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C.R.P.(PD).No.2622 of 2017 etc., batch

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2024

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

C.R.P.(PD).Nos.2622, 2627, 2628 and 3037 of 2017
and 1782, 1799, 1800 to 1806 of 2023
and CMP.Nos.12506, 12517, 12518 and 14228 of 2017 11562, 11648, 11647,
11649, 11650, 11651, 11653 of 2021

C.R.P.(PD).No.2622/2017:

S.Saraswathi

... Petitioner

vs.

1.The Deputy Registrar of Co-operative Societies (Dairying),
Vellore – 9.

2.The General Manager,
Vellore-Tiruvannamalai District Co-operative
Milk Producers Union Limited,
Vellore – 9.

... Respondents

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the C.T.A.No.09/2015, on the file of the Principal District Munsif cum Special Tribunal for Co-operative Society Cases, Vellore, dated 26.04.2017 in partly allowing 02/2014-2015, on the file of the Deputy Registrar of Co-operative Societies (Dairying), dated 10.06.2015, is even otherwise illegal, incompetent.



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For Petitioner : Mrs.V.Pavithra
for Mrs.V.Srimathi

For Respondents : Mr.V.Jeeva Giridharan
Additional Government Pleader for R1
Mr.L.P.Shanmugasundaram for R2

COMMON ORDER

These Civil Revision Petitions are filed challenging the order passed by the Co-operative Special Tribunal, Vellore. The Civil Revision Petition Nos.1799 to 1806 of 2023 are filed by the Vellore-Tiruvannamalai District Milk Producers Co-operative Union Limited and the Deputy Registrar of Co-operative Societies (Dairying Vellore). The other Civil Revision Petitions are filed by the delinquent employees.

2. For the sake of convenience, the petitioners in CRP.No.1799 to 1806 of 2023 are referred to as petitioners in this order. The petitioners in other revisions who are the delinquent employees are referred to as respondents in this order.



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3. The first petitioner herein by his letter on 14.06.2014

requested the second petitioner to enquire into the irregularities in the daily remittance of the amounts collected from milk agents at Vaniyampadi Milk Marketing Unit. The second respondent by his proceedings dated 14.06.2014 appointed one Radhakrishnan, Co-operative Sub Registrar as enquiry officer to conduct enquiry under Section 81 of the Act. During the course of the enquiry, it was found by him that the daily collection of the advance amounts from the agents were not remitted into the bank accounts during the period from 10.06.2013 to 30.10.2013. It was found by the enquiry officer that amount collected from milk agents for supply of milk had been shown to be remitted into Vaniyampadi Branch, Canara Bank account of the first petitioner union by fabricating the bank remittance challans. But the amounts have not been really remitted into the bank. A sum of Rs.54,39,289/- was found to be misappropriated by falsification of challan. The Enquiry Officer also found that a sum of Rs.1,69,195/- had been paid as commission to the milk agents without remitting Rs.54,39,289/- collected from them and thus caused loss to the Society. It was also found that one Raja Moorthy, Selection Grade Secretary at Vaniyambadi claimed a sum of Rs.5,593/- as



travelling allowance without travelling around Vaniyambadi and Tirupathur area for collection of the amount. Thus Enquiry Officer found that Society suffered a loss to the tune of Rs.56,14,077.50 paise.

4. Based on the findings of the 81 enquiry, the second petitioner herein initiated Surcharge Proceedings under Section 87 of Co-operative Societies Act against the respondents and finally passed Surcharge Order against the respondents and others. The second petitioner fixed the liability jointly and severally on the respondents and others in following manner.

<i>Period</i>	<i>Name of the Appellant & CTA Number</i>	<i>Sale proceeds</i>	<i>Commission</i>	<i>Travelling Allowance</i>
10.06.2013 to 30.10.2013	K.Saraswathy C.T.A.No.9/15	Rs.54,39,289-00	----	----
10.06.2013 to 30.10.2013	D.Sripathy C.T.A.No.10/15	Rs.54,39,289-00	1,69,195-50	----
22.06.2013 to 30.10.2013	R.Ganesh C.T.A.No.11/15	Rs.50,02,319-00	1,69,195-50	----
10.06.2013 to 30.10.2013	E.Kalpana C.T.A.No.12/15	Rs.54,39,289-00	1,69,195-50	----
10.06.2013 to 30.10.2013	R.Mathivanan C.T.A.No.13/15	Rs.54,39,289-00	1,69,195-50	----



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<i>Period</i>	<i>Name of the Appellant & CTA Number</i>	<i>Sale proceeds</i>	<i>Commission</i>	<i>Travelling Allowance</i>
18.06.2013 to 29.10.2013 (In this 10 days only)	P.Parimaladevan C.T.A.No.14/15	Rs.7,57,175-00	----	----
29.06.2013 to 30.10.2013	Jwala Rani C.T.A.No.16/15	Rs.47,89,279-00	1,69,195-50	----
10.06.2013 to 19.06.2013	Dr.Ulaganathan C.T.A.No.18/15	Rs.4,36,970-00	----	----
10.06.2013 to 30.10.2013	Rajamurthy (Died on 24.01.2016)	Rs.54,39,289-00	----	Rs.5593-00

5. Aggrieved by the said Surcharge Order, the respondents and some other delinquent employees preferred an appeal before the Co-operative Special Tribunal, Vellore. The Tribunal allowed the appeal and set aside the surcharge order passed against the respondents. However, the Tribunal found the respondents were negligent in discharging their duties, while cross checking the accounts and therefore, imposed a fine of Rs.1,00,000/- on each of the respondents. The Tribunal ordered that fine amount shall be paid to the first petitioner Union.



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6. Aggrieved by the order passed by the Co-operative Special Tribunal setting aside the Surcharge Order passed against the respondents and others, the petitioners preferred Civil Revision Petition Nos.1799 to 1806 of 2023. Aggrieved by the imposition of fine amount, the respondents herein namely Saraswathi, Sripathy, Ganesan, Jwala Rani and Ulaganathan preferred Civil Revision Petition Nos.2622, 2627, 2628 and 3037 of 2017 and 1782/2023, respectively.

7. The learned counsel appearing for the petitioners submitted that the respondents herein namely, Ulaganathan, Saraswathi, Sripathy, Ganesan and Jwala Rani, were employed as A.G.M Planning, Secretary Accounts Section, Milk Sales Officer, Assistant General Manager (Sales) and Assistant General Manager (Milk Preservation) respectively. The Enquiry Officer under 87 of Surcharge Proceedings as well as the Co-operative Tribunal found the respondents herein as Superior Officers failed to discharge their duties in their supervisory capacity and consequently failed to detect the financial irregularities committed by L.Raja Moorthy, Selection Grade



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Secretary. In such circumstances, the Tribunal ought not to have set aside the Surcharge Order passed against the respondents jointly and severally.

8. The learned counsel for the petitioners further submitted that merely because the above said Secretary admitted his liability and agreed to make good the loss to society, the Tribunal ought not to have absolved the respondents of their responsibility and liability.

9. The learned counsel representing the respondents delinquent employees submitted that imposition of fine of Rs.1,00,000/- by the Co-operative Tribunal is without jurisdiction and hence liable to be set aside. The learned counsel further submitted though Enquiry Officer found there was some slackness or negligence on the part of the respondents while discharging their duties as Supervisory authorities, there is nothing on record to suggest that the alleged dereliction of duty is wilful and consequently entitling the petitioners to initiate the Surcharge Proceedings under Section 87 of the Co-operative Societies Act.



10. In the light of the submission made by the counsel on either side, this Court has to decide, whether the Co-operative Special Tribunal is justified in setting aside the Surcharge Order passed against the respondents and imposing a fine amount.

11. A perusal of the 81 enquiry report, Surcharge Order passed under Section 87 of Co-operative Societies Act and the Order passed by the Co-operative Special Tribunal along with other connected records produced in the typed set of papers would suggest one Raja Moorthy, Selection Grade Secretary indulged in falsification of bank challans and created documents as if amount collected from milk agents were remitted into the bank account of the first petitioner. There is no evidence available on record to show that the respondents herein either actively or inactively aided said Raja Moorthy in his misdeeds. In fact, the said Raja Moorthy admitted his liability by not preferring any appeal challenging the Surcharge Order passed against him. During the course of arguments, it was also brought to the notice of this Court that a sum of Rs.54,43,335.98/- had been recovered from the estate of said Raja Moorthy. At the relevant period during which the irregularity was



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committed, the said Raja Moorthy was working as a Cashier in Vaniyambadi, Tirupathur, Jolarpet Sales Division of the first petitioner. The collection of amount from the milk agents and remittance of the same into the bank account of the first petitioner was his full responsibility and he also admitted the same. The responsibility of the respondents is limited to the cross verification of the accounts. There is no evidence available on record to suggest that the respondents failed to discharge their responsibility of supervision and cross verification of accounts willfully in order to aid and assist the said Raja Moorthy in falsification of accounts and consequential misappropriation.

12. It is settled law, mere negligence in discharging the duties would not entitle the second petitioner to initiate Surcharge Proceedings under Section 87 of Co-operative Societies Act. In this regard, it would be appropriate to refer to the decision of this Court in **Sathyamangalam Co-operative Urban Bank Limited vs. The Deputy Registrar of Co-operative Society and another** reported in (1980) 2 MLJ 17. The relevant observation of this Court reads as follows:



“19. The degree of negligence that is contemplated under [Section 71\(1\)](#) of the Act is not a mere negligence, but wilful negligence. The word 'wilful' has not been defined in the Act. The word 'wilfulness' or wantonness' imports pre-meditation or knowledge and consciousness that an injury or loss is likely to result from the act done or from the omission to act. Thus, the term imports a constructive intention as to the consequences which, entering into the wilful act, the law imputes to the offender and in this way a charge, which otherwise would be mere negligence, becomes, by reason of a reckless disregard of probable consequences, a wilful wrong. In other words, the conduct of a person, to amount to 'wilful negligence', must be something more than ordinary negligence. To constitute wilful negligence, the act done or omitted to be done must be intended or must involve such reckless disregard of security and right as to imply bad faith. The wilful or intentional negligence is something distinct from mere carelessness or inattention, however gross, and consists of a wilful and intentional failure or neglect to perform a duty necessary to protect from harm or loss to any person or property of another. In examining whether there is wilful negligence, it has to be seen first whether the person concerned is guilty of negligence and if so, whether that negligence is wilful and secondly, whether the said wilful negligence is the proximate cause of the injury or loss sustained.



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.....Having regard to the interpretations and discussions in respect of the term 'wilful' appearing in various enactments, as found in the case-law decided by the learned English and Indian Judges which serve as a guide to the construction of the term 'wilful' used in [Section 71\(1\)](#) of the Act, I am of the view that in order to pass a surcharge order under that section against a person entrusted with the organisation and management of a cooperative society or an officer or servant thereof, such person should have done an actionable wrong, either by commission or omission, in a deliberate and reprehensible manner, with reckless callousness and with a supine indifference (but not by accident or inadvertence), without taking due care and precaution ordinarily expected from a reasonable and prudent man under those existing circumstances, that is to say, not caring what the result of his carelessness would be. To make it explicit, it may be stated that he should have acted in breach of legal obligations or in conscious disregard of duty or with an intentional failure to perform the manifest duty, in the performance of which the public have an interest, and that such commission should be the proximate cause of the loss or deficiency in question.”

13. In ***S.Ramadevi vs. The Special Officer, Ambur Co-operative Sugar Mills, Vadapudupet, Vellore District and others***



reported in **2016-4-L.W 452**. The Division Bench of this Court, while considering the meaning of scope and ambit of “wilful negligence”, after referring to ***Sathyamangalam Co-operative Urban Bank Limited case*** referred supra and other case laws observed as follows:

“26.We are, thus, of the view that as the legal principles are quite settled, we have to only look into the application of the same in the facts of the present case. We are of the view that the appellate authority was right in coming to the conclusion that there is no willful negligence in the case of the appellant and this aspect has really not even been seriously touched upon by the learned Single Judge. Merely because loss is caused would not suffice. The appellant is not the beneficiary. There is no such willful negligence attributed to her. This is apparent from even the enquiry report, which we have referred to aforesaid. Mere use of the words "negligence and careless with selfish motive for gain" would not suffice when actually the facts do not make out such a case. Thus, the surcharge officer certainly fell into an error in imposing the liability on the appellant. The enquiry report discussed aforesaid itself shows that it is the third respondent who is



found to have taken advantage of the situation in seeking to obtain illegal gain for himself. The pay bill was prepared by the third respondent in the computer and the abstract of the department wise pay bill alone used to be furnished to the Accountant and the Chief Accountant (appellant) and signatures obtained. Thus, both of them had been signing on the department wise pay bill abstract without seeing the pay bills. The third respondent / Mr.A.Kabali, thus, took advantage of the fact that it was not possible for others to verify the cheques and test the salary list which was running into 300 pages. It is in these circumstances that the fourth respondent has been exonerated of the liability even though the abstract pay bill was required to be verified by him as an Accountant and he alone was supervising each and every matter. The cheques signed by the appellant are actually in the nature of countersignature and the Accountant himself had been exonerated. Merely because the appellant was the head of the department, the liability could not be fastened on her as no case of willful negligence is made out.”

14. In the case on hand, the main irregularity pointed out is concoction of false bank challans, as if, amount collected from milk agents



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were deposited into the bank account of the first petitioner by above said Raja Moorthy, Cashier. It is not in dispute, as per the bye-laws, cashier was fully responsible for collection of amount from milk agents and remittance of the same into the account of the union. It appears that when false bank challans prepared by delinquent were presented for cross verification, the respondents herein without doubting genuineness of the bank challan presented before them for having remitted the amount into the bank account simply approved it. It is stated that the respondents by cross checking the accounts of the amounts could have found actually amount was not deposited into the account. Such failure of the respondents may amount to negligence in discharging their duties to some extent. However, no Officer would doubt the bank challans presented before them by the Subordinate/Co-employee as a general rule, unless, there are circumstances which warrants such inference. Therefore, failure of the respondents to doubt the bank challans presented to them by above said Raja Moorthy and the further failure to cross check the accounts would in no stretch of imagination be termed as wilful negligence warranting initiation of Surcharge Proceedings against them. Therefore, the order of the Tribunal setting aside the Surcharge Order against the



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respondents is sustainable and it requires no interference. Therefore, the

Civil Revision Petition Nos.1799 to 1806 of 2023 preferred by the petitioners are dismissed.

15. While, setting aside the Surcharge Order passed against the respondents, taking into consideration negligence on the part of the respondents in supervising/cross checking the accounts, the Tribunal imposed a fine of Rs.1,00,000/- on each of the respondents. The same was impugned by the counsel for the respondent on the ground that the Tribunal has no jurisdiction to impose such a fine under the Co-operative Societies Act. The Tribunal constituted under Co-operative Societies Act is a creature of the statute and it can only exercise the powers conferred on it by the statute which created it. It is not a Court having plenary or inherent powers. The learned counsel for the petitioners Union is also unable to point out any provision in the Co-operative Societies Act, enabling Tribunal to impose fine on the employees who found to be negligent in discharging their duties.



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16. In such circumstances, the order passed by the Tribunal

imposing fine on the respondents has no sanction of law and accordingly, the same is liable to be set aside. Hence, the Civil Revision Petitions filed by the respondents/employees in CRP.Nos.2622, 2627, 2628, 3037 of 2017 and 1782 of 2023 are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Index : Yes / No
Speaking order : Yes / No
Neutral Citation : Yes / No
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The Principal District Munsif cum Special
Tribunal for Co-operative Society Cases, Vellore.



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S.SOUNTHAR, J.

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