



W.P.No.15368 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.15368 of 2009

K.Ramu

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies
Tindivanam.

2.The Nagandur Primary Agricultural
Co-operative Bank Ltd.,
Rep.by its Special Officer, Nagandur
Tindivanam Taluk.

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the order passed in C.M.A.No.28 of 2004 dated 10.02.2009 on the file of the District Court, Villupuram and quash the same.



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For Petitioner : Mr.R.Karunakaran
For Respondents : Mr.S.Ravikumar for R1
Special Government Pleader
R2 – No appearance

ORDER

This Writ Petition is filed challenging the judgment and decree of the Cooperative Appellate Tribunal in CMA.No.28 of 2004. By the said order, the Appellate Tribunal rejected the appeal filed by the petitioner as against the order dated 20.06.2003 passed under Section 87 of the Tamil Nadu Cooperative Societies Act, making him also jointly and severally responsible to pay a sum of Rs.11,83,510/-.

2. The factual background in which the Writ Petition arises is that after a report under Section 81 of the Tamil Nadu Cooperative Societies Act, surcharge proceedings were initiated against the petitioner herein and 13 others totally under 10 heads of loss. The petitioner is the Secretary of the



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Society and 3 others were the Clerks of the Society. The rest 10 persons are the President and Directors of the Board of the society. After considering the explanation given by the petitioner and the evidence on record, the Society held the petitioner is also responsible in respect of item Nos.1 to 9 of the loss except item No.10. Aggrieved by the same, the petitioner preferred an appeal and the appeal is dismissed. Though only Civil Revision Petition under Article 227 is to be filed, since this Court also deals with the same, this Writ Petition is considered on merits treating it as a revision.

3. On perusal of the material records of the case, the 1st item is with reference to the appointment of Guberamoorthy. It is stated that the said Guberamoorthy was appointed without even any approval from the Deputy Registrar of Cooperative Societies and without any sanctioned post and thereby all the persons responsible caused the loss to the tune of Rs.91,825/-. The explanation which is submitted by the petitioner is that he has opposed the said appointment and had duly informed the higher Authorities. However, no document whatsoever is produced in respect thereof. The second item is that 12(3) settlement was wrongfully entered into by the President without the



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approval of the Authorities and thus, caused the loss of Rs.93,420/-. The 3rd item is granting of unlawful promotion and fixing of salary over and above the salary which is sanctioned by the Registrar and prescribed under 18(1) settlement to be entered with the employees. Similarly 4th item is again wrongfully paying amounts in excess of the 12 (3) settlement which are prescribed. Therefore, in respect of the three items, it can be seen that the dispute has been raised, in the conciliation proceedings, the settlements have been recorded. It can be seen from 18 (1) settlement that not only the President but also the Special Officer is also signatory to the settlement. Therefore, in respect of these 3 items, the same has been paid only as per the 18 (1) settlement and 12 (3) settlement which have been entered into pursuant to the dispute raised before the conciliation Officer or the Labour Officer as the case may be, even though it is now settled by the Division Bench of this Court that the Registrar of Co-operative Societies has power to override 12(3) settlement or 18 (1) settlement, in the absence of such a specific order passed in this case, negating the 12 (3) settlement and 18 (1) settlement, the Respondents 1 & 2 cannot straight away go ahead by holding that the amount is wrongful loss to the society and ordering recovery of the said amounts.



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4. As far as the 5th item is concerned, the same relates to wrongfully granting vehicle loan. The item No.6 is that without even purchase of the vehicle, the vehicle loan is being granted. The item No.7 relates to grant of Provident Fund loan without following the procedure and where the entitlement was not there. So far as Item No.8 is concerned, wrongfully granting consumer loans without following the procedure. As far as Item No.9 is concerned, the printing of form and other stationery of the society in private institution, while the order is that it has to be printed only in the cooperative society. Therefore, I do not find any error in the order of the original Authority as well as the Appellate Authority in respect of item Nos.1, 2, 5 to 9 of the surcharge order. But as far as item Nos.2, 3 and 4 are concerned, pursuant to the disputes have been raised and before the Conciliation Officer or otherwise before the Labour Officer, if 18 (1) settlement and 12 (3) settlement are entered into, in the absence of specific order of the Registrar of Cooperative Societies negating the said awards under 12 (3) Settlement, straightaway proceedings under 87 of the Tamil Nadu Cooperative Societies Act cannot be undertaken. In this regard, useful



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reference can be made to the judgment of this ***Court in CRP (MD) Nos.1231 of 2024 etc (The Deputy Registrar of Co-operative Societies, Tiruchendur Vs. A.Tamilraj & others).***

5. In view thereof, this Writ Petition is partly allowed on the following terms;

1) The surcharge order order passed by the first respondent dated 20.06.2003 and the consequential order in CMA.No.28 of 2004 by the Tribunal stands confirmed in respect of item Nos.1, 2, 6 to 9 of the items mentioned in the surcharge order and shall stand set aside in as much as the petitioner is concerned with reference to item Nos.3, 4 and 5 of the surcharge order and the balance amount can be calculated. If the amount remains unpaid by the petitioner, further proceedings can be taken by the respondents to collect the amount in accordance with law.

No costs.

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Neutral Citation : No
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D.BHARATHA CHAKRAVARTHY, J.

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