



C.R.P.(NPD)No.2870 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.04.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(NPD)No.2870 of 2022

and

C.M.P.Nos.15545 of 2022 & 22651 of 2023

G.Jaivigneswar

.. Petitioner

Vs.

1.The Deputy Registrar (Dairying),
Milk Production & Dairy Development Department,
Kanagamuthu Post, Salem Main Road,
Krishnagiri – 635002

2.The General Manager,
The Dharmapuri Dist Cooperative Milk Producers
Union Limited,
Kanagamuthu Post, Salem Main Road,
Krishnagiri – 635002

3.V.Selvakumar

4.S.Sumathi

5.Velavan

6.Basavaraj S.U

.. Respondents



C.R.P.(NPD)No.2870 of 2022

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the order dated 28.03.2022 made in C.M.A.(CS)No.2 of 2020 before the Co-operative Societies Tribunal (Principal District Judge) Judge, Krishnagiri.

For Petitioner : Mr.S.R.Rajagopal
Senior Counsel for
Mr.C.Vidhusan

For R1 : M/s.Akila Rajendran
Additional Government Pleader

For R2 : Mr.R.Arvind
for Mr.I.John Arockiadas

ORDER

This is a truly unfortunate case where a public institution, namely, Aavin has lost a sum of Rs.3,31,11,039.64/- on account of the alleged acts of the civil revision petitioner and the 6th respondent herein.

2. One Aaruthra Milk International Private Limited is alleged to have approached the civil revision petitioner and the 6th respondent for the supply of certain quantities of milk. The 6th respondent was then the General Manager of Dharmapuri District Cooperative Milk Producers Union Limited [hereinafter referred to as DDCMPU Limited].



C.R.P.(NPD)No.2870 of 2022

3. The contracted supply was for 60,000 liters of Raw Chilled Milk everyday commencing from the month of January 2019. On receipt of this request, the 6th respondent had approached the Managing Director of the Tamil Nadu Cooperative Milk Producers Federation Limited [hereinafter referred to as Aavin].

4. By an order dated 04.01.2019, the Managing Director of Aavin granted permission to the 6th respondent to make supplies to Aaruthra Milk International Private Limited.

5. During the relevant time, the civil revision petitioner had been appointed to the substantive post of Manager (Marketing), DDCMPU Limited. As the Assistant General Manager (Marketing) had been transferred out of her post, the petitioner was given an additional charge to act as the Assistant General Manager (Marketing). This order was passed on 06.09.2018. The 6th respondent, the then General Manager of DDCMPU Limited, entered into an agreement with Aaruthra Milk International Private Limited on 03.01.2019.



C.R.P.(NPD)No.2870 of 2022

6. There is a specific clause in the agreement that the supply should not be on credit basis, but it should be only on cash and carry basis. In other words, prior to the supply of milk, the Aaruthra Milk International Private Limited would be bound to pay the amount for that supply and thereafter, lift the milk from the dippo of DDCMPU Limited.

7. On the basis of the permission granted by the Managing Director of Aavin, the 6th respondent issued a note to the Assistant General Manager (Dairy), directing him to effect supplies to Aaruthra Milk International Private Limited. Acting on the letter dated 04.01.2019, the Assistant General Manager (Dairy) started the supply from 08.01.2019 onwards. Sadly, at the time of supply, the Assistant General Manager (Dairy) did not notice that the payments had not been made by Aaruthra Milk International Private Limited prior to lifting 60,000 litres of Raw Chilled Milk per day.

8. It was on 22.01.2019, the civil revision petitioner wrote a letter to the 6th respondent stating that the milk was being carried away by Aaruthra Milk International Private Limited at free of cost without making a single paise as payment.



C.R.P.(NPD)No.2870 of 2022

WEB COPY

9. On 08.02.2019, the 6th respondent asked the petitioner to approach Aaruthra Milk International Private Limited to collect the payments. The record reveals that out of the arrears of Rs.3,31,11,039.64/-, an amount of Rs.50,00,000/- was paid by way of cheque which was credited, and another amount of Rs.50,00,000/- was paid by way of RTGS. As against the supply worth Rs.3,31,11,039.64/-, Aavin received a paltry sum of Rs.1,00,00,000/-, leaving behind the balance of Rs.2,31,11,039.64/-.

10. To complete the narration, Aaruthra Milk International Private Limited had issued three cheques to clear the amount. Two cheques for a sum of Rs.1,00,00,000/- and one for the remaining amount of Rs.1,31,11,039.64/-. As it is to be expected of any pre-dealer, all the three cheques bounced. It was at that stage, the 2nd respondent herein woke up and decided to seek for an inquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. Section 81 inquiry was conducted and the authority who conducted the inquiry recommended civil, criminal and disciplinary action including the framing of surcharge as against the respective parties.



C.R.P.(NPD)No.2870 of 2022

WEB COPY

11. On the basis of the inquiry report under Section 81, Section 87 proceedings were initiated. The 1st respondent conducted the said proceeding, in which, the civil revision petitioner did not participate. However, the 6th respondent participated.

12. After extracting the facts of the case, in one sentence, the 1st respondent came to a conclusion that the petitioner and the 6th respondent are responsible jointly and severally for a sum of Rs.2,31,11,039.64/-. What becomes curious is that though one of the charges as against the petitioner and the 6th respondent that they had effected supplies to Aaruthra Milk International Private Limited without even making the said entity as a member. During the 87 inquiry, the authorities who were in control of Aaruthra Milk International Private Limited were also impleaded as respondent Nos.1 to 3. Having suffered the surcharge order, the civil revision petitioner preferred an appeal before the Tribunal for Co-operative Societies-cum-Principal District Judge at Krishnagiri in C.M.A.(CS)No.2 of 2020. By an order dated 28.03.2022, the learned Principal District Judge dismissed the appeal. Hence, the revision.



C.R.P.(NPD)No.2870 of 2022

13. Heard Mr.S.R.Rajagopal for S.Shanmitha and Mr.C.Vidhusan, appearing for the petitioner, and M/s.Akila Rajendran, appearing for the 1st respondent, and Mr.R.Arvind for I.John Arockiadas, appearing for the 2nd respondent.

14. Though several contentions running into the merits of the case were raised by Mr.S.R.Rajagopal, who pleaded that his client is absolutely innocent and that recovery of amount is not one within his scope of duties, in the light of the order that I am going to pass, I am not dealing with the merits of the matter other than that relating to the duties and responsibilities of the civil revision petitioner.

Duties and Responsibilities

15. As per the terms of appointment of the petitioner, in reference to No.3049/Estt.1/16, dated 29.08.2018, apart from improving the marketing activities in Krishnagiri, the following duties and responsibilities were fixed for him to perform in the substantive post of Manager (Marketing) :

*“ 1. The overall Mkg. In charge of
Krishnagiri, Dharmapuri respectively are
responsible for the all the sales activities.*



WEB COPY



C.R.P.(NPD)No.2870 of 2022

2. The Manager (Mkg) is responsible for active Daily milk sales & Products sales target fixed.

3. The Manager (Mkg.) is responsible to appoint more No. of retailer/whole sale dealer ERO/EFRO for milk and milk products in the areas.

4. The Manager (Mkg.) is responsible will also arrange to appoint WSD for the areas arrangement of sale of milk and milk products without fail. ”

16. When this is the role of the Marketing Manager, it cannot be said that the petitioner has nothing to do about verifying whether the sales that have been made by DDCCMPU Limited are on credit basis or on cash and carry basis. Therefore, insofar as the plea of Mr.S.R.Rajagopal that the civil revision petitioner has nothing to do with the supply of milk is concerned, I have to reject the same. Insofar as his other submissions that no willful negligence or dereliction of duty is attributable to the petitioner is concerned, I do not want to go into the applications of those principles in this case.

17. The 2nd primary point, which Mr.S.R.Rajagopal would argue, is that no reasons have been given in Section 87 order or by the Appellate



C.R.P.(NPD)No.2870 of 2022

Authority, namely, the Principal District Judge at Krishnagiri prior to arriving at the conclusion that the petitioner is responsible for the charges framed against him. I am not concerned with the 6th respondent because the records do not reflect that the 6th respondent had filed any appeal before the learned Cooperative Societies Tribunal.

18. It has been settled by catena of judgments of the Supreme Court that the reasons are the heartbeat of any order. In case, the order is bereft of reasons, then the Court would have no other option than to set aside the same.

19. A perusal of the order of the trial authority shows that no reasons have been given by the 1st respondent prior to arriving at the conclusion that the civil revision petitioner is responsible for the charges framed against him. There is no discussion on the role of the civil revision petitioner, nor there is any discussion as to the alleged conspiracy between the civil revision petitioner, respondent Nos.3 to 5, and the 6th respondent. I have to hasten to add that the burden of proof that is necessary in the cases, such as these, is not to the same as it is required in the criminal proceedings. The



C.R.P.(NPD)No.2870 of 2022

burden of proof is lesser than the strict demand of criminal law, namely, the test of “beyond reasonable doubt”.

20. The 1st respondent/authority is expected to give a finding atleast on the basis of preponderance of probabilities. I have searched in vain in the impugned order of the 1st respondent and I am unable to find any reason to substantiate the fixation of the liability on the civil revision petitioner. A non-speaking order and an unreasoned order cannot stand the scrutiny of law. Similarly, the violation of natural justice by the trial authority cannot be cured by affording reasons at the appellate stage.

21. The order being void for being unreasoned, the Lower Appellate Court ought to have set aside the order and must have remitted the matter for a fresh enquiry. This is, more so, because the proceedings have been initiated well within the permissible period of litigation of seven years as it is available under Section 87. Fortunately for me, the seven year period is still alive and therefore, I am proposed to pass the following order :



C.R.P.(NPD)No.2870 of 2022

(a) The order of the learned Principal District Judge-cum-Cooperative Societies Tribunal at Krishnagiri in C.M.A.(CS)No.2 of 2020, dated 28.03.2022, is set aside.

(b) Similarly, the order passed under Section 87 of the Co-operative Societies Act, 1983 by the 1st respondent is also set aside.

(c) The proceedings are restored on to the file of the Deputy Registrar (Diarying), Krishnagiri - 635002 for fresh disposal in accordance with law. The Deputy Registrar shall, prior to passing of an order, give reasons for fixing the liability on the civil revision petitioner, if he finds any such liability exists. In any event, he must give a finding charge by charge.

22. Though on the previous occasion, the civil revision petitioner did not participate in the proceedings, it does not mean that his right by virtue of this order is also closed. The civil revision petitioner will be entitled to raise all the defences that were raised by him, today, other than that relating to the duty owed to the 1st respondent.

23. With the consent of the petitioner, the 1st respondent, and the 2nd respondent, the parties shall appear before the 1st respondent on 29.04.2024.



C.R.P.(NPD)No.2870 of 2022

The 1st respondent shall conduct an enquiry and complete the same on or before 30.06.2024 and he shall submit a report to this Court on 05.07.2024.

24. With the above directions, the Civil Revision Petition stands allowed. No costs. The matter is restored on to the file of the 1st respondent. The costs of these proceedings shall follow the result of Section 87 enquiry. Consequently, connected Civil Miscellaneous Petitions are closed.

16.04.2024

mkn2

Index:Yes/No

Speaking Order :Yes/No

Neutral Citation:Yes/No

To

The Co-operative Societies Tribunal (Principal District Judge) Judge,
Krishnagiri



WEB COPY



C.R.P.(NPD)No.2870 of 2022

V. LAKSHMINARAYANAN, J.

mkn2

C.R.P.(NPD)No.2870 of 2022

and

C.M.P.Nos.15545 of 2022 & 22651 of 2023

16.04.2024