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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.03.2021

PRONOUNCED ON : 27.05.2021

CORAM

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.34119 of 2017
and WMP.No.37874 of 2017

P.Ravi

... Petitioner

vs

1. The Presiding Officer,
Special Tribunal for Co-Op Cases)
(Chief Judge Court of Small Causes)
Chennai 600 104.
2. The Deputy Registrar of Co-Op Societies
(Non Credit)
Kuralagam, Chennai 600 108.
3. Triplicane Urban Co-operative Stores Ltd.,
Rep.by its Managing Director,
Triplicane, Chennai 600 005.

.. Respondents

Prayer : Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for the records of the fourth respondent, relating to the order dated 06.07.2017 in C.M.A.No.15/2014, passed by the first respondent Tribunal, upholding the order of the 2nd respondent in Rc.No.2648 of 2012/Sa.Pa dated 28.08.2014 to quash the same and issue consequential directions to 3rd respondent to refund to the petitioner the sum of Rs.4,12,108.08 with interest.

For Petitioner : Mr.J.Muthukumaran

For R2 & R3 : Mr.L.P.Shanmugasundaram
Spl.Govt.Pleader

O R D E R

The petitioner has challenged the impugned order dated 6.7.2017 in C.M.A.No.15 of 2014 passed by the Special Tribunal For Co-operatives Societies Cases, the first respondent herein.



2. By the impugned order dated 6.7.2017 in C.M.A.No.15 of 2014, the said Tribunal has dismissed the appeal filed by the petitioner against the order dated 28.8.2014 passed by the second respondent pursuant to surcharge notice dated 29.11.2013.

3. The petitioner as an Accountant with the third respondent Co-operative Society had allegedly diverted about 1658 gas cylinders during the period between February 2009 October 2009 by engaging private staffs and thereby allegedly caused a loss of Rs.11,86,324.25 to the third respondent and was therefore subjected to a disciplinary proceedings.

4. The petitioner was issued with the charge memo dated 19.11.2012. During the course of investigation an enquiry report dated 9.4.2012 was generated which appears to have formed the basis of surcharge proceedings which is the subject matter of the present writ petition.

5. During the interregnum, an order dated 30.5.2015 was passed by the Disciplinary Authority. The Disciplinary Authority concluded that the petitioner had caused the loss to the third respondent Co-operative Society. The petitioner was therefore discharged from service by the said order dated 30.5.2015. The petitioner appears to have filed a revision petition before the Additional Registrar of Societies under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. The status of the said proceeding is not known.

6. Meanwhile, surcharge proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 which was initiated against the petitioner for the loss caused to the third respondent Co-operative Society was proceeded with.

7. It commenced with a notice dated 29.11.2013 issued to the petitioner based on the enquiry report dated 9.4.2012. The petitioner replied to the same vide a reply dated 10.01.2014 and requested for a copy of the said report. Thereafter, a summon was issued to the petitioner on 13.01.2014. The petitioner was asked to appear on 23.01.2014 before the second respondent.

8. The second respondent thereafter heard and by an order dated 28.8.2014 held that the petitioner had caused a total loss of Rs.11,676,314.90 to the third respondent Co-operative Society and since the petitioner had already paid a sum of Rs.4,12,108.08, the petitioner called upon to pay the balance amount of Rs.7,55,206.82.

9. Aggrieved by the aforesaid order dated 28.8.2014 of the second respondent, the petitioner herein filed an appeal



before the first respondent Tribunal, under Section 152 (1) of the Tamil Nadu Cooperative Societies Act, 1983. The first respondent Tribunal has dismissed the said appeal filed by the petitioner vide impugned order dated 6.7.2017.

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10. The impugned order of the first respondent Tribunal is sought to be assailed by the petitioner primarily on the ground that there has been manifest violation of natural justice inasmuch as such proceeding initiated by the third respondent was based on an enquiry conducted on 9.4.2012, and a copy of the report has not been furnished to the petitioner.

11. It is therefore submitted that the impugned order upholding the levy of surcharge on the petitioner was liable to be quashed.

12. It is further submitted that there were two other staff viz., delivery boys who were also involved in the alleged irregular supply of gas cylinders to the unregistered customers during the aforesaid period, and therefore the petitioner at best is liable only for the proportionate loss allegedly suffered by the third respondent Co-operative Society and the balance was to be recovered from them.

13. It is submitted that vide memo dated 6.5.2010, the third respondent had also called upon the petitioner to pay a sum of Rs.4,12,108.08 which was duly complied by the petitioner on 01.07.2010 when the petitioner paid an amount of Rs.2,00,000/- and on 25.5.2011 when the petitioner paid the balance amount of Rs.2,12,108.08 pursuant to which the suspension order was revoked on 18.6.2011.

14. It is further submitted that as per the instruction of the third respondent in Na.Ka.No.5377/96 dated 21.12.1998, in cases of stock, shortage, all the employees of the branch are responsible and this practice was being followed all along but the impugned the proceeding there has been a deviation which the First respondent Tribunal has ignored the same.

15. It is further submitted that the second respondent proceeded to pass the surcharge order dated 28.8.2014 without considering the reply of the petitioner.

16. It is therefore submitted that the impugned order passed by the first respondent upholding the order of the said respondent is liable to be quashed.

17. Defending the first respondent submitted that the present writ petition is liable to be dismissed. It is submitted that the computer bills were examined and it was found that only six cylinders were delivered by the delivery boys appointed by the third respondent Society and the remaining 1679 cylinders were distributed by workers employed by the petitioner without the knowledge of the third



respondent.

18. It is submitted that the petitioner held a responsible post in the branch of the third respondent Society and was guilty of dereliction of duty by supplying cylinders to the persons who were not the registered customers of the third respondent Society to make the personal profit.

19. It is submitted that the petitioner was responsible for the loss suffered by the third respondent Society. It is further submitted that the petitioner was summoned to appear before the enquiry officer appointed by

the third respondent Society on 23.01.2014 and for it is therefore not correct to submit that the enquiry report dated 9.4.2012 was not furnished to the petitioner.

20. It is submitted that the charge memo was based on the enquiry report dated 9.4.2012. It is pursuant to enquiry a notice dated 29.11.2013 was issued and the final order dated 28.8.2014 was passed by the second respondent.

21. It is submitted that there is no error in the impugned order of the first respondent Tribunal. Hence, the second and third respondents prayed for dismissal of the present writ petition.

22. I have considered the arguments advanced on behalf of the petitioner and the learned Special Government Pleader for the second and third respondents. The short point that arises for consideration in this writ petition is whether the impugned order dated 6.7.2017 passed by the first respondent Tribunal upholding the order dated 28.08.2014 passed by the second respondent dismissing the appeal filed by the petitioner is sustainable or not?

23. The principal of attack against the impugned order dated 6.7.2017 passed by the first respondent Tribunal is that a copy of the enquiry dated 9.4.2012, which formed the basis of surcharge notice dated 29.11.2013 was not furnished to the petitioner.

24. Secondly, it is stated that the second respondent has imposed the entire surcharge amount for alleged loss on the petitioner contrary to the circular dated 21.12.1998.

25. The first respondent Tribunal vide order dated 6.7.2017 has concluded that Rule 103 and 107 of the Tamil Nadu Co-operative Societies Rules 1988 does not contemplate furnishing of enquiry report to a delinquent and therefore there is not an irregularity in the order passed by the second respondent on 28.08 2014.



26. The first respondent has also upheld the order dated 28.08.2014 of the second respondent on the ground that the petitioner did not dispute the delivery of 1658 gas cylinders to 290 non-existing families and has paid a sum of Rs.4,12,108.08 and therefore thereby admitted to his guilt and the argument that the delivery boys were also responsible for loss cannot be sustained.

27. It has been further held that as an Accounts Officer responsible for the branch for the delivery of gas cylinders to registered customer, the petitioner alone was responsible for the loss caused to the third respondent.

28. The Tribunal has also placed reliance on the decision of this Court rendered in N Seker vs Principal District Judge Cum Co-operative Tribunal (2009) 4 MLJ 456 as held by the division bench in S.V.K Sahasranam vs Deputy Registrar of Cooperative Societies, Thiruvanamalai (2008) 8 MLJ 231.

29. Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 reads as under:-

87. Surcharge .-

(1)Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding up of a society, it appears that any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment which is not in accordance with this Act, the rules or the by - laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, Liquidator or any creditor or contributory may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the



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Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just:

(2) Provided that no action shall be commenced under this sub-section after the expiry of seven years from the date of any act or omission referred to in this sub-section:

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

(2) Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if it were an arrear of land revenue and for the purpose of such recovery the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3) This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act.

(4) The Registrar or the person authorized by him, shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:-

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of any documents;

(c) reception of evidence on affidavits;

(d) requisitioning any public record from any



count or office;

(e) issuing commission for examining of witnesses.

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30. From a reading of Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 it is evident that it is compensatory in nature and is intended to recover, amounts from delinquent person who had caused for the loss to the Co-operative Society.

31. Under the aforesaid provision, the Registrar of the person authorised by the Registrar can make an order requiring such person to repay or restore the money or property or any part thereof with interest at any such rate as the Registrar or the person authorized as the aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not accordance with this Act, the rules or the by-laws as the Registrar or the person authorized as the aforesaid thinks just.

32. The facts of the case in the impugned order do not indicate that there was a loss to the third respondent Co-operative Society though it appears that the petitioner had made profit by supplying gas cylinders to persons who were not the registered customers of the third respondent thereby brought disrepute to the Indian Oil Company.

33. While dismissal from service of the petitioner appears to be just under the provisions of the Tamil Nadu Co-operative Societies Act, 1983, invocation of surcharge proceedings against the petitioner, prima facie appears to be without jurisdiction in absence of the direct evidence of pecuniary loss caused to the third respondent.

34. The petitioner appears to have also filed a revision against the order of the 2nd respondent dismissing the petitioner from service of the third respondent before the Additional Registrar of Co-operative Societies. The status of the said proceeding has not been informed either the counsel for the petitioner or the respondent. Though, the above observation has been made regarding the dismissal of the petitioner from the service of the third respondent, it is made clear that the above observation, shall not be binding authority on the Additional Registrar of Co-operative Societies before whom such proceedings are reportedly pending as on the date of this order.



35. As prima facie provisions of Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 are not attracted in absence of a pecuniary loss caused to the third respondent, this Court is inclined to quash the impugned surcharge order dated 28.8.2014 passed by the second respondent and the impugned order dated 6.7.2015 passed by the fourth respondent Tribunal dismissing the petitioner's appeal and remit the case back to the second respondent to pass a fresh order on merits in accordance with law after furnishing a copy of the enquiry report dated 9.4.2012 to the petitioner.

36. The third respondent shall therefore furnish a proper enquiry report dated 9.4.2012 within a period of 30 days from the date of receipt of this order. Further the said proceeding shall be completed by the second respondent within a period of 60 days thereafter. Liberty is given to the petitioner to file appropriate representation/reply within a period of 30 days from the date of receipt of such enquiry report.

37. While passing the order under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, the second respondent shall clearly specify how there was a pecuniary loss caused to the third respondent Co-operative Society on account of supply of cylinders to unregistered customers if indeed the petitioner had remitted the amounts collected from such sale to the credit of the third respondent.

38. If indeed there was no pecuniary loss caused to the third respondent Society, the amount paid by the petitioner shall be refunded back to the petitioner together with interest. The observations made in this order regarding the dismissal of the petitioner from the service of the third respondent Society shall not be binding on the second respondent. The second respondent shall pass independent order on merits in accordance with law within the specified time.

39. This writ petition stands disposed with the above observation. No cost. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar



To

1. The Presiding Officer,
Special Tribunal for Co-Op Cases)
(Chief Judge Court of Small Causes)
Chennai 600 104.
2. The Deputy Registrar of Co-Op Societies
(Non Credit)
Kuralagam, Chennai 600 108.
3. The Managing Director,
Triplicane Urban Co-operative Stores Ltd.,
Triplicane, Chennai 600 005.

+1cc to Mr.J.Muthukumaran, Advocate SR.No.27339

W.P.No.34119 of 2017
and WMP.No.37874 of 2017

UM(CO)
RLP(16/07/2021)