



C.R.P(MD)No.1529 of 2013

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 25.04.2023

DELIVERED ON : 08.06.2023

CORAM:

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

C.R.P(MD)No.1529 of 2013

and

M.P(MD)No.1 of 2013

G.Nagarajan

... Petitioner

Vs.

1.The Special Officer,
Tiruchirapalli District,
Agricultural Department Officers
Credit and Thrift Society,
Mannarpuram,
Trichy-20.

2.The Deputy Registrar of
Co-operative Societies,
Tiruchirapalli Circle,
Kajamalai,
Trichy-20.

... Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to allow the civil revision petition by setting aside the order passed in C.M.A(CS)No.88 of 2009 dated 08.10.2012 confirming the order passed in Na.Ka.6268/2008/saba dated 22.04.2009 by Deputy



C.R.P(MD)No.1529 of 2013

Registrar of Co-operative Societies, Tiruchirappalli dated 22.04.2009.

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For Petitioner : Mr.R.Manimaran
For R-1 : Mr.G.Mohan Kumar
For R-2 : Mr.P.T.Thiraviyam
Government Advocate

ORDER

This Civil Revision Petition has been preferred against the judgment and decree passed in C.M.A(CS)No.88 of 2009 dated 08.10.2012 confirming the order passed in Na.Ka.6268/2008/saba dated 22.04.2009 by the Deputy Registrar of Co-operative Societies, Tiruchirappalli. For the sake of convenience, the parties herein are referred to as arrayed in C.M.A(CS)No.88 of 2009.

2. Heard the learned Counsel on either side and perused the materials available on record. The learned counsel for the petitioner took me through the various grounds of this Civil Revision Petition.



C.R.P(MD)No.1529 of 2013

3. The Petitioner / Appellant, one G.Nagarajan is the former Clerk of the first respondent Society. One K.Varadharajan is the former Vice President of the Society. On the basis of Section 81 audit report of the year 1997-1998 that there were irregularities and misappropriation of the Society's fund, Section 87 surcharge enquiry was initiated against them in respect of five items of charges. The gravamen of charges levelled against the Petitioner / Appellant and K.Varadharajan are as follows:

(i) First item is making debit entries for Rs.3,412.30 without any receipts.

(ii) The second item is that the amount of Rs.23,204/- paid by the Assistant Director's Office was misappropriated without giving credit into the Society's account.

(iii) The third item is that without any details of debit, entries were made on different dates for a total amount of Rs.1,514.90.

(iv) The fourth item is that without any receipt for disbursement of the share amount, debit entries were made.

(v) The fifth item of charge is for certain items of loans for which interest was received at a lesser rate of interest.



C.R.P(MD)No.1529 of 2013

4. A perusal of records would reveal that for the objections in the audit report of the year 1997-1998, on the basis of the proceedings of the Deputy Registrar, Tiruchirappalli, dated 19.07.2000, Section 81 inquiry report was submitted on 12.04.2001. Thereafter, surcharge proceedings under Section 87 was initiated by the notice of the Deputy Registrar, Tiruchirappalli dated 03.08.2005. On the basis of which, an enquiry was conducted and final order was passed by the Deputy Registrar, Tiruchirappalli. The Deputy Registrar passed surcharge award in the said surcharge proceedings on 20.04.2006 for 5 items of misappropriation and Ex-Vice President, K.Varadharajan and Ex-Clerk G.Nagarajan were made liable jointly and severally. Against which, the Vice President K.Varadharajan preferred C.M.A.No.33 of 2008, before the District Judge's Court at Tiruchirappalli, in which, the learned District Judge was pleased to set aside the surcharge award passed by the Deputy Registrar, Tiruchirappalli dated 20.04.2006 and thereafter remanded, the said case back to the Deputy Registrar, Tiruchirappalli, directing him to give proper opportunity to both the parties, who were found guilty. Following the said order, the Deputy Registrar, Tiruchirappalli initiated, Section 87 surcharge enquiry afresh by issuing notice dated 23.12.2018 to both the petitioner



C.R.P(MD)No.1529 of 2013

herein and K.Varadharajan. Due to the non appearance of the Petitioner / Appellant, he was set *ex parte* and surcharge award was passed again on 22.04.2009 by the Deputy Registrar, Tiruchirappalli following the earlier order blindly, without application of mind. Against the said award, the Petitioner / Appellant filed C.M.A(CS)No.88 of 2009 and the same was dismissed on 08.10.2012. Against which, this Civil Revision Petition is filed.

5. Be that as it may, Section 81(4) of the Tamil Nadu Co-operative Societies Act, 1983 mandates as follows:

“81.(4) The inquiry shall be completed within a period of three months from the date of ordering the inquiry or such further period or periods not exceeding three months at a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate.”

6. But in this case, Section 81 inquiry was ordered on 19.07.2000 and Section 81 inquiry report was submitted by the competent authority on 12.04.2001, that is, after a period of 8 months from 19.07.2000. Section 81 mandates that the inquiry period should not exceed six months in aggregate.



C.R.P(MD)No.1529 of 2013

Any report filed beyond an aggregate period of more than six months itself, would vitiate the Section 81 inquiry.

7. However the second respondent issued Section 87 surcharge notice on 03.08.2005, on the basis of an inquiry report, submitted beyond a period of eight months from the date of initiation of the said inquiry. In furtherance to the same, Section 87 surcharge proceedings were initiated by the Deputy Registrar, Tiruchirappalli, who passed final order in the surcharge proceedings on 20.04.2006, that is, beyond a period of six months from the date of commencement of the said surcharge proceedings.

8. The proviso to Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 is as follows:

“Provided that no action shall be commenced under this sub section after the expiry of seven years from the date of any act or omission referred to in this sub section :

Provided further that the action commenced under this sub section shall be completed within a period of six months from the date of such commencement or such further period or periods as



C.R.P(MD)No.1529 of 2013

WEB COPY

the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate.”

9. In this case, the surcharge proceedings were certainly initiated after a period of seven years from the date of audit objection of the year 1997-1998, that is, on 03.08.2005. Moreover, the surcharge action was commenced on 03.08.2005, and the same was concluded by its order on 20.04.2006, that is, beyond a period of eight months. In terms of the proviso to Section 87(1), any action commenced under Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983, which is not completed within a period of six months in aggregate is bad in the eye of law. However, in view of the judgment of this Court in ***G.Panneerselvam and others Vs. Deputy Registrar of Co-operative Societies reported in 2009 (2) MLJ 901*** and in view of the judgment passed by the Hon'ble Division Bench of this Court in ***A.Balaraman and Others Vs. The Deputy Registrar of Co-operative Societies and Others reported in 2009 (3) MLJ 1032***, this Court is not inclined to go into the question of limitation.



C.R.P(MD)No.1529 of 2013

10. Admittedly, on 01.07.1992, the then Special Officer of Tiruchirappalli District Agricultural Department Officers Co-operative Credit and Thrift Society Limited had inducted the Petitioner /Appellant into the said society “on daily wages basis”. Though the Petitioner / Appellant has been serving in the Society continuously till he was terminated, his appointment was not regularised. Since the Petitioner / Appellant was inducted into service only on daily wages basis, he was not assigned with specific charges or duties. He had been acting only on the instructions and directions given by his superiors, including the Vice President, K.Varadharajan. The learned Trial Court failed to appreciate that the Petitioner / Appellant was working on daily wages basis, for the reason which he was not entrusted with any record or responsibilities.

11. The learned Trial Court is failed to consider that during the year 1996, one K.Varadharajan was elected as Vice President and having been elected as Vice President, he was managing the affairs of the Society from 01.11.1996 to October 1999. It is only K.Varadharajan with whom the affairs and Management of the Society was entrusted and it was only K.Varadharajan, who was in charge of all the records and accounts. This



C.R.P(MD)No.1529 of 2013

Petitioner / Appellant was acting only on the directions and instructions of the said K.Varadharajan, as he was a daily wages employee.

12. The learned Trial Court is failed to consider the bylaws of the Society. The relevant portion of which is extracted as follows :

“By-law 23(1)(a) “The President or Vice-President shall have a General control over all the affairs of the Society and he / she is the custodian of all the properties of the Society”.

By-Law 25 reads:- “Receipts shall be issued for all moneys paid to the Society. For moneys paid by members, the receipts shall be signed by the President or Vice President, whoever is selected by the Board to discharge this function”.

By-Law 26 reads:- “It shall be the duty of the Board to maintain such accounts and registers as are prescribed by Rule 20 of the Rules under the Act”..... [Vice-President as the representative of Board, alone is in-charge of accounts and register].

By-Law 27(i) reads:- “The Board shall have powers to incur such expenditure as may be necessary for the management of the Society with reference to Scales prescribed by Registrar and within the Budget-allotment sanctioned by the General Body for each year”.



C.R.P(MD)No.1529 of 2013

13. The learned District Judge failed to appreciate that the Petitioner / Appellant was only a daily wages employee, who was under the direction and instruction of the then Vice President K.Varadharajan, and hence it is only K.Varadharajan, who is fully responsible for the misappropriation and irregularity, if any. The learned District Judge failed to consider that as a daily wages employee, the Petitioner / Appellant only acted under the instruction of the then Vice President and he did not act on his own accord. The learned District Judge ought not to have held the Petitioner / Appellant as jointly liable along with the then Vice President, but ought to have fixed the entire liability on the then Vice President, K.Varadharajan, appreciating the innocence of the Petitioner / Appellant.

14. The learned District Judge failed to appreciate that, the impugned surcharge award dated 22.04.2009 has been passed without establishing the duties and obligations of the Petitioner / Appellant at the first instance, thereby proceeding to decide that the Petitioner / Appellant is guilty of wilful negligence and misappropriation of the funds of the Society. A quick glance of the bylaws of the Society would reveal that the duties and obligations of a daily wages employee was neither delineated in the bylaws



C.R.P(MD)No.1529 of 2013

of the said Society, nor provided in the relevant Tamil Nadu Co-operative Societies Act, 1983 and Tamil Nadu Co-operative Societies Rules, 1988.

The Petitioner / Appellant has been mulcted with the liability only on the basis that he had by acts and omissions of wilful negligence caused loss to the society and if at all any liability has to be fixed as against an employee, it must be first established that there were duties and obligations specifically cast upon the Petitioner / Appellant, of which he committed breach. Such an exercise has not been done by the Deputy Registrar in his impugned award dated 22.04.2009 and that was not considered by the learned District Judge, Tiruchirappalli in his impugned order dated 08.10.2012.

15. The Hon'ble Division Bench of this Court in W.A.No.73 of 1981 dated 23.08.1988 has held in a similar case reported in ***MANU/TN/0555/1988 (P.Karuppiah Vs. The Deputy Registrar of Co-operative Societies, Periyakulam and Others)***, the relevant portion of which is extracted as below:

“1.By a reading of the bylaws, we are not able to spell out any specific duty or obligation on the part of the appellant, with regard to remittances and withdrawals. In the



C.R.P(MD)No.1529 of 2013

WEB COPY

absence of the casting of such specific duties or obligation on the appellant with regard to remittances and withdrawals, by any acceptable proceeding, governing the services of the appellant when he acted as the secretary-in-charge or accountant-in-charge, it will not be in order to pin down the liability for loss of interest on the appellant. The appellant has been mulcted with the liability only on the basis that he has by acts and omissions of wilful negligence caused loss to the bank. For this action, it must be first established that there were duties and obligations specifically cast upon the appellant, of which he committed breach. If there is no clarity as to the specific duties and obligations cast upon the appellant with regard to remittances and withdrawals, then the very basis of the charges must be held to be lacking. That is the position here. Negligence in this context presupposes existence of specific duties and obligations and breach thereof. If the duties and obligations are not specifically defined and delineated, one could not pin down the culpability of breach thereof on the person concerned. This aspect could not be a matter of presumptions and assumptions but necessarily must be a matter of concrete materials. We find that the probable nexus between any act of omission on the part of the appellant and the resultant loss to the bank has not been made out at all for the simple reason there is no material exposed in the case, making out the casting of specific duties and obligations upon the appellant in this behalf. Hence, we are



C.R.P(MD)No.1529 of 2013

WEB COPY

obliged to sustain the first ground of attack, put forth by the learned counsel for the appellant.

2. The second aspect canvassed by the learned counsel for the appellant is that, assuming that the petitioner was cast with specific responsibility or obligation or duty with reference to the remittances and withdrawals, yet, the alleged acts and omissions with which the appellant was charged, could not be said to have been tainted with 'wilful negligence', which has been construed by pronouncements of the Court as meaning something done either by commission or omission, in a deliberate and reprehensible manner; with reckless callousness and with a supine indifference, and not by accident or inadvertence without taking due care and precaution ordinarily expected from a reasonable and prudent man under the existing circumstances.....

.....The learned single Judge, we find, has omitted to take note of the crucial aspect with regard to the casting of specific responsibility or duty or obligation on the appellant with regard to remittances and withdrawals. As we have already pointed out, there is no material evidence exposed in this case, showing that position. In the absence of the said position being made out against the appellant, it is not possible to sustain the proceedings which culminated in the mulcting of the liability on the appellant Taking note of this feature, we are obliged to



C.R.P(MD)No.1529 of 2013

WEB COPY

interfere, in writ appeal and accordingly the writ appeal is allowed, the order of the learned single Judge is set aside.”

16. Service conditions of employees of Societies under the Tamil Nadu Co-operative Societies Act, 1983 are distinct and governed by bylaws apart from Chapter 8 of the Act, where it has been found that the Tribunal / District Judge had failed to consider or look into the individual grievances of the aggrieved, the failure to do so amounts to the Tribunal, not having exercised its jurisdiction of looking into all the allegations and its failure to give appropriate findings, could render the said order as invalid and liable to be set aside. In this case, the learned District Judge / Tribunal has certainly failed to consider and look into the individual grievances of the Petitioner / Appellant, who was a daily wages employee and the failure of the Tribunal to do so certainly amounts to not having exercised its jurisdiction of looking into all allegations and arriving at proper decision and hence the impugned order passed by the learned District Judge on 08.10.2020 is liable to be set aside.



C.R.P(MD)No.1529 of 2013

17. When the fact remains, that K.Varadharajan had not produced receipts for expenditure, it is unfair to hold the Petitioner / Appellant jointly liable, merely for the reason that expenses were entered in the books of account by the Petitioner / Appellant. It is quite palpable that all those entries were made by the Petitioner / Appellant only on the basis of the vouchers, slips and bills given by K.Varadharajan to the Petitioner / Appellant and on the direction and instruction of the said Vice President. Moreover, since the liability fastened on K.Varadharajan and the Petitioner / Appellant jointly and severally run into Rs.1,96,833.20, it is necessary that the attention of the Tribunal should have been focused on the issues raised and appropriate findings should have been given. That apart, since the Petitioner / Appellant raised the contention that he was a daily wages employee, the Tribunal ought to have given a separate finding with respect to the allegations against the Petitioner / Appellant and K.Varadharajan.

18. This Court in W.P.Nos.24311 of 2004 etc., dated 23.02.2010 reported in **2010 (4) MLJ 1027 (R.Nanjundan Vs. The District Judge-Cum-Tribunal for Co-operative Cases of the Nilgiris District,**



C.R.P(MD)No.1529 of 2013

Udhagamandalam and Others), dealt with a similar case, the relevant portion of which is extracted as follows:

“21. In the present case, the Tribunal had held that if charges are proved that by itself is wilful negligence of the petitioners there was no further proof about their intention is required. Therefore, whatever contention raised by the petitioners that were found rejected by the Tribunal was based on sound reasons. But, however the last submission of the learned senior counsel that the Tribunal made a perfunctory order without fixing proper liabilities on each of the petitioners . It did not even refer to the surcharge proceedings which emanated from three different orders and the surcharge proceedings were also preceded on the basis of three different enquiry reports. Since some of the petitioners have raised contentions, about either they were not in employment on the days noted or were not on duty during the period in question, the Tribunal ought to have given a finding on such separate defence taken by the petitioners.

22. Though Mr.P.Sivashanmugasundaram, learned counsel for the society attempted to justify the impugned order by stating that no such contentions were raised, a perusal of the impugned order shows that the Tribunal did not deal with any of the individual contentions or the defects pointed by the petitioners. Since the liability fastened on the petitioners runs into more than



C.R.P(MD)No.1529 of 2013

WEB COPY

half a Crore rupees, it is necessary that the attention of the Tribunal should have been focussed on the issues raised and appropriate findings should have been given. Therefore, on that short ground, the writ petitions are liable to be allowed. The impugned orders passed by the Tribunal will stand set aside.....”

Neither the Deputy Registrar, Tiruchirappalli nor the Tribunal has gone into the fact as to why the Secretary of the said Society was not fastened with liability for a misappropriation to a tune of more than Rupees One Lakh, rather culminating in fastening liability on a clerk working on daily wages basis.

19. In view of the above, the impugned order passed by the learned District Judge's Court, Tiruchirappalli dated 08.10.2012, is hereby set aside as far as the findings against the Petitioner / Appellant alone is concerned. In fine, this Civil Revision Petition stands partly allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

08.06.2023



C.R.P(MD)No.1529 of 2013

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
BTR

To

- 1.The Deputy Registrar of Co-operative Societies,
Tiruchirappalli.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P(MD)No.1529 of 2013

L.VICTORIA GOWRI, J.

BTR

Order made in
C.R.P(MD)No.1529 of 2013

08.06.2023