

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
and
THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

W.A.Nos.1664 to 1666/2010 and
M.P.No.1/2010 in all the 3 appeals

Veerathamizhan ... Appellant in W.A.No.1664/2010
Rajamohan ... Appellant in W.A.No.1665/2010
Arulmani ... Appellant in W.A.No.1666/2010

-vs-

1. The Administrator,
Nadipisai Pulavar K.R.Ramasamy
Co-operative Sugar Mills Limited,
Thalainayar,
Mayiladuthurai Taluk,
Nagapattinam District.
2. The Principal District Judge,
Nagapattinam.
3. The Joint Registrar/Administrator,
MRK Co-operative Sugar Mills Limited,
Sethiyathoppu, Cuddalore-608 702.
4. The Commissioner for Sugar Department,
Tamil Nadu Sugar Department,
474, Anna Salai,
Nandanam, Chennai-35 ... Respondents in all W.As.

Writ Appeals filed under Clause 15 of the Letters Patent against the Common Order dated 22.01.2010 passed in W.P.Nos.14827 to 14829/2001 by a learned Single Judge of this Court.

Prayer in W.P.No. 14827 to 14829/2001 : Petitions filed under Article 226 of the Constitution of India praying to issue a writ of certiorari calling for the records of the decree of the first respondent in CMA No.22, 23 and 24 of 2000 respectively dated 03/04/2001 and quash the same.

For Appellants : Mr.S.Sounthar

For respondents : Mr.L.P.Shanmugasundaram,
1, 3 and 4 Spl.G.P. (Co-op.)

COMMON JUDGMENT

(Judgment of the Court was pronounced by T.RAJA, J.)

The above three Writ Appeals have been brought up questioning the correctness of the impugned Common Order passed by the learned Single Judge of this Court in W.P.Nos.14827 to 14829/2001 dated 22.01.2010, reversing the Common Judgment and Decree passed by the learned Co-operative Tribunal, namely, the Principal District Judge, Nagapattinam, the 2nd respondent herein in CMA.Nos.22 to 24/2000, thereby allowing the appeals and setting aside the Section 87 Proceedings initiated against the appellants on two grounds, namely, (a) there was a violation of the principles of natural justice in not furnishing a copy of the Enquiry Report under Section 81; and (b) the six months time to pass an order on completion of the 87 proceedings contemplated under Section 87(1) of the Co-operative Societies Act has also not been followed.

2. Mr.S.Sounthar, learned Counsel appearing for the appellant in all these three appeals assailing the impugned Common Order pleaded that when the appellants were working as Cane Officers in the 1st respondent Co-operative Society registered under the Tamil Nadu Co-operative Societies Act and Rules made therein, between the period 06.06.1995 and 13.09.1996, an audit inspection has been made under Section 82 of the Tamil Nadu Co-operative Societies Act (hereinafter referred to as, 'the Act'). During the course of the said audit made u/s.82 of the Act, it was noticed that the appellants, namely, Veerathamizhan, Rajamohan and Arulmani, had caused loss to the tune of Rs.2,72,982.85p to the said Co-operative Society. When a report was submitted to that effect, the Administrator of Nadipisai Pulavar K.R.Ramasamy Co-operative Sugar Mills Limited, Thalainayar, Mayiladuthurai Taluk, Nagapattinam District, the 1st respondent herein, sought permission from the Commissioner of Sugar Cane to initiate Surcharge Proceedings against the appellants under Section 82 of the Act. After obtaining necessary permission from the Commissioner/Registrar of Co-operative Societies for Sugar Mills for initiation of surcharge proceedings by an order dated 02.05.1998, the Joint Registrar/Administrator, MRK Co-operative Sugar Mills Limited, Sethiyathoppu, Cuddalore-608 702, the 3rd respondent herein, was appointed as Surcharge Officer. Thereafter, a Surcharge Notice was also issued on 31.08.1999. On receipt of the same, the three Cane Officers/appellants herein submitted their explanation on 15.09.1999 denying their involvement in the alleged loss said to have been caused to the 1st respondent Co-operative Society. Thereafter, a detailed enquiry was also held. Finally, the Surcharge Officer passed a Surcharge

Recovery Order under Section 87 (1) of the Act on 26.02.2000 fixing the responsibility that Rs.1,03,709.80p should be payable by Mr.P.Veerathamizhan, Rs.1,02,618.15p by Mr.Rajamohan and Rs.66,654.90 by Mr.Arulmani with interest at the rate of 21% p.a.

3. Learned Counsel for the appellants further pleaded that aggrieved thereby, all the appellants approached the 2nd respondent Co-operative Tribunal, namely, the Principal District Judge, Nagapattinam, raising inter alia that the report filed under Section 81 of the Act was not furnished to them and thereby Sec.87 proceedings are vitiated due to the non-compliance of the principles of natural justice. Secondly, when the appellants have made a representation requesting the Officer holding Sec.87 proceedings to permit them to engage a counsel to assist them, after receiving the same, the appellants were not provided with any legal assistance, as a result, they were not able to effectively take part in the 87 proceedings. Thirdly, when the 87 proceedings were initiated on 02.05.1998 and the same came to an end on 26.02.2000 by passing an Award, as a result, the mandatory time limit given for completion of the 87 Surcharge Proceedings that it should be completed within a period of 6 months from the date of commencement, has not been followed. Although, this was opposed by the 1st respondent herein before the learned Tribunal, the 2nd respondent herein, taking note of the fact that when the 81 enquiry was ordered, a copy of the report on completion of the enquiry was not furnished except furnishing the 2nd part of the Enquiry Report, has held that when the parts I and III of the Enquiry Report were not admittedly furnished to the appellants, it goes without saying that the appellants were not able to find where the Enquiry Officer has committed errors and mistakes while reaching the conclusions. Fourthly, the appellants were not even permitted to take part in the enquiry by adducing both oral and documentary evidence and that when S.81 of the Act categorically says that only in the event of proven willful negligence, the surcharge proceedings under Section 87 can be proceeded against the appellants, insofar as there was no finding given by the Enquiry Officer under Section 81 of the Act holding that there was a deliberate and willful negligence on the part of the appellants, Section 87 proceedings ought not to have been initiated against them, he pleaded.

4. Arguing further, learned Counsel for the appellants contended that it was not in dispute that one Mr.Rajendran who was the main culprit, is said to have been misappropriated the entire money, causing loss to the 1st respondent Society. Since the said Rajendran has committed suicide along with two of his family members, namely, his wife and one of his children, it clearly shows that he has admitted the guilt. When the matter stands as above, it is not known why the 1st respondent Co-operative Society, after admission and acknowledgment of the

guilt by the said Rajendran, has released the retiral benefits, namely, Gratuity, Provident Fund and Insurance amount to him. After realising the above said amounts, they have launched proceedings against the appellants herein. When they were only Cane Officers working for the period from 06.06.1995 to 13.09.1996 and there was no any direct connection or evidence to show that they have conspired joining hands with the deceased Rajendran to cause any loss to the 1st respondent society, the initiation of 87 Proceedings without even furnishing a copy of the full report of Section 81 Enquiry, it would also be not only opposed to settled law but highly impossible for the appellants to participate in the 87 proceedings. This has been clearly overlooked by the learned Single Judge of this Court whereas it was appreciated by the learned Co-operative Tribunal, the 2nd respondent herein.

5. Concluding his arguments, learned Counsel for the appellants drawing our notice to paragraph 13 of the impugned order stated that the learned Single Judge also after appreciating the case of the appellants has come to the conclusion that the loss was caused by one Mr.G.Rajendran, who is no more. Therefore, necessary proceedings have to be initiated against him and after his death, it should be proceeded against his legal heirs. When there was a specific finding given against the said Rajendran that goes to show that the appellants were not responsible, however, the learned Single Judge while reversing the well reasoned order passed by the 2nd respondent herein allowed the Writ Petitions, the same is, therefore, liable to be interfered with by allowing these appeals, he pleaded.

6. Mr.L.P.Shanmugasundaram, learned Special Government Pleader (Co-op.) appearing for the respondents 1, 3 and 4 submitted that Section 81 of the Co-operative Societies Act states that if there is any loss caused to the society, the Registrar either on his own motion or on the application of the majority of the Board can hold an enquiry to find out whether there was any misappropriation or fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to the Society. When there was an admitted misappropriation made by one Mr.Rajendran to the tune of Rs.3,42,456.85 by using 71 forged receipts as if fertilizers were distributed to the needy farmers, while serving as a clerk in the 1st respondent Sugar Mill from 06.06.1995 to 13.09.1996, it was found clearly that the said Rajendran was responsible for misappropriation. After finding that he was responsible for misappropriation of the said amount, he, on his own came forward and paid Rs.69,474/- and the balance amount of Rs.2,72,982.85p could not be paid. In the meanwhile, for the reasons best known to him, he committed suicide along with his wife and one of his children. This mishap had occurred only in view of the willful negligence committed by the appellants who were all Cane Officers working for the period from 06.06.1995 to 13.09.1996

because they did not undertake any inspection of the works done in the said Co-operative Society. Hence, the appellants are liable.

7. Learned Special Government Pleader for respondent Co-operative Society further submitted that when the appellants were serving as Cane Officers, the said Rajendran along with one Venkatesan have forged 71 receipts as though fertilizers taken from the 1st respondent co-operative society were distributed to the needy farmers. If the arguments of the appellants are to be accepted that they had discharged their duties as superior officers meticulously and carefully, then a proper check could have been carried out, as a result, the said Rajendran along with Venkatesan would not have ventured in the misappropriation. As there were misappropriation made jointly by both Rajendran and Venkatesan, causing huge loss of Rs.3,42,456.85p to the Society, an enquiry was ordered under Section 81 of the Act and after completion of the enquiry under Section 81, a copy of the Part-II of the report was furnished to the appellants. On receipt of the same, they have not approached the 1st respondent stating that they were put to face prejudice in not furnishing the other parts of the report and the other parts of the report are not relevant to the alleged negligence committed by the appellants. Therefore, the learned Single Judge has rightly come to the conclusion that the appellants have not even established the prejudice suffered by them. Since the appellants have also received the report of the Enquiry Officer and acknowledged the same in their letter dated 15.09.1999 without saying anything, it may be presumed that there was no such prejudice caused to them.

8. Learned Special Government Pleader also submitted that the simple charge made against the appellants was that while they were working as Cane Officers for the period between 06.06.1995 and 13.09.1996 in the 1st respondent Co-operative Society, they kept quite even without discharging their obligation as supervisors. When 71 forged receipts were used by that Rajendran joining hands with one Venkatesan causing huge loss to the Society, this aspect has been completely forgotten to be established by them. Therefore, the learned Single Judge has rightly come to the conclusion that once the appellants in their letter dated 15.09.1999 acknowledging the report of the Enquiry Officer have participated in the 87 proceedings, the question of prejudice said to have been caused to them cannot be raised.

9. I find some merits on the submissions made by the learned Special Government Pleader appearing for the respondents 1, 3 and 4. The reason being that firstly, after conducting a detailed enquiry under Section 81 of the Act, a copy of the Part II of the Enquiry Report was served on the appellants and after receipt of the same, they have acknowledged the said report

without raising any objection that Parts I and III of the report have not been served on them. This Court has laid down the legal position that non-furnishing of Enquiry Report under Section 81 of the Act to the delinquent before the Surcharge Proceedings enabling him to give proper explanation is fatal to surcharge proceedings. But the case on hand is different that the appellants have received copy of Part II of the Enquiry Report. Thereafter only, the Surcharge Officer passed a Surcharge Recovery Order under Section 87 (1) of the Act on 26.02.2000 fixing the responsibility that Rs.1,03,709.80p should be payable by Mr.P.Veerathamizhan, Rs.1,02,618.15p by Mr.Rajamohan and Rs.66,654.90 by Mr.Arulmani with interest at the rate of 21% p.a. Therefore, the contention of the learned Counsel for the appellants that the principles of natural justice has been violated by not serving the report of the Enquiry Officer is unsustainable. Secondly, though Surcharge Proceedings were initiated on 02.05.1998 and the same came to an end on 26.02.2000 by passing an Award, as a result, the mandatory time limit given for completion of the 87 Surcharge Proceedings that it should be completed within a period of 6 months gap has not been followed, learned Counsel for the appellants fairly agreeing to the ratio laid down by this Court in the case in S.V.K.Sahasraraman vs. The Deputy Registrar of Co-operative Societies, Thirvannamalai and others reported in 2008 8 MLJ 231 holding that the order to be passed under Section 87 of the Act is not mandatory stated that he is not pressing this point as this has become the law of the land.

10. Thirdly, insofar as the contention of the learned Counsel for the appellants that they were not permitted to engage a Counsel to assist them during the surcharge proceedings, as held by the learned Single Judge, though the rules framed under the Tamil Nadu Co-operative Societies Act do not provide any specific permission is accepted, then also, they are responsible for the huge loss caused to the respondent society because their deliberate and willful negligence in discharging their duty as Cane Officers has resulted in misappropriation of Rs.3,42,456.85p by the Clerk Rajendran along with one Venkatesan by raising 71 forged receipts as if fertilizers were distributed to the needy farmers. Fourthly, the contention that though the said Venkatesan is now no more, proceedings under Section 87 of the Act should be proceeded against his legal heirs is not accepted because the appellants are only responsible for the willful negligence leading to the loss caused to the Society by the said Rajendran. Therefore, in the findings and conclusions reached by the learned Single Judge, we are unable to find any infirmity or illegality to interfere with the impugned order. However, taking into account the fact that in the Section 87 surcharge proceedings, the appellants, namely, P.Veeratamilan, R.Rajamohan and T.Arulmani were directed to pay the amount of Rs.1,03,709.80p, Rs.1,02,618.15p and Rs.66,654.90p respectively along with

interest at 21% p.a., bearing in mind that they have committed willful negligence in not undergoing regular and routine supervision only which could have prevented the said Rajendran and Venkatesan from causing loss, we are inclined to reduce the rate of interest alone from 21% to 9% because Section 87 of the Act empowers the Registrar to make an order requiring anyone to repay the money with interest as he thinks just by way of compensation in respect of the loss caused to the society.

11. With the above modification, the Writ Appeals are partly allowed. No costs. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

tsi

To

1. The Administrator,
Nadipisai Pulavar K.R.Ramasamy
Co-operative Sugar Mills Limited,
Thalainayar,
Mayiladuthurai Taluk,
Nagapattinam District.
2. The Principal District Judge,
Nagapattinam.
3. The Joint Registrar/Administrator,
MRK Co-operative Sugar Mills Limited,
Sethiyathoppu, Cuddalore-608 702.
4. The Commissioner for Sugar Department,
Tamil Nadu Sugar Department,
474, Anna Salai, Nandanam, Chennai-35

+1cc to Mr.R.Parthiban, Advocate SR.No.26190

+3cc to Government Pleader (CO-OP)SR.No.26327, 26328, 26329

W.A.Nos.1664 to 1666/2010

KV(CO)
GMY(29/06/2021)