BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.01.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.125 of 2021
and
W.M.P.(MD)Nos.116, 15003 & 17814 of 2021

D.Ponselvi,
President (Removal / Disqualification),
Q.305, Perungarai Primary Agricultural
Cooperative Credit Society,
Perungarai, Paramakudi Taluk,
Ramanathapuram District. ... Petitioner

Vs.

1. The Registrar of Co-operative Society,
O/o.the Registrar of Co-operative Society,
No.170, E.V.R. High Road,
Kelpauk, Chennai.

2. The Joint Registrar of Co-operative Societies,
O/o.the Joint Registrar of Co-operative Societies,
Ramanathapuram District Co-operative Credit Society,
Ramanathapuram, Ramanathapuram District.

3. The Deputy Registrar of Co-operative Societies,
O/o.the Deputy Registrar of Co-operative Society,
Paramakudi, Ramanathapuram District.

4. The Secretary,
Q.305, Perungarai Primary Agricultural
Co-operative Credit Society,
Perungarai, Paramakudi Taluk,
Ramanathapuram District. ... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order passed by the second respondent in his proceedings in Na.Ka.No.3874/2019/SaPa dated 03.12.2020 and quash the same as illegal.

For Petitioner	:	Mr.Ajmalkhan, Senior counsel, for M/s.Ajmal Associates
For Respondents	:	Mr.T.Villavan Kothai, Additional Government Pleader.

* * *

ORDER

Heard the learned Senior counsel appearing for the writ petitioner and the learned Additional Government Pleader appearing for the respondents.

2.The writ petitioner served as a President of Q.305, Perungarai Primary Agricultural Co-operative Credit Society, Perungarai, Paramakudi Taluk, Ramanathapuram District. The Joint Registrar of Co-operative Societies, Ramanathapuram District passed the impugned order dated 03.12.2020 disqualifying the petitioner under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983. Challenging the same, the present writ petition has been filed.

3.The learned Senior counsel appearing for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and grant relief as prayed for.

4.The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. He pointed out that the society of which the petitioner was the President had granted jewel loans to a number of agriculturists. The said borrowers had committed default. The jewels ought to have been brought to auction in time. On account of the delay in bringing the jewels to auction, the society was put to loss to the tune of Rs.2,40,203/-. This was pointed out in the audit conducted for the year 2017-2018. Based on the same, the Joint Registrar issued notice under Section 36(1) of the Act. The petitioner offered her response on 08.09.2020. After considering the explanation and the materials on record, the authority came to the conclusion that the Society was put to loss due to the gross negligence on the part of the petitioner and therefore passed the disqualification order. The learned Additional Government Pleader would add that the authority had complied with all the statutory requirements. The petitioner had rushed to this Court without exhausting the appeal remedy. The learned Additional Government Pleader wanted this Court to dismiss this writ petition.

5.I carefully considered the rival contentions and went through the materials on record. It is true that the order is appealable. The writ petition was filed way back in January 2021 and interim stay was also granted while admitting it. I therefore do not want to non-suit the petitioner on this technical ground at the final hearing stage.

6.The only ground on which the petitioner had been disqualified was that she failed to auction the pledged jewels in time and that as a result, the Society was put to financial loss. Section 36(1) of the Act provides for permanent disqualification of an office-bearer. The provision reads as follows:-

> " **36.Disqualification and removal.-**(1)Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83, it appears that a person who is, or was, a member of a board has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or of gross or persistent negligence in connection with the conduct and management of, or of gross mismanagement of the affairs of the society, the Registrar may, without prejudice to any other action that may be taken against such member by order in writing, disqualify him permanently from holding in future any office in any registered society. The Registrar shall, if such

person holds office of member of the board, also by the same order remove him from that office."

The petitioner had not misappropriated or fraudulently retained any money belonging to the society. She cannot also be said to be guilty of breach of trust. Even according to the authority, she was guilty of only gross negligence. It is true that Section 36 of the Act provides for permanent disqualification if the person concerned was guilty of gross or persistent negligence in connection with the conduct and management of the affairs of the society. The expression "gross negligence" has been defined in P.RAMANATHA AIYAR'S ADVANCED LAW LEXICON in the following terms :

"**Gross Negligence.** Negligence beyond a reasonable degree. Such negligence is comparable to recklessness...

Negligence marked by total or nearly total disregard for the rights of others and by total or nearly total indifference to the consequences of an act. [S.3, Indian Trusts Act (2 of 1882)].

Gross negligence means some culpable default, not arising merely from want of foresight or mistake of judgment. AIR 1970 MP 39.

> The expression “gross negligence” denotes a high degree of careless conduct and depends on the particular case. It is not necessary that there should be a fraud or something denotes a fraud to bring the case within the meaning of the word “gross negligence”. [MLJ : FYD (01-50), V.2, p.1022: AIR (Vol.32) 1945 Nag.111]. [CP Local Funds Audit Act (1933), S.10]
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> “Gross negligence”, “sometimes called “wilful blindness” is the same thing as 'negligence', with the addition of a vituperative epithet”(per ROLFE, B.Wilson V. Brett, 11MW 115, 116).”

Black's Law Dictionary talks of active negligence, advertent negligence, casual negligence, collateral negligence, comparative negligence, concurrent negligence, contributory negligence, criminal negligence, culpable negligence, gross negligence, hazardous negligence etc., Gross negligence has been defined as “lack of even slight diligence or care”. The difference between gross negligence and ordinary negligence is one of degree and not of quality. It is a conscious, voluntary act or omission in reckless disregard of a legal duty. It is also termed wanton or willful negligence. The Madras High Court in the decision reported in ***AIR 1977 Mad 92 (Subbammal v. Tenkasi Cooperative Urban Bank)*** held that wilful negligence means, intentional and purposeful omission and mere negligence, however gross it may be, may not be sufficient to attract the provision for surcharge. Thus according to the learned Judge (Ramanujam, J.), there is a distinction between wilful negligence and gross negligence. The expression "wilful negligence" is found in Section 87 of the Act which provides for taking surcharge proceedings. But the definitions found in standard law lexicons indicate that the distinction between the two is without difference. Though these two expressions, namely, gross negligence and wilful negligence semantically bear the same meaning, I hold that the manner of application of the standard to a given fact situation is bound to vary. A higher standard would be required in a disqualification proceeding under Section 36 of the Act compared to a surcharge proceeding under Section 87 of the Act. The authorities as well as the courts will have to be mindful of the fact that the law-makers have employed different expressions. In other words, the same act or omission, while may not invite the consequence of disqualification, can still attract an order of surcharge. I come to such a conclusion because an order of disqualification has graver consequences compared to an order of surcharge.

7.In the case on hand, the board had the duty to recover the jewel loans. The Society had passed the resolution in the year 2015 itself directing the Secretary of the Society to bring the jewels to auction. Though the learned Senior Counsel would contend that it was the

Secretary who had failed to take action and that the President cannot be blamed, I cannot endorse the said defence. While it is true that it is the duty of the Secretary to implement the resolution passed by the Board, the Board is equally obliged to ensure that this duty is discharged.

8.Whether the omission on the part of the Board would constitute gross negligence is a point for consideration. The negligence must be comparable to recklessness and the element of culpability must be present. The borrowers were agriculturists. The creditor is a co-operative society. Therefore, the society cannot be blamed for giving some leverage to the borrowers. The auction was held in the year 2017. Even according to the respondents, the Society was able to recover a sum of Rs.9,37,235/-. The entire principal amount had been recovered. The loss of Rs.2,40,203/- represents the interest component for the period from 2015 to 2017. It is not as if the petitioner was in sole and exclusive management of the society. It is not as if she failed to act even after being reminded of the duty. In these circumstances, the omission would not meet the requirement of “gross negligence” for the purpose of Section 36 of the Act.

9.In this view of the matter, the order impugned in this writ petition is set aside. This writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

18.01.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
SKM

To:

1. The Registrar of Co-operative Society,
   O/o.the Registrar of Co-operative Society,
   No.170, E.V.R. High Road, Kelpauk, Chennai.

2. The Joint Registrar of Co-operative Societies,
   O/o.the Joint Registrar of Co-operative Societies,
   Ramanathapuram District Co-operative Credit Society,
   Ramanathapuram, Ramanathapuram District.

3. The Deputy Registrar of Co-operative Societies,
   O/o.the Deputy Registrar of Co-operative Society,
   Paramakudi, Ramanathapuram District.

4. The Secretary,
   Q.305, Perungarai Primary Agricultural
   Co-operative Credit Society,
   Perungarai, Paramakudi Taluk, Ramanathapuram District.

G.R.SWAMINATHAN,J.

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