

IN THE HIGH COURT OF JUDICATURE AT MADRAS

[ORDERS RESERVED ON : 11.12.2020]

[ORDERS PRONOUNCED ON : 21.01.2021]

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

C.R.P.(PD)Nos.1664, 2003, 1751 and 1859 of 2020

and

C.M.P.Nos.11140, 10295, 12428, 12429,10299,
10828, 10829, 10831, 11139, 9274 and 10297 of 2020

P.KrishnamoorthyPetitioner in all C.R.Ps

...Vs...

- 1.Industrial Co-operative Officer (Manager) / Surcharge Officer
O/o. the Deputy Director (Industrial Cooperatives),
CTAL Buildings, Alandur Road,
Guindy, Chennai - 600 032.
2. The Chennai Industrial Cooperative Analytical Laboratory Ltd.,
Represented by its Secretary,
Fourth Avenue Road, Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai - 600 032.
3. The Deputy Director of Industries and Commerce,
(Industrial Cooperatives),
CTAL Building,
ThiruViKa Industrial Estate,
Guindy, Chennai - 600 032.
4. The Sale Officer/Industrial Cooperative Officer (Liquidation),
Office of the Deputy Director (Industrial Cooperatives)
CTAL Building,
ThiruViKa Industrial Estate,
Guindy, Chennai - 600 032.

...Respondents in C.R.P.(PD)No.1664 and 1751 of 2020

1. Industrial Cooperative Officer (Manager/Surcharge Officer)
O/o. the Deputy Director (Industrial Cooperatives),
CTAL Buildings, Alandur Road,
Guindy, Chennai - 600 032.
2. The Chennai Industrial Cooperative Analytical Laboratory Ltd.,
Represented by its Administrator,
Fourth Avenue Road, Thiru.Vi.Ka.Industrial Estate,
Guindy, Chennai - 600 032.
...Respondents in C.R.P.(PD)Nos.2003 and 1859 of 2020

PRAYER in C.R.P.(PD)No2003 of 2020.: Petition filed under Article 227 of the Constitution of India., against the impugned order of the Hon'ble Motor Accident Claim Tribunal / Chief Judge, Court of Small Causes, Chennai dated 28.11.2019 made in M.P.No.43 of 2019 in C.M.A.No.11 of 2019 dismissing the appellant's prayer to grant an order of STAY of the impugned Surcharge Order Proceeding No.2/MICAL/2019 dated 26.03.2019 of the first respondent and operation of all further actions pursuant to the same.

PRAYER in C.R.P.(PD)No.1859 of 2020.: Petition filed under Article 227 of the Constitution of India., against the impugned order of the Hon'ble Motor Accident Claim Tribunal / Chief Judge, Court of Small Causes, Chennai dated 28.11.2019 made in M.P.No.41 of 2019 in C.M.A.No.9 of 2019 dismissing the appellant's prayer to grant an order of STAY of the impugned Surcharge Order Proceeding No.1/MICAL/2019 dated 26.03.2019 of the first respondent and operation of all further actions pursuant to the same.

PRAYER in C.R.P.(PD)No.1664 of 2020.: Petition filed under Article 227 of the Constitution of India., against the order of the Judge, Small Causes Court order dated 14.02.2020 in C.M.P.No.1 of 2020 in C.M.A.No.9/2019.

PRAYER in C.R.P.(PD)No.1751 of 2020.: Petition filed under Article 227 of the Constitution of India., against the order of the Judge, Small Causes Court order dated 14.02.2020 in C.M.P.No.1 of 2020 in C.M.A.No.11/2019.

For Petitioner : Mr.K.S.Govinda Prasad in all C.R.Ps

For Respondents : Mr.R.Sivakumar

ORDER

The petitioner who is the appellant before the Chief Small Causes Court, Co-operative Tribunal designated under the Tamil Nadu Co-operative Societies Act, is the Revision Petitioner herein.

2. C.R.P.Nos.1664 and 1751 of 2020 have been filed against the orders passed in C.M.P.No.1/2020 in C.M.A.No.9/2019 and C.R.P.No.1751 of 2020 has been filed against the C.M.P.No.1/2020 in C.M.A.No.11/2019 seeking for a stay of all further proceedings in pursuance of the impugned order and the stay petition was dismissed and hence, this Civil Revision Petition filed by the petitioner.

3. The petitioner is a Deputy Director of Industries and Commerce (Industrial Cooperatives) due to retire on 31.07.2020(originally). During the period while he was holding additional charge of the second respondent management (2014-2017) enquiry was held under Section 82 of TNCS Act, followed by Surcharge proceedings under Section 87(1) to recover the supposed loss of Rs.6,03,176 and Rs.7,95,612/- against which C.M.A.Nos.9 & 11 of 2019 and stay petition M.P.Nos.41&43 of 2019 were filed before the Chief Judge Small Causes Court.

4. Pending C.M.A.Nos.9&11 of 2019, he has filed M.P.Nos.41&43/2019 to stay the operation of the impugned order of the surcharge passed by the respondent.

5. The grievance of the petitioner/appellant is that the Surcharge Officer has also included the total amount of audit objections relating to the year 2012 to 2013 without taking note of the fact that the petitioner/appellant joined duty in the society only in 2014 and hence prayed for stay

(a) According to the respondent, inspection conducted as per Section 82 had clearly proved that the petitioner had misappropriated an amount of Rs.7,95,612/-. Further he had also caused loss to the extent of Rs.6,03,176/- to the society funds due to his willful and deliberate failure to pay the service tax. Subsequently to the surcharge order dated 26.03.2019, separate and independent proceedings were initiated by the 2nd respondent to recover the amount by way of Execution Proceedings.

(b) By the Resolution No.1 dated 12.06.2019 passed by the respondent's society it was resolved to implement the surcharge order which is impugned in the C.M.A. Accordingly by an office letter dated 08.07.2019 the Deputy Director/The District Registrar was requested to execute the surcharge order.

(c) Considering the request of the respondent society herein, the District Registrar in exercise of his power under Section 143 of TNCS Act had appointed the 2nd respondent as Sale Officer by his proceedings E.P.No.27/1C3/201 dated 22.07.2019. On such appointment and on considering the entire facts and circumstances, the 1st respondent had submitted a report dated 31.10.2019 to the District Registrar recommending that the due amount under the impugned surcharge order may be recovered from petitioner's salary. The Pay Drawing Officer to withhold a sum of Rs.7,66,240/- for complete realisation of the award amount from the

petitioner's salary. The above order of the District Registrar was duly served upon the petitioner.

(d) Subsequent to the impugned surcharge order dated 26.03.2019, that independent actions as provided under the TNCS Act was already initiated by way of filing of independent Execution Petitions as well as order passed in that petition, the present stay application has become infructuous and prayed for dismissal stay petition before the Tribunal.

6. The learned Chief Judge, Small Causes Court, Chennai which is also designated as Co-operative Tribunal in its order observed that the main appeal is pending for records from the Department and taking note of the counter filed as stated above that as there was no stay has been granted in the case, the respondent had passed a resolution on 12.06.2019 and based upon the resolution, Execution Proceedings has been initiated and hence since recovery proceedings is initiated and the said petition has become infructuous.

7. The above contention was accepted by the learned Chief Judge, Small Causes Court-Co-operative Tribunal and accordingly, dismissed the M.P holding that the said petition has become infructuous.

8. At the outset, this Court observes that by allowing the respondent, the Department to execute the surcharge award, when the main appeal itself is pending resulted thereby the main C.M.A itself has become infructuous virtually. This vital aspect of the case appears to have been not taken note of by the Tribunal.

9. The main ground on which these two C.R.Ps are filed is that:-

(a) for the period which the petitioner was not in charge of the post of Director, surcharge was levied on him viz., for the period for which the petitioner has not worked as a Deputy Director, Industrial Co-operatives in the said Department for those period also surcharge proceedings have been initiated against the petitioner.

(b) The second point that was urged before this Court is that report of audit inspection report under Section 81 of the Act wherein the respondent Department alleges loss caused to the Society, copy of the scheme was not furnished to the petitioner nor produced before the Tribunal as called for in the enquiry of stay petition.

(c) Proof of service of copies of report and inspection report and enquiry report under Section 81 and 82 was not produced before the Tribunal for enquiry, I find the said contention raised by the learned counsel for the petitioner is found to have force.

10. On perusal of the records, it is seen that the main C.M.A.Nos.9 and 11/19 is still pending before the Co-operative Tribunal, pending for production records by the Department. At this juncture, the submissions made by the first respondent-Society assumes significance.

11. The learned counsel for the respondent could submit that the petitioner is originally due to retire on 30.07.2020 and accordingly to avoid post retirement proceedings, the recovery proceedings are initiated since no stay order has been granted by the Co-operative Tribunal and now in view of the pandemic situation, the Government of Tamil Nadu had extended the age for retirement by one year and hence, the petitioner is due to retire by 03.07.2021.

12. After hearing the rival submissions, I find that the contention of the learned counsel for the petitioner is that:-

a) Break up details of audit and objections for the period 2012-2013 are not furnished to the petitioner despite several reminders.

b) Copy of the audit and inspection report under Section 82 of the Act was not furnished nor even produced before the Co-operative Tribunal.

c) Service of copies of inspection report and enquiry report were not produced before the Co-operative Tribunal since till date no records have been produced before the Tribunal despite reminders sent to the respondent and hence, I find that the respondent-Society on the one hand they are not producing the original records for the hearing of the stay petition or not producing the original records for taking up the main C.M.A.

d) However taking advantage of the adjournments given by the Co-operative Tribunal for production of the records, as stated supra, it appears that citing no stay being granted by the Co-operative Tribunal they have indulged in passing of the recovery proceedings and also partially succeeded in making the recovery which is unsustainable in law.

13. The attitude of the respondent in not getting ready with the enquiry in the stay petition before the Tribunal. However they have indirectly deprived the appellant the remedy of statutory appeal under the Act which runs contrary to the Scheme of the Act itself and thus I find that the clandestine method adopted by the respondent is hereby deprecated.

14. Taking note of the subsequent event namely pending appeal, pending the stay petition, the respondent have proceeded with the surcharge order and also based a recovery order. Based upon such order passed, the Tribunal by oversight has held that the said petition has become infructuous and the fact that the said case could not be taken out for consideration for

want of submission of records from the respondent as observed by the Tribunal in Paragraph No.6 of its order.

15. Considering the specific plea raised by the petitioner that during the relevant point of time he was not in charge in respect of Department as mentioned in the ground of revision and also non production of the necessary records before the Tribunal and not furnished the copy of the audit objections and audit report under Section 81 Report before the Tribunal. The respondent have handicapped the petitioner in projecting his case.

16. After going through the documents, I find that there is a prima facie case in favour of the petitioner and balance of convenience is also in favour of the petitioner. If the recovery proceedings pursuant to the impugned order, in C.M.As are allowed, to go, the petitioner will be put to loss and hardship, this Court is conscious of the fact that as against the recovery proceedings, he has to file a separate appeal. However based upon the impugned order, recovery is made, I find that the Tribunal could have been mere diligent in calling upon the respondent to file the necessary document for consideration of the M.P as appears to have adjourned the matter from time to time, thereby it has given reason for respondent to pass order of recovery.

17. The submission made by the learned counsel for the respondent about the extension of date of retirement by one year is taken note of and in the interest of justice, I am inclined to pass the following order:-

18. In the interest of justice,

i) The stay petitions filed in M.P.43/19 in C.M.A.No.11/19 and M.P.1/2020 in C.M.A.No.9&11/2019 is hereby allowed and there shall be an order of stay of all further proceedings in respect of the surcharge proceedings initiated against the petitioner that are subject matter of C.MAs.9&11/2019 pending disposal of the above C.M.A.

ii) Since the recovery order has already been passed, it is open to the petitioner/appellant to file a separate appeal against those order and since an order of recovery has been passed in the stay petition, I hereby directed, in exercise of powers confirmed under Article 227 of the Constitution of India, that the respondents 1&2 are hereby directed not to give enforcement to the recovery order by the other respondents.

19. With these observations, **C.R.P.(PD)No.1664 of 2020 is partly allowed** to a limited extent that the proposed respondents 3&4 are impleaded in the main C.M.A only to a limited extent of implementing the order passed in Para 18(i) only and not for adjudication of the main C.M.A.

20. So also **C.R.P.(PD)No.1751 of 2020 is partly allowed** and order in C.M.P.No.1/2020 in C.MA.No.11/2019 is hereby modified to the limited extent of implementing the order passed in Para 18(i) only and not for adjudication of the main C.M.A.

21. **C.R.P.(PD)No.2003 of 2020 is allowed** and the order passed in M.P.No.43/2019 dated 28.11.2019 is set aside. Consequently, M.P.No.43/19 is stands allowed.

22. **C.R.P.(PD)No.1859 of 2020 is allowed** and the order dated 28.11.2019 in M.P.No.41/19 in C.M.A.No.9/19 is set aside. Consequently, M.P.No.41/19 is stands allowed.

23. Interim order stay granted by this Court in respective of C.M.Ps are made absolute. C.M.P.Nos.11140, 10295, 10297, 10299, 12428, 12429 and 10831 of 2020 stands closed with a direction to file appropriate application before the learned Tribunal.

24. C.M.P.Nos.10831, 10829, 10828 and 11139 of 2020 are stand closed.

25. It is hereby made clear that in view of the fact that the date of retirement has been extended by the Government of Tamil Nadu and the date of retirement by the petitioner is 30.06.2021, and the petitioner is at liberty to file separate appeal against the recovery proceedings and the Co-operative Tribunal, Chief Judge, Small Causes Court is hereby directed to take necessary steps to direct the respondents 1&2 to submit the original records forthwith and shall not permit to the respondents 1&2 to drag on the proceedings.

26. The Co-operative Tribunal is hereby directed to dispose of the C.M.As on or before 30.03.2021 and the necessary documents as sought for by the petitioner for the conduct of the appeal has to be submitted by the respondent.

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27. In the event of either of the party not co-operating for disposal of the above C.M.Ps. The aggrieved party can move this Court for the extension of stay beyond the period of 30.03.2021.

21.01.2021

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Index:yes/No

Speaking Order:Yes/No

To

The Motor Accident Claim Tribunal / Chief Judge, Court of Small Causes,
Chennai

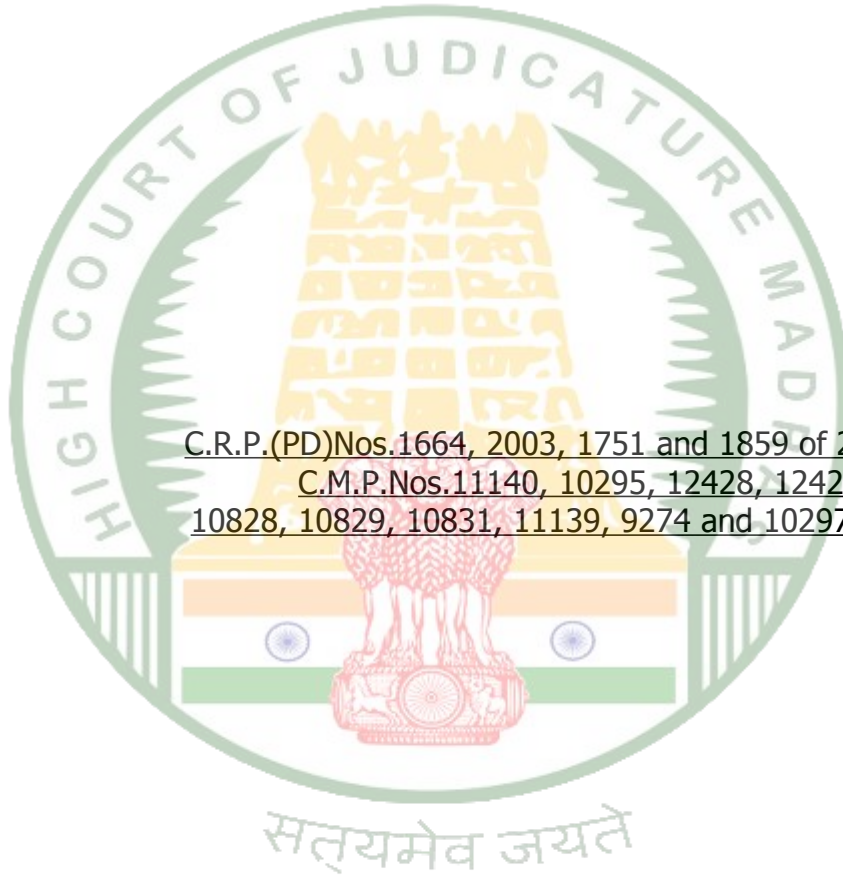


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RMT.TEEKAA RAMAN,J.,

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