IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.01.2023

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

C.R.P.No.3537 of 2022 and
C.M.P.No.18829 of 2022

1. The Deputy Registrar of Co-operative Societies
   Krishnagiri – 635 001.

2. Special Officer
   S.310, Ekkoor Primary Agricultural
   Co-operative Bank Ltd.
   Uthangarasi Taluk
   Krishnagiri District. .. Petitioners

vs

K.S.Aagajan [deceased]
Former Special Officer cum Subregistrar Cooperative Societies
S/o.Sunna Sahib
No.4/662, Teachers Colony, Dharmapuri.

1. Irfan
2. Imran
3. Ibrahim
4. Salman
5. Shakila Banu

[legal heirs of the deceased, impleaded vide order
dated 12.10.2022 in C.M.P.No.16984 of 2022
in C.R.P(SR) No.106201 of 2022]

6. N.Dhandapani .. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India seeking to set aside the order dated 19.12.2016 made in C.M.A(CS).No.19 of 2012 on the file of Tribunal for Co-operative Cases (Principal District Judge), Krishnagiri and quash the same.

For Petitioners	:	Mr.A.Selvendran Special Government Pleader
For Respondents	:	Mr.S.Sairaman for respondents 1 to 5 No Appearance for respondent 6

ORDER

The civil revision petition has been instituted challenging the order dated 19.12.2006 passed in C.M.A(CS) No.19 of 2012 on the file of the Special Tribunal for Cooperative Cases, Principal District Judge, Krishnagiri.

2. The revision petitioners are the Deputy Registrar of Cooperative Socities and Special Officer of the Cooperative Society and it is not in dispute that a statutory enquiry under Section 81 of the Tamil Nadu

Cooperative Societies Act was instituted and based on the enquiry report, actions were initiated under Section 87 of the Tamil Nadu Cooperative Societies Act and under other relevant provisions. The present revision petition has been filed challenging the surcharge order passed by the Deputy Registrar of Cooperative Societies, which was set aside by the Special Tribunal for Cooperative Cases under Section 152 of the Tamil Nadu Cooperatives Act.

3. Section 81 of the Tamil Nadu Cooperative Societies Act contemplates enquiry. Thus, the Registrar is empowered to conduct an enquiry into the affairs of the Cooperative Societies registered under the Act. In the event of any irregularity, three fold actions are permissible like disciplinary proceedings against the employees, criminal case and crime investigation, initiate surcharge proceedings under Section 87 of the Act, to calculate the full loss caused to the Cooperative Societies. All three fold actions are permissible simultaneously and in the present case, notice under Section 87(1) of the Act was issued and after conducting an enquiry, final

order, under Section 87 of the Act, was passed by the Deputy Registrar of Cooperative Societies which was taken by way of an appeal before the Special Tribunal for Cooperative Cases under Section 152 of the Act.

4. The Principal District Court / Special Tribunal quashed the surcharge order mainly on the ground that the initiation was made after the lapse of seven years, which is under violation of the contemplated time limit prescribed under the Act. Under Section 87 of the Act, for initiation of surcharge proceedings must be done within a period of seven years and in the present case, it is contended that seven years period, as contemplated, was lapsed and therefore, the actions initiated are untenable.

5. The learned counsel for the petitioner mainly contended that the alleged occurrence took place in the year 1994-96 and the surcharge proceedings were initiated in the year 2002 and notice under Section 87 was issued in the year 2009 and therefore, the action under Section 87 is tenable.

6. Learned counsel for the petitioner reiterated that as per the judgment of this Court, in the case of ***C.Kanagajothi Vs. The Registrar of Cooperative Societies, Kilpauk, Chennai*** reported in ***[CDJ 2019 MHC 2083]***, the time limit prescribed in the Act is directory and not mandatory and therefore, the surcharge proceedings initiated under Section 87 of the Act cannot be quashed merely on the ground of non-compliance of the time limit prescribed. The relevant portion of the order reads as under:

> *"7. This Court is of the considered opinion that the time limit prescribed under the Statute is only directory and not mandatory. The said legal position was clarified by the Hon'ble Division Bench of this Court in the case of* ***S.V.K. Sahasramam Vs.The Deputy Registrar of Co-op. Societies in W.A.No.949 of 2008.***
>
> *8. The legal principles in relation to the time limit prescribed in various statutes are adjudicated by the other Courts also and this Court considered all these aspects in* ***W.P(MD)No.8488 to 8490 of 2010 dated 10.01.2018*** *and the relevant paragraphs are extracted hereunder:-*

"11. It is well settled that the question whether an expression used in a Section is mandatory or not has to be decided on various factors and the mere expression of the word "shall" alone is not decisive of the matter. This question came up for consideration before the Privy Council in the celebrated case of ***Montreal Street Railway Company Vs. Normandin*** *AIR 1917 Privy Council 142. SIR ARTHUR CHANNEL, speaking for the judicial Committee of the Privy Council, clarified the position at page 144 of the report as follows:*

"The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statutes must be looked at."

The learned Judge relied on Maxwell on "The Interpretation of Statutes" and the portion on which reliance was placed is set out herein below:

"Where the prescription of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have

no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words as directory only. The neglect of them may by penal, indeed, but it does not affect the validity of the act done in disregard of them. "

The aforesaid principles have been followed by the Constitution Bench of the Supreme Court in the case of ***State of U.P. Vs.Manbodhan Lal (supra),*** *wherein paragraphs 10 and 11 at pates 917 and 918 of the report are relevant and they are extracted here under:*

"The question may be looked at from an other point of view. Does the Constitution provide for the contingency as to what is to happen in the event of non-compliance with the requirements of Article 320 (3) (c). It does not, either in express terms or by implication, provide that the result of such a non-compliance is to invalidate the proceedings ending with the final order of the Government."

This aspect of the relevant provisions of part XIV of the

Constitution, has a direct bearing on the question whether Article 320 is mandatory. The question whether a certain provision in a stature imposing a duty on a public body or authority was mandatory or only directory, arose before their Lordships of the Judicial Committee of the Privy Council in the case of ***Montreal Street Railway Company Vs.Normandin, 1917 A.C.170(B).***

In that case the question mooted was whether the omission to revise the jury lists as directed by the statute, had the effect of nullifying the verdict given by a jury. Their Lordships held that the irregularities in the due revision of the jury lists, will not ipso facto avoid the verdict of a jury. The Board made the following observations in the course of their judgment.

"...The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in MAXWELL, on the INTERPRETATION OF

STATUTES, 5th Edn., p.596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done. "

The principle laid down in this case was adopted be the Federal Court in the case of ***Biswanath Khemka Vs. King-Emperor, 1945 FCR 99: AIR 1945 FC 76 (C)****. In that case, the Federal Court had to consider the effect of non-compliance with the provisions of Section 256 of the Government of India Act, 1935, requiring consultation between public authorities before the conferment of magisterial powers or of enhanced magisterial powers etc.,* *The Court repelled the contention that the provisions of Section 256, aforesaid, were mandatory. It was further held that non-compliance with that Section would not render the appointment otherwise regularly and validly made, invalid or inoperative. That decision is particularly important as the words of the Section then before their Lordships of the Federal Court, were very emphatic and of a prohibitory character.*

An examination of the terms of Article 320 shows that the word "shall" appears in almost every paragraph and every clause or sub-clause of that article. If it were held that the provisions of Article 320 (3) (c) are mandatory in terms, the other clauses or sub-clauses of that article, will have to be equally held to be mandatory.

If they are so held, any appointments made to the public services of the Union or a State, without observing strictly, the terms of these sub-clauses in clause (3) of Article 320, would adversely affect the person so appointed to a public service, without any fault on his *part and without his having any say in the matter.*

This result could not have been contemplated by the makers of the Constitution. Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceedings or the outcome of the proceeding, would be invalid.

On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on Statutory Constitution Article 261 at p.516, is pertinent:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must

govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other..."

The very same passage from the judgment of the Privy Council referred to above has been approvingly quoted by the Supreme Court in extenso. Similar principles have been reiterated in a subsequent Constitution Bench judgment of the Supreme Court in the case of ***State of U.P. Vs. Babu Ram Upadhya (supra). JUSTICE. K. SUBBA RAO*** *as His Lordship then was, speaking for the majority, quoting the same passage from* ***Mantreal Street Railway Company Vs. Normandi (supra),*** *has come to the same conclusion.*

"The relevant rules of interpretation may be briefly stated thus:

When a statute used the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and *the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."*

The decision of the Supreme Court in State of U.P.Vs.Manbodhan Lal (supra) was also reiterated.

The two judges Bench of the Hon'ble Supreme Court of India, in the case of T.V.Usman Vs. Food Inspector, Tellicherry Municipality AIR 1994 SC 1818: (1994) 1 SCC 754, the same principles have been reiterated.

"In Maxwell on Interpretation of Statutes, Eleventh Edn., at page 362 it is stated as under: Where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a

particular manner did not imply a prohibition to do it in any other manner, no doubt can be entertained as to the intention; that is to say, such a requirement would be imperative.

It is further stated on page 364 that:

The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

When a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative.

In Craies Statute Law, Seventh Edn., at page 62 it is stated thus:

When a statute is passed for the purpose of enabling something to be done, and prescribes the formalities which are to attend its performance, those prescribed *formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential and may be disregarded without invalidating the thing to be done, are called directory.*

At page 250 it is further stated thus:

The question whether the provisions in a statute are directory or imperative has frequently arisen in this country, but it has been said that no general rule can be laid down and that in every case the object of the statute must be looked at. ... When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in respect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable not affecting the validity of acts done.

In Dattatraya Moreshwar v. State of Bombay, A.I.R.

1952 S.C. 181, it was held as under:

S.V.K. Sahasramam vs The Deputy Registrar Of Co-Op. ... on 29

August, 2008

Generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.

In Rule 7(3) no doubt the expression shall is used but it must be borne in mind that the rule deals with stages prior to launching the prosecution and it is also clear that by the date of receipt of the report of the Public Analyst the case is not yet instituted in the court and it is only on the basis of this report of the Public Analyst that *the authority concerned has to take a decision whether to institute a prosecution or not. There is no time-limit prescribed within which the prosecution has to be instituted and when there is no such limit prescribed then there is no valid reason for holding the period of 45 days as mandatory. Of course that does not mean that the Public Analyst can ignore the time-limit prescribed under the rules. He must in all cases try to comply with the time-limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and on that basis to hold that even prosecution cannot be launched. May be, in a given case, if there is inordinate delay, the court may not attach any value to the report but merely because the time-limit is prescribed, it cannot be said that even a slight delay would render the report void or inadmissible in law. In this context it must be noted that Rule 7(3) is only a procedural provision meant to speed up the process of investigation on the basis of which the prosecution has to be launched. No doubt, sub-section (2) of Section 13 of the Act confers valuable right on the accused under which provision the accused can make an application to* *the court within a period of 10 days from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the Central Food Laboratory and in case the sample is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore it must be shown that the delay has led to the denial of right conferred under Section 13(2) and that depends on the facts of each case and violation of the time-limit given in sub-rule (3) of Rule 7 by itself cannot be a ground for the prosecution case being thrown out."*

9. In view of the fact that the time limit prescribed under the Act for concluding the Surcharge proceedings is only *directory, the Surcharge notice cannot be quashed on this ground. However, it is duty mandatory on the part of the authorities to ensure all such proceedings are concluded within a reasonable period of time. The observations made in this judgment that the time limit is directory can never be misconstrued by the authorities competent, so as to prolong and protract the Surcharge proceedings. The Rule is to conclude the proceedings as per the time limit prescribed under the Statute. Only in exceptional circumstances, where it is not possible to conclude the proceedings on account of the genuine administrative reasons, then the authorities may take some additional time for the purpose of concluding the proceedings and not otherwise.*

10. This being the principles to be followed, it is left open to the writ petitioner to submit explanations/objections, if any additional, the same also shall be considered by the respondents and the respondents are directed to proceed with the enquiry and pass final orders in the Surcharge proceedings as expeditiously as possible."

7. The above judgment was delivered relying on the judgment of the Division Bench of this Court, holding that the time limit contemplated is for completion of investigation, which is directory and not mandatory. The prescription of time limit cannot affect the principles of justice and in the present case, the financial allegations is running to several lakhs. Public interest is to be protected and merely on the ground of time limit, frauds cannot be allowed to escape from the clutches of proceedings.

8. Considering the facts and circumstances, this Court is of the considered opinion that the order passed by the Principal District Court / Special Tribunal is to be set aside and the case is to be remitted back for adjudication of the issues on merits and in accordance with law.

9. Accordingly, the order dated 19.12.2016 passed in C.M.A.(CS).No.19 of 2012 is set aside and the matter is remanded back to the Tribunal for Cooperative Cases Principal District Court, Krishnagiri for

adjudication of the issues on merits and in accordance with law by affording opportunity to the parties concerned and dispose of as expeditiously as possible.

10. With these directions, the civil revision petition is allowed. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Speaking Order/Non-Speaking Order. 27.01.2023
Internet : Yes/No.
Index: Yes/No.
Neutral Citation:Yes/No
drm

To

1. The Deputy Registrar of Co-operative Societies
Krishnagiri – 635 001.

2. Special Officer
S.310, Ekkoor Primary Agricultural
Co-operative Bank Ltd.
Uthangarasi Taluk
Krishnagiri District.

3. The Tribunal for Co-operative Cases
   (Principal District Judge), Krishnagiri.

S.M.SUBRAMANIAM, J.

drm

C.R.P.No.3537 of 2022 and
C.M.P.No.18829 of 2022

27.01.2023