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W.P. No. 4974 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.03.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

**W.P. No. 4974 of 2017
and
W.M.P. No. 5215 of 2017**

P.S.Mahendiran

... Petitioner

-VS-

1. The Deputy Registrar of Co-operative Societies/Sur-Charge Office,
Tirupattur Range,
Tirupattur,
Vellore District.

2. The Co-operative Sub-Registrar/Special Officer,
Periyagaram Primary Agricultural Co-op Credit Society,
Periyagaram,
Tirupattur,
Vellore District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorarified Mandamus, calling for the impugned order passed by the First Respondent in S.C. No. 4/2015-16 sa.pa dated 08.02.2017 and quash the same and consequently direct the First Respondent to conduct an enquiry as per Section 87(4)(a), (b), (c) & (e) of the Tamil Nadu Co-operative Societies Act on furnishing documents, statement relied in the surcharge case.



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For Petitioner : Mr. P.Krishnan
For Respondents : Mr. P.Sathish,
Additional Government Pleader (for R1)
Mrs. T.Girija (for R2)

ORDER

Heard Mr. P.Krishnan, Learned Counsel for the Petitioner, Mr. P.Sathish, Learned Additional Government Pleader appearing for the First Respondent and Mrs. T.Girija, Learned Counsel for the Second Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner was working as Senior Clerk in the Co-operative Society of the Second Respondent. It had been informed to the Petitioner by proceedings in Tha. Thee. No. 4/2015-16 Sa.Pa. Dated 08.02.2017 by the First Respondent that the surcharge proceedings that had been initiated against him under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the Act' for short) would have to be concluded within a period of six months, but it is his case that materials relied against him based on which such action had been taken have not been furnished despite the request made by him. In that backdrop, the Writ Petition has been filed



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challenging the said order and consequently direct the First Respondent to conduct enquiry as per Section 87 of the Act after furnishing documents relied in that regard. In the context of the contentions raised in this case. This Court at the time of admission on 02.03.2017 had directed *status quo* to be maintained by the Respondents.

3. It would be beneficial in this context to refer to decision of the Hon'ble Supreme Court of India in the decision in ***Deepak Ananda Patil -vs- State of Maharashtra*** (Order dated 04.01.2023 in Civil Appeal Nos. 88-89 of 2023), which reads as follows:-

“20. It is a well-established principle of administrative law that an adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilized has been apprised of it and given an opportunity to respond to it. Surveying the precedents extensively, MP Jain & SN Jain's treatise on Principles of Administrative Law notes that:

“If the adjudicatory body is going to rely on any material, evidence or document for its decision against a party, then the same must be brought to his notice and he be given an opportunity to rebut it or comment



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thereon. It is regarded as a fundamental principle of natural justice that no material ought to be relied on against a party without giving him an opportunity to respond to the same. The right of being heard may be of little value if the individual is kept in the dark as to the evidence against him and is not given an opportunity to deal with it. The right to know the material on which the authority is going to base its decision is an element of the right to defend oneself. **If without disclosing any evidence to the party, the authority takes it into its consideration, and decides the matter against the party, then the decision is vitiated for it amounts to denial of a real and effective opportunity to the party to meet the case against him. The principle can be seen operating in several judicial pronouncements where non-disclosure of materials to the affected party has been held fatal to the validity of the hearing proceedings.**

(emphasis supplied)

21. In *T. Takano -vs- Securities and Exchange Board of India* [(2022) 8 SCC 162], a two judge bench of this court, of which one of us was a part (Dr D.Y. Chandrachud, J.), discussed the line of cases of this Court on the duty to disclose



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investigative material. The Court analyzed the ratio in *Natwar Singh -vs- Director of Enforcement* [(2010) 13 SCC 255], *Krishna Chandra Tandon -vs- Union of India* [(1974) 4 SCC 374], *Khudiram Das -vs- State of West Bengal* [(1975) 2 SCC 81], *Union of India -vs- Mohd. Ramzan Khan* [(1991) 1 SCC 588], *Managing Director, ECIL, Hyderabad -vs- B. Karunaka* [(1993) 4 SCC 727], *State Bank of Patiala -vs- SK Sharma* [(1996) 3 SCC 364], *State of Uttar Pradesh -vs- Ramesh Chandra Mangalik* [(2002) 3 SCC 443], *Kothari Filaments -vs- Commissioner Of Customs* [(2009) 2 SCC 192], and noted that:

“39. The following principles emerge from the above discussion:

(i) A quasi-judicial authority has a duty to disclose the material that has been relied upon at the stage of adjudication; and

(ii) An *ipse dixit* of the authority that it has not relied on certain material would not exempt it of its liability to disclose such material if it is relevant to and has a nexus to the action that is taken by the authority. In all reasonable probability, such material would have influenced the decision reached by the authority.



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Thus, the actual test is whether the material that is required to be disclosed is relevant for purpose of adjudication. If it is, then the principles of natural justice require its due disclosure.”

(emphasis supplied)

23. On the issue of the impact of such non-disclosure, in *T.Takano -vs- Securities and Exchange Board of India* [(2022) 8 SCC 162] summarizing the ratio of the Constitution Bench in *Managing Director, ECIL, Hyderabad -vs- B. Karunakar* [(1993) 4 SCC 727], we noted that:

“A Constitution Bench of this Court in *Karunakar* (supra) held that the non-disclosure of the relevant information is not in itself sufficient to warrant the setting aside of the order of punishment. It was held that in order to set aside the order of punishment, the aggrieved person must be able prove that prejudice has been caused to him due to non-disclosure. To prove prejudice, he must prove that had the material been disclosed to him the outcome or the punishment would have been different. The test for the extent of disclosure and the corresponding remedy for non-disclosure is dependent on the



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objective that the disclosure seeks to achieve. Therefore, the impact of non-disclosure on the reliability of the verdict must also be determined vis-à-vis, the overall fairness of the proceeding. While determining the reliability of the verdict and punishment, the court must also look into the possible uses of the undisclosed information for purposes ancillary to the outcome, but that which might have impacted the verdict.”

(emphasis supplied)

4. In view of the aforesaid legal position, it is incumbent upon the Respondents to supply copies of all materials relied in the surcharge proceedings by 24.04.2024 to the Petitioner before taking any further action in the matter. Though the Second Respondent has stated in the Counter-Affidavit dated 30.07.2021 that the copies of chitta, day book, general ledger, jewel application, jewel loan ledger, savings bank account book pages, jewel custody register have been furnished to the Petitioner on 20.08.2016, no proof in that regard has been produced before this Court. If any such proof is not handed over to the Petitioner, the copies of the said documents shall be supplied to the Petitioner without fail. It is needless to add here that while taking further



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action, the concerned authority shall follow the prescribed procedure and ensure full opportunity of personal hearing to all parties concerned including the Petitioner and pass reasoned order dealing with each of the contentions raised by the parties on merits and in accordance with law and communicate the decision to them under written acknowledgment. It is made clear for the purpose of reckoning the aggregate time limit of six months stipulated in the second proviso to Section 87 of the Act for completing the surcharge proceedings as highlighted by this Court in the decisions in ***T.V.Ekambaram -vs- Co-operative Tribunal cum District Judge, Madurai*** [2000 (II) CTC 659] and ***Gabriel -vs- Deputy Registrar (Housing), Cuddalore*** [2003 (3) CTC 23], the period from 02.03.2017 when the said order of *status quo* was passed by this Court till 24.04.2024 when time has been granted for furnishing the materials to the Petitioner in this order, shall be excluded.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

27.03.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 02.04.2024.

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To

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1. The Deputy Registrar of Co-operative Societies/Sur-Charge Office,
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Tirupattur,
Vellore District.
2. The Co-operative Sub-Registrar/Special Officer,
Periyagaram Primary Agricultural Co-op Credit Society,
Periyagaram, Tirupattur, Vellore District.

Copy to

P.S.Mahendiran
S/o. Settu
Jalliyur Road
T.Periyagaram
Tirupattur
Vellore District.



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P.D. AUDIKESAVALU, J.

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