



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 17.9.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

C.R.P. (NPD) (MD) No.200 of 2012

and

M.P.No.1 of 2012

P.Kamatchi Raj

:Petitioner/Petitioner

vs.

1. The Industrial Co-operative Officer/
Surcharge Officer,
O/o. the District Industries Centre,
Thoothukudi.

2. The Assistant Director of
Industrial Co-operatives,
District Liquidator,
District Industries Centre,
Thoothukudi.

:Respondents/Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the Fair and Decretal order dated 9.7.2009 passed in C.M.A.(CS) No.49 of 2003 on the file of the District Court (Co-operative Appeals Tribunal), Thoothukudi.

For Petitioner : Mr.M.Saravanakumar

For Respondents : Mr.A.Baskaran Govt. Advocate

ORDER

The revision has been filed against the fair and decretal order dated 9.7.2009 passed in C.M.A.(CS) No.49 of 2003 on the file of the District Court (Co-operative Appeals Tribunal), Thoothukudi.

2. Brief facts of the case are as under:-

(i) Kalugumalai Stone Workers Industrial Unit IND No.1597 comes within the purview of the Cooperative Societies Act and relate to the welfare and improvement of the Kalugumalai Stone Workers. In the periodical audit conducted by the Department, in the year 1995-96, certain lapses were found out in the administration of the Industrial Unit to the detriment of the Society which has been quantified at Rs.95,967/- under various heads. The petitioner Kamatchiraj was the Special Officer of the Industrial Unit during the relevant point of time.

(ii) With regard to the lapses found out in the audit, an enquiry was conducted under Section 81 of the Societies Act and a Report was filed by the Enquiry Officer on 22.12.1999 pointing out

some missing entries in maintenance of accounts while opining that there is no misappropriation of funds.

(iii) Later, by way of an additional Report dated 18.3.2000, the same Enquiry Officer has opined that there was some misappropriation to the tune of Rs.80,000/- and recommended for taking action against the petitioner Kamatchi Raj.

(iv) Based on the above Report, the second respondent addressed a letter to the Director of Industries and Commerce, Chepauk, Chennai and on the instructions of the Director, the second respondent had initiated surcharge proceedings under Section 87 by appointing one Mr.S.M.Kaja Mohideen, the Superintendent of the Industrial Cooperative Unit to conduct the surcharge proceedings.

(v) On conclusion of the surcharge proceedings, the petitioner was found guilty for the lapses and a sum of Rs.95,967/- with interest at 12% was ordered to be recovered from the petitioner.

(vi) Aggrieved by such order, the petitioner had preferred an Appeal in C.M.A.(CS) No. 49 of 2003 before the Principal District Court, Tuticorin and the Appeal came to be dismissed, aggrieved against the same, the present civil revision petition has been filed by the said Kamatchi Raj.

3. The crux of the submissions made by the learned counsel for the petitioner is as under:-

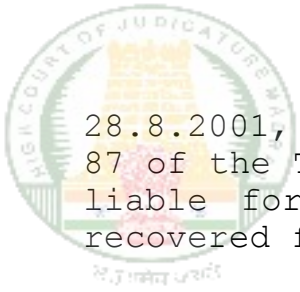
(i) The matter pertains to certain irregularities alleged to have been committed by the petitioner while he was working as Industrial Cooperative Supervisor cum Secretary in Kalugumalai Industrial Stone Workers Industrial Unit. The Society was registered in the year 1982.

(ii) The petitioner joined as Assistant Supervisor of the Industrial Cooperative Secretary during the year 1988. Later, the petitioner was promoted as Supervisor in the year 1989.

(iii) Whiles, the respondent ordered for enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act in respect of certain incidents that took place from the year 1987-88. On 22.12.1999, the Enquiry Officer submitted his Report and in his Report, he had stated that there is no misappropriation in the Society and finding that the State Government has not further extended the quarry licence to the Society, had recommended for winding up the Society.

(iv) Subsequently, on the instigation of the first respondent, the Enquiry Officer, *suo motu*, reopened the case and without conducting any enquiry, filed another Report stating that the petitioner, by non-collection of sundry debts, from Members during the period from 7.4.1993 to 11.8.1993, caused a loss to the tune of Rs.80,000/- to the Society and thereby the petitioner is liable to pay the same.

(v) Thereafter, the second respondent addressed a letter to Director of Industrial Cooperatives for initiation of surcharge proceedings, to the tune of Rs.80,000/- from the petitioner. On the instructions of the Director, the second respondent nominated the Surcharge Officer to recover the amount of Rs.99,774/-. On



28.8.2001, the Surcharge Officer submitted a Report under Section 87 of the Tamil Nadu Cooperative Societies Act and the petitioner is liable for the loss of Rs.95,967/- and that the same should be recovered from the petitioner with interest at 12% per annum.

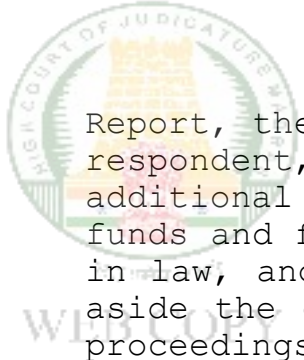
4. Apart from making the above submissions, the learned counsel for the petitioner would bring to the notice of this court that this court, in number of judgments, had held that responsibility could not be fixed for non-collection of sundry debts and the petitioner had submitted a representation with a request to drop the proceedings and that the respondents, in respect of similarly placed another Officer, had dropped the proceedings, however, in respect of the petitioner, they had not dropped the proceedings and thereby the petitioner preferred Appeal before the Principal District Court, Thoothukudi in C.M.A.(CS) No.49 of 2013.

5. The learned counsel for the petitioner would further submit that the Appellate Court, without framing any point for consideration and without rendering any finding whether the act of the petitioner was deliberate or done with reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man, rendered a finding that the petitioner is liable to pay the amount and dismissed the Appeal.

6. The learned counsel for the petitioner would also submit that the Appellate Court has not properly appreciated the fact that initially, the Enquiry Officer had submitted a Report contending that there was no misappropriation of funds and the Society needs to be wound up, however, the same Enquiry Officer, in his additional Report, on the instigation of the first respondent, had contended that there was misappropriation to the tune of about Rs.80,000/- recoverable from the petitioner.

7. It is further brought to the notice of this court that the Appellate Court had failed to consider the fact that for the incident that took place in the year 1993, the enquiry was ordered after seven years against the provisions of the Tamil Nadu Cooperative Societies Act and thereby it had become a time barred one.

8. The learned counsel for the petitioner would further contend that the petitioner was not given any opportunity to put forth his case before the Appellate Court. He would also submit that there is no allegation of any misappropriation in the first Report submitted by the Enquiry Officer and if at all, some missing entries with regard to maintenance of accounts and non availability of vouchers for making some payments and non-collection of sundry debts were pointed out in that Report, which would, certainly, not attract the surcharge proceedings, however, contrary to the first



Report, the same Enquiry Officer, on the instructions from the first respondent, had, suo motu, re-opened the case and submitted an additional enquiry observing that there was misappropriation of funds and fixed such responsibility upon the petitioner which is bad in law, and in totality of the circumstances, he prayed for setting aside the order passed by the court below and the entire surcharge proceedings initiated against him.

9. Per contra, the learned Government Advocate would submit that the Report given by the Enquiry Officer on 18.3.2000 is only in continuation of the Report given by him on 22.12.1999 which is only clarificatory in nature. He would also submit that though the petitioner had filed the Appeal, he did not appear before the court before despite sufficient opportunity provided to him and thereby the Appellate Court, taking into consideration the materials available, passed an order based on Report given by the Enquiry Officer and therefore, he prayed for dismissal of the present civil revision petition.

10. Heard the learned counsel appearing for the parties and perused the materials available on record.

11. Entire perusal of the records would reveal that the charges levelled against the petitioner was lack of maintenance of accounts for some transactions and non production of vouchers for certain payments even as per the first report filed by the Enquiry Officer, but, there was no misappropriation of funds, much less criminal misappropriation compelling the authorities to initiate the surcharge proceedings, however, all of a sudden, without affording any opportunity to the petitioner to put forth his case, he was fixed with responsibility for the lapse in the maintenance of accounts and the loss occurred to the Cooperative Society, which is against the principles of natural justice.

12. It would be apt to refer here that in a similar situation in **A. Janakiraman and another v. Deputy Registrar of Cooperative Societies and another ((2009) 6 MLJ 1051)**, a learned Single Judge of this court, had referred to various earlier decisions on the point and held as under:-

" In surcharge proceedings, the first respondent is duty bound to prove that there was willful dereliction of duty like criminal case. The criminal Court having found that the petitioners are not guilty, the said findings are definitely in favour of the petitioners. The words used under Section 87 (1) are "willful negligence".

The said issue was considered in series of decisions of this Court.

(a) In **Sathyamangalam Co-Operative Urban Bank Limited v. Deputy Registrar of Co-operative Society**



*and Another (1980) 2 MLJ 17, this Court considered the scope of earlier Section viz., Section 71 of the Tamil Nadu Co-operative Societies Act, 1961, which is analogous to Section 87 of the Act, 1983 and held that **mere negligence is not sufficient to intimate surcharge proceedings.** (emphasis supplied)"*

13. Further, recently, a Division Bench of this court in **K.Ajay Kumar Gosh v. Tribunal for Cooperative Cases, Nagercoil ((2009) 4 MLJ 992)**, it has been held thus,

" ... to pass surcharge order under Section 87 of the Act, appellants should have done an actionable wrong either by commission or omission in a deliberate and reprehensible manner with reckless callousness and with a supine indifference, without taking due care and caution ordinarily expected from a reasonable and prudent man under those existing circumstances. In the absence of such categorical finding by the respondents, it is not possible to mulct the appellants with the loss caused to the society."

14. It is not in dispute that the earlier Report filed by the very same Enquiry Officer has observed that there was no misappropriation of funds whereas in the subsequent Report filed by him, a contradicting opinion has been given which has not been properly explained by the Respondents herein either before the Appellate Court or before this court and the Appellate Court has not properly appreciated that issue. In the light of the above decisions and a catena of decision on the issue, this court has no hesitation in holding that the order passed by the Appellate Court has to be set aside and accordingly, it is set aside and the Surcharge Proceedings initiated against the petitioner herein is also set aside.

In the result, the civil revision petition is allowed. No costs. The connected Miscellaneous Petition is closed.

Sd/-

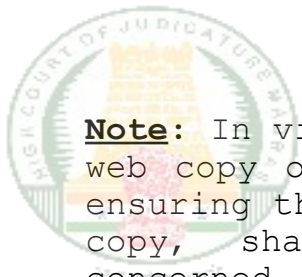
Assistant Registrar (CS-I)

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Sub Assistant Registrar (CS)

ssk.



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To

1. The District Judge,
(Co-operative Appeals Tribunal),
Thoothukudi.
2. The Industrial Co-operative Officer/
Surcharge Officer,
O/o. the District Industries Centre,
Thoothukudi.
3. The Assistant Director of
Industrial Co-operatives,
District Liquidator,
District Industries Centre,
Thoothukudi.

Copy to:-

The Section Officer, V.R Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.SARAVANA KUMAR, Advocate (SR-29658[F] dated 20/09/2021)

+1 CC to M/s.SPL. GP (SR-29569[F] dated 20/09/2021)

**C.R.P. (NPD) (MD) No.200 of 2012
and
M.P.No.1 of 2012
17.9.2021.**

RD(24.09.2021) 6P 8C