

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM

THE HON'BLE MR.JUSTICE R. SURESH KUMAR

Writ Petition No.38921 of 2005

and W.M.P.No.41698 of 2005

N.Ulaganathan

... Petitioner

-Vs-

1.The Chief Executive Officer
Tamil Nadu Khadi and Village Industries Board
Kuralagam, Chennai 600 108.

2.The Regional Deputy Director
Tamil Nadu Khadi and Village Industries
Trichy-1.

3.The Assistant Director of Khadi and Village
Industries, Salem, Salem District.

4.The Assistant Director of Khadi and Village
Industries, Karur, Karur District. ... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus to call for the records connected in Na.Ka.No.3077/98/E dated 12.01.2001 of the 3rd respondent and order of the 4th respondent in Na.Ka.No.3714/96/C1 dated 13.12.2000 and quash the same.

For Petitioner	:	Mr.G.Elanchezhiyan
For Respondents	:	Mr.S.K.Bose - for R1 Mr.B.Dinesh Kumar - for RR 2 to 4

O R D E R

The prayer sought for herein is to call for the records connected in Na.Ka.No.3077/98/E dated 12.01.2001 of the 3rd respondent and order of the 4th respondent in Na.Ka.No.3714/96/C1 dated 13.12.2000 and quash the same.

2. That the petitioner was Khadi Inspector at the respondent Khadi Board. While he was working so, he was appointed as Special Officer at Thuraiyur Carpentry and Blacksmith Workers Industrial Cooperative Society. While he was working there,

there has been an alleged misappropriation of the society fund under the respondent Khadi Board to the extent of Rs.21,55,628/- and in respect of the same, there has been a Surcharge Proceedings initiated under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter referred to as 'the Act') by giving a show cause notice dated 13.12.2000.

3. On receipt of the said show cause notice, the petitioner has given his explanation on 25.01.2001, where he wanted the respondents to furnish the documents, which they are going to rely upon in the Surcharge Proceedings against the petitioner. However in this regard, though such request has been made to furnish the documents and some letter correspondence has taken place between the respondents especially the fourth respondent, who issued the show cause notice, and the petitioner, ultimately nothing has come from the respondents and there was no proceedings conducted under Section 87 of the Act within the stipulated time of either six months or extended period of one year as contemplated in the said Section 87 of the Act. Therefore, on that ground of delay in completing the Surcharge Proceedings initiated under Section 87 of the Act, the petitioner has filed this writ petition challenging the impugned show cause notice dated 13.12.2000.

3. Though respondents entered appearance long back, they have not chosen to file a counter to the grounds urged by the petitioner. Today when the case is taken up for hearing, learned counsel for the petitioner has heavily relied upon Section 87 of the Act, where he relied upon the second proviso, in which it is mandated that, any proceedings initiated under this Section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate. The relevant portion of Section 87 is extracted hereunder.

"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 the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate."

4. By relying upon this statutory limitation prescribed for completing the Surcharge Proceedings initiated since it has not admittedly been completed even after five years, this writ petition is filed in the year 2005. Learned counsel for the petitioner would submit that, the entire proceedings initiated

through the impugned notice gets vitiated and therefore, the proceedings which is initiated through the impugned show cause notice shall be rescinded by quashing the said show cause notice.

5. Since it is purely a legal ground urged by the learned counsel for the petitioner by relying upon the aforesaid provision of the Act, a specific query is posed against the respondents through the learned Standing Counsel as to why there has been a five years delay till the writ petition was filed in the year 2005 in completing the Surcharge Proceedings, which was initiated in the year 2000, Mr.S.K.Bose, learned Standing Counsel appearing for the respondents, on instructions from the third and fourth respondents, would submit that, the respondents have not been in a position to give any acceptable reason for the delay in completing the Surcharge Proceedings within six months or the extended period and they have conceded the case of the petitioner on the ground of delay. Learned Standing Counsel would also submit that, though attempt has been made by the respondents to complete the proceedings within the stipulated time, the same could not be completed, which is beyond the control of the respondents, for which no specific reason could be adduced before this Court at this juncture.

6. The said submission made by the respondents counsel, on instructions from the third and fourth respondents, are hereby taken note of.

7. As has been rightly pointed out by the petitioner, the second proviso to Section 87 of the Act has clearly mandated that if at all any Surcharge Proceedings is initiated under Section 87 of the Act, it shall be completed within a period of six months from the date of such commencement or for such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate. Therefore, the original period of limitation of six months and the extended period of six months and on a whole, the maximum period of one year was available to the authority who initiated Surcharge Proceedings to complete it.

8. If at all any acceptable reason that is attributable on the part of the petitioner in delaying the matter, the same can be accepted. But, here in the case on hand, the petitioner approached this Court only in the year 2005. Therefore, the filing of the writ petition or the stay granted or pendency of the writ petition cannot be a reason attributable for the purpose of taking a shelter that the petitioner has approached the Court of law and the matter was pending for long time.

9. Instead, since the proceedings was commenced in December

2000, from then onwards even though the petitioner has chosen to give his reply in January 2001, subsequently though there has been correspondences between the petitioner and the respondents, there was no concrete progress made in completing the Surcharge Proceedings even for four years, till the petitioner filed this writ petition in the year 2005.

10. It is settled proposition that, if a particular thing has to be undertaken or done as has been contemplated under the provisions of the Statute in a particular manner, that shall be undertaken or done only in that manner as provided in the Statute and not otherwise. This settled proposition would apply to the facts of the present case, where, the law has mandated that the prescribed period of six months shall be the limitation within which it is expected that the Surcharge Proceedings initiated under Section 87 of the Act shall be completed and if the same could not be completed within six months period by the authority who initiated such proceedings, he may get further extension from his higher authority for such period of one or two or three months, but on a whole, such extended period shall not go beyond six months. Therefore, altogether the authority who initiated the Surcharge Proceedings will have the maximum one year period, within which such Surcharge Proceedings shall be completed.

11. In view of the said mandate, as has been prescribed under the second proviso to Section 87 of the Act, as quoted herein above, since admittedly the proceedings have not been completed for nearly four years and more, which is an admitted fact, for which there is no plausible reason given by the respondents and even today there has been no such attempt made by the respondents, as the learned Standing Counsel for the respondents, on instructions would submit that, there could be no plausible reason on the part of the respondents, especially the third and fourth respondents, justifying the delay caused in completing the Surcharge Proceedings, this Court does not have any hesitation to come to the conclusion that, the delay in completing the Surcharge Proceedings under Section 87 of the Act in the present case, which was admittedly not completed even for four years and more, will run contra to the mandate given by the provisions of the Act ie., second proviso to Section 87 of the Act and therefore, on that ground the impugned order is liable to be interfered with.

12. In that view of the matter, this Court is of the view that, the impugned order cannot be further proceeded to complete the Surcharge Proceedings under Section 87 of the Act in view of the mandate given in the second proviso to Section 87 of the Act and therefore, the said proceedings in Na.Ka.No.3714/96/C1 dated 13.12.2000 is hereby quashed.

13. Resultantly, the writ petition is allowed. However, there shall be no order as to the costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

KST

To

1.The Chief Executive Officer, Tamil Nadu Khadi and Village Industries Board
Kuralagam, Chennai 600 108.

2.The Regional Deputy Director, Tamil Nadu Khadi and Village Industries. Trichy-1.

3.The Assistant Director of Khadi and Village Industries, Salem, Salem District.

4.The Assistant Director of Khadi and Village Industries, Karur, Karur District.

+1CC TO MR.G.ELANCHEZHIAN, ADVOCATE, SR.NO. 5138

W.P.No.38921 of 2005

RK
KKN 17.04.2021