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CRP.No.3181 of 2022.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 03.03.2023

Delivered On : 28.04.2023

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP.No.3181 of 2022

S.Survarachakan

... Petitioner/Appellant/Petitioner

Vs.

1. The Deputy Registrar/
Arbitrator,
Kancheepuram Region,
Kancheepuram.

2. The Managing Director,
Kancheepuram District Consumer
Co-operative Wholesale Stores,
No.185, Prakasam Salai,
Chennai – 600 108. ... Respondents/Respondents/Respondents

PRAYER: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Order dated 25.04.2022 passed in CMA.No.50/2018 (CNR.No.TNCH09-012419-2017) on the file of the learned Chief Judge, Court of Small Causes, Chennai, Co-operative Tribunal confirming the Order passed in the proceeding No.5/2016/A3 dated 20.01.2017 under Tamil Nadu Co-operative Societies Act, 1983 and allow the CRP.

For Petitioner : Mr.J.Muthukumaran



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For Respondents : Mr.V.Jeevagiridharan
Additional Government Pleader for R-1
Dr.S.Suriya
Additional Government Pleader for R-2

ORDER

This Civil Revision Petition has been filed to set aside the Order dated 25.04.2022 passed in CMA.No.50/2018 (CNR.No.TNCH09-012419-2017) on the file of the learned Chief Judge, Court of Small Causes, Chennai, Co-operative Tribunal confirming the Order passed in the proceeding No.5/2016/A3 dated 20.01.2017 under the Tamil Nadu Co-operative Societies Act, 1983.

2. This Civil Revision Petition had been filed by the Appellant. The Petitioner was a salesman before the Co-operative Society. This Petition had been filed against the surcharge Order passed by the Deputy Registrar/Arbitrator, Kancheepuram based on the surprise inspection conducted by the Manager of the Society.

2.1. The learned Counsel for the Petitioner invited the attention of this Court to the finding of the enquiry Officer imposing surcharge on the



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Petitioner. Aggrieved by the surcharge Order, the Petitioner herein filed Appeal as per the Provisions of Co-operative Societies Act before the Co-operative Appellate Tribunal, Chief Judge, Court of Small Causes, Chennai in CMA.No.50/2018.

2.2. It is the contention of the learned Counsel for the Petitioner that the Petitioner was employed in the second Respondent Society, Kanchipuram District Consumer Co-operative Whole Sale Store, No.185, Prakasam Salai, Chennai.

2.3. The Appellant was working as a salesman in one fair price shop at Rajaji Nagar from April, 2011 to May, 2014. The second Respondent had control over the fair price shop in and around the Kanchipuram District. The second Respondent conducted periodical inspection particularly stock verification. Apart from that, surprise inspection was conducted by the Civil Supply Distribution Officer. During those inspection if any deficit stock was found, immediately memo was issued to the employee calling for an explanation. During April, 2011 to May, 2014, regular monthly stock verification was conducted by the second Respondent and no major



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shortage was found and recovered from the shop where the Revision Petitioner was employed. The second Respondent referred the matter to the first Respondent with a false allegation and asked them to conduct inspection. The first Respondent ordered inspection under Section 82 of Tamil Nadu Co-operative Societies Act, 1983. One Muthupandian, Sub Registrar, Co-operative Societies attended as Inspection Officer and conducted inspection without following the due process of law. After such inspection, the said Inspection Officer had passed the illegal Orders alleging that there was some shortage to the tune of Rs.16,98,389/-. Out of the said shortage a sum of Rs.10,20,000/- was already received by the second Respondent and the remaining amount of Rs.6,98,389/- is yet to be paid. Thereafter, a show cause notice was issued by the first Respondent to the Revision Petitioner herein. The Revision Petitioner had given a detailed explanation, thereby rebutting his liability. Without considering the explanations offered by the Revision Petitioner, the first Respondent had passed the surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 and directed the Revision Petitioner to pay the balance amount either jointly or severally along with his colleagues. Aggrieved by the said surcharge Order, Revision Petitioner had filed



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CMA.No.50/2018 before the Court of learned Chief Judge, Court of Small Causes, Chennai which is the Appellate Authority under the Co-operative Societies Act. The Petitioner as Appellant sought to set aside the proceedings of the first Respondent dated 20.01.2017 as it is against the principles of natural justice. Also the Petitioner herein sought to set aside the Order of the first Respondent dated 20.01.2017 stating that the Order passed by the first Respondent as Arbitrary and in violation of principles of natural justice. Also, the Inspection Report of the Inspection Officer was not at all genuine and in accordance with law and not in accordance with due procedure. Therefore, the Order passed by the first Respondent based on the said Inspection Report is liable to be set aside. Also, it was argued that the proceedings under Section 87 (1) of the Tamil Nadu Co-operative Societies Act, 1983 ought to have been completed within six months from the date of commencement of the proceedings. The proceedings commenced on 24.02.2015 and the final Order was received by the Revision Petitioner on 01.04.2017. Therefore, the entire proceedings of the first Respondent was bad in law. The request of the Petitioner that the inspection conducted by the Manager of the Society where the Petitioner was a salesman and the Manager of the said Society himself as the



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Inspection Officer is violative of natural justice was not considered. The Manager of the second Respondent society where the Petitioner was serving as salesman had not verified the register and had not verified the stock and without following the due procedures, the Inspection Officer had given a finding as though the stocks were missing. The copies of the report were not furnished to the Petitioner which is violative of principle of natural justice.

2.4. The Appeal preferred by the Revision Petitioner before the Co-operative Special Tribunal/Chief Judge, Court of Small Causes, Chennai was dismissed by the learned Chief Judge placing reliance on the Order passed by the Surcharge Officer. The learned Chief Judge, Court of Small Causes, Chennai failed to consider that the inspection report had been furnished along with show cause notice in the surcharge proceedings. The observation of the learned Chief Judge, Court of Small Causes, Chennai that the Petitioner had sought the second Respondent to furnish the copy of the surcharge proceedings again and again with an ulterior motive to delay the proceedings is unjustified and unwarranted. The learned Chief Judge, Court of Small Causes, Chennai failed to consider that the Petitioner herein



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had been visited with civil consequences of recovery of huge sum in review of the surcharge proceedings. Therefore, he has right to seek furnishing all the relevant copies to defend himself effectively. The learned Chief Judge, Court of Small Causes, failed to consider that the proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, shall be completed within a period of six months from the date of commencement of the proceedings. Here, in this case, surcharge proceedings commenced on 24.02.2015 and final Order was passed on 20.01.2017 i.e., the second Respondent had taken nearly two years to complete the proceedings. Therefore, the entire proceedings are liable to be quashed for not observing the time limit. The delay in the case for completing the proceedings within the stipulated period could have been averted if the copies of the inspection report had been furnished to the Petitioner in time. The learned Chief Judge, Court of Small Causes failed to consider that the request of the Petitioner for changing the inspection officer was not conceded by the second Respondent, since the Inspection Officer himself was the employee of the first Respondent society and the Petitioner had apprehension that he cannot get justice in the hands of the Inspection Officer who is the Manager of the second Respondent society. The learned Chief Judge, Court of Small



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Causes, Chennai failed to consider that the monthly stock verification was conducted by the second Respondent society from the period of April, 2011 to May 2014 and no deficiency in stock had been reported. That apart, during the annual report of the Authority that there is no remark about the deficiency of stock. Also, the learned Chief Judge, Court of Small Causes failed to consider that the Inspection Ordered under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 is an internal enquiry in the department to find out the factual position of the affairs of the Co-operative Societies. It is supposed to be confidential. There is no question of calling for explanation from the Staff concerned, as pointed out in the Judgment. The learned Chief Judge, Court of Small Causes had dismissed the Appeal as per the Order dated 25.04.2022 without proper application of mind to the facts and circumstances of the case and to the provisions of law. Therefore, the impugned Judgment dated 25.04.2022 is to be set aside. This Civil Revision Petition is to be allowed and thereby setting aside the surcharge proceeding in No.5/2016/A3 dated 20.01.2017 under the Tamil Nadu Co-operative Societies Act, 1983.

2.5. In support of his contention, the learned Counsel for the Revision



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Petitioner relied on the following rulings:

(i) **2013 (1) CTC 367** in the case of **S.Kumarasamy Vs. The Deputy**

Registrar of Co-operative Societies, Kovilpatti. The relevant portion reads as follows:

“Tamil Nadu Cooperative Societies Act, 1983 (T.N. Act 30 of 1983), Section 87 – Surcharge proceedings – Principles of Natural Justice – Enquiry Report under Section 81 not submitted to Petitioner along with Notice under Section 87 – Report submitted to Petitioner long after issuance of Notice under Section 87 – In such circumstances, held, Petitioner not afforded with ample opportunity at time of receipt of Notice and entire proceedings vitiated on account of violation of Principles of Natural Justice.

Tamil Nadu Cooperative Societies Act, 1983 (T.N. Act 30 of 1983), Section 87 – Surcharge proceedings – Action against President alone – Validity of – Negligence in affairs of Society, attributable to Secretary of Society and subordinates, who were in-charge of same – When no wilful negligence is attributed to President, proceedings initiated against President alone, invalid.

Code of Civil Procedure, 1908 (5 of 1908), Order 22, Rule 4 - Tamil Nadu Cooperative Societies Act, 1983 (T.N. Act 30 of 1983), Section 87 – Surcharge proceedings – Secretary of Society died after joint award passed against President and Secretary both – Proceedings initiated against President alone – Held, when legal heirs of deceased Secretary not brought on record, action against President alone, not sustainable.”

(ii) **2007 Writ L.R 502** in the case of **L.Ranganathan Vs. The Deputy**

Registrar of Co-operative Societies, Salem Circle, Salem District. The relevant portion is extracted hereunder:



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“Tamil Nadu Cooperative Societies Act, Section 87 – Show cause notice issued to the Petitioner initiating surcharge proceedings based on the report of the enquiry under Section 81 – Writ Petition was filed mainly on the ground that copy of the Enquiry report prepared by the Enquiry Officer based on the enquiry conducted on 07.11.2005, has not been served on the Petitioner – Held: admittedly the copy of the enquiry report has not been served on the Petitioner before initiating the impugned Surcharge proceedings under Section 87 – In view of the same, the writ petition is allowed; impugned show cause notice is quashed.”

3. The learned Counsel for the Respondents submitted the counter filed by the first Respondent and adopted by the second Respondent. The second Respondent had not filed separate counter. Learned Counsel appearing for the second Respondent relied on the contents of the counter.

The relevant portion reads as follows:

“3) The following facts are placed before this Hon'ble Court to appreciate the manner in which the Petitioner's liability under the surcharge proceedings had arisen and the Respondents were well justified in his action.

6) It is submitted that the first Respondent issued summons to the Petitioner/Appellant to appear in the surcharge proceeding on 11.07.2016, 12.08.2016 and 09.11.2016 and the Petitioner/Appellant appeared on 11.07.2016 and gave a letter stating that he would submit explanation after perusal of records on 12.08.2016. Also he gave his deposition stating that he would give written explanation in the next hearing. In his deposition he has also admitted that he already remitted an amount of Rs.10,20,000/- and another amount of Rs.45,000/- towards the loss caused to the cooperative store.

7) The Petitioner/Appellant did not appear on 09.12.2016. Hence another opportunity was given to the Petitioner/Appellant to appear on 29.12.2016 being the last chance. The Petitioner/Appellant



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appeared on 29.12.2016 and requested time for another 10 days to give his detailed written deposition and also informed that he will produce the receipts for having paid the amount. In adhering his request, another opportunity was given to the Petitioner/Appellant to appear on 18.01.2017. But the Petitioner/Appellant had failed to appear in the surcharge proceedings conducted on 18.01.2017. It is submitted that all efforts were taken by the first Respondent to provide the reasonable opportunity to the Petitioner/Appellant to defend himself. The Petitioner/Appellant failed to avail the opportunities. As sufficient opportunities were given to the Petitioner/Appellant in the surcharge proceedings by adhering the Principle of natural justice, first Respondent passed final Orders on 20.01.2017 fastening liability on the Petitioner/Appellant and two others for Rs.6,78,389.05 with accrued interest from the date of occurrence of loss and to the date of remittance.

14. With regard to averments made in grounds (e), (f) and (g), it is submitted that the Petitioner/Appellant had attended the hearings of inspection conducted under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 and he was given reasonable opportunities to defend himself by perusing records. It is only an afterthought on the part of the Petitioner to cast aspersion on the inspection investigation after without any benefice cause.

15. With regard to averment made in ground (h), it is submitted that having accepted his guilty, remitted an amount of Rs.10,20,000/- and further amount of Rs.45,098/- which is adjusted from his subsistence allowance with his consent on 31.08.2015. The Petitioner in his deposition during surcharge hearings on 12.08.2016, has admitted that he remitted an amount of Rs.10,20,000/- and Rs.45098/- towards the loss amount and further on 29.12.2016, he deposed that he will produce receipts for having remitted the aforesaid amounts. In as much as the Petitioner paid the said amount on coercion of the second Respondent, he ought to have insisted the same to the first Respondent surcharge proceedings. Hence the Petitioner's contention that he remitted the amount on coercion is not sound good and unsustainable.”

3.1. Also, the learned Additional Government Pleader placed reliance



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on the findings of the Enquiry Officer particularly to the fact that on request of the delinquent, several opportunities were granted to him to peruse the records and offer explanation. In spite of the same, he had not perused any of the documents and had failed to appear at the adjourned date. Therefore, surcharge proceedings had been completed. Now, after given a finding, the Revision Petitioner herein cannot claim that the Enquiry Officer had not proceeded with the enquiry by fair means and he was not granted any opportunities. That therefore, the surcharge proceedings initiated against him is violative of the principles of natural justice and has to be set aside cannot be accepted. Learned Counsel for the second Respondent prayed for dismissal of this Civil Revision Petition.

4. Point For Consideration:

Whether the finding of the surcharge proceedings No.5/2016/A3 dated 20.01.2017 and confirmed by the learned Chief Judge, Court of Small Causes, Chennai by dismissing the CMA.No.50/2018 filed by the Petitioner herein is to be set aside by exercising the power of the High Court under Article 227 of Constitution of India?



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5. On consideration of the rival submissions, it is found that in the annual inspection conducted, nothing was found missing. The first Respondent had ordered inspection, as an internal mechanism, to be conducted by the Manager of the second Respondent society, who is the Inspection Officer. The Inspection Officer had conducted inspection and given a finding as though certain items were missing. The explanation offered by the Revision Petitioner, as delinquent under the surcharge proceedings that in the previous inspection reports nothing was reported missing. It is the contention of the learned Counsel for the Petitioner that the surcharge proceedings was carried over the period beyond six months. Therefore, the proceedings are vitiated. Also, due procedures were not followed by verifying the stocks with the stock registers. Without verifying the stocks with the stock register, the Inspection Officer who is the Manager of the second Respondent society, who has already grudge against the Revision Petitioner had given a report as though some items of the stock of the second Respondent Society are missing. The request of the Revision Petitioner to change the Inspection Officer was not considered.

5.1.The contention of the learned Counsel for the Revision Petitioner



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that the internal inspection is only a mechanism to find out the actual position of the affairs of the Co-operative Societies which is confidential in nature wherein as per the Rules and Procedures of the Co-operative Societies Act, memo will not be issued to the Staff concerned. Instead, based on the internal inspection, memo was issued to the Revision Petitioner which is against the Rules of the Co-operative Societies Act. In the previous monthly stock verification from 2011 to 2014, deficiency in stock had not been reported. The finding of the Inspection Report is found to be vitiated, particularly, when the documents sought for, by the Petitioner was not granted to him. As per the reported rulings in **2013 (1) CTC 367** in the case of ***S.Kumarasamy Vs. The Deputy Registrar of Co-operative Societies, Kovilpatti*** and **2007 Writ L.R 502** in the case of ***L.Ranganathan Vs. The Deputy Registrar of Co-operative Societies, Salem Circle, Salem District*** which are to be considered. For imposing penalty under the surcharge proceedings, there shall be a clear finding that the negligence of the Staff was wanton, with an intention to cause loss. Only under such circumstances, for surcharge proceedings imposing penalty will be considered as sustainable in law. Here, on mere finding without verification of stocks with the stock register, particularly, when there was inspection, the



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Inspection Officer immediately proceeds the alleged inspection wherein there was no remark of missing stocks. Under those circumstances, imposing penalty invoking Section 87 of the Tamil Nadu Co-operative Societies Act is found vitiated. Therefore, the Authorities under this Act had not followed the due procedure and thereby the Revision Petitioner had been punished for no fault of his by imposing surcharge proceedings.

5.2. In the reported ruling of this Court in **2013 (1) CTC 367** in the case of ***S.Kumarasamy -vs- The Deputy Registrar of Cooperative Societies, Kovilpatti***, it was held that enquiry report under Section 81 of the Co-operative Societies Act was not furnished to the Petitioner along with notice under Section 87 of the Cooperative Societies Act. The report submitted to the Petitioner long after the issuance of notice under Section 87 of the Cooperative Societies Act. In such circumstances, the Petitioner was not afforded with ample opportunity and therefore, the entire proceedings was held vitiated on account of violation of principles of natural justice. Here also the facts are similar. The Petitioner sought change of Inspection Officer, as the Manager of the second Respondent society himself was the Inspection Officer. He had personal grudge against



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the Petitioner who was employed under the said Manager. Particularly, when the previous inspection report of the second Respondent society did not mention any missing of stocks.

5.3.The Manager of the second Respondent society, on being appointed as Inspection Officer, immediately, proceeded with the inspection without verifying the stocks with the stock register and had given a report to the first Respondent as though certain stocks were missing. Based on which, the first Respondent had issued show cause notice to the Petitioner. Usually, in inspection report which is conducted to find out the factual position of the affairs of the Cooperative Societies in which memos are not issued. Here memo was issued to the Petitioner based on the inspection report. The request of the Petitioner to change the Inspection Officer was not considered. After the inspection report, memo was issued to the Petitioner. The Petitioner sought copy of report under Section 81 of the Cooperative Societies Act. That was not furnished to him. Therefore, as per the reported ruling in **2013 (1) CTC 367**, the surcharge proceedings is violative of the principles of natural justice and the ratio laid down in the reported ruling **2013 (1) CTC 367** holds good in this case also.



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5.4.As per the reported ruling in **2007 Writ L.R. 502** in the case of ***L.Ranganathan -vs- The Deputy Registrar of Co-operative Societies, Salem Circle, Salem District***, the copy of the enquiry report was not furnished to the delinquent. Therefore, initiation of the surcharge proceedings under Section 87 of the Co-operative Societies Act was quashed. The same applies to the facts of this case also. The request of the Petitioner seeking copy of the inspection report under Section 81 of the Co-operative Societies Act was not furnished to him. Therefore, the surcharge proceedings under Section 87 of the Co-operative Societies Act is found not sustainable in law. The learned Chief Judge, Court of Small Causes had misdirected himself and was carried away by the submissions of the learned Counsel appearing for the Respondents 1 and 2 that the Petitioner did not inspect the records. It is not the question of inspection of the records. It is the duty of the Enquiry Officer and the Surcharge Officer to furnish all relevant documents relied by them to arrive at a conclusion to furnish those documents to the delinquent for his effective defence in the surcharge proceedings to the report under Section 81 of the Co-operative Societies Act, had not been furnished to the Petitioner for effective defence in the



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surcharge proceedings then the delinquent is unable to defend himself under the principles of fairness, equity and good conscience which governs departmental proceedings and the domestic enquiries. Therefore, as per the ratio laid down in the reported ruling in **2007 Writ L.R. 502** holds good in this case also. The learned Chief Judge, Court of Small Causes, failed to consider those aspects and had mechanically dismissed the appeal filed by the Petitioner herein as Appellant before the Special Tribunal under the Co-operative Societies Act, the learned Chief Judge, Court of Small Causes, as the Appellate Authority. Therefore, the finding of the learned Chief Judge, Court of Small Causes, Chennai, is erroneous and is to be set aside.

5.5. When there is direction from the Superior Officer to repay the amount severally and jointly, the Staff of the second Respondent society having paid back the amount, does not mean that they are accepting their guilt. It is under the principle of superiors' words being obeyed by the staff. They had repaid to the second Respondent society. That cannot be considered as admission of guilt by the Staff.

5.6. In the light of the above, the surcharge proceedings imposing



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penalty of **Rs.6,98,389/-** on the Petitioner is found perverse and unsustainable in law. The learned Chief Judge, Court of Small Causes, Chennai had misdirected himself and confirmed the finding of the Surcharge Officer. Therefore, the same is to be necessarily interfered with by this Court exercising powers under Article 227 of Constitution of India. Therefore, the Order passed by the learned Chief Judge, Court of Small Causes, Chennai dated 25.04.2022 and the Order passed by the surcharge proceedings by the first Respondent in No.5/2016/A3 dated 20.01.2017 are to be set aside as they had not followed the fair principles under the principles of fairness, equity and good conscience which is also guiding principles for domestic enquiries.

5.7. In the light of the above discussion, point for Consideration is answered in favour of the Revision Petitioner and against the Respondents. The Order passed by the learned Chief Judge, Court of Small Causes, Chennai in CMA.No.50/2018 dated 25.04.2022 and the surcharge proceedings in No. 5/2016/A3 dated 20.01.2017 are liable to be set aside.



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In the result, this ***Civil Revision Petition is allowed.*** The Order passed by the learned Chief Judge, Court of Small Causes, Chennai in CMA.No.50/2018 dated 25.04.2022 and the surcharge proceedings in No. 5/2016/A3 dated 20.01.2017 are set aside. Consequently, connected Miscellaneous Petition is closed. No costs.

28.04.2023

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



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1. The Chief Judge,
Court of Small Causes,
Chennai.
2. Section Officer,
V.R.Section,
High Court, Madras.



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SATHI KUMAR SUKUMARA KURUP, J.

dh

Order made in
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