



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.21551 of 2008 and
M.P.No.1 of 2008

The Special Officer,
DD 158, T.N.S.T.C. Employees,
Co-operative Thrift & Credit Society,
Dharmapuri.

... Petitioner

Vs.

1.The Presiding Officer,
The Tribunal for Co-operative Cases,
Krishnagiri.

2.M.Raman

3.The Deputy Registrar Co-operative Societies,
Dharmapuri Region, Dharmapuri.

4.R.Ramalingam

... Respondents

Prayer: Writ petition filed under Section 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in C.M.A.No.(C.S.No).37 of 2007 dated 27.04.2007, quash the same as illegal and contrary to law and consequently direct the 2nd respondent to pay the surcharge amount as directed in and by the order passed by the 3rd respondent his Pro.Na.Ka.No.5399/04/Sa.Pa.2 dated 12.09.2005 and pass orders.

For Petitioner : Mr.D.Baskar

For Respondents : R1-Tribunal

Mr.S.Seralathan for R2
Mr.S.Arumugam for R3
Government Advocate
No appearance for R4



ORDER

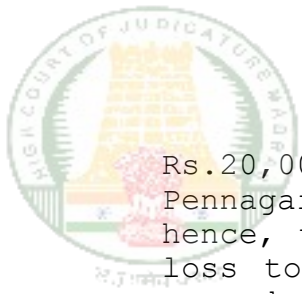
This writ petition has been filed seeking to issue Certiorari Mandamus to quash Writ of Certiorarified Mandamus, to quash the impugned order passed by the 1st respondent in C.M.A.No.(C.S.No).37 of 2007 dated 27.04.2007 and consequently direct the 2nd respondent to pay the surcharge amount as directed in and by the order passed by the 3rd respondent his Pro.Na.Ka.No.5399/04/Sa.Pa.2 dated 12.09.2005 and pass orders.

2. The brief case of the petitioner is as follows:

The petitioner herein is the TNSTC Employees' Cooperative Thrift and Credit Society. The second respondent is a Secretary; and the fourth respondent was the then Special Officer of the petitioner Society. The third respondent, vide order dated 12.01.2004, has ordered for inspection of the society under Section 82 of the Tamil Nadu Cooperative Societies Act. While inspection it was found that the second respondent along with the fourth respondent have committed financial irregularities in making deposits in another Cooperative Society, contrary to the Societies Act, Rules, Bye laws and the circular of the Cooporative Society and caused financial loss to the tune of Rs.20,00,000/- to the society. Hence, the Inspecting Officer submitted his report dated 23.04.2004 and based on that, surcharge proceedings was initiated vide order dated 13.06.2005 by issuing show cause notice to the second and fourth respondents. The second respondent submitted his explanation, denying the charges. Subsequently, after giving due opportunities, enquiry was conducted and the third respondent passed order, dated 12.09.2004, directing the second and fourth respondent to pay jointly the loss of Rs.20,00,000/- with interest a 18% p.a.

2.1. Against the order passed by the third respondent, the second respondent filed an appeal before the first respondent in CMA No37 of 2005 and the same was allowed on 27.04.2007. Hence, this writ petition has been filed by the TNSTC Employees' Co-operative Thrift and Credit Society to quash the above said order passed by the first respondent and consequently direct the second respondent to pay the surcharge amount, as ordered by the third respondent.

3. The learned counsel appearing for the petitioner submitted that when the appeal was came up before the Tribunal, the counsel for the petitioner did not appear. However, the Tribunal has passed the order, allowing the appeal, based on the grounds and the submissions made by the counsel for the second respondent herein. He further submitted that, in the above said impugned order, there is no discussion with regard to the fact that there is a violation of instructions given by the second and fourth respondent herein. The above said amount of



Rs.20,00,000/- was deposited before 165, Cooperative Society, Pennagaram, without obtaining permission from the Department and hence, the act of the second and fourth respondent would cause a loss to the society. Further, there is no explanation from the second and fourth respondent for taking steps to recover the above said amount and to re-deposit the same in the petitioner's society. According to the learned counsel for the petitioner, the amount has to be deposited in a Nationalised Bank under interest bearing deposit.

4. He further submitted that the first respondent/Tribunal has passed the impugned order without giving a reasonable opportunity to the petitioner. The Tribunal has failed to consider the fact that the second respondent has made deposit from out of the funds of the petitioner society to another cooperative society, without any sanction order by the Registrar of Cooperative Societies, as defined under Section 68 of the Tamil Nadu Cooperative Societies Act. Such illegal investment or deposit, made by the second and fourth respondent, amounts to misappropriation of funds of the Society. Further, the second respondent is the joint account holder of the bank accounts held by the Society and he issued cheques after signing himself along with fourth respondent, with intention to avail undue advantage. But the first respondent has failed to appreciate these facts and simply allowed the appeal, only by relying upon the contentions of the second respondent, without affording opportunity of hearing to the petitioner. Hence, the order passed by the first respondent is liable to be set aside.

5. The learned counsel appearing for the second respondent submitted that the second respondent has filed the appeal before the Tribunal challenging the recovery order passed by the third respondent. In the appeal, the second respondent has specifically raised a ground that he is a Secretary, that too a lower level Officer to that of the Special Officer of the Society and he could not refuse to sign on the cheques as joint account holder along with the Special Officer. The further ground is that for the disputed deposit, which is said to have been caused loss to the Society, the Central Cooperative Bank, Dharmapuri stands as a guarantor and the second respondent had no role in the policy decision or passing of resolution and he has no knowledge about the policy condition of Pennagaram Society. It is further raised in the ground that only the amount has been deposited in another Cooperative Society and there is no loss to the petitioner's Society and further the Pennagaram society had repaid a sum of Rs.11,00,000/- to the petitioner's society.

6. Heard the rival submissions made by the learned counsel appearing for both the parties and I have perused the materials



on record.

7. According to the petitioner, when the matter came up for hearing before the Tribunal/ first respondent herein, the counsel for the petitioner did not appear before the court and without giving opportunity of hearing the petitioner, the Tribunal has passed an Exparte Order in the above Appeal. Hence, the order passed by the Tribunal is liable to be set aside and the matter shall be remitted back to the Tribunal to be decided afresh, on its own merits.

8. The contention of the petitioner is that, the amount should be deposited in a Nationalised Bank under interest bearing deposit and through this deposit, the petitioner society can receive interest amount. But, due to the act of the second and fourth respondent, there occurred a financial loss to the petitioners society, but, these aspects have not been considered by the Tribunal and hence, the order of the Tribunal is liable to be set aside.

9. Before Tribunal, the second respondent herein has contended that he has nothing to do with the policy decision or passing of resolution and therefore, he would not have any knowledge about the deposit of the amount before the Pennagaram Cooperative Society. Thus, the defence taken by the second respondent is accepted. Further, it is found that, before Tribunal, the counsel for the respondent (petitioner herein) did not appear and advance arguments to put forth the contentions of the Petitioner Society.

10. It is to be noted that the learned counsel appearing to the petitioner Society, though had made appearance on behalf of the Society before Tribunal, did not appear for hearing to advance his argument. Having appeared on behalf of the Society, it is the duty of the counsel to represent on behalf of the society and advance arguments, by placing relevant materials to support the case of the society.

11. It is clear that, the fourth respondent herein has not preferred any appeal as against the order of recovery passed by the third respondent in the surcharge proceedings. Therefore, it is for the petitioner's society to proceed further, as against the fourth respondent.

12. Accordingly, the orders passed by the first respondent in CMA 37 of 2007 dated 27.04.2007 is set aside. The matter is directed to be remitted back to the Tribunal for passing orders afresh, after hearing both sides, in accordance with law, within a period of four months from the date of receipt of the records. Both the parties are directed to appear before the Tribunal and



cooperate for early disposal of the CMA.

13. With the above observations, this writ petition is allowed and the impugned order passed by the first respondent in CMA No.(C.S.).37 of 2007 dated 27.04.2007 is set aside. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-

Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

mst

To

1.The Presiding Officer,
The Tribunal for Co-operative Cases,
Krishnagiri.

2.The Deputy Registrar Co-operative Societies,
Dharmapuri Region, Dharmapuri.

+1cc to Mr.S.Seralathan, Advocate, S.R.No.67568

+1cc to Ms.M.Geetha Thamaraiselvan, Advocate, S.R.No.67569

+1cc to the Government Pleader, S.R.No.67943

W.P.No.21551 of 2008 and
M.P.No.1 of 2008

GPL(CO)
CB(02/02/2022)