevity, the Tribunal) in CMA
(CS) No.15 of 2009 dated 16.8.2010.

3. The said appeal was filed by the legal heir of one late Mr. Ramalingam, who was working as a Superintendent in the petitioner society. The Tribunal allowed the appeal filed by the legal heir of the said late Mr. Ramalingam on three grounds

(i) firstly by stating that the proceedings initiated against the deceased employee under Section 87 of the Tamil Nadu Cooperative Societies Act (1983) (for short, the Act) was hopelessly barred by limitation as the time limit of seven years fixed under Section 87 of the Act is mandatory;

(ii) secondly by stating that no proceedings could have been initiated against the legal heir beyond a period of three years and that this period of limitation is also mandatory; and

(iii) thirdly based on the procedural infirmity, which had occurred in the decision making process.

4. So far as the first two grounds are concerned, the Tribunal was guided by a few decisions of this Court, which had, at the relevant point of time, held that the limitation prescribed under Section 87 of the Act is mandatory.

5. The question as to whether the period stipulated under Section 87 of the Act is mandatory or directory is no longer res integra and has been decided by the Hon'ble Supreme Court and the First Bench of this Court in the case of S.V.K. Sahasramam Vs. Deputy Registrar of Cooperative Societies [reported in 2008 (8) MLJ 231] and another First Bench of this Court in the case of S. Ramadevi Vs. The Special Officer [WA.No.1213 of 2008 dated 05.8.2016]. The decision of the First Bench in the case of S.V.K. Sahasramam was followed by two learned Single Judges of this Court in the case of Tamil Nadu Cooperative Marketing Federation Ltd. Vs. D. Lakshmi Kantham & others [WP.No.3323 of 2010 dated 23.1.2012] and in the case of K 1755 Goundampalayam Primary Agricultural Cooperative Credit Society Ltd. Vs. A. Shanmugam [reported in 2018 (1) CTC 231].

6. The relevant portions in the decision of the First Bench of this Court in the case of S. Ramadevi, in which, the decision in the case of S.V.K. Sahasramam was followed, read as follows :

"21. On the other hand, learned counsel for the first respondent sought to submit that use of the expression ''shall'' in the proviso should be read as ''may'' since it is a case where public funds are involved and sometimes proceedings may take time. In support of her contention, she has relied upon the judgment of the Division Bench of this Court in W.A.No.949 of 2008 (between

S.V.K.Sahasramam vs. The Deputy Registrar of Co-op. Societies, Tiruvannamalai District) and Others) decided on 29.08.2008. The factual matrix related to an enquiry under Section 81 of the said Act. The issue which was examined was whether the period for completion of enquiry as provided under Section 81 of the said Act was mandatory or not and whether the word 'shall' has to be construed as mandatory. In that context, the Division Bench observed that the expression used in the section whether mandatory or not would be decided on various factors and mere expression of the word 'shall' alone is not decisive in the matter. In this behalf, a reference was made to the celebrated case of Montreal Street Railway Company vs. Normandin, AIR 1917 Privy Council 142, quoting as under: "The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statutes must be looked at."

22.The Division Bench also made a reference to two judgments of Hon'ble Supreme court in State of U.P. vs. Babu Ram Upadhyaya, AIR 1961 SC 751 and the Constitution Bench judgment in State of U.P. vs. Manbodhan Lal, AIR 1957 SC 912. After discussing the issue, the Division Bench opined that the enquiry under Section 81 of the said Act could not be compared to an enquiry against an individual employee and such enquiry is to be followed by a proceeding under Section 87 of the said Act. A categorical finding was given that both the period under Section 81 and the second proviso to Section 87 could not be held to be mandatory, especially as allegations of embezzlement and misappropriation of public funds are involved and the members of general public who have been cheated have no control over those who hold the enquiry in respect of the time limit and thus, holding such enquiry as time barred would be great injustice. The time period was, thus, held not to be mandatory.

23. Learned counsel for the appellant has not shown any legal view to the contrary and thus, this issue is really not res integra in view of the decision recorded aforesaid of the Division Bench. The plea of time barred is, thus, rejected."

7. In the light of the above decisions, the Proviso to Section 87 of the Act cannot be held to be mandatory. Therefore, the Tribunal, to that extent, committed an error in holding that the time limit prescribed under Section 87 of the Act is mandatory.

8. With regard to the third contention, the Tribunal, on going through the entire records, found that the deceased employee had given a requisition letter to the petitioner to furnish copies of the records pertaining to surcharge proceedings and in spite of receipt of such a request, the relevant records were not furnished to the deceased employee nor his legal heir, against whom, proceedings were initiated. Further, the aspect as to whether the proceedings under Section 81 of the Act were at all commenced against the deceased employee was in great doubt and to clarify the factual position, the original records were perused by the Tribunal. Ultimately, the Tribunal pointed out that when the legal heir of the deceased employee challenged the order of termination passed against him dated 06.6.1994 by approaching the Labour Court, Salem by filing C.P.No.302 of 2001, in which, the petitioner society filed a counter wherein there was no whisper about the proceedings initiated under Section 81 of the Act though it was stated before the Tribunal that on 27.5.1994, proceedings were initiated, ultimately, the said claim petition filed before the Labour Court, Salem was allowed by order dated 31.3.2003.

9. Considering the reasons assigned by the Tribunal, this Court finds that there is no perversity in the decision making process. Though this writ petition has been filed under Article 226 of The Constitution of India, it has to be treated as a petition under Article 227. Consequently, any person aggrieved by such order does not have a right to file an intra-court appeal. Thus, while examining the correctness of the order passed by the Tribunal, this Court finds that there is no error in the decision making process nor there is any wrong appreciation of evidence placed before it and the Tribunal rightly allowed the appeal filed by the legal heir of the deceased employee.

10. In the light of the above, the writ petition is partly allowed and the finding of the Tribunal holding that the period of limitation prescribed under Section 87 of the Act is

mandatory, is set aside. In the light of the said decisions of the two First Benches of this Court, it is held that the period prescribed is only directory. The finding of the Tribunal on the merits of the matter quashing the surcharge proceedings is confirmed and the writ petition is dismissed to that extent. No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Presiding Officer, District Cooperative Tribunal (Principal District Court), Dharmapuri.
2. The Deputy Registrar of Cooperative Societies, Dharmapuri District.

+1cc to Mr.S.Sivashanmugam, Advocate, S.R.No.24351
+1cc to Mr.K.Selvaraj, Advocate, S.R.No. 24258
+1cc to Special Government Pleader, S.R.No. 24478

WP.No.23086 of
2012

KK (CO)
KKV/11/06/2020

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