



C.R.P.(MD)Nos.742 to 745 and 763 to 783 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.06.2023

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THE HONOURABLE MR.JUSTICE C.SARAVANAN

C.R.P.(MD)Nos.742 to 745 and 763 to 783 of 2023

C.R.P.(MD)No.742 of 2023:-

1.The Deputy Registrar of Co-operative Societies,
Dindigul,
Dindigul District.

2.A.1493, Pattiveeranpatti Coffee and Cardamom
Producers Co-operative Bank,
Rep. through its Secretary,
Pattiveeranpatti,
Dindigul District.

.. Petitioners

Versus

1.P.Sampathkumar
2.K.Soundarapandiyammal

.. Respondents

Prayer :- Petition filed under Article 227 of the Constitution of India, to set aside the fair and executable order dated 30.11.2005, passed in C.M.A.(CS)No.28 of 1999 on the file of the Co-operative Tribunal (Principal District Court), Dindigul and allow this Civil Revision Petition.

For Petitioners
in all the C.R.Ps.

: Mr.N.S.Karthikeyan

For R2
in C.R.P.(MD)Nos.742 to 745,
763 to 770, 773, 774 & 776 to
783/2023

: Mr.S.Mohandoss



C.R.P.(MD)Nos.742 to 745 and 763 to 783 of 2023

For R1 in C.R.P.(MD)Nos.743 & 745/2023
and for R1 and R3 in C.R.P.(MD)No.744/2023
and for R1 and R5 in C.R.P.(MD)No.763/2023
and for R1 and R4 in C.R.P.(MD)No.766/2023
and for R4 and R5 in C.R.P.(MD)No.768/2023 : Mr.A.Saravanakumar

For R3 in C.R.P.(MD)Nos.763, 768, 773 & 780/2023
and for R1 in C.R.P.(MD)Nos.764, 765 & 774/2023
and for R6 in C.R.P.(MD)Nos.766, 770, 777 & 778/2023
and for R2 in C.R.P.(MD)No.775/2023 and
for R5 in C.R.P.(MD)No.776/2023 : No Appearance

COMMON ORDER

The petitioners are the Deputy Registrar of Co-operative Societies, Dindigul, and the Secretary of A.1493, Pattiveeranpatti Coffee and Cardamom, Producers, Co-operative Bank, Pattiveeranpatti, Dindigul District. In these Civil Revision Petitions, which were earlier filed as Writ Petitions, the petitioners have challenged the common order, dated 30.11.2005, passed by the Co-operative Tribunal [Principal District Court], Dindigul, in C.M.A.(CS)Nos.28 to 31, 52 to 56, 61 to 63, 48 to 51, 37 to 40, 33 to 36 and 32 of 1999. These appeals were filed by the former employees of the second petitioner Bank against 25 different surcharge orders, all dated 14.10.1998, which came to be passed in respect of the following employees:-

- (i) Elangovan
- (ii) Sampath Kumar
- (iii) Kanagasababathi
- (iv) Murugesan
- (v) Manimegalai
- (vi) Mookaiah



2.The dispute pertains to the year 1997. Based on the allegation that for the loans taken by the second petitioner Bank, the Chief Accountant namely, Kanagasababathi had created forged Challans, as if the amounts were being remitted regularly to the Government for the loan borrowed, when indeed there were fake Challans and have been accounted in the books of the second petitioner Bank, as if the loans were discharged to the Government. The surcharge proceedings are based on the enquiry report of the Enquiry Officer dated 21.07.1997. 25 surcharge orders, which came to be passed on the same day *i.e.*, on 14.10.1998, were challenged before the Tribunal on the ground that the enquiry report was not furnished to the noticees/appellants before the Tribunal. It was further submitted that the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 [hereinafter referred to as "the Act"] was also not completed within the time-line stipulated under Section 81(4) of the Act.

3.It is further submitted that neither a copy of the enquiry report was given nor the Enquiry Officer was examined or cross-examined. It is submitted that none of the Challans allegedly fabricated by the Accountant, namely, Kanagasababathi were produced. Therefore, the charge against the respondents/employees were not proved and that the Enquiry Officer had however given a finding against the above-named employees, some of whom have already deceased during the pendency of the proceedings before the Tribunal.



4. These Civil Revision Petitions were earlier filed as Writ Petitions and in the Writ Petitions, a common stand was taken by the petitioners that the Tribunal had passed orders, dated 30.11.2005, but no Revision Petition or the Writ Petition was filed earlier, as some of the respondents were working with the second petitioner Bank till 2016 and had deliberately left the work unattended and failed to file the Writ Petition in time against the order passed in the above-mentioned Civil Miscellaneous Appeals and thus, 12 years have lapsed.

5. As far as the merits of the cases is concerned, in the grounds, it has been stated that the order of the Tribunal is not well reasoned and was liable to be set aside.

6. It is submitted that the Tribunal has allowed the appeals primarily on the ground of limitation to file the enquiry report under Section 81 of the Act and in the light of the decisions of this Court in **M.Sambandam vs. Deputy Registrar (Credit) Co-operative Societies, Madras and others** reported in 1994 (4) LLN 483 and **Sambandam vs. the Deputy Registrar** reported in 1999 (3) MLJ 310.

7. The other ground on which, the impugned order has been challenged is that the Tribunal has given an erroneous finding even though the admitted fact was that the said Kanagasababathi took amount from the second petitioner Bank for



remittance into Treasury and handed over fake Challans to the second petitioner Bank and therefore, it cannot be said that they have committed actionable wrong.

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8. Defending the impugned order, the learned counsel for the respondents submits that as far as limitation issue is concerned, the issue now stands decided against the respondents in terms of the decision of the Hon'ble First Bench of this Court in **S.V.K.Sahasramam vs. The Deputy Registrar of Co-op. Societies, Tiruvannamalai Circle, Tiruvannamalai, Tiruvannamalai District and two others** [Writ Appeal No.949 of 2008, dated 29.08.2008] reported in **2008 (8) MLJ 231**.

9. It is submitted that although the Tribunal has allowed the appeals filed by the respondents, the fact remains that the Tribunal has given a clear finding that the respondents cannot be said to have admitted any actionable wrong. It is submitted that the Tribunal being the ultimate fact finding authority, the scope of review under Articles 226 or 227 of the Constitution of India, as the case may be, is limited. It is submitted that the revision under those provisions of the Constitution of India is confined to the decision making process and not decision *per se*. It is submitted that the Tribunal has not committed any procedural irregularity warranting interference against the impugned order.



10. That apart, it is submitted that the Writ Petitions itself were filed belatedly after a lapse of almost 12 years from the date the of the order of the Tribunal, dated 30.11.2005. Even on this score, these Civil Revision Petitions are liable to be dismissed.

11. In support of his submissions, the learned counsel for the respondents has also relied on the following two decisions of this Court rendered in the context of Article 227 of the Constitution of India and Section 5 of the Limitation Act.

(i) **T.Marimuthu vs. M.Dhanalakshmi and others** reported **2012 SCC Online Mad 4352**

(ii) **Paramanandan vs. Selvanagaki and others** reported in **2013 (1) LW 58**

12. The learned counsel for the respondents submits that although Section 5 of the Limitation Act is not applicable, the ratio in the second mentioned case, will also apply where there is an enormous delay. That apart, it is submitted that there were no materials before the Deputy Registrar to confirm the surcharge proceedings against any of the employees of the second petitioner Bank under Section 87 of the Act.

13. The learned counsel for the respondents also submitted that nothing precluded the Registrar of Co-operative Societies to file a Writ Petition as was the practice then or invoke the Civil Revision Petition, as has been ordered. Hence, he prayed for dismissal of the Civil Revision Petitions.



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14.I have considered the arguments advanced by the learned counsel for the petitioners and the learned counsels for the respondents.

15.The operative portion of the impugned order exonerating the employees reads as under:-

"19.The appellants have been fastened with the liability as they have been working in the Bank and they have signed in certain entries and they had neither ascertained the genuineness of the challan given by the deceased Kanagasababathi nor confirmed the remittance of the amount. The admitted fact is that Kanagasababathi took the amount from the above said Co-operative Bank for remittance into the Treasury and handed over the fake challans to the Bank. The appellants cannot be said to have committed any actionable wrong. From the records submitted by the first respondent, I do not see any material of acceptable evidence to attribute the wilful negligence on the appellants."

16.A reading of the above passage indicates that there is a bundle of contradictions. While the Tribunal has concluded that the admitted fact is that the said Kanagasababathi took the amount from the second petitioner Co-operative Bank and not remitted the same to the Treasury and handed over the fake Challans to the second petitioner Bank, however, curiously, the Tribunal held that the appellants cannot be said to have committed any actionable wrong. The Tribunal while coming to the above conclusion had framed the following two points for consideration:-

"(1) Whether the appellants are liable to pay the loss incurred by the Society as directed by the Deputy Registrar in his impugned order dated 14.10.98?

(2) Whether these appeals are to be allowed?"



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17.The observations in rest of the Paragraphs from Paragraph No.15 onwards are primarily dealing with limitation issue in the light of the decision that were prevailing at that point of time in the context of Sections 81 and 87 of the Act. These are no longer available in the light of the subsequent decision of the First Bench of this Court in **S.V.K.Sahasramam's case** referred to supra. Thus, the only issue for this Court to consider is whether the order passed by the Tribunal is to be sustained or has to be interfered with at this distant point of time, particularly, in the light of the fact that the order was passed by the Tribunal on 30.11.2005. The order passed by the Tribunal is otherwise liable to be interfered with, as clearly there is a contradiction in Paragraph No.19. However, there is an enormous delay in filing the Writ Petitions, which have been subsequently ordered to be converted as Civil Revision Petitions in the light of the decision of the First Bench of this Court in **E.S.Sundara Mahalingam vs. The Special Tribunal for Co-operative Cases (District Judge), Tirunelveli and two others** [W.A.No.4021 of 2019, rendered on 22.11.2019].

18.The Writ Petitions, which have been since re-numbered as Civil Revision Petitions, are late by about 12 years. Barring a bald assertion that some of the employees of the second petitioner Bank were employees till 2016 and therefore, the Writ Petitions could not be filed earlier, is not an excuse. Therefore, this Court is



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inclined to dismiss the Civil Revision Petitions filed by the Deputy Registrar of Co-operative Societies, Dindigul and the Secretary of the second petitioner Bank, as hopelessly belated, since many of the employees would have also retired and may have also died and none of the records would be available for perusal.

19.These Civil Revision Petitions stand dismissed with the above observations. No costs.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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15.06.2023

To

The Principal District Judge,
(Co-operative Tribunal),
Dindigul.



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C.SARAVANAN, J.

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Common Order made in
C.R.P.(MD)Nos.742 to 745 and 763 to 783 of 2023

15.06.2023