

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

C.R.P.(P.D).No.756 of 2018
and C.M.P.Nos.3819 & 11515 of 2018

K.Ramalingam
S/o.Kanagasabapathy,
Former Superintendent
The Thanthoni Agri Engineering and Service
Co-operative Centre Limited,
D.No.10, V.K.A.Complex,
Anna Nagar, Karur – 639 002. ... Petitioner

Vs

The Deputy Registrar,
(Agro Engineering Service),
O/o.The Commissioner for Agriculture,
Chepauk, Chennai – 600 005. ... Respondent

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the Judgment and Decree dated 08.12.2017 made in CMA No.58 of 2016 on the file of the Special Tribunal for Cooperative Cases, Chennai (Court of Small Causes, Chennai) thereby dismissing the appeal and confirming the order of surcharge passed by the respondent/Deputy Registrar (Agro Engineering Services), Chennai made in Na.Ka.131841/2012/Ve.po.Pa1 dated 04.10.2016.

For Petitioner : Mr.M.S.Palaniswamy
For Respondent : Mr.A.E.Ravichandran
Government Advocate (CS)

ORDER

This Civil Revision Petition is filed against the Judgment and Decree dated 08.12.2017 made in CMA No.58 of 2016 on the file of the Special Tribunal for Cooperative Cases, Chennai (Court of Small Causes, Chennai) thereby confirming the order of surcharge proceedings passed by the respondent/Deputy Registrar (Agro Engineering Services), Chennai made in Na.Ka.131841/2012/Ve.po.Pa.1 dated 04.10.2016, thereby ordered to recover a sum of Rs.1,34,30,452.20/- from the petitioner and another delinquent Mr.P.Sellamuthu.

2. The learned counsel for the petitioner would submit that the respondent passed by an impugned order without furnishing the enquiry report submitted under section 81 of the Tamil Nadu Cooperative Societies Act 1983 (herein after called as “the said Act”). The petitioner is a paid servant working under the then Special Officer appointed under Section 89 of the said Act and carried out his directions and instructions in the day to day activities without having any independent power of management,

supervision and administration in the affairs of the Thanthoni Agro Engineering and Service Co-operative Centre Limited, Karur. The then Special Officer by name P.Sellamuthu was entrusted with the management of the said society in view of the provision under Section 89 r/w. Section 88(3) & 2(7) and he was officiated as the Special Officer between 2008-2009 and 2009-2010 on and from 02.05.2008. Therefore, the petitioner was not entrusted and the Special Officer is responsible for the irregularities occurred in the said society. Before passing a final order by the respondent, the petitioner was not served with the required documents.

3. Admittedly, he was directed to obtain the copies from the criminal proceedings in C.C.No.67 of 2012 on the file of the Judicial Magistrate, Karur. The Hon'ble Supreme Court of India as well as this Court repeatedly held that the delinquent should be served with all the copies before passing surcharge order under Section 87 of the said Act. He also relied upon the order passed by this Court in W.P.No.2103 of 2018 and in pursuant to the order, the Registrar of Co-operative Society was issued a Circular dated 25.04.2018.

4. Per contra, the learned counsel for the respondent would submit that the petitioner was duly served with the copies along with the summons issued to participate in the surcharge proceedings dated 15.03.2016, 11.04.2016 and 19.08.2016. All the summons were duly received by the petitioner and as such, no violation of principles of natural justice. He further submitted that the petitioner along with another person committed irregularities and due to which, there is huge sum of Rs,1,33,63,261.20/- loss occurred to the society. Therefore, ordered for an enquiry under Section 81 of the said Act and in pursuant to the enquiry report, surcharge proceedings have been initiated under Section 87 of the said Act.

5. Though, several opportunities given to the petitioner, he failed to come forward to defend the charges and surcharge order was passed as against the petitioner and another person P. Sellamuthu who was Special Officer. They are made liable to jointly and severally to pay the surcharge amount with interest. Aggrieved by the same, the petitioner preferred an appeal in CMA No.13 of 2014 and the same was set aside and remitted the

case for fresh consideration after furnishing the documents sought for by the petitioner herein by an order dated 22.12.2014. Thereafter, the petitioner was duly served with the copies as required by him and surcharge order was passed by the respondent. Therefore, there is absolutely no illegality in the order passed by the respondent and prayed for dismissal of the revision petition.

6. The petitioner was working as superintendent in Thanthoni Agro Engineering and Service Cooperative Centre Limited, Karur and one P.Sellamuthu was working as Special Officer. Both were signed in the six drafts to the tune of Rs.3,54,513.50/- for supply of fertilizers from TANFED. On the contrary, as per the enquiry report, they have purchased from TANFED 598 metric tone Urea and 235 metric tone DAP to the tune of Rs.54,06,906.30/- and thereafter, they sold 598 metric tone Urea and 235 metric tone DAP to Tamil Nadu News Print Limited for Rs.1,59,36,567.50/- and 77 metric tone Urea to Balmer Lawrie Company to the tune of Rs.28,33,600/-. Accordingly, totally they sold for Rs.1,87,70,167.50/- and the said amount was not brought to the accounts of the said Society. Therefore, they caused loss of Rs.1,33,63,261.20/- to the Society.

7. Admittedly, from 02.05.2008 to 02.08.2010, the P.Sellamuthu was working as Special Officer and the petitioner was working as Superintendent in the society. The delivery note and invoices were prepared by the petitioner and the said P.Sellamuthu. Six sale transactions were not brought to the account of the Society. On enquiry revealed that there was loss to the society and in pursuant to the enquiry report, surcharge proceedings were initiated and passed final order.

8. The only point for consideration is that whether the petitioner was served with the enquiry report under Section 81 of the said Act. In this regard, the learned counsel for the petitioner relied upon the Judgment passed by this Court in W.P.No.2103 of 2018 dated 12.02.2018 and this Court held as follows :

“Before concluding the matter, it is to be stated at this juncture that though this Court has repeatedly held in several cases that without furnishing the enquiry report to the concerned delinquent no final order can be passed by the concerned authority, it is a matter of fact that several writ petitioners are being filed before this Court raising the very same ground. Needless to say that the

concerned top officials of the respondent Department shall take note of several orders passed by this Court, out of which, one was reported in 2017 (1) CTC 258 (C.Kamaraj V. The Registrar of Cooperative Societies) and issue general circular indicating the procedure to be followed before passing the final order including the issuance of the enquiry report to the concerned delinquent etc., in order to avoid unnecessary litigations arising out of the very same ground in all those cases.”

9. Based on the above order passed by this Court, the Registrar of the Co-operative Society issued a circular on 25.04.2018. The relevant portion of the Circular is extracted here under :-

“4. Whenever, follow up action is taken under Section 36 or 87 of the Tamil Nadu Co-operative Societies Act, 1983, on the basis of Section 81 Inquiry Report or Section 82 Inspection or Investigation report, there is no specific provision similar to the provision in Section 81(3) or 82(2) or Rule 104(7) requiring to communicate a copy of the inquiry or inspection or investigation to the person or persons against whom such action is initiated. However, the principle of natural justice mandates the communication of a copy of the Section 81 Inquiry report or Section 82 Inspection or

Investigation report, as the case may be, relating to the subject to the person or persons against whom action under Section 36 or 87 is initiated which should invariably be sent along with the notice issued under Section 36 or 87, calling for his or their representation by the officer concerned. If in any case by mistake a copy of the inquiry report or inspection or investigation report was not sent along with the notice, it shall be ensured that it is sent to the person or persons concerned immediately, even if such person or persons have not sought for the same.

5. *In the case of supersession of the board under Section 88 of the Act, an inquiry under Section 81 or an inspection or investigation under Section 82 is not a prerequisite. Therefore, when action under Section 88 of the Tamil Nadu Co-operative Societies Act, 1983, is initiated, it is not necessary to mention anything about the section 81 Inquiry or Section 81 Inspection or Investigation in the notice of supersession issued under Section 88 of the Act. However, if there is any mention, directly or indirectly, about the Section 81 Inquiry or Section 82 Inspection or Investigation into the affairs of the society in the supersession notice issued under Section 88 of the Act, a copy of the Section 81 Inquiry Report or Section 82 Inspection or Investigation Report shall invariably be sent along with the notice of supersession to the*

members of the board of the society, while calling for their representation.

7. All the departmental officers are requested to bear in mind of the instructions issued in Paras 4, 5 and 6 while taking action under Section 36 or 87 or 88 of the Tamil Nadu Co-operative Societies Act, 1983 and see that they are strictly followed. They should note that the principles of natural justice will apply in all other statutory matters like Dispute under Section 90, Appeal under Section 152, Revision under Section 153, Review under Section 154 etc., The Registrar of Co-operative Societies hopes that the departmental officers will ensure that in future no statutory order passed by them is set aside by the Courts of Law solely on the ground of violation of principles of natural justice.”

10. As per the above Circular, it is mandates the communication of a copy of the enquiry report under Section 81 of the said Act or Section 82 inspection report or investigation report, as the case may be, relating to the subject to the person or persons against whom action under Section 36 or 87 is initiated which should invariably be sent along with the notice under Section 36 or 87, calling for his or their representation by the officer concerned. Therefore, it is cristal clear that the principles of natural justice

will apply in all the statutory matters and the enquiry report under Section 81 of the said Act shall be furnished to the petitioner herein.

11. On perusal of the notice issued by the respondent herein, dated 15.03.2016, 11.04.2016 and 19.08.2016 revealed that no enquiry report was served on the petitioner. It also revealed that the petitioner was directed to obtain a copy of the enquiry report and other documents which were required by him before the Judicial Magistrate No.I, Kulithalai in C.C.No.67 of 2012. Therefore, the petitioner was not served with any documents as required by him, such as enquiry report under Section 81 of the said Act and other documents. In fact, in the earlier occasion, the Co-operative Tribunal remitted back to the respondent for passing fresh order after furnishing the copies which were required by the petitioner. Again the respondent committed the same mistake i.e., without serving the enquiry report under Section 81 of the said Act, the impugned order has been passed. Therefore, it is clear violation of principles of natural justice and the impugned order cannot be sustained as against the petitioner.

12. In view of the above, the Judgment and Decree dated 08.12.2017 made in CMA No.58 of 2016 on the file of the Special Tribunal for Cooperative Cases, Chennai (Court of Small Causes, Chennai) is hereby set aside and the Civil Revision Petition is allowed. Again the matter is remanded back to the respondent herein for passing fresh order in respect of the petitioner alone. It is made clear that the respondent is directed to serve all the documents which are required by the petitioner within a period of four weeks from the date of receipt of a copy of this order and thereafter, pass order within a period of eight weeks.

23.07.2021

Index: Yes/No
Internet: Yes/No
Speaking Order: Yes/No
Lpp

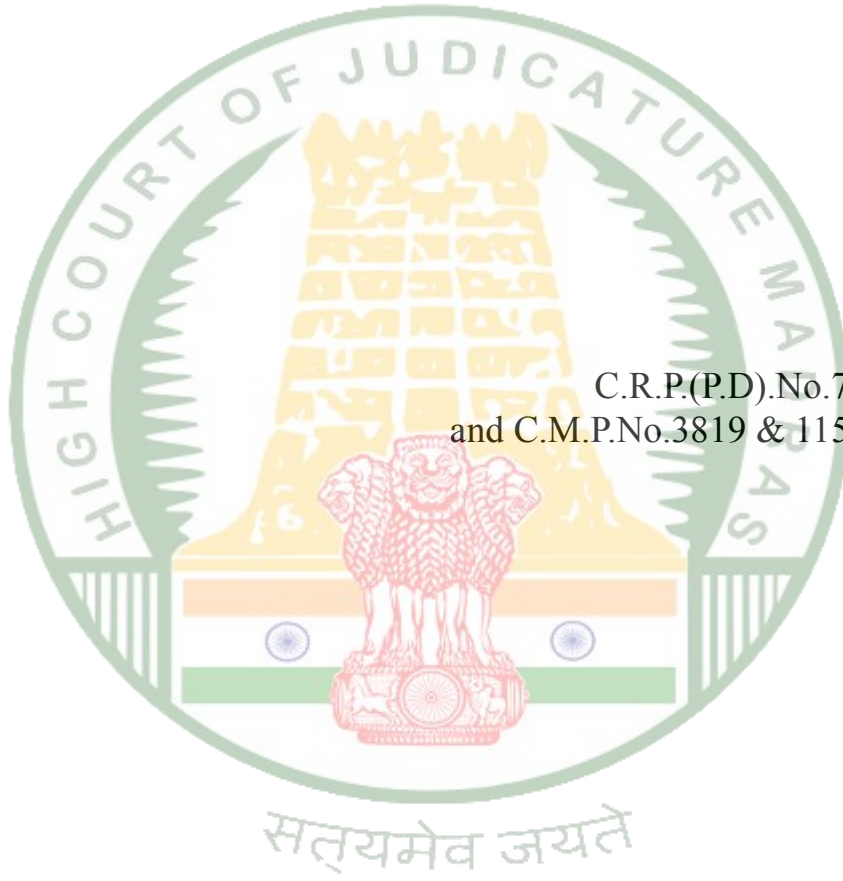
To

1. The Special Tribunal for Cooperative Cases, Chennai (Court of Small Causes, Chennai)
2. The Deputy Registrar (Agro Engineering Service),
O/o. The Commissioner for Agriculture, Chepauk, Chennai – 600 005.

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