IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2020

CORAM :

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition No.6011 of 2013

Orders reserved on 29.01.2020	Orders pronounced on 05.02.2020

M.R.Balashanmugam .. Petitioner

-vs-

1.The Deputy Registrar of
Co-op., Societies,
Coimbatore.

2.The Special Officer,
K.1948, The Coimbatore Agricultural
Producers Co-op., Marketing Society Ltd.,
Coimbatore. .. 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 surcharge order No.9/2008/Sa.Pa.1 dated 30.07.2009, passed by the 1st respondent confirmed in the fair and decretal order dated 07.12.2012, made in Co-op C.M.A.No.86 of 2009 on the file of the learned Principal District Judge, Coimbatore and quash the same.

For Petitioner : Mr.N.Manokaran

For Respondents: R1 - Ms.T.Girija,
Additional Government Pleader

: R2 - Mr.L.P.Shanmugasundaram,
Special Government Pleader

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ORDER

This writ petition has been filed by the erstwhile Special Officer of the second respondent/Co-operative Society challenging the order of surcharge dated 30.07.2009, passed by the first respondent, as confirmed in C.M.A.No.86 of 2009 dated 07.12.2012, on the file of the Principal District Court cum Co-operative Tribunal, Coimbatore.

2.Mr.N.Manokaran, learned counsel for the petitioner submitted that the petitioner was appointed as a Special Officer of the second respondent-Society on 02.01.2004, and functioned in the said post till 26.07.2005, for a period of about nineteen months. The petitioner is to exercise control over 268 public distribution outlets in the area. After about three years, after the petitioner was relieved from the said post, the first respondent, by order dated 25.03.2008, directed an inspection to be conducted under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 (for brevity "the Act"). An inspection report was submitted on 03.07.2008, based on which, notice of surcharge under Section 87(1) of the Act was issued. In the said notice, it was alleged that on account of the conduct of the petitioner, the second respondent-Society incurred a loss of Rs.5,13,912.30 ps. The loss was computed based on the stock of various items in the various fair price shops, which became unusable and spoiled. They include Rava, Maida and Atta weighing about 11673 kgs, edible oil of 2398 kilolitre, 420½ boxes of soap and 180 bags of rice.

3.The petitioner submitted his reply dated 28.11.2008, contending that the damaged items were replaced by the concerned company to the second respondent-Society and there was no loss. The quantity of damaged edible oil was 70 litres after the sale of the entire quantity purchased in terms of the report submitted by the Branch Supervisors dated 01.08.2005. The soaps were not damaged or in unusable condition as per the report of the Branch Supervisors, as they are not perishable items.

4.It was further contended that proceedings have been initiated after three years, after the petitioner was relieved from the said post. The new incumbent, who was appointed as Special Officer, took charge subsequently and he had sold 244 bags of rice. On 02.04.2004, the Chinthamani Co-operative Stores had addressed a letter to the Society stating that the rice bags were damaged and since the said co-operative stores was liable to pay a sum of Rs.19,00,000/- to the second respondent-Society, the rice bags were taken back and a report was obtained from the Quality Inspector on 29.12.2006, about the quality of the rice. In the surcharge proceedings, the Department examined three witnesses, viz., the Inspecting Officer as P.W.1, the Branch Manager as P.W.2 and the godown keeper as P.W.3.

5.The petitioner would state that the Joint Registrar of Co-operative Societies, Coimbatore, had issued two circulars dated 31.03.2004 and 16.04.2005 fixing a monthly target sale of Rs.1,00,000/- for non-controlled items. The circulars were marked by the petitioner in the surcharge proceedings as Ex.D1 and Ex.D2. These circulars were pressed into service to substantiate the petitioner's case that there was a compulsion to lift the non-controlled items by the Society to be distributed through the fair price shops. The petitioner relied upon two circulars issued by the Registrar of Co-operative Societies, Madras, dated 05.04.1977, marked as Ex.D3; and circular dated 28.10.1988, marked as Ex.D4. These circulars were pressed into service to support the contention that action should not be taken by initiating surcharge proceedings in the event of general loss sustained during the normal course of business of the society or loss suffered on account of sale of goods. The petitioner relied upon the inspection report dated 28.07.2005, submitted by the successor with regard to the non-controlled items. The petitioner also relied upon the stock statement, outward statement, return statement, return of goods to the company etc., to substantiate his case.

6.The first respondent, by order dated 30.07.2008, held that the petitioner is responsible for causing loss to the society to the tune of Rs.5,13,912.30 ps. and he would liable to make the loss together with interest at 12.5%. Aggrieved by such order, the petitioner preferred an appeal before the Principal District Court cum Co-operative Tribunal in C.M.A.No.86 of 2009. The Tribunal dismissed the appeal largely on the ground that the petitioner cannot rely upon the circulars marked as Ex.D1 and Ex.D2, as there was no direction in the said circulars to purchase goods without ascertaining demand from the fair price shops. The Tribunal referred to the stock verification reports, marked as Ex.D6 and Ex.D15, dated 01.08.2005, to hold that the petitioner was responsible for the loss of non-controlled items. The Tribunal referred to Ex.D11, the stock list, dated 19.07.2006 to hold the petitioner responsible for excessive purchase of oil and there were 420½ boxes of soap, which were found unusable and they were returned to the second respondent-Society by the fair price shops and 180 rice bags were kept unsold. The order of surcharge dated 30.07.2009, as confirmed by the Tribunal by order dated 07.12.2012, are impugned in this writ petition.

7.The learned counsel contended that there is a specific direction issued in Circulars, Ex.D1 and Ex.D2 to retain stocks worth Rs.1,00,000/- and to meet the demand, the non-controlled items were procured. Further, no cost can be fastened on the petitioner, as the loss incurred during the course of business of the society and there can be no surcharge liability in terms of the circulars, Ex.D3 and Ex.D4, issued by the Registrar of Co-operative Societies. Further, it is contended that the petitioner handed over charge on 26.07.2005 and the stocks were verified on 01.08.2005. Further, by referring to Ex.D7, Ex.D8 and Ex.D10, it is submitted that there was no damage to the Rava, Maida and Atta and they were returned to the company, who had supplied those products. Further, as per the reports, only 70 kilolitre of sunflower oil was found to be damaged as against the allegation that 2398 kilolitre of oil was damaged.

Further, there was no report to the unsold soaps. It was further submitted that the rice bags were supplied by the previous Special Officer to the Chinthamani Stores and they were returned on 02.04.2004 and out of 224 bags, 64 bags were sold by the petitioner's successor one Mr.Chandrasekar.

8.The learned counsel had referred to the evidence of the inspecting officer and the godown keeper to state that there is no material to hold the petitioner liable for payment of any amount as surcharge. It is further submitted that the petitioner was relieved from the post of Special Officer on 26.07.2005 and on 27.07.2005, one Mr.Radhakrishnan took charge as Special Officer and functioned in the post till 16.08.2005 and after him, one Mr.Rathinasapabathi was appointed as Special Officer on 17.08.2005, who functioned in the said post till 11.08.2007 after which, one Mr.Gowravaraj was posted as Special Officer, who functioned till 16.09.2007 and after he was relieved, Mr.Chandrasekar was posted as Special Officer from 17.09.2007, who was functioning as Special Officer at the time of inspection, which was conducted on 25.03.2008, i.e., three years after the petitioner was transferred to a different society. Further, it is submitted that there is absolutely no evidence or material to substantiate wilful negligence on the part of the petitioner to fix surcharge liability.

9.It is further submitted that another inquiry was ordered under Section 81 of the Act to examine as to whether there were any irregularities in the affairs of the second respondent-Society during the period when the petitioner was functioning as Special Officer. Four charges were framed against the petitioner of which, three pertain to purchase of excess quantity of tamarind and Barani masala powder resulting in loss to the society. The first respondent by order dated 16.08.2007, held that the petitioner was responsible for the loss caused to the society and was liable to pay a sum of Rs.7,48,933.75 ps. The said order was challenged by the petitioner by filing an appeal before the Principal District cum Co-operative Tribunal, Coimbatore in C.M.A.No.61 of 2007, which was dismissed by order dated 30.01.2009. Challenging the said order, the petitioner filed a revision petition under Article 227 of the Constitution of India in C.R.P.(NPD)No.1491 of 2009. The said revision petition was allowed by judgment dated 19.09.2017, reported in 2017-5-L.W. 149. The Court held that there is no finding to the effect that loss was caused to the society on account of deliberate negligence on the part of the petitioner. Further, the Court pointed out that it was not proved before the Surcharge Officer about the actual loss, if any, caused to the second respondent-Society, nor there was any allegation that the petitioner had benefited by purchasing excess quantity of tamarind and Barani masala powder. By applying various decisions of this Court, it was held that the order passed by the Tribunal is not sustainable and accordingly, the same was set aside.

10.By referring to the said decision, the learned counsel submitted that the only difference between the present proceedings and the other surcharge proceedings, which was initiated against the petitioner and quashed by this Court in the aforementioned decision is that in the present proceedings, it is an inspection under Section 82 of the Act whereas, in the earlier proceedings, it was an inquiry under Section 81 of the Act. Therefore, it is submitted that the said decision, viz., 2017-5-L.W. 149 would strengthen the case of the petitioner to hold that the impugned orders are unsustainable.

11.The learned counsel placed reliance on the decision of the Hon'ble Supreme Court in Pollachi Cooperative Marketing Society vs. K.N.Valuswami and Others, reported in 1994 Supp (3) SCC 134, in support of his contention that the degree of negligence contemplated under Section 87 of the Act is not mere negligence, but wilful negligence, implying consciousness of likelihood of injury or loss arising from an act of omission or commission.

12.Referring to the decision of the Division Bench of this Court in K.Ajay Kumar Gosh and Others vs. Tribunal for Co-operative Cases (District Judge of Kanyakumari District) Nagercoil and Another, reported in (2009) 4 MLJ 992, it is submitted that to pass a surcharge order under Section 87 of the Act, the employees of the society 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 the existing circumstances.

13.Reliance was placed on the decision of the Division Bench of this Court in S.Ramadevi vs. The Special Officer, Ambur Co-operative Sugar Mills and Others, reported in 2016-4-L.W. 452 for the contention that merely because loss is caused would not suffice to initiate surcharge proceedings, when there is no allegation that the petitioner is a beneficiary and when no wilful negligence has been attributed against the petitioner. On the above grounds, the learned counsel prayed for setting aside the impugned orders.

14.Ms.T.Girija, learned Additional Government Pleader appearing for the first respondent submitted that the petitioner was functioning as Special Officer of the second respondent-Society during the period 02.01.2004 to 26.07.2005 during which, irregularities were pointed out during the course of audit of the society in the year 2006-07 and based on the audit report, the first respondent ordered a statutory inspection under Section 82 of the Act by order dated 25.03.2008. The Inspecting Officer found that the petitioner has caused wilful deficiencies to the assets of the society and recommended to recover the said loss through surcharge action. Pursuant to the said inspection, the first respondent initiated surcharge proceedings under Section 87 of the Act and after affording sufficient opportunity to the petitioner, passed the order dated 30.07.2009 fixing liability to the tune of Rs.5,13,912.30 ps. on the petitioner. The petitioner filed an appeal before the Tribunal, which was dismissed after elaborately hearing the parties, by order dated 07.12.2002.

15.It is submitted that when the petitioner was functioning as the Special Officer of the second respondent, the Society had 83 fair price shops under its control and another 185 fair price shops were also attached to the second respondent society as the lead society to move the essential commodities to the shops. The society sells non-controlled articles such as Rava, Maida, Atta, Sunflower oil (edible oil) etc., and also rice procured from the open market together with controlled articles such as Rice, Sugar and Kerosene, which are distributed under the Public Distribution System. It is submitted that before placing purchase order for non-controlled items, it is the duty of the petitioner to assess the demand by getting an indent from the salesmen of the respective fair price shops, the petitioner purposely failed to follow this procedure and placed orders for non-controlled items as per his whims and fancies due to which, stocks got piled up in the shops, which ultimately became unusable and therefore, the petitioner has caused wrongful loss to the society due to his wilful negligence.

16.It is further submitted that the directions issued by the Joint Registrar of Co-operative Societies and the circulars are meant to emphasis upon the societies to improve the sale of non-controlled items so that, the fair price shops become viable and there is no direction issued in any of the circulars to purchase excess quantity than what is required by the respective shops. It is further submitted that after the petitioner was relieved from the post of Special Officer on 26.07.2005, his successor directed stock verification and found 19280 kgs of Maida, 960 kgs of Rava and 40640 kgs of Atta in the godown of the Head Quarters of the second respondent-Society; 3238 kgs of Maida, 2298 kgs of Rava and 3983 kgs of Atta returned from the fair price shops were found in damaged condition. Out of the said quantity, 16600 kgs of Maida, 5520 kgs of Rava and 37200 kgs of Atta were returned to the supplier. After returning the items, the Inspecting Officer reported 3631 kgs of Maida, 2674 kgs of Rava and 5368 kgs of Atta to remain with the society and 2398 litres of edible sunflower oil.

17.It is further reiterated that the petitioner purchased the edible oil without obtaining indent from the salesmen of the fair price shops and without assessing the damage of the oil. Further, it is submitted that the petitioner purchased soaps from companies, which were not recognised and approved by the Joint Purchase Committee and the petitioner also made immediate payment to the supplier of soaps on account of which, a deficit was caused to the society and the loss suffered on its account is Rs.1,35,466/-. Further, it is submitted that the petitioner would accept that 244 bags of rice procured from the open market were returned by Chinthamani Co-operative Stores out of which, only 64 bags were sold and 180 bags remained unsold and it is incorrect on the part of the petitioner to state that only 2 bags of rice remained unsold and the said stand is contrary to the inspection report and on account of the wilful conduct of the petitioner, the second respondent incurred a loss to the tune of 75,737.50 ps. Further, it is submitted that Ex.D1 and Ex.D2 advised the societies that every fair price shops should sell non-controlled items to the value of not less than Rs.1,00,000/- and also it was advised that the family card holders should not be compelled to purchase the non-controlled items. Further, it is contended that the direction issued was only to increase the sales and there was no direction to purchase goods without obtaining a demand or an indent from the fair price shops. Therefore, it is incorrect on the part of the petitioner to state that he had effected purchase of non-controlled items as per the direction of the Joint Registrar of Co-operative Societies.

18.Further, with regard to the maintainability of this writ petition, it is submitted that in the light of the judgment of the Hon'ble First Bench of this Court in E.S.Sundara Mahalingam vs. The Special Tribunal for Co-operative Cases (District Judge), Tirunelveli, W.A.No.4021 of 2019, dated 22.11.2019, a writ petition is not maintainable under Article 226 of the Constitution of India and a civil revision petition under Article 227 of the Constitution alone is maintainable.

19.Heard the learned counsels for the parties and perused the materials placed on record including the counter affidavits filed by the respondents.

20.The first question to be decided is whether the petitioner is entitled to maintain a writ petition under Article 226 of the Constitution of India challenging an order passed by the Co-operative Tribunal. Identical issue came up for consideration before the Hon'ble First Bench in the case of E.S.Sundara Mahalingam (supra). After referring to the decision of the Hon'ble Supreme Court in Radhey Shyam vs. Chhabi Nath, reported in (2015) 5 SCC 423, it was pointed out that the challenge, admittedly, is to an order passed by the Tribunal and the jurisdiction of this Court, which could be exercised, was under Article 227 of the Constitution and the petition could have been treated to be that under Article 227 only. In the light of the above decision, though the present writ petition has been filed under Article 226 of the Constitution, it has to be treated as a petition under Article 227 of the Constitution of India and either party aggrieved by this order is not entitled to any intra-court appeal remedy. Having held so, the Court now proceeds to consider the contentions advanced on either side.

21.The sheet anchor of the argument of Mr.N.Manoharan, learned counsel for the petitioner, is that to hold the petitioner liable for making good the loss caused to the society by initiating surcharge proceedings under Section 87 of the Act, the first respondent has to establish that such loss was caused to the society on account of wilful negligence on the part of the petitioner and not mere negligence. The petitioner should have done an actionable wrong either by his 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 the existing circumstances. Thus, it is the submission of the learned counsel that in the absence of any such conclusion, the petitioner cannot be mulched with any loss caused to the second respondent. The above argument is buttressed by placing reliance on the decision in Pollachi Cooperative Marketing Society (supra), K.Ajay Kumar Gosh (supra) and S.Ramadevi (supra).

22.The other contention is that surcharge proceedings were initiated against the petitioner by the first respondent pursuant to an inquiry conducted under Section 87 of the Act pertaining to the affairs of the second respondent society and the Single Bench of this Court allowed the revision petition filed by the petitioner and quashed the proceedings on the ground that the Society has not alleged and approved that by the deliberate negligence of the petitioner, loss was caused to the society. Therefore, it is submitted that the said decision rendered in the case of the petitioner himself may be taken note of to exonerate the petitioner.

23.Section 87 of the Act deals with “surcharge”. Sub-Section (1) of Section 87 states that where in the course of an audit under Section 80 or an inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83 or the winding-up of a society, it appears that any person who is or was entrusted with the organisation or management of the society has mis-appropriated or fraudulently retained any money or other property or has been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by beach of trust or wilful negligence or has made any payment which is not in accordance with the Act and the rules or the by-laws the Registrar himself or any person specially authorised by him, frame charges against such person and after giving a reasonable opportunity to the person concerned, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the mis-appropriation, mis-application of funds, fraudulent retainer, breach of trust or wilful negligence or payments, which are not accordance with the Act, the rules or the by-laws of the society.

24.In terms of the above provision, liability can be fixed on any person, who is or was entrusted with the organisation or management of the society. Admittedly, the petitioner was entrusted with the organisation and management of the second respondent-Society during the relevant time. Therefore, it has to be seen as to whether the petitioner could have been held liable to make good the loss caused to the society.

25.The petitioner relies upon the circulars, Ex.D1 and Ex.D2, issued by the Joint Registrar of Co-operative Societies, dated 31.03.2004 and 16.04.2005. The circulars refer to an advice given by the Registrar of Co-operative Societies stating that each fair price shop should endeavour to sell non-controlled items to the tune of Rs.1,00,000/- at the same time and there should not be any compulsion on the family card holders to purchase the non-controlled items. On a reading of Ex.D1 and Ex.D2, it is seen that the circulars are, in fact, guidelines issued to the Special Officers under whose control, the fair price shops exist. There is no indication in the circulars that there is a compulsion that minimum sale of non-controlled items should be to the tune of Rs.1,00,000/-. If such an interpretation is to be given to the circulars, guidelines, it will work against commercial expediency. Fair price shops have been established to distribute controlled items under the Public Distribution System. The controlled items being rice, sugar and Kerosene.

26.In order to make the fair price shops viable, the Government took a decision to sell non-controlled items at a fair price in those shops. Though such a decision was taken to market non-controlled items, the Registrar was in his view, as he has specifically stated that the family card holders cannot be compelled to purchase non-controlled items. Thus, as a Special Officer, the petitioner was expected to exercise his discretion and consider the commercial consideration and procure the required amount of material to be distributed to the various fair price shops and to be sold by the respective shops. The petitioner was expected to act with prudence, as he being the Special Officer of the Society and there were as many as 268 fair price shops under the control of the second respondent. The petitioner cannot blindly fall back on the circulars of the Joint Register and state that unmindful of the demand, he would place purchase order for non-controlled items to the tune of Rs.1,00,000/- to each 268 shops without due regard as to whether there is any demand for those sales in the respective shops.

27.The first respondent is right in contending that without obtaining an indent from the respective shops, purchase orders could not have been placed. This is a basic and elementary principle of any trading or marketing business. The supply should meet the demand and business prudence may lead to a situation that purchase orders are placed with a slight margin over the demand, say about 2 to 5% over and above the demand to meet any exigency so that the card holders are able to purchase those non-controlled items at a reasonable price on account of non-availability.

28.The notice issued to the petitioner under Section 87 (1) of the Act would state that there was excess stock of Rava, Maida and Atta to the tune of 11673 kgs, edible oil to the tune of 2398 kl and 420½ boxes of various varieties of soaps. Apart from that, about 180 bags of rice procured from the open market remained unsold in the godown. The total quantity, which was purchased, clearly shows the callousness of the petitioner in the discharge of his duties and responsibilities as a Special Officer. Therefore, in the considered view of this Court, reliance placed on the circulars, Ex.D1 and Ex.D2, cannot in any manner improve the case of the petitioner.

29.The petitioner also placed heavy reliance on the circular issued by the Registrar of Co-operative Societies, viz., Ex.D3. This circular was pertaining to the loss sustained in the normal course of business and giving broad guidelines with regard to the scope of taking action under Section 71 of the Tamil Nadu Co-operative Societies Act, 1961 (hereinafter referred to as "the 1961 Act"). Three types of losses were taken note of in the circular, viz., (i) loss sustained by the societies in the normal course of business; (ii) loss sustained by the societies on account of sale of goods by reduction in price; and (ii) loss due to destruction of unsaleable old stocks etc.

30.It was pointed out that to take surcharge action under Section 71 of the 1961 Act, there should be misappropriation or fraudulent retention of any money or other property of the society; breach of trust in relation to the society; causing deficiency in the assets of the society by breach of trust or wilful negligence or payment made contrary to the Act or the rules or the by-laws of the society. It was pointed out that the mere fact that a society had incurred business loss should not form basis for initiating surcharge action and only the deficiency caused to the assets of the society on account of wilful negligence of the members of the committee, and officers or servants of the society will attract action for surcharge. Thus, it is clear that the circular issued by the Registrar, Ex.D4, deals with loss sustained by the society in the normal course of business. It can be a loss on account of sale at reduced price or on account of destruction of unsaleable products.

31.The petitioner's case cannot be brought under any of these three heads. This is so because, the quantity of the products purchased was without any basis and without inviting an indent from the respective fair price shops and it cannot be a loss sustained in the normal course of business. Rather, loss was on account of reckless callousness on the part of the petitioner without taking due care and caution, which is expected of a Special Officer. Therefore, the circular, Ex.D5, also cannot in any manner help the case of the petitioner. This leaves us with the other documents, which were relied on by the petitioner and smarked during the surcharge proceedings by the petitioner. The Court is exercising revisional jurisdiction to test the correctness of the findings of the Tribunal affirming the surcharge order passed by the first respondent. As the revisional court, it cannot function as a second appellate court over the findings of the surcharge officer or the Tribunal. The scope of interference shall be limited to examine as to whether the impugned orders suffer from any patent illegality, perversity or passed in utter disregard to the evidence on record or gross misinterpretation of the evidence on record or in other words, that no prudent person could have arrived at such a finding as arrived at by the surcharge authority or the Tribunal. This Court cannot embark upon a fact finding exercise. It cannot reappraise the evidence, which was placed before the surcharge authority, which in fact has been re-appreciated and considered by the Tribunal, the appellate authority.

32.Bearing this principle in mind, if the fact situation is examined, it is evidently clear that the petitioner has committed gross violation and did not exercise any prudence thereby causing deficiency in the assets of the society, which is wholly due to the wilful negligence on the part of the petitioner. The surcharge authority has clearly brought out the duties and responsibilities of the petitioner, as he is the person who has to decide upon the purchases to be effected for supply to the fair price shops. Therefore, the authority has observed that as a Special Officer, he should have called for a meeting of the employees of the society, assessed as to how many non-controlled items can be sold in each shop, obtained details from each of those shops and thereafter, placed a purchase order. Further, the surcharge authorities, rightly, observed that the petitioner should have ascertained as to how much stocks supplied earlier were remained unsold and what is the average requirement of each fair price shop, insofar as it relates to non-controlled items. Without conducting any such prudent exercise, the petitioner had been wilfully negligent in the matter of purchase and now to state that because of the circulars of the Joint Registrar, he had effected purchase would clearly show that the petitioner is guilty of wilful negligence. Furthermore, the authority has clearly held that there has been a gross violation in the purchase procedure. The supplies of soaps effected by the private suppliers have been settled immediately by the petitioner.

33.With regard to the unsold bags of rice, they are rice procured from the open market. Thus, the transaction is purely a commercial transaction probably with the intention of making the fair price shops viable. In any event, due diligence was required to be exercised by the petitioner as a Special Officer. The rice bags supplied to the Chinthamani Co-operative Stores were returned probably due to damaged condition or regarding its quality. Out of the total 224 bags, which were returned by the society, the petitioner would justify accepting the return by stating that the said co-operative stores was due and liable to pay a sum of Rs.19,00,000/- to the second respondent-society and therefore, would justify the action in taking back 244 bags of rice.

34.In the considered view of this Court, this decision lacks commercial prudence and no reasonable man would take such a decision especially when the rice bags are returned on account of its damage. Out of the 244 bags, only 64 bags could be sold and the remaining 180 bags were unsold. It is not clear as to what steps were taken to return the rice bags procured from open market from the respective suppliers or any action taken by the petitioner as a prudent Special Officer against those suppliers. The petitioner is attempting to pick holes in the evidence of the Branch Manager, inquiry officer and godown keeper. The evidence has been considered as a whole by the surcharge officer and the petitioner has been found guilty.

35.The Tribunal, on its part, had examined the entire evidence on record and on the proven facts, dismissed the petitioner's appeal. The Tribunal has also specifically pointed out that the petitioner had purchased soaps from the concerns, which were not recognised by the Joint Purchase Committee and he also made immediate payment to the suppliers. Nothing more is required to establish wilful negligence, supine indifference and callousness on the part of the petitioner.

36.The decisions, which were referred to by the learned counsel for the petitioner while explaining the legal position have examined the facts of the respective cases to come to a conclusion. The facts, in the instant case, are writ large to clearly show that the petitioner was wilfully negligent and his conduct has caused financial loss to the society thereby causing deficiency in the assets of the society.

37.So far as the decision in the petitioner's case is concerned, reported in 2017-5-L.W. 149, on facts, the Court came to the conclusion that it was not proved that the petitioner was deliberately negligent and caused loss to the society. However, as brought out in the preceding paragraphs, there is gross negligence on the part of the petitioner. He had failed to take due care and caution, which have prudent Special Officer was expected to take, as the head of the society and entrusted with market and sale of non-controlled items, business exigencies, ought to have been exercised with adequate care and caution. The conduct of the petitioner is imprudent and reckless.

38.Thus, for all the above reasons, this Court finds there are absolutely no grounds to interfere with the order passed by the Tribunal confirming the order passed by the first respondent.

39.In the result, the writ petition fails and the same is dismissed. No costs.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

abr
To

1.The Deputy Registrar of
Co-op Societies,
Coimbatore.

2.The Special Officer,
K.1948, The Coimbatore Agricultural
Producers Co-op Marketing Society Ltd.,
Coimbatore.

+1cc to Mr.N.Manoharan , Advocate SR.No. 9218
+1cc to Mr.L.P.Shanmugasundaram , Advocate SR.No. 9717
+1 cc to Government Pleader Sr.No. 9473

Writ Petition No.6011 of 2013

A.SK(05/03/2020)