



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.02.2022

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THE HONOURABLE Mr.JUSTICE V.PARTHIBAN

W.P.No.664 of 2014

and

M.P.No.1 of 2014

A.S.Jayavelu

... Petitioner

Vs

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

2. Vellore District Central Co-operative Bank Limited,
Rep. by its President,
No.1, Officers Lane, Vellore.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari, to call for the concerned records from the first respondent, quash the order dated 21.02.2013 bearing Na.Ka.No.8119/2006 Sa.ba. issued by the first respondent and the Surcharge Notice issued by the first respondent dated 03.09.2013, bearing Na.Ka.No.8119/2006 Sa.ba/Tha.thee18/2006-2007, in so far as the petitioner is concerned.

For Petitioner : Mr.Balan Haridas

For Respondents : Mr.S.Arumugam, GA for R1
Mr.R.Gopinath for R2

O R D E R

This writ petition has been filed to issue a writ of Certiorari, to call for the concerned records from the first respondent, quash the order dated 21.02.2013 bearing Na.Ka.No.8119/2006 Sa.ba. issued by the first respondent and the Surcharge Notice issued by the first respondent dated 03.09.2013, bearing Na.Ka.No.8119/2006 Sa.ba/Tha.thee18/2006-2007, in so far as the petitioner is concerned.



2. The case of the petitioner is as follows:

(i) The petitioner was working as Circle Supervisor in the second respondent Co-operative Bank. A surcharge proceedings has been initiated against the petitioner for certain irregularities alleged to have been committed by him while he was working in Chakramallur Primary Agricultural Co-operative Bank, Chakramallur Post. The surcharge notice was issued on 28.10.2006. In response to the surcharge notice, the petitioner appeared to have submitted a representation stating that he was no way responsible for any loss to the Society and there was no negligence on his part at all. The petitioner was shown as 7th defendant in the surcharge proceedings. The first respondent finding that the petitioner's explanation was acceptable and satisfactory, deleted the name of the petitioner from the surcharge proceedings vide proceedings dated 06.09.2010.

(ii) Thereafter, one Ramadoss, who was working as Salesman in the said Co-operative Bank was found guilty by the first respondent in the aforesaid common order dated 06.09.2010. The said Ramadoss had filed an appeal before the Co-operative Tribunal against the said order in so far as he was concerned. In the appeal, the Tribunal passed an order on 09.03.2012, allowing the appeal by setting aside the order of the first respondent dated 06.09.2010, under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 and remanded the matter for fresh consideration of the first respondent, after providing due opportunity to the appellant therein. The appeal was allowed only in so far as the said Ramadoss was concerned. He was only the appellant therein.

(iii) While matter stood thus, the first respondent in pursuance of the direction of the Co-operative Tribunal dated 09.03.2012, has issued proceedings dated 15.05.2012, re-opening the surcharge proceedings, not only against the said Ramadoss and also against the petitioner, as well. At this, the petitioner submitted a reply on 15.06.2012, stating that the re-opening of the surcharge proceedings against him was illegal and impermissible for the reason that the order dated 06.09.2010, exonerating the petitioner from the charges by the first respondent, had become final and no appeal was filed against his exoneration.

(iv) However without appreciating the legal position, thus, the explanation given by the petitioner, the first respondent issued show cause notice on 08.10.2012. The petitioner has also responded to the show cause notice vide his letter dated 17.11.2012. Thereafter, the petitioner approached this Court in W.P.No.32815 of 2012, challenging the show cause notice dated 08.10.2012. This Court however passed an order on 10.12.2012, directing the first respondent to consider the explanation of



the petitioner and pass orders afresh on the same. Thereafter, the first respondent passed an order on 21.02.2013, stating that the orders will be passed after conducting surcharge proceedings and issued show cause notice dated 03.09.2013, for surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act. Challenging the same, the petitioner is before this Court.

3. The learned counsel for the petitioner has reiterated the above facts and he would strongly urge this Court that the impugned action of the first respondent is not maintainable in law for the simple reason that the exoneration by the first respondent vide his letter dated 06.09.2010, had become final and no appeal had been filed against the said exoneration. Only in so far as the said Ramadoss, the Co-operative Tribunal has remanded the matter for fresh consideration and thereupon, the matter has been re-opened by the first respondent. When the matter was reopened in pursuance of the direction of the Co-operative Tribunal, the scope of re-consideration should be confined only to the said Ramadoss and not others. The action of reopening of the issue even as against the petitioner in the circumstances of the case, is an attempt by the first respondent to overreach his power and also beyond the scope of the direction issued by the Co-operative Tribunal.

4. Moreover, according to the learned counsel, this Court has directed in W.P.No.32815 of 2012, to pass orders in accordance with law. While passing orders in pursuance of the direction of this Court, the first respondent reopened the entire surcharge proceedings against the petitioner after it had become final way back on 06.09.2010, when the first respondent had passed the order deleting the name of the petitioner from the surcharge proceedings, on acceptance of his explanation. He would therefore submit that the impugned proceedings by the first respondent are liable to be interfered with for the reason that the same is tainted with malafides and the same amounted to a colourable exercise of power and hence cannot be sustained in law.

5. Notice has been ordered. Mr.S.Arumugam, learned Government Advocate entered appearance on behalf of the first respondent and Mr.R.Gopinath, learned counsel entered appearance on behalf of the second respondent. Although no counter affidavit has been filed in the matter, the learned counsel appearing for the respondents made their submissions on the basis of the instructions from the respondents. The learned counsel would not dispute the facts as stated above. The learned counsel would also have no answer to the admitted position that the Co-operative Tribunal had remanded the matter only in respect of the said Ramadoss, in the appeal proceedings



initiated by him.

6. In such circumstances, the scope of re-consideration had to be confined only to the claim of Ramadoss and not expand the scope of fresh consideration in respect of other employees who had been exonerated like the petitioner herein. When a person who had been found guilty of irregularities, had chosen to file an appeal against the proceedings of the authority before the Co-operative Tribunal and the Tribunal remanded the matter to the authority for fresh consideration as far as that person was concerned, the authority was to imperatively confine his consideration only to the appellant alone who invited the remand from the Tribunal and not against others. It is more so that admittedly the petitioner was exonerated of the charges of irregularities vide order dated 06.09.2010 and no appeal has been preferred against the finding of the authority, in so far the involvement of the petitioner was concerned. In the absence of any appeal against the exoneration, the finding had become final. As rightly contended by the learned counsel for the petitioner, it cannot be reopened at the instance of a collateral proceedings that gave rise to directions of remand by the Co-operative Tribunal.

7. This Court finds that the action of the first respondent in reopening the surcharge proceedings against the petitioner, is not only suffering from non-application of mind and also amounting to a colourable exercise of power, besides the action being arbitrary and unjust.

8. For the above said reasons, this Court is of the considered view that the petitioner has made out a case for grant of relief.

9. Therefore, the impugned proceedings dated 21.02.2013 bearing Na.Ka.No.8119/2006 Sa.ba. issued by the first respondent and the Surcharge Notice issued by the first respondent dated 03.09.2013, bearing Na.Ka.No.8119/2006 Sa.ba/Tha.theel8/2006-2007, are hereby set aside.

10. Accordingly, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

gsk



To

1. The Deputy Registrar of Co-operative Societies,
Ranipet.
2. The President,
Vellore District Central Co-operative Bank Limited,
No.1, Officers Lane, Vellore.

+1cc to Mr.R.Gophinath, Advocate, S.R.No.10894

+1cc to the Government Pleader, S.R.No.11523

W.P.No.664 of 2014 and
M.P.No.1 of 2014

GPL(CO)
SU(07/04/2022)