



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD)No.16352 of 2021

and

W.M.P. (MD) .No.13205 of 2021

WEB COPY

R.J.Gangatharan

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Madurai.

2.The Administrative Officer,
A-3101 Madurai Milk Project Employees Co-operative Thrift
and Credit Society Limited,
Sathamangalam,
Madurai.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the communication dated 02.08.2021 made in j.jP.t.14/2019-20/rg issued by the first respondent and to set aside the same as illegal and consequently direct the first respondent to take the review application filed by the petitioner dated 15.06.2021 on file and dispose of the same in accordance with law.

For Petitioner : Mr.R.Gandhi
For R1 & R2 : Mr.K.S.Selva Ganesan,
Counsel for State.

ORDER

The petitioner challenges a communication dated 02.08.2021 of the first respondent by which the Review Application of the petitioner was rejected.

2. The petitioner states that he was working as an Assistant Secretary in the second respondent Society. On 19.07.2019, an order of suspension was issued against the petitioner and a charge memo was issued thereafter. Pursuant to the charge memo, an inquiry was instituted against the petitioner and others under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. On conclusion of the surcharge proceedings, an order dated 18.02.2021 was issued by the first respondent confirming the findings in the report of the Inquiry Officer. The petitioner filed a Review Application against the order dated 18.02.2021. The said Review Application was rejected by the impugned order dated



02.08.2021 on the ground that a Review Application is not maintainable.

3. Mr.K.S.Selva Ganesan, learned counsel for the State, accepts notice on behalf of both the respondents. He submits that a review is not maintainable against an order passed under Section 87 of the Act of 1983.

4. Both an appeal and a review are creatures of statute. Therefore, neither an appellate remedy nor remedy by way of review may be exercised unless the authority concerned is empowered to receive such appeal or review by the relevant statute. As regards the Tamil Nadu Co-operative Societies Act, 1983, Section 152 thereof enables a person aggrieved by an order passed under Section 87 thereof, as well as orders under other Sections, to file an appeal against such order. As per sub-section 3 of Section 152, such appeal is to be filed within sixty (60) days from the date of communication of the relevant order. The said sub-section enables the appellate authority to receive an appeal filed even beyond the sixty day period provided the appellant concerned establishes sufficient cause for such delay. Section 154 is the provision dealing with review. The said provision enables an aggrieved person to apply for review against an order passed under Section 152 or Section 153 on the grounds indicated therein. Therefore, it is clear that the power of review is confined to orders passed under Section 152 or Section 153. As regards orders under Section 87, remedy is by way of appeal under Section 152.

5. In light of the above discussion and analysis, the impugned order dated 02.08.2021 by which the petitioner's Review Application was rejected does not contain any infirmity. However, it will be open to the petitioner to file an appeal under Section 152 of the Act of 1983. In terms of sub-section 3 of Section 152, it will also be open to the petitioner to file an application to condone the delay by citing the *bona fide* but erroneous filing of a Review Application previously.

6. With the above observations, W.P.(MD).No.16352 of 2021 is disposed of without any order as to costs. Consequently, W.M.P.(MD).No.13205 of 2021 stands closed.

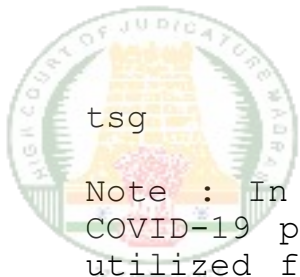
Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



tsg

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Deputy Registrar of Co-operative Societies,
Madurai.

2.The Administrative Officer,
A-3101 Madurai Milk Project Employees Co-operative Thrift
and Credit Society Limited,
Sathamangalam,
Madurai.

+1 CC to M/s.R.GANDHI, Advocate (SR-29151[F] dated 15/09/2021)

+1 CC to M/s.SPL. GP (SR-29120[F] dated 15/09/2021)

W.P (MD) No.16352 of 2021
14.09.2021

NSN(CO)
KB(21.09.2021) 3P 5C