IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2020

Date of Reserving the Order	Date of Pronouncing the Order
27.01.2020	03.02.2020

Coram

The Hon'ble Mr.Justice T.S. SIVAGNANAM

W.P.Nos.28776/2016, 36740/2016,
7432/2017 and 7433/2017 and
W.M.P.Nos.24819 of 2016, 31579 & 31580 of 2017
in W.P.Nos.28779/2016 and 36740/2017

W.P.No.28776 of 2016

K.Venugopalan .. Petitioner

vs

1.The Deputy Registrar of Co-operative
Societies, Mannargudi, Thiruvarur District.

2.M.Parasuraman
3.T.Panneerselvam
4.B.Ravindran
5.G.Palaniyappan
6.V.Muthukumaran
7.G.Sivakurunathan
8.G.Shanmugam
9.K.Gunalan
10.M.Maniyan
11.S.Saroja
12.M.Premalatha

13.The Special Tribunal for Co-operative
Society Cases (District and Sessions Court),
Thiruvarur.

14.The Management,
T.816, Tiruthuraipoondi Agricultural Producers
Co-operative Marketing Society,
Rep. by its Managing Director,
Thiruthuraipoondi. .. Respondents

[R14 impleaded as per order dated 04.04.2017
in W.M.P.No.34304 of 2016]

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the entire records pertaining to the order made in Co-operative C.M.A.No.8 of 2008 dated 04.04.2016 passed by the 13th respondent in so far as concerning the charges 1 to 12 framed against the petitioner and to quash the same.

For Petitioner	:	Mr.R.Viduthalai Senior Counsel for Mr.L.N.Praphasham
For Respondents		
R1 & R13	:	Mr.C.K.Chandrasekar
R3	:	Mr.Veerakathiravan Senior Counsel for M/s.S.Suriya
R14	:	Mr.L.P.Shanmugasundaram Special Government Pleader
R2, R4 to R6, R9 & R10	:	No appearance

W.P.No.36740 of 2016

T.Panneerselvam .. Petitioner

vs

1.The Deputy Registrar of Cooperative Societies,
Mannarkudi Region, Tiruvarur District.

2.The Special Officer,
Thiruthuraipoondi Agricultural Producers
Cooperative Marketing Society T.816,
Thiruthuraipoondi, Tiruvarur District. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari, calling for the records relating to the impugned surcharge order made in Na.Ka.No.691/2000/Sa.Pa. Dated 28.12.2005 passed by the first respondent confirmed in the order dated 04.04.2016 made in Co-op. C.M.A.No.35 of 2008 passed by the learned Special Tribunal for Cooperative Cases/Principal District Court, Tiruvarur, quash the same.

For Petitioner : Mr.Veerakathiravan
Senior Counsel for M/s.S.Suriya

For Respondents
R1 : M/s.T.Girija
Additional Government Pleader
R2 : Mr.L.P.Shanmugasundaram
Special Government Pleader

W.P.No.7432 of 2017

1.The Special Officer (now The Managing Director)
Thiruthuraipoondi Agricultural Producers
Co-operative Marketing Society T.816 Bank Ltd.,
Thiruthuraipoondi, Tiruvarur District.

2.The Deputy Registrar of Co-operative Societies,
Mannarkudi Circle,
Tiruvarur District. .. Petitioners

vs

1.T.Panneerselvam

2.The Presiding Officer,
Principal District & Sessions Judge,
Thiruvarur. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the second respondent in his order in Co-operative Principal District Judge/ Co-operative Tribunal, Thiruvarur, dated 04.04.2016 in C.M.A.No.35 of 2008 and quashed the same and consequently permit the petitioner to proceed with the recovery and the loss sustained to the society.

For Petitioner : Mr.L.P.Shanmugasundaram
Special Government Pleader

For Respondents
R1 : Mr.Veerakathiravan
Senior Counsel for M/s.S.Suriya
R2 : Court

W.P.No.7433 of 2017

1.The Special Officer (now The Managing Director)
Thiruthuraipoondi Agricultural Producers
Co-operative Marketing Society T.816 Bank Ltd.,
Thiruthuraipoondi, Tiruvarur District.

2.The Deputy Registrar of Co-operative Societies,
Mannarkudi Circle,
Tiruvarur District. .. Petitioners

vs

1.K.Venugopalan

2.The Presiding Officer,
Principal District & Sessions Judge,
Thiruvarur. .. Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records of the second respondent in his order in Co-operative Principal District Judge/ Co-operative Tribunal, Thiruvarur, dated 04.04.2016 in C.M.A.No.8 of 2008 and quashed the same and consequently permit the petitioner to proceed with the recovery and the loss sustained to the society.

For Petitioner : Mr.L.P.Shanmugasundaram
Special Government Pleader

For Respondents
R1 : Mr.R.Viduthalai
Senior Counsel
for Mr.L.N.Praghasham
R2 : Court

COMMON ORDER

All the four writ petitions have been filed challenging the order passed by the Principal District Court/Co-operative Tribunal, Tiruvarur in C.M.A.No.8 of 2008 and C.M.A.No.35 of 2008.

2.The petitioner in W.P.No.28776 of 2016 is one Mr.K.Venugopalan, who was the Manager/Secretary of the respondent Co-operative Society who has since been dismissed from service. The petitioner in W.P.No.36740 of 2016 is Mr.T.Panneerselvam, the Managing Director of the Society against whom disciplinary action was initiated culminating in a punishment of stoppage of one increment for five years without cumulative effect. W.P.Nos.7432 and 7433 of 2017 have been filed by the Special Officer/Managing Director of Thiruthuraipoondi Agricultural Producers Co-operative Marketing Society, in which the writ petitioners were working as Manager and Managing Director respectively.

3.The reason for filing four writ petitions is because the Managing Director and the Manager are aggrieved by the order passed by the Tribunal in not completely exonerating them from the surcharge proceedings initiated under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 [for brevity "the Act"]. Totally 18 charges were framed against the writ petitioners, of which, against the Managing Director, the Tribunal exonerated him of charges 13 to 17 and for the Manager, exonerated of charges 13 to 18. The writ petitioners are aggrieved with regard to the findings recorded by the Tribunal with regard to the other charges. The Co-operative Society is also before this Court challenging the order of the Tribunal as against the findings recorded by the Tribunal exonerating the Managing Director and the Manager of charges 13 to 17 and 13 to 18 respectively. Therefore, if a result is arrived at in W.P.Nos.7432 and 7433 of 2017, it will give a quietus to the matter as the Society seeks to sustain the surcharge order in its entirety. However, the Court heard the arguments of the learned Senior Counsels for the petitioners and thereafter, the learned counsel for the Co-operative Society and would take note of the arguments in such seriatum.

4.Mr.R.Viduthalai, learned senior counsel appearing for the petitioner Mr.K.Venugopalan, the Manager, submitted that the order of surcharge contained 18 charges of which except charge No.11, 17 charges were held to be proved against the petitioner and he was made jointly and severally liable along with the Managing Director, President and the Board of Directors of the

Society and the total surcharge amount recoverable determined at Rs.23,40,000/-. It is submitted that the Tribunal confirmed the findings of the surcharge authority in so far as it relates to charges 1 to 10 and 12 to the tune of Rs.22,90,000/-. The Tribunal granted relief to the petitioner by exonerating him of charges 13 to 18 and if these are reckoned, then the approximate amount to be recovered will be Rs.6,34,000/-. It is further submitted that only as against the petitioner Mr.K.Venugopalan, criminal prosecution was initiated in C.C.Nos.58 to 62 of 2002 and except in one case, where the petitioner was let of under the Probation of Offenders Act, in other cases he was acquitted and the allegation against the petitioner in the criminal case is identical to that of the allegation in the surcharge proceedings and the finding rendered by the Criminal Court should be given due regard and if the same is done, the total liability to be fastened will be reduced to about Rs.4,00,000/- and if the petitioner is jointly and severally liable, the amount recoverable from the petitioner will be meagre. It is further submitted that the language of Section 87 of the Act clearly indicates that it is compensatory in nature and it is relatable to the loss caused to the Society. If that is the phraseology of the statutory provision, then the surcharge authority should determine the degree of liability of each person who has been charged, however, in the instant case, the same was not done. It is further argued that the liability of the Manager/Secretary of a Society cannot be to the tune of the liability that has to be fixed on the Managing Director of the Society. So therefore, the surcharge authority should pin the liability of each and every charge specifically. However, the surcharge authority failed to do so and though the Tribunal granted partial relief to the petitioner, it failed to take note of this vital aspect while confirming the findings with regard to charges 1 to 10 and 12. Further, it is submitted that once the surcharge authority holds that the liability is joint and several, then the Doctrine of Proportionality has to be applied and there cannot be equal liability to that of the Managing Director of the Society, Mr.T.Panneerselvam.

5.The learned counsel had referred to the findings rendered by the Tribunal to demonstrate that the Tribunal failed to take into consideration that it is the Managing Director, who is the Chief Executive of the Society who has to be held responsible, however, the learned senior counsel very fairly submitted that he is not venturing into the factual details as this Court will not re-appreciate the evidence which was placed before the lower authorities/Tribunal. However, it is submitted that the endeavour is to point out that the findings are erroneous. Further the learned counsel referred to the judgments of the

Judicial Magistrate Court, Thiruthuraipoondi in C.C.Nos.58 to 62 of 2002 dated 18.12.2009 to substantiate his arguments that the very same allegation was decided by the Criminal Court and the petitioner has been acquitted and the benefit of the said judgment should be made applicable to the surcharge proceedings. To support such a contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in the case of Capt.M.Paul Anthony vs. Bharat Gold Mines Ltd. and another [(1999) 3 SCC 679] and the decision of the Hon'ble Supreme Court in the case of The Managing Director, State Bank of Hyderabad and another vs. P.Kata Rao [(2008) 15 SCC 657]. Further, it is submitted that the petitioner is aged about 75 years and considering all these, the Court may sustain the order passed by the Tribunal in so far as it exonerates the petitioner and set aside the findings of the Tribunal in so far as it is not exonerated the petitioner.

6.Mr.Veerakathiravan, learned senior counsel appearing for the Managing Director, Mr.T.Panneerselvam, submitted that the duties and responsibilities of a Managing Director are only supervisory and the entire responsibility with regard to affairs of the Society was that Mr.K.Venugopalan, the Secretary/Manager of the Society. Furthermore, the President and the elected Board of the Society are also responsible. It is further submitted that the basis of the surcharge proceedings is the inquiry under Section 81 of the Act, in which the allegation against the petitioner is lack of supervision. There is no allegation of collusion with the Manager, misappropriation, fraud, etc. the learned counsel referred to the particulars of the cases which have been presented before this Court in a tabulated form. The endeavour of the learned senior counsel is to demonstrate that there is no allegation of any defalcation by the petitioner and all pertain to lack of supervision which cannot lead to recovery of any money from the petitioner. Further, it is submitted that it is the petitioner who had taken action against the Manager for the defalcation committed by him, suspended him from service, attached his properties and the petitioner cannot penalised for having taking action to safeguard the interest of the Society. Further, by referring to each of the 18 charges, the learned senior counsel reiterated that those charges cannot be a ground to conclude that there was lack of supervision when all steps were taken by the petitioner. In this regard, the learned counsel referred to Section 87 of the Act to impress upon this Court that there should have been entrustment on the petitioner to make him liable for the alleged loss to the Society. It is further submitted that for the charge of lack of supervision departmental action was initiated which has culminated in the order of punishment of stoppage of one increment for five years without cumulative effect and the petitioner has suffered a monetary loss of more than Rs.4 lakhs. Further, it is submitted that the order under Section 87 of the Act cannot travel beyond the report submitted under Section 81 of the Act as the surcharge order in its preamble itself states that it is based on the inquiry conducted under Section 81 of the Act. Further, it is submitted that the petitioner was allowed to retire subject to the outcome of the writ petition and the surcharge proceedings and the retirement benefits have not been paid to the petitioner. In support of his contentions, the learned senior counsel placed reliance on the following judgments, namely, P.Karuppiah vs. The Deputy Registrar of Co-operative Societies, Periyakulam [(1989) Writ.L.R. 272], M.Sambandam vs. The Deputy Registrar (Credit) [(1999) 3 MLJ 310, Gabriel vs. The Deputy Registrar (Housing), Cuddalore and another [(2003) 3 CTC 23], K.Krishnan vs. Deputy Registrar of Co-operative Societies, Thiruvallur District and others [(2012) 4 MLJ 201], S.Ramadevi vs. The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District and others [(2016) 4 LW 452] and D.Ganesan vs. Commissioner of Sugar and others [(2019) 5 CTC 549].

7.Mr.C.K.Chandrasekar, learned counsel appearing for the Special Officer of the Society submitted that Section 87 of the Act is very widely couched and would bring within its fold all factors and this is evident by a mere reading of the said provision. The Managing Director entrusted with the management of the Society and he is the top most official of the Society and cannot plead that he had no role and his role was limited only to supervisory function. In so far as the arguments made on behalf of the petitioner Mr.K.Venugopalan, it is submitted that the decision in the case of Capt. M.Paul Anthony cannot be applied to the petitioner's case in the light of Sub-section (4) of Section 87 of the Act which states that Section 87 shall apply not withstanding that such person or officer or servant may have incurred criminal liability by his Act. Therefore, the acquittal in the criminal case can have no impact against the surcharge proceedings. Referring to Rule 146 of the Tamil Nadu Co-operative Societies Rules, 1988 [for brevity "the Rules"], it is submitted that the Managing Director is the Chief Executive Officer of the Society and he is fully responsible for all the defalcation and reference to the bye laws of the Society can in no manner advance the case of the Managing Director since Rules clearly state his role in the management of the Society. It is submitted that the purpose of initiating surcharge proceedings is for the recovery of the loss caused to the Society. Further commenting upon the findings rendered by the Tribunal, it is submitted that the Tribunal while exonerating the petitioners of the charges states that holding them guilty is unjustified, however, the Tribunal has not assigned any reasons for reversing the findings of the surcharge authority. There is no finding as to how the action is unjustified. There is no reference to any of the documents which were part of the inquiry proceedings or the surcharge proceedings. There is no reference to any evidence yet the Tribunal has set aside the findings. It is further submitted that the decisions relied on by the petitioners cannot be applied to the facts of the present case as in those cases, the Court came to the conclusion that no finding of wilful neglect was recorded against those petitioners by the Surcharge Officer and therefore the Court interfered with the order, whereas, in the instant case, clear finding has been recorded by the Surcharge Officer and the Tribunal did not assign any reason to reverse such finding of fact.

8.Mr.L.P.Shanmugasundaram and M/s.T.Girija, learned counsels for the second writ petitioner, namely, the Deputy Registrar of Co-operative Societies, Mannargudi Circle, while adopting the argument of Mr.C.K.Chandrasekar, would submit that the petitioner Society was a very successful marketing society and because of all the defalcations committed, the Society has lost its income and the present situation, the Society is struggling to survive.

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

10.All the four writ petitions have been filed under Article 226 of the Constitution of India. In several cases, civil revision petitions are filed under Article 227 of the Constitution of India questioning the correctness of the findings of the Co-operative Tribunal/Principal District Court. The question arose as to whether the challenge to the orders passed by the Tribunals which have been conferred appellate powers under special statute should be treated as a petition under Article 226 or Article 227 of the Constitution of India. The Hon'ble First Bench of this Court in the case of E.S.Sundara Mahalingam vs. Special Tribunal for Co-operative Cases and others in W.A.No.4021 of 2019, dated 22.11.2019 considered this issue. The said appeal arose out of an order passed in a writ petition challenging the order of the Special Tribunal for Co-operative Cases headed by the learned District Judge in exercise of powers under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983. When the appeal was listed for maintainability, the Hon'ble First Bench held that even though the petition may have been captioned as a petition under Article 226 of the Constitution of India praying for Writ of Certiorari, yet a writ petition, if questioning the order of Tribunal arising out of the proceedings under a State Act would be entertainable under Article 227 of the Constitution of India.

11.Further, the Hon'ble First Bench held that in the given circumstances, if the writ petition would be maintainable under Article 227 of the Constitution of India, then the writ appeal against the same under Letters Patent would not be entertained by a Division Bench. On this prima facie finding, the parties were given liberty to argue the matter. After referring to the decision of the Division Bench of the Patna High Court in the case of Vijayanand Puri vs. Deorani Devi and another, reported in 2019 SCC OnLine Patna 1808, whereunder the judgment of the Hon'ble Supreme Court in the case of Rupa Ashok Hurrah vs. Ashok Hurra, (2002) 4 SCC 388 and the view taken in Surya Dev Rai vs. Ram Chander Rai, (2003) 6 SCC 675, that was later on overruled in the decision of Radhey Shyam vs. Chhabi Nath, (2015) 5 SCC 423, it was held that the jurisdiction of this Court while testing the correctness of an order passed by a Special Tribunal chaired by a learned District Judge could be exercised under Article 227 and the petition could have been treated to be that under Article 227 only. Accordingly, in the said case, the writ appeal was held to be not maintainable.

12.In the light of the above decision, though all the writ petitions have been filed under Article 226 of the Constitution of India, they are entertained and are held to be petitions under Article 227 of the Constitution of India. The resultant position would be any one of the party who is aggrieved by this order cannot maintain an intra Court appeal before this Court. With this preliminary finding, the Court proceeds to examine the rival contentions.

13.Before we go into the facts of the case, we need to take note of Section 87 of the Act which deals with surcharge. The said provision reads as follows:

> 87.Surcharge.- (1) 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 organization or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach

of trust or wilful negligence or has made any payment which is not in accordance with this Act, the rules or the by-laws the Registrar himself or any person specially authorized by him in this behalf, of his own motion or on the application of the board, liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at any such rate as the Registrar or the person authorized as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not accordance with this Act, the rules or the by-laws as the Registrar or the person authorized as aforesaid thinks just.

Provided that no action shall be commenced under this sub-section after the expiry of seven years from the date of any act or omission referred to in this sub-section:

Provided further that the action commenced under this sub-section shall be completed within a period of six months from the date of such commencement or such further period or periods as a the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate.

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if it were an arrear of land revenue and for the purpose of such recovery, the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act.

(4) The Registrar or the person authorized by him, shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any count or office;

(e) issuing commission for examining of witnesses.

14.Surcharge is initiated for recovery of loss caused to the Society. The proceedings can be initiated pursuant to action taken under five modes, namely, in the course of an audit under Section 80 or an inquiry under Section 81 or an inspection and investigation under Section 82 or inspection of books under Section 83 or winding up of the Society. In the cases on hand, surcharge proceedings were initiated pursuant to an inquiry under Section 81 of the Act. This inquiry is conducted by an officer in the rank of Co-operative Sub-Registrar. Notice of inquiry is given to the writ petitioners, an opportunity is given to them to explain and the officer records his findings and submits an inquiry report. Based on the inquiry report, the Surcharge Officer takes up the matter, considers the facts and frames the charge. Thus the report under Section 81 of the Act is in the nature of preliminary report and it cannot be said that the Surcharge Officer cannot travel beyond the report as it is in the nature of a first information and it is the Surcharge Officer who will have to consider all aspects and frame the surcharge proceedings which is akin to framing a charge sheet or charge memo. Therefore, the learned senior counsel appearing for the petitioner is not well justified in contending that the Surcharge Officer cannot go beyond the report under Section 81 of the Act. In other words, the Inquiring Officer submits a report of his inquiry and from the inquiry report, charges have to be framed. Therefore, the Inquiry Officer cannot put fetters on the charge framing authority stating that he has to be guided only based on the opinion recorded by the Inquiring Officer.

15.Admittedly, 18 charges were framed against the petitioner, K.Venugopalan. The surcharge authority has given elaborate reasons to come to a conclusion that both writ petitioners, i.e. Managing Director and the Secretary/Manager of the Society are liable to compensate the Society for the loss caused. The argument of the Manager is that the Managing Director is fully responsible and he is only a Manager of the Society and therefore, he cannot be held liable jointly and severally with that of the Managing Director or the President or the elected Board of Directors of the Society. The argument of the learned senior counsel is that Section 87 is a provision which is compensatory in nature as it is relatable to the loss caused to the Society and the degree of liability has to be determined and it cannot be equal to all categories of officers and staff of the Society. Arising out of this submission, it is stated that Doctrine of Proportionality has to be applied. The learned senior counsel for the Managing Director would contend that the role of the Managing Director is only supervisory and for lack of supervision, departmental proceedings were initiated for the same set of allegations and the Managing Director has been punished and for the same set of allegation, recovery cannot be made by initiating proceedings under Section 87 of the Act.

16.It was contended by the learned senior counsel for the Manager that criminal prosecution was initiated against the Manager and the same ended in acquittal and it is on the same set of facts and the same evidence which is sought to be used for recovering loss caused to the Society by initiating action under Section 87 of the Act. This according to the learned senior counsel is unfair and to buttress the submission, reliance was placed on the decision in the case of Capt.M.Paul Anthony and P.Kata Rao. In the considered view of this Court, the decisions cannot be applied to a surcharge proceedings initiated under the Act because of sub-section (3) of Section 87 of the Act which states that surcharge proceedings shall apply not withstanding the person or officer or servant may have incurred criminal liability by his act. In fact the petitioner pleads that criminal prosecution was initiated against him and he was acquitted of the criminal charge and therefore, it should have a bearing on the surcharge proceedings. This argument cannot be countenanced in the light of the plain language of sub-section (3) of Section 87 of the Act and the proceedings under Section 87 of the Act is a separate and independent proceedings and the result in criminal proceedings can have absolutely no impact to the surcharge proceedings and the decisions of the Hon'ble Apex Court cannot be applied to the facts of this case.

17.The arguments of the learned senior counsel for the Managing Director is largely based on the duties and the responsibilities entrusted to him, it is contended that the

Managing Director has only supervisory control over the Society and for lack of supervision, he has been proceeded departmentally and has also been punished with stoppage of increment for five years without cumulative effect. Rule 146 of the Rules deals with powers and functions of the Managing Director or the Chief Executive Officer and the said provision reads as follows:

> "146. Powers and functions of Managing Director or the Chief Executive Officer.__ (1) The Managing Director or the Chief Executive Officer shall be the Chief Executive of the society. He shall carry into effect the resolutions of the board which are in accordance with the Act, these rules and the by-laws and which are not against the interest of the society. He shall refer all other resolutions with details as to how, in his opinion, they are not in accordance with the Act, these rules or the by-laws or are against the interest of the society, to the Government in the case of an apex society and to the Registrar in the case of any other society.
>
> (2) The Managing Director or the Chief Executive Officer shall have an overall control of the day-to-day administration of the society and all correspondence shall be conducted by him.
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> (3) The Managing Director or the Chief Executive Officer may, with the approval of the board, institute or defend any suit or other legal proceedings on behalf of the society.
>
> (4) (a) The Managing Director or the Chief Executive Officer shall have power to operate the accounts of the society, to endorse and transfer promissory notes, Government and other securities held by the society and to sign, endorse and negotiate cheques and other negotiable instruments, bonds (except bonds for moneys borrowed), receipts and all accounts and other documents connected with the business of the said society for and on behalf of the said society.
>
> (b) The Managing Director or the Chief Executive Officer shall have power to make arrangements for the proper maintenance of accounts and the custody of cash and other properties of the society.
>
> (5) The Managing Director or the Chief Executive Officer shall have the right to inspect the societies, which are members of, and have received financial assistance from the society and shall have the power to call for any records of,

inspect the works financed by the society, and verify securities ,cash and accounts relating to, such member society.

(6) It shall be the duty of the Managing Director or the Chief Executive Officer to carry on the business of the society in accordance with the Act, these rules, the by-laws and the regulations, if any, framed by the board and approved by the Registrar. 165

(7) (a) Subject to the provisions in sections 73 to 77 and these rules, the Managing Director or the Chief Executive Officer shall be the authority competent

(i) to make appointments of the members of the establishment other than paid officers in accordance with the strength of each category and scales of pay prescribed in the special by-law covering the service conditions of the employees of the society concerned ;

(ii) to transfer all the members of the establishment;

(iii) to grant leave of all kinds to all the members of the establishment;

(iv) toaward any punishment on any member of the establishment as specified in the rules.

(b) Appeals against the orders under sub-clause (iv) of clause (a) above shall lie to such authority as prescribed in the special by-law covering the service conditions of the employees of the society concerned.

(8)The Managing Director or the Chief Executive Officer shall exercise such other powers as may be delegated to him by the board.

(9) The Managing Director or the Chief Executive Officer may, by order in writing, delegate any of his functions to any officer or servant of the society. He may, at any time, withdraw the functions delegated by him. The exercise or discharge of any function so delegated shall be subject to such restrictions, limitations and conditions as may be laid down by the Managing Director and shall also be subject to his control and revision. All such delegations of functions of Managing Director shall be placed before the board for its information."

18.In terms of the above Rule, the Managing Director is to carry into effect the resolutions of the Board which are in accordance with the Act, the Rules and the by-laws and which are not against the interest of the Society. He shall refer all other resolutions with details as to how in his opinion they are not in accordance with the Act or the Rules or by-laws are against the interest of the Society, to the Government in the case of an apex society and to the Registrar in the case of any other society. The overall control of the day-to-day administration of the society and all correspondence shall be conducted by him. With the approval of the Board, the Managing Director shall institute or defend any suit or legal proceedings on behalf of the society. He shall have power to operate accounts of the society, endorse and transfer promissory note, other securities, negotiable instruments, etc.; shall have power to make arrangements for proper maintenance of accounts, custody of cash and the properties of the Society and such other matters. Thus, a reading of Rule 146 would clearly show that the Managing Director who is the Chief Executive Officer of the Society and it cannot be stated that his role is only supervisory. That apart, the fact that the Managing Director faced a departmental proceedings for the very same 18 charges which ended in order of punishment which has become final will go to establish that he is guilty of the charges. The resultant position would be loss caused to the Society needs to be recovered from him. As mentioned earlier, surcharge authority has clearly fixed responsibility and rendered a finding as regards the liability of the officers of the Society as well as the President and elected Board of Directors who have not challenged the proceedings and accepted the surcharge order. To upset the finding rendered by the Surcharge Officer, the Tribunal should have material and should record reasons.

19.Mr.C.K.Chandrasekar, learned counsel has drawn the attention of this Court to the findings of the Tribunal in so far as it relates to Charges 13 to 18. to say the least, there is absolutely no reasons recorded by the Tribunal as to why the liability was erroneously fixed on the petitioners. If according to the Tribunal, liability cannot be fastened on the petitioner, then an endeavour should have been made by the Tribunal to discuss the evidence which was available before the Surcharge Officer then recorded a finding as to how the Surcharge Officer committed an error in fixing the liability. No such exercise has been done by the Tribunal and the finding is devoid of reasons and therefore, perversity is writ large on the face of the impugned orders. If that is so, the arms of this Court under Article 227 of the Constitution of India are long enough to strike down an order which is devoid of reasons and suffers from error apparent on the face of the order and when the findings are perverse. It was argued that the liability of each of the officer has to be separately fixed and the Doctrine of Proportionality will apply. The case on hand is a case where there has been defalcation in the manner in which the affairs of the Society have been managed causing deficiency in the assets of the Society which is evident from the findings rendered by the Surcharge authority in respect of charges where the Tribunal exonerated the petitioners. The question is whether there was breach of trust or wilful negligence. However, those two alone are not the ingredients because any payment made not in accordance with the Act, Rules and the by-laws also expose the Officer or employee of the Society to proceedings under Section 87 of the Act. The factual statement recorded by the Surcharge Officer clearly shows wilful negligence not only on the part of the Managing Direct as well as the Manager. Both of them cannot escape by blaming each other. If according to the Manager, what was ordered by the Managing Director is illegal against the interest of the Society would tantamount to breach of trust in relation to the Society, he ought to have refused to obey such directions or take forward such direction by affixing his seal and signature. Therefore, the Manager also becomes culpable. If according to the Managing Director all responsibility lies with the Manager, he ought not to have exercised his power and if done so, he becomes jointly liable. On the other hand, if the Managing Director failed to supervise or failed to carry out his duties and responsibilities as adumbrated under Rule 146 of the Rules, automatically it will be a case of wilful negligence. Thus the attempt of the petitioners to pass the buck between themselves has to necessarily fail. As mentioned earlier, the Tribunal has exonerated the petitioners from certain charges holding that it is not justified. It is not sufficient for the Tribunal to hold that the charge is not justified but if it comes to such a conclusion, the Tribunal is enjoined with the duty to record reasons as to how the finding is not justified. This Court finds that the impugned order is devoid of any reasons and therefore, to be held to be perverse.

20.It was argued that the learned senior counsel appearing for the Managing Director that in respect of Charge No.17, the irregularity was that liquor was sold by the Society at a lower price, i.e. below the margin rate of 20% contrary to the rate fixed by the Rate Fixation Committee. The petitioners' explanation is that the Society earned profit of more than Rs.8 lakhs though had sold the liquor bottles with the margin rate of about 14%. Therefore, it is submitted that this alleged loss is in the nature of a notional loss and that cannot be a reason to initiate surcharge proceedings against the petitioners. The argument does not merit acceptance because if the Rate Fixation

Committee has fixed the margin rate of profit at 20%, none had jurisdiction to sell it at a reduced profit rate stating that the Society yet earned a profit of more than Rs.8 lakhs, is no explanation. The finding of the Surcharge Officer is that there is no record to show that the liquor was sold at a lesser profit margin, i.e. 14%. In fact the Tribunal also notes that yet the Tribunal in a perverse manner holds that the charge is unjustified against the petitioners. Therefore, the conclusion of the Surcharge Officer is that a case has been set up as if the Society sold the liquor bottles at 14% margin/profit as against 20% and yet made a profit. The petitioners, the President of the Society and the Board of Directors have been held to be jointly and severally liable. The argument of the learned senior counsel that Doctrine of Proportionality has to be fixed and each persons liability has to be pin pointed. The case on hand is a classical case where each of the person involved have abetted and have been a party to the defalcation. When it comes to recovery of loss caused to the Society, there can be no room to apply to the Doctrine of Proportionality. All persons are to be treated on the same pedestal and merely because a person was a Manager or Secretary of the Society or a Managing Director or a Board of Director different yardstick cannot be applied. However, there may be a different category of cases where Class IV employees may also be involved and the authority or the Tribunal on examination of the facts may come to the conclusion that the liability to be fastened on such Class IV employees should be either minimal or he should not be fastened with any liability, whereas in the cases on hand pertain to the Chief Executive Officer of the Society and the Secretary of the Society, both of whom are Government Officers posted to the Society to safe guard the interest of the Society and any misdemeanor on their part cannot be taken lightly and the question of applying the Doctrine of Proportionality to the cases on hand would not arise. Thus, in the considered view of this Court, the Tribunal was not justified in exonerating the petitioners from the charges mentioned above.

21.In the result, W.P.Nos.7432 and 7433 of 2017 are allowed as prayed for and the order passed by the Tribunal are set aside and the order passed by the surcharge authority is restored. Consequently, W.P.Nos.28776 and 36740 of 2016 are dismissed. Connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The Deputy Registrar of Co-operative
Societies, Mannargudi,
Thiruvarur District.

2.The Special Tribunal for Co-operative
Society Cases (District and Sessions Court),
Thiruvarur.

3.The Management,
T.816, Tiruthuraipoondi Agricultural Producers
Co-operative Marketing Society,
Rep. by its Managing Director,
Thiruthuraipoondi.

4.The Special Officer,
Thiruthuraipoondi Agricultural Producers
Cooperative Marketing Society T.816,
Thiruthuraipoondi, Tiruvarur District.

+1 cc to Mr.G.Mutharasu Advocate sr8005
+4 cc to Mr.L.P.Shanmugasundaram Advocate sr8431,8432,
8433,8434
+2 cc to Mr.S.Vinod Advocate sr8200,8201
+1 cc to the Government Pleader 9019,9020,9021,9022

W.P.Nos.28776/2016, 36740/2016,
7432/2017 and 7433/2017

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