IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2023

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P(NPD)No.1843 of 2019
and CMP.No.12213 of 2019

K.Shanmugam ... Petitioner

vs

1.The Deputy Registrar of Co-operative Societies,
Omalur Circle,
Omalur, Salem District.

2.The Special Officer,
K.K.124 Kolathur Primary Agricultural Co-operative Bank,
Kolathur,
Mettur Taluk, Salem District. .. Respondents

Petition filed under Article 227 of the Constitution of India against the Judgment and Decree dated 13.10.2017 made in C.M.A.(CS)No.19 of 2009 on the file of the Court of the Principal District Judge, Salem confirming the Surcharge Order passed by the 1st respondent in Na.Ka.No.3691/2008 SaPa dated 27.02.2009.

For Petitioner : Mr.G.C.Nelson Britto

For Respondents : Mr.B.Tamil Nidhi (for R1)
Additional Government Pleader (CS)

ORDER

The civil revision petition challenges the order passed in CMA(CS)No.19 of 2009 dated 13.10.2017. CMA(CS)No.19 of 2009 was preferred against the order of the Deputy Registrar of Co-operative Societies in surcharge proceedings in Na.Ka.3691/2008/SaPa dated 27.02.2009.

2.The petitioner was an employee of K.K.124 Kolathur Primary Agricultural Co-operative Bank. This bank is situated in Kolathur Village, Mettur Taluk, Salem District. He had joined service on 01.11.1970 and retired from service as the Secretary on attaining the age of superannuation on 30.09.2007. He was the Secretary of the Society between April 1999 and March 2003.

3.Allegations were made against him that he had committed certain irregularities in issuance of loan and had failed to collect the entrance fee for members as required by the bye-laws. Notices were issued under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 and a report was submitted.

4.According to the enquiry report, the irregularities alleged were found to be true and they were based on an audit report with respect to the society.

5.The shortfall falls under two categories namely,

(i) that as a Secretary he had collected entrance fee only from 12 members and not from 857 members as required by the bye-laws. On account of the failure to collect the amount, it resulted in a loss of Rs.16,200/- to the Society.

(ii) the second head is the major head and slightly a serious one. It was alleged that as a Secretary, he had indulged in collection of deposit and collected deposit from people and had invested the amounts so collected at a lower rate with the Central Co-operative Bank.

6.Based on the Section 81 Enquiry Report, surcharge proceedings were initiated under Section 87 of the Act. The surcharge proceedings were conducted by the first respondent namely, the Deputy Registrar of Co-operative Societies, Omalur Circle, Omalur, Salem District. The defence of the applicant was that he had only obeyed the instructions of the Registrar of Co-operative Societies whereby, he had deposited the amounts collected with the Central Co-operative Bank in the District.

7.A perusal of the enquiry report as well as the order in appeal, against which the present revision arises would show that there is no allegation of theft, malversation or misappropriation of the amounts.

8.I heard Mr.G.C.Nelson Britto, learned counsel appearing for the petitioner and Mr.Tamil Nidhi, learned Additional Government Pleader (CS) appearing for the 1st respondent.

9.As per Section 10(2) of the bye-laws of the Society, it fell on the clerk to have collected the entry fee of Rs.25/-. At that relevant time, the civil revision petitioner was the Secretary of the Society, but failed to do so. He cannot allege that since the clerk did not collect the amount, he is not responsible for the same. The chain of hierarchy requires that the paid Secretary supervises the job of the clerk and it was his duty to ensure that entry fee of Rs.25/- should have been collected by the clerk.

10.Having failed in his supervisory role, I am not inclined to interfere with the concurrent findings of fact by the enquiry officer as well as by the lower appellate Court holding the petitioner responsible for the failure to collect Rs.25/- causing a loss to the society. On that head, the civil revision petition deserves dismissal.

11.Insofar as the second head is concerned, it is the admitted case that the appellant collected huge amounts of deposit from members and non-members and had paid high interest. However, it is also on record that he utilised 60% of the transaction amounts towards the Society's transactions and the remaining 40%, he had deposited to the credit of the second respondent in the District Central Co-operative Bank.

12.The petitioner relies upon the Circulars issued by the Salem District Co-operative Bank as well as by the Registrar of Co-operative Societies dated 25.10.1988, 02.03.1993, 23.01.1996, 20.08.1997 and 24.01.1998.

13.At all points of time, the compliance with respect to the Circulars issued by the superiors of the petitioner is not in dispute. He had strictly followed the Circulars and had implemented them in letter and spirit. The problem arose, as pointed out by Mr.Tamil Nidhi, when the audit objections had been raised by the auditors, who visited the bank.

14.I have to state that audit is a postmortem of the transaction. An audit merely states whether the action that has already taken place is correct or objectionable. At the time when the decision is taken, I have to see whether the petitioner has followed the instructions of his superiors.

15.A perusal of the Circulars cited above would show that the Primary Agricultural Co-operative Bank had been instructed to invest the amounts in their hands, after defraying their expenses, to the credit of the District Central Co-operative Bank. In accordance with the same, the petitioner had spent 60% towards his Society's needs and had invested the same as instructed by the Registrar of Co-operative Societies and by the District Central Co-operative Bank. Therefore, he had followed the instructions that he was bound by during the relevant time.

16.Further, as I already pointed out this is not a case of misappropriation, fraud, illegal retention of money or breach of trust, for me to confirm the order. This is a case of a management decision, which could be right or wrong, but taken in bonafide manner. A person who is incharge of the society might take a decision according to his skill and ability, which the audit might subsequently find to be wrong. That does not impinge upon the bonafides or upon the intention of the petitioner to follow the instructions of the Registrar.

17.I also have to hold that an employee of the society cannot take such independent decisions, but is bound by the directions of the Board of Directors in particular, the President. A paid Secretary would have to abide by the binding directions issued by the Registrar of Co-operative Societies and the Managing Director of the respective Central Co-operative Banks.

18.The petitioner having complied with the Circulars, the notional loss, being the difference between the higher rate of interest paid to the members and non-members and the lower rate of interest that was generated on account of the investment in the Central Co-operative Bank, should not be laid at the door steps of a paid Secretary. He is but a mere employee. Therefore, insofar as the short collection of admission fees from 857 members is concerned, the civil revision petition stands dismissed.

19.Insofar as the head of difference between the interest paid and payable to members and receiving by interest of the members amounting to Rs.37,62,839/- is set aside.

20.The vehement and strong objection of Mr.Tamil Nidhi, that the action of the respondent is contrary to the audit report has been considered by me in the previous paragraph. I have held that audit objection cannot create a liability as it is a post decisional correctional method which is found in the system.

21.As long as the petitioner has complied with the rules and regulations, the loss that the bank had suffered is at best, a wrong decision based on the instructions of the superiors. A decision making authority is entitled to make right as well as wrong decisions. Hind sight is the perfect science and in this case, it is on the basis of audit objection that the petitioner has been mulcted with liability. Therefore, that portion of the liability is set aside.

22.This civil revision petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

23.The petitioner states that his retirement benefits have not been disbursed so far. There shall be a direction to the respondents to adjust the head under which the petitioner has been held liable as against the amounts payable to him and disburse the remaining portion of the amounts. The said exercise shall be completed within a period of sixteen (16) weeks from the date of receipt of a copy of this order.

09.08.2023

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
vs

To

The Principal District Judge,
Salem.

<u>V. LAKSHMINARAYANAN,J.</u>

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