



C.R.P.No.196 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 07.06.2023

Pronounced on : 19. 06.2023

CORAM : JUSTICE N.SESHASAYEE

C.R.P.No.196 of 2019
and CMP.No.1585 of 2019

M.Selvaraj

.. Appellant / Petitioner

Vs

1.Perambalur District Consumer
Co-operative Wholesale Stores Ltd.,
Rep by its Special Officer
K.R.Complex, Thuraimangalam Road
Perambalur - 621 220.

2.The Deputy Registrar of Co-operative Societies
73-H, Venkatesapuram
Perambalur - 621 212.

.. Respondents / Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, praying to set aside the fair and decretal order passed in C.M.A.(CS) No.28 of 2010 on the file of Principal District Court, Perambalur, dated 31.10.2017 and confirming the order in Na.Ka.916/2009 sa.pa dated 08.02.2010 on the file of the first respondent.



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For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Dr.S.Suriya
Additional Government Pleader (CS)

ORDER

This revision is filed challenging the order passed by the Co-operative Tribunal (the Principal District Judge), Perambalur in C.M.A.(CS) No.28 of 2010. The revision petitioner along with 35 persons was proceeded against in a surcharge proceedings under Sec. 87 of the Tamil Nadu Co-operative Societies Act, and has been found guilty of the charges framed against them. And the revision petitioner herein was found liable for a loss of Rs.62,08,317.43p jointly and severally on 9 heads of charges occasioned to the Perambalur District Consumer Co-operative Wholesale Store, the first respondent herein, due to his wilful negligence.

2. The facts that led up to the institution of CRP may now be briefly stated :

- The first respondent, the Co-operative Society, has its wholesale stores at Perambalur, with branches at Perambalur, Jeyamkondam and Ariyalur. The petitioner was working as a Godown Keeper /



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Manager Purchase at Perambalur.

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- While so, in an enquiry conducted under Sec. 81 of the Co-operative Societies Act, it was found that there has been excess purchase of uncontrolled, sub-standard items without any demand for purchase from any of the outlets, and consequently loss occasioned to the Co-operative Society for want of sales. The period of enquiry was from December, 2006 to February, 2008, and it culminated in a report by the Enquiry Officer dated 15.06.2008.
- Based on the same, surcharge proceedings were initiated *inter alia* against the present revision petitioner. In all, more than 60 charges were framed, and the charges specific to the revision petitioner are Charge Nos.1, 24 to 29, 52 and 60(6). At that relevant time, a certain Thiru.Syed Kamal Batcha was the Special Officer of the Co-operative Society. In Section 81 Enquiry Report, it was specifically found that the Special Officer was responsible for procuring the uncontrolled items without verifying the available stock.
- In his reply to the show cause notice submitted under Section 87(4) of the Act, the revision petitioner had stated that he had played no role for procurement of articles; that the Special Officer had done it on his



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own, and he insisted to stock the procurement in the godown; and since the Special Officer himself has made a statement to the Enquiry Officer during the enquiry under Sec. 81 of the Act, he alone was responsible for the procurement made under his signature.

- In his report, the second respondent who conducted the surcharge proceedings under Section 87 of the Act, found the revision petitioner guilty of the charges framed against him and found him liable for the loss. The details of the conclusion of the surcharge proceedings vis-a-vis the revision petitioner is as below :

<i>Charge No.</i>	<i>Name of the Branch</i>	<i>Heads of charges</i>	<i>Award amount with interest from 01.03.2008 to 31.03.2008</i>
1	Perambalur Godown	Non-controlled items, excess purchase, unsold goods for more than 2 months - unfit for sale.	Rs. 5,28,674.25
24	Perambalur Godown	Non-controlled items, excess purchase, unsold goods for more than 2 months - unfit for sale.	Rs. 9,70,456.00
25	Ariyalur Godown	Non-controlled items, excess purchase, unsold goods for more than 2 months - unfit for sale.	Rs. 8,19,298.00
26	Jeyamkondam Godown	Non-controlled items, excess purchase without getting indent	Rs.23,92,034.75
27	Perambalur Godown	Purchase of non-controlled items without indent	Rs. 28,995.40



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Charge No.	Name of the Branch	Heads of charges	Award amount with interest from 01.03.2008 to 31.03.2008
28	Perambalur Godown	Purchase of non-controlled items without indent	Rs. 73,567.00
29	Jeyamkondam Godown	Purchase of non-controlled items, long storage for more than 2 months	Rs. 39,655.00
52	Perambalur Godown	Stock deficit	Rs. 1,063.43
60(6)	Perambalur Godown	Non-controlled items long storage for more than 2 months	Rs.13,54,573.60
Total :			Rs.62,08,317.43

- As indicated earlier, in each of these items, the revision petitioner was found guilty jointly and severally with few others.
- Aggrieved by the same, the revision petitioner preferred an appeal before the Co-operative Tribunal / Principal District Judge, Perambalur, which vide its order dated 31.10.2017, confirmed the surcharge order. Hence, this revision.

3. The learned counsel for the petitioner submitted that there was absolute lack of application of mind, both on the part of the second respondent, the official who conducted the surcharge proceedings, as well as by the Tribunal, and presented the following circumstances to justify his contentions:



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(a) The revision petitioner is a Godown Keeper / Manager Purchase, and he is in charge of the godown located only in Perambalur, and not the ones at Ariyalur and Jeyamkondam. Very obviously he cannot be held responsible for anything that had happened vis-a-vis Ariyalur and Jeyamkondam godowns. This would imply that there is no foundation for fastening the liability on the revision petitioner as regards Charges No.25, 26, 28 and 29.

(b) It is nowhere found that the revision petitioner had actively involved in placing orders for procuring the uncontrolled items. And it goes as an undisputed fact that only Thiru.Syed Kamal Batcha, the Special Officer, alone is liable. Neither in the enquiry held under Section 81 of the Act nor in the surcharge proceedings under Section 87 of the Act, the specific role of the revision petitioner is identified and stated. He has been roped in the proceedings only to share company with the delinquent Special Officer, solely due to the post he held, and not because he was found to be liable for playing a role in the loss occasioned to the Co-operative Society. In this regard, neither the second respondent nor the Tribunal has considered the defence of the revision petitioner which he placed before the second respondent



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under Section 87(4) of the Act.

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(c) The facts scenario being what it is in terms of Section 87 of the Act, it is not every loss that must be deflected to an erring official, but only such loss should have been occasioned due to the wilful negligence of the staff concerned. So far as the present case is concerned, on facts there is nothing to indicate that the revision petitioner has a role in the loss occasioned to the Society, much less in any act or omission that may tantamount to wilful negligence on his part.

Reliance was placed on the ratio in ***Ramadevi Vs. The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet*** [2016-4-L.W.452] and ***C.R.P.(NPD) No.614, 678, 571, 589 & 588 of 2022 dated 21.04.2022.***

4. Per contra, the learned Additional Government Pleader placed reliance on the explanation offered by the revision petitioner to the Charge memo issued to him under Sec. 87 of the Act, and relied on paragraphs 4 to 11. This apart, the learned Advocate also relied on the duties and responsibilities of a Purchase Manager, and submitted that the Purchase Manager is required to ensure the collection of stock position from sales section of various branches and godowns, process the same, and obtain purchase orders after carefully



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assessing the quantity and value intended after ascertaining the stock position at various branches. There is a specific instruction that the Purchase Manager has to avoid overstocking without valid reasons.

5.1 The incontrovertible facts that emerge from the case is that the purchase order was exclusively placed by a certain Syed Kamal Batcha, the Special Officer, and not by the revision petitioner herein, and that the revision petitioner at that relevant time is stated to be a Purchase Manager-cum-Godown Keeper, and the nature of the charges framed against him was that excess stocks of certain unbranded items were purchased and stocked without any need for such purchase. It is not the case of the Society that the revision petitioner was actively involved in placing orders for the procurement of the items, but he had not checked the stock position as warranting the purchase. This may be an act of negligence. But the point is, was it wilful, in order liability can be fastened on the revision petitioner?

5.2 This apart he is the Godown Keeper only for Perambalur branch, whereas he has been fastened with liability for the excess stock procured for Ariyalur and Jeyamkondam branches as well. It is not made clear how he is made liable for the loss vis-a-vis these branches. This Court does not find



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any material on record rather credible enough to sustain the liability fastened on the revision petitioner vis-a-vis Charge Nos.1, 24 to 29 and 60(6) as there is no proof of wilful negligence of the revision petitioner.

6. The learned Additional Government Pleader appearing for the respondent-Society has referred to certain duties and responsibilities of the Purchase Manager, but this was not pointedly raised in the notice issued under Section 87 of the Co-operative Societies Act.

7. The revision petitioner is also fastened with liability of Rs.1,063.43 under Charge No.52 towards stock deficit in Perambalur Godown. As a Godown Keeper, it is his absolute duty to ensure the stocks are well kept and accounted for. Therefore, on this head of charge he is liable for Rs.1,063.43.

8. In conclusion, this revision is partly allowed and the liability of the revision petitioner has been upheld only to an extent of Rs.1,063.43 under Charge 52, and as regards other heads of charges (Charges No.1, 24 to 28 and 60(6)), he is absolved of his liability, and the order passed in C.M.A.(CS) No.28 of 2010 by the Co-operative Tribunal / Principal District



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Court, Perambalur, dated 31.10.2017 is set aside as regards the liabilities fastened on the revision petitioner against Charges No.1, 24 to 29 and 60(6).

No costs. Consequently, connected miscellaneous petition is closed.

19.06.2023

Index : Yes / No

Speaking order / Non-speaking orders

To:

1.The Principal District Judge
Perambalur.

2.The Section Officer
VR Section, High Court, Madras.



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N.SESHASAYEE.J.,

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Pre-delivery order in
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