IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM :

THE HONOURABLE Mr.JUSTICE T.S.SIVAGNANAM

Writ Petition Nos.440 and 1691 of 2015
and
M.P.Nos.1, 2, 2 and 3 of 2015

Orders reserved on 03.01.2020	Orders pronounced on 23.01.2020

W.P.No.440 of 2015 :-

R.Kandan ... Petitioner

-vs-

1.The Vellore District Nutrition Employees Child Welfare Organiser and Helpers Cooperative Thrift and Credit Society Ltd., Rep., by President,
Now at,
9/8, Periyatheru (upstairs),
Sathuvacharry, Vellore-9.

2.Deputy Registrar of Cooperative Societies,
Vadivel Nagar, Sainathapuram,
Vellore-1.

3.M.Padmini

4.R.Mohan

5.R.Karunakaran

6.Cooperative Tribunal/
Principal District Judge,
Vellore (Dt.). ... Respondents

Petition filed Under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the sixth respondent Tribunal relating to its order in CTA.No.02/2012 dated 09.10.2014 and of the second respondent relating to his order in SC.No.1/2011-12 Sa.Pa. dated 11.01.2012 and quash both the orders.

W.P.No.1691 of 2015 :-

S.Karunakaran ... Petitioner

-vs-

1.The Vellore District Nutrition Employees
Child Welfare Organiser and Helpers
Cooperative Thrift and Credit Society Ltd.,
Rep., by President,
Now at,
9/8, Periyatheru (upstairs),
Sathuvacharry, Vellore-9.

2.Deputy Registrar of Cooperative Societies,
Vadivel Nagar, Sainathapuram,
Vellore-1.

3.M.Padmini

4.R.Mohan

5.R.Kandan

6.Cooperative Tribunal/
Principal District Judge,
Vellore (Dt.). ... Respondents

Petition filed Under Article 226 of the Constitution of India for issuance of Writ of Certiorari to call for the records of the sixth respondent Tribunal relating to its order in CTA.No.03/2012 dated 09.10.2014 and of the second respondent relating to his order in SC.No.1/2011-12 Sa.Pa. dated 11.01.2012 and quash both the orders.

For Petitioners : Mr.P.Anbarasan
(In both W.Ps.)

For Respondents : RR1 & 2 -Ms.T.Girija,
(In both W.Ps.) Government Advocate

: RR3 to 6 - No appearance

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COMMON ORDER

Both these writ petitions have been filed by two Co-operative Sub Registrars, who were appointed as Administrators of the first respondent/Co-operative Society in two different spells. Since the facts are identical, the writ petitions were heard together and are being disposed of by this common order.

2.The petitioner in W.P.No.440 of 2015 is Mr.R.Kandan, was given additional charge as Administrator of eight co-operative societies including the first respondent-Society for a period of 98 days from 22.03.2005 to 29.06.2005.

3.The petitioner in W.P.No.1691 of 2015 is Mr.S.Karunakaran, was given additional charge of four co-operative societies including the first respondent-Society for a period of 172 days from 30.06.2005 to 29.12.2005.

4.The Department initiated surcharge proceedings against the writ petitioners as well as the other employees of the first respondent-Society. In fact, the petitioner, Mr.R.Kandan is the fifth respondent in W.P.No.1691 of 2015 and the petitioner, Mr.S.Karunakaran is the fifth respondent in W.P.No.440 of 2015.

5.The case of Mr.R.Kandan is that the newly elected President of the first respondent-Society, viz., the third respondent, who took charge on 22.03.2004, enrolled 600 members who were all employees under the Government Mid-day Meal Scheme. The petitioner would state that the fourth respondent was incharge of maintaining the accounts of the Society, who had to function under the directions and guidance of the President, the third respondent and later on, the fourth respondent became the Secretary of the first respondent-Society. The petitioner would state that the Board of Management of the first respondent-Society received 328 applications from its members for sanction of loan. It is stated that the field officers of the Vellore District Central Co-operative Bank scrutinised the loan applications and on being satisfied, loan was sanctioned and the amount was credited to the account of the first respondent-Society. The petitioner Mr.R.Kandan, who took charge as Administrator of the Society on 22.03.2005, would state that due to pressure exerted by the members who had applied for loan, he took steps for disbursement of loan with the active assistance of respondents 3 and 4, viz., the President and Secretary of the Society. Out of the 328 loan applications, which were cleared and sanctioned, the petitioner disbursed loans to 63 applicants by cheques.

6.The petitioner Mr.S.Karunakaran, who became the Administrator of the Society from 30.06.2005, that is, after the term of petitioner Mr.R.Kandan was over, would state that the third and fourth respondents prepared eight loan applications to the tune of Rs.1.45 lakhs, which were approved by the Central Co-operative Bank out of which, only a sum of Rs.54,870/- remained, but it was shown as Rs.90,570/- in the surcharge proceedings initiated against him. Out of another sum of Rs.25,000/-, a sum of Rs.23,740/- was not collected.

7.The petitioner, Mr.R.Kandan would state that the second respondent, viz., the Deputy Registrar of Co-operative Societies, Vellore, during May, 2010 directed him to verify the loans which were sanctioned. Upon verification, the petitioner came to know that 115 members who were shown as borrowers have stated that they have not received the loan amount. Pursuant to such verification, the petitioner submitted a report to the second respondent on 19.07.2010 requesting that an inquiry may be ordered under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (for brevity "the Act"). Though the petitioner Mr.R.Kandan was the person who requested for conducting an inquiry under Section 81 of the Act, the second respondent issued a notice dated 12.04.2011 not only to the President and Secretary of the Society, but to the petitioners as well. In the notice dated 12.04.2011, the second respondent ordered that a sum of Rs.16,64,204/- should be recovered from the petitioners as well as the President, Secretary and the respondents. Both the petitioners would state that they submitted representation on 12.05.2011 requesting for furnishing some important documents. However, those documents which were sought for were not furnished. Subsequently, the petitioners by representation dated 12.07.2011, while submitting a reply to the notice dated 12.04.2011, once again requested for supply of documents and requested for witnesses to be examined. Pursuant to such request, the second respondent by communication dated 25.07.2011 directed the petitioners to obtain the documents sought for from the first respondent-Society. According to the petitioners, the documents were not available in the first respondent-Society.

8.The petitioners would further state that the second respondent without giving any further opportunity to the petitioners, passed the order dated 11.01.2012, directing recovery of a total amount of Rs.17,59,841/- not only from the petitioners but the other respondents as well.

9.According to the petitioner Mr.R.Kandan, out of the total amount, a sum of Rs.4,54,500/- alone related to the petitioner and the petitioner, Mr.S.Karunakaran would state that out of the total amount, a sum of Rs.1,14,310/- alone related to the petitioner. The petitioners challenged the order dated 11.01.2012, viz., the surcharge order by filing appeals before the Co-operative Tribunal. The Tribunal by order dated 09.10.2014, dismissed the appeals. The orders passed by the Tribunal are impugned in these writ petitions.

10.Mr.P.Anbarasan, learned counsel for the petitioners would contend that the Tribunal lost sight of the fact that the petitioners were appointed as Administrators for several Societies of which, the first respondent-Society was one among them and the period during which they were Administrators was only 98/172 days respectively, but erroneously liability was fastened on the petitioners. It is further submitted that the loan applications were processed by the President and Secretary of the Society, who had submitted the same for verification and approval to the Central Co-operative Bank and upon approval, funds were credited to the account of the first respondent Society and in turn, the loans were disbursed to the member borrowers by cheques. Thus, it is contended that the petitioners could not have been made liable for any amount to be paid by way of surcharge. It is further submitted that the loans which were disbursed were later recovered from the borrowers and further loans were sanctioned by the successors in office.

11.It is submitted that the officer, who conducted the surcharge proceedings under Section 87 of the Act did not examine the borrowers, necessary witnesses were not permitted to be cross examined and the documents sought for by the petitioners were not furnished. It is further submitted that the inquiry conducted under Section 81 of the Act was defective and the defect which occurred in the inquiry proceedings was further precipitated by an erroneous order under Section 87 of the Act. It is further submitted that parallelly, criminal prosecution was initiated against the petitioners. However, the petitioners were acquitted in the criminal cases. Further, the former President of the Society and the Secretary accepted full responsibility of the loan transactions and this should have been considered by the Tribunal and the petitioners should have been exonerated.

12.It is further submitted that the Tribunal had rejected the appeals filed by the petitioners solely on the ground that the petitioners failed to inspect the affairs of the Society, which would not be sufficient to initiate surcharge proceedings under Section 87 of the Act which requires wilful disregard to the procedure to be established to make a person liable for surcharge. It was further submitted that the Department is well aware of the fact that the petitioners were appointed as Administrators of the first respondent-Society for a brief spell and erroneously they have been made responsible jointly along with the President and Secretary of the Society and this aspect was not appreciated by the Tribunal while confirming the order of surcharge. It is further submitted that the proceedings initiated under Section 87 of the Act has to be conducted as if the authority who was conducting a suit and the provisions of the Code of Civil Procedure, 1908 would stand attracted. Despite the request made by the petitioners to cross examine the witnesses, who were examined in the inquiry conducted under section 81 of the Act, the same was not provided and the documents which were requested by the petitioners were never produced and the manner of forgery alleged was not established. Further, the authority failed to conduct a proper inquiry into the matter as to whether the loans which were sanctioned were siphoned off without being disbursed to the borrowers. The Tribunal failed to consider that the amount could not have been directed to be recovered along with interest at 18% and the rate of interest is usurious.

13.Alternatively, it was submitted that even assuming the petitioners were responsible for not property verifying the affairs of the Society, at best, they can be held responsible only for the amount which were disbursed during the period when they were holding charge as Administrators of the Society and they could not have been made jointly and severally liable along with the President, Secretary and others of the first respondent-Society.

14.The learned counsel to substantiate his arguments, had drawn the attention of this Court to the documents filed in the typed set of papers more particularly, the copy of the report dated 18.02.2011 submitted under Section 81 of the Act, the surcharge notice dated 12.04.2011, the representation given by the petitioners dated 12.05.2011 and the further representation dated 12.07.2011.

15.Referring to the order of surcharge dated 11.01.2012, the learned counsel submitted that the authority did not take into consideration the defence pleaded by the petitioners and mechanically confirmed the contents of the report under Section 81 of the Act and held the petitioners liable. It was further argued that the management of the affairs of the Society was vested with the Board of Directors in terms of Section 33 of the Act and the Secretary is enjoined with the duty to maintain all records of the Society in terms of Section 84 of the Act and in such circumstances, the petitioners could not have been made liable.

16.It was further submitted that before the Tribunal, the petitioners specifically contended that they are not privy to any of the loan transactions and were not involved in the processing of the loan applications or presenting the same to the Central Co-operative Bank for sanction. In such circumstances, the petitioners could not have been made liable. Further, it is submitted that the Secretary of the Society, Mr.Mohan admitted before the Surcharge Officer that he alone was responsible for all the loans which were sanctioned and disbursed during the period when the petitioners were appointed as Administrators of the first respondent-Society. The cheques which were disbursed by the petitioners, while they were functioning as Administrators, were to the members who were identified by the President of the Society. Thus, when the petitioners had not committed any actionable wrong as contemplated under Section 87 of the Act, initiation of proceedings against the petitioners is bad in law and vitiated. Further, there was no material available with the Surcharge Officer to establish that the petitioners were involved in the processing and sanction of the loans. That apart, the loans were subsequently recovered and fresh loans were given to the members by the successors of the petitioners. Thus, none of the ingredients for initiating action under Section 87 of the Act stood attracted.

17.The learned counsel for the petitioners has drawn the attention of this Court to each of the charges, which were alleged against the petitioners and contended that nothing was established against the petitioners and in such circumstances, the Tribunal erroneously confirmed the order of surcharge. On the above grounds, the learned counsel prayed for setting aside the orders passed by the Tribunal and quashing the surcharge proceedings initiated against the petitioners.

18.Ms.T.Girija, learned Government Advocate appearing for the first and second respondents submitted that after the Central Co-operative Bank verified the documents and sanctioned the loan and credited the amount to the account of the first respondent-Society, it is the Society which had disbursed the loan to the individual members by cheques and these cheques were presented for encashment before the Central Co-operative Bank and the cheques were encashed and amount was paid. The cheques were paid by the President or the Administrators after verifying the signatures of the borrowers in the counterfoil of the cheque book with the signatures obtained in the admission register. It is submitted that the petitioners after taking charge as Administrators of the first respondent-Society failed to examine the transactions done by the Society, which had diligently reviewed the loan applications processed earlier, they would have ascertained that many of the loan applications were fabricated and the signatures were forged. Thus, the petitioners, in the capacity of Administrators, did not carry out their functions diligently, rather they were negligent and careless and issued the cheques without even verifying the borrowers' signatures in the counterfoil of the cheque with that of the admitted signatures of the members in the Society records. It is submitted that the President of the Society is not authorized to identify the borrowers on behalf of the Administrators/petitioners, that too, when she had relinquished her post.

19.It is further submitted that it is incorrect to state that the period during which the petitioners were working as Administrators was not reckoned and they have been made liable along with the President and Secretary jointly and severally for the entire amount because, the surcharge proceedings initiated against the petitioners is confined only to the cheques which were issued to the alleged borrowers during the period when they were functioning as Administrators and it is not a general order governing the period during which the petitioners were not in office.

20.By referring to the report submitted under Section 81 of the Act, the learned Government Advocate submitted that it is clearly established that the petitioners had aided the President and Secretary of the Society in mis-appropriating the loans sanctioned to the members by fabricating the loan applications with forged signatures and therefore, the inquiry officer recommended action under Section 87 of the Act. The second respondent conducted a full-fledged inquiry under section 87 of the Act and passed the order of surcharge. It is further submitted that the petitioners have received the copy of the inquiry report under Section 81 of the Act on 11.07.2011 and perused all the relevant records on 04.08.2011 in the office of the second respondent and after availing the opportunity provided, they submitted their statement of defence on 09.10.2011. It is further submitted that it is incorrect to state that the petitioners were not afforded opportunity to cross examine. In fact, it was at the discretion of the petitioners. However, the petitioners did not choose to cross examine any of the witnesses. The second respondent clearly recorded a finding that the petitioners were wilfully negligent and caused loss to the Society in the matter of sanction of loans by using forged and fabricated documents. Thus, the order of surcharge was based on documentary evident as well as oral evidence from the affected individuals. The loans which were sanctioned did not reach the hands of the members and in the account of the members, adjustment entries were made as loans recovered from the members and the said misappropriated amount was debited under suspense assets. Further, the petitioners are wilfully negligent in the discharge of their duties as Administrators without reporting the forgery committed by the President and Secretary of the Society. Despite full and effective opportunity granted to the petitioners, they were unable to establish their innocence, nor dislodge the oral and documentary evidence placed before the authority.

21.The contention raised by the petitioners that the Secretary of the Society admitted full responsibility can be no ground to exonerate the petitioners especially when, it was clearly established that the petitioners were wilfully negligent in the discharge of their duties as Administrators. The rate of interest at 18% cannot be stated to be usurious and it has been levied taking into consideration all the expenses which had to be incurred by the Society.

22.With regard to the case of Mr.S.Karunakaran, the learned Government Advocate submitted that the petitioner is responsible for failing to detect the false membership documents and did not even conduct a test check, which clearly shows that he is wilfully negligent in the discharge of his duties as Administrator. Further, it is submitted that though the cheques were crossed cheques, it was issued to a person who was not a member of the first respondent-Society. Further, it is reiterated that the petitioner was given full opportunity to examine the documents during the inquiry proceedings under Section 81 of the Act and the surcharge proceedings were conducted strictly in accordance with Section 87(i) of the Act and there is no irregularity in the procedure adopted. On the above grounds, the learned Government Advocate sought to sustain the impugned orders.

23.Heard the learned counsels for the parties and perused the materials placed on record.

24.Before this Court proceeds to test the correctness of the submissions made on either side, it is to be pointed out that the impugned orders have been passed by a Tribunal constituted under the provisions of the Tamil Nadu Co-operative Societies Act, 1983. In the recent decision of the Hon'ble First Bench of this Court, the Court considered as to whether the challenge to an order passed by a Tribunal should be treated as a writ petition under Article 226 of the Constitution of India or 227 of the Constitution. This question was answered by the Hon'ble First Bench 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.

25.By applying the above decision to the case on hand, the present proceedings have to be treated as one under Article 227 of the Constitution of India and not under Article 226, though it has been numbered as a writ petition. Having held so, the Court proceeds to examine the contentions raised.

26.Before going into the factual thicket, this Court has to remind itself as to its scope of interference in orders passed by the Tribunal. Admittedly, the Court cannot test the correctness of the orders passed by the Tribunal as if it is an appellate court over the decision of the Tribunal. This Court is entitled to consider as to whether there was any error in the decision making process either at the level of the surcharge proceedings or before the Tribunal.

27.The next aspect that can be considered is whether the approach of the Tribunal suffers from perversity, whether no reasonable person could have come to the conclusion as arrived at by the Tribunal, re-appreciation of the evidence is impermissible. With the above caveat, we need to test the correctness of the submissions made on either side.

28.The first ground raised by the petitioners is that they were Administrators for a brief spell and could not have been made jointly and severally liable along with the President and Secretary of the Society under Section 87 of the Act. This argument does not merit consideration for the reason that as an Administrator of the Society, the petitioners are fully responsible for all transactions done by the Society. The petitioners cannot wriggle out by stating that it is the President of the Society who is responsible especially when, the President relinquished her office. Equally, the petitioners cannot state that Mr.Mohan, the Secretary of the Society accepted that he was fully responsible for all the transactions and that should be a ground to exonerate the petitioners. A mere concession or an admission by the said Mr.Mohan can in no manner improve the case of the petitioners.

29.As stated by the second respondent in the counter affidavit, the petitioners could not have relegated the verification process to the President of the Society who had subsequently relinquished office. The petitioners do admit that they had disbursed the cheques. Therefore, full responsibility lies with the petitioners. Though loan applications were received well before the date on which the petitioners were posted as Administrators, being an officer in the cadre of Co-operative Sub Registrar, duty is enjoined upon them to verify as to whether proper procedure was followed because disbursement of the loan is the most important aspect in such transaction. Equally, the petitioners cannot shift the blame on the approval granted by the Central Co-operative Bank. In any event, the approval granted by the Central Co-operative Bank is only with regard to the Society's eligibility to get the amount to be disbursed as loan and this is the reason why the amount is credited to the bank account of the first respondent-Society by the Central Co-operative Bank. Thus, there is a paramount duty cast upon the petitioners more particularly, the Administrators of the Society to ensure that the loan applications were properly submitted, the credentials of the members were genuine and only thereafter, the disbursal could be done. The role of the Administrator comes in only when the Board of Management of the Society is not in place. Therefore, the petitioners cannot wriggle out of their responsibility. Having held so, it has to be seen as to how the Tribunal dealt with the matter.

30.On a reading of the impugned orders, it is clearly established that the petitioners had full and effective opportunity before the Tribunal. Apart from that, even before the surcharge authority, the petitioners had full opportunity. The averment made in the counter affidavit filed by the second respondent in the writ petitions that the petitioners had perused all the relevant documents on 04.08.2011 and thereafter, submitted their statement of defence on 09.10.2011 was not denied by the petitioners. Further, the petitioners have not denied the specific averment of the second respondent in the counter affidavit that the petitioners did not choose to cross examine any witnesses.

31.On a reading of the surcharge order, it is evidently clear that the affected parties were examined and their statements are on record. These aspects have been rightly noted by the Tribunal. The Tribunal after going through the documents which were placed before it, found that in terms of the by-law 4(a) of the first respondent-Society, the ceiling limit for grant of loan is Rs.15,000/- and further found that loan applications of 29 persons were forged and fabricated. None of those 29 members were aware about the transaction which was happening in their names. While examining the correctness of the findings of the surcharge officer, the Tribunal pointed out that the members in whose names the loans were sanctioned, were already borrowers and the outstanding amounts were shown to have been repaid and the Tribunal examined by way of illustration a few cases to take note of the modus operandi adopted.

32.After considering the factual position, the Tribunal took note of Section 87 of the Act and held that it is on account of wilful negligence on the part of the petitioners, loss was caused to the first respondent-Society. Thereafter, the Tribunal has referred to the 'duties and responsibilities of the Special Officer' as enumerated under Section 88/89 of the Act and rightly held that after the petitioners have taken over charge as Administrators/Special Officers, they are fully responsible for any defalcation which occurs in the Society. Furthermore, the Tribunal pointed out that the petitioners were fully aware of all their responsibilities and in spite of the same, they were wilfully negligent in not verifying the documents before disbursing the loan.

33.This Court also perused the order passed by the surcharge authority dated 11.01.2012, which is a detailed and reasoned order. The surcharge authority has dealt with each of the items of loss caused to the Society, viz., item nos.1 to 4, 5(1), 5(2) and 5(3) and discussed the role of the petitioners. The period during which the petitioners had functioned as Administrators has been specifically taken into consideration and the discussion starts from page 34 of the surcharge order and pointed out as to how the petitioners are liable.

34.As mentioned earlier, this Court cannot examine the correctness of the order passed by the surcharge authority and that of the Tribunal as if it is a second appellate authority. The reasons assigned by the surcharge officer as well as the Tribunal are cogent, the manner in which the petitioners were wilfully negligent has been clearly brought out in both the orders. Thus, in the absence of any perversity in the approach of the surcharge authority or that of the Tribunal, this Court is not inclined to interfere with the impugned orders.

35.For all the above reasons, these writ petitions fail and they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

abr

To

1.The President,
The Vellore District Nutrition Employees
Child Welfare Organiser and Helpers
Cooperative Thrift and Credit Society Ltd.,
Now at,
9/8, Periyatheru (upstairs),
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2.The Deputy Registrar of Cooperative Societies,
Vadivel Nagar, Sainathapuram,
Vellore-1.

3.The Cooperative Tribunal/
Principal District Judge,
Vellore (Dt.).

+1cc to Ms.T.Girija, Advocate SR.5220
+2cc to Mr.P.Anbarasan, Advocate SR.4995
+1cc to Spl Government Pleader(CO-OP) SR.5308

Writ Petition Nos.440 & 1691 of 2015

RJI(CO)
CB(02/03/2020)