



CRP(MD)No.933 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 23.10.2024

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(MD)No.933 of 2020
and
CMP(MD)No.6101 of 2020

Arjunan

.. Petitioner

v.

The Deputy Registrar of Co-operative Societies,
Paramakudi Division,
Paramakudi,
Ramanad District.

.. Respondent

PRAYER: Petition filed under Article 227 of the Constitution of India as against the order dated 18.12.2019 made in CMA(SC)No.7 of 2019 on the file of the Principal District and Sessions Court, Ramanad, confirming the order dated 01.02.2019 passed by the Deputy Registrar of Co-operative Societies, Paramakudi Division, Paramakudi, in Tha.Thi.No. 04/2017-18/Na.Ka.No.909/2017.



WEB COPY



CRP(MD)No.933 of 2020

For Petitioner : Mr.C.Jeganathan
For Respondents : Mr.G.V.Vairam Santhosh,
Additional Government Pleader

ORDER

Surcharge proceedings u/s.87 of the Tamil Nadu Co-operative Societies Act [hereinafter referred to as 'the Act'] was initiated as against the petitioner, then Secretary of Q-1217 Semmanoor Primary Agricultural Co-operative Credit Society, Ramanad, based on the enquiry report u/s.81 of the Act and final order was passed by the respondent / Deputy Registrar of Co-operative Societies on 01.02.2019 holding that the petitioner has caused loss to the tune of Rs.2,05,472/- to the Society and the same is liable to be recovered from the petitioner with interest @ 17.5%. Challenging the same, the petitioner has filed an appeal before the Principal District Court / Co-operative Tribunal, Ramanad and the Tribunal, by judgment dated 18.12.2019, dismissed the appeal. Aggrieved over the same, the petitioner has filed the instant revision petition.



2.Learned Counsel for the petitioner submitted that the surcharge proceedings u/s.87 of the Act was initiated by the respondent, based on the enquiry report u/s.81 of the Act. However, this basic document, viz., enquiry report, has not been furnished to the petitioner and therefore, the entire proceedings has been vitiated and it has been made in violation of principles of natural justice. In view of the non-furnishing of the enquiry report, the petitioner is unable to put forth his contention before the respondent and also before the Tribunal. Therefore, he requested to remand the matter for fresh consideration, after furnishing the enquiry report u/s. 81 of the Act.

3.By referring to the order passed by this Court in WP(MD)No.2103 of 2018, dated 12.02.2018, learned Counsel for the petitioner submitted that this Court has issued a specific direction to the Registrar of Co-operative Societies to issue a Circular for furnishing the enquiry report u/s.81 of the Act, along with the surcharge notice. In pursuance to the same, the Registrar of Co-operative Societies has also issued a Circular dated 25.04.2018 with specific instructions to all the Deputy Registrars of Co-



CRP(MD)No.933 of 2020

operative Societies dealing with the surcharge proceedings to furnish the enquiry report u/s.81 of the Act along with the surcharge notice. According to the learned Counsel, even after this Circular dated 25.04.2018, the respondent has failed to furnish the enquiry report u/s.81 of the Act and therefore, the petitioner was prevented from defending the surcharge proceedings and also before the Tribunal.

4.He further submitted that the surcharge proceedings initiated u/s. 87 of the Act has to be completed within a period of six months or within a extended period of another six months, in any event, within a period of one year. In the case on hand, the proceedings u/s.87 of the Act was initiated on 07.02.2018 and was concluded only on 30.05.2019, after a period of one year and three months. The Tribunal has not properly considered the same.

5.Learned Additional Government Pleader appearing for the respondent submitted that the petitioner, then Secretary of the Society, has misappropriated to the tune of Rs.2,05,472/-. Therefore, an enquiry was ordered u/s.81 of the Act and based on the enquiry report, the further



CRP(MD)No.933 of 2020

proceedings u/s.87 of the Act was contemplated. According to the learned Additional Government Pleader, the copy of the enquiry report was communicated to the petitioner along with the surcharge notice issued by the respondent in Letter Na.Ka.No.909/2017/Sa.Pa dated 07.02.2018. The same was also mentioned in the surcharge order passed by the respondent dated 01.02.2019. Taking advantage of the omission about the enclosures in the surcharge notice, the petitioner has taken a plea that he was not provided with the enquiry report u/s.81 of the Act.

6.He further submitted that there is no requirement for supplying this enquiry report u/s.81 of the Act to the petitioner / delinquent as per Sub-Section 3 of Section 81 of the Act, which requires a copy of the enquiry report to be furnished to the concerned District Central Co-operative Bank alone. By considering this provision, this Court in *N.Sekar v. Principal District Judge cum Co-operative Tribunal, Thanjavur* [2009 (1) CTC 473], has held that the petitioner therein has not pointed out the relevant provision of law, which makes it mandatory for the Enquiry Officer to furnish a copy of the enquiry report to the delinquent employee before



CRP(MD)No.933 of 2020

initiating the surcharge proceedings u/s.87 of the Act. The Court further held that neither under the Act nor under the Co-operative Societies Rules [particularly Rules 104 & 173] provide for any provision for furnishing a copy of the enquiry report. The Tribunal, by considering this decision referred by the respondent, has rejected the petitioner's plea and therefore, the Tribunal cannot be found fault with.

7.Learned Additional Government Pleader, by referring to the memorandum of appeal filed by this petitioner before the Co-operative Tribunal, submitted that the petitioner has admitted the receipt of the enquiry report u/s.81 of the Act and took a specific stand that he was not supplied with the depositions and other documents. He has also pointed out that the enquiry before the respondent was conducted from 16.03.2018 to 01.02.2019 and the Deputy Registrar has provided 16 hearings in the enquiry, however, the petitioner has not made any petition before the Surcharge Authority as if he was not furnished with the enquiry report u/s.81 of the Act. The petitioner was aware of the charges as against him. In fact, the Enquiry Officer u/s.81 of the Act has explained the charges to



CRP(MD)No.933 of 2020

the petitioner, verified with him and then only filed his report. Therefore, learned Additional Government Pleader submitted that this stand has been taken by this petition, in this revision petition, in order to drag on the proceedings.

8.Learned Additional Government Pleader pointed out that the misappropriation was in the year 2016, the enquiry report was on 27.09.2017, the surcharge order was passed on 01.02.2019 and the misappropriated amount is yet to be recovered from the petitioner.

9.With regard to the other contention raised by the petitioner that the enquiry was not concluded within the stipulated time limit, the learned Additional Government Pleader submitted that the enquiry u/s.81 was completed within three months as per Section 81(4) of the Act and therefore, this contention is not correct. With regard to the other averment that the enquiry u/s.81 and the proceedings u/s.87 of the Act were not concluded in time, the same is not correct. According to him, the proceedings u/s.87 of the Act was initiated on 07.02.2018 and the six



CRP(MD)No.933 of 2020

months period was over on 07.08.2018. However, by order dated 02.08.2018, the Joint Registrar has granted further time from 06.08.2018 till 05.11.2018. Again, further time was granted by order dated 23.10.2018 extending the time for enquiry from 06.11.2018 to 05.02.2019. The final order was passed on 01.02.2019, well within the extended period and the statute permits further period of six months. Therefore, the enquiry was concluded within the extended period of six months and there is no delay in concluding the proceedings, as projected by the petitioner.

10. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent.

11. The main contention of the petitioner is that the surcharge proceedings u/s.87 of the Act was conducted without furnishing the enquiry report u/s.81 of the Act.

12. With regard to the furnishing of the enquiry report, the respondent took two different stands. On the one hand, the respondent claims that the



enquiry report u/s.81 of the Act need not be furnished to the petitioner and

that there is no provision of law for furnishing the enquiry report u/s.81 of the Act during the surcharge proceedings. In this regard, reliance was made to the decision of this Court in *N.Sekar v. Principal District Judge cum Co-operative Tribunal, Thanjavur* [2009 (1) CTC 473].

13.The very same respondent, on the other hand, took another stand that even though it is not necessary, the enquiry report u/s.81 of the Act was, in fact, furnished to the petitioner along with the surcharge notice and that the petitioner has also admitted the same in the grounds of appeal filed before the Tribunal.

14.In fact, there is no provision directing the concerned authority to furnish the enquiry report u/s.81 of the Act to the delinquent, either under the Co-operative Societies Act or under the Rules. By referring the same, this Court in *N.Sekar's* case (supra) has held that there is no provision which makes it mandatory for the enquiry officer to furnish the copy of the enquiry report u/s.81 of the Act to the delinquent employee before



CRP(MD)No.933 of 2020

initiating the surcharge proceedings. Following this decision, the Tribunal has rejected the plea raised by this petitioner. Therefore, the Tribunal cannot be found fault with for having taken this decision.

15.However, this Court in WP(MD)No.2103 of 2018 has issued a specific direction to the Registrar of Co-operative Societies to issue a Circular for issuing the enquiry report u/s.81 of the Act along with the surcharge notice u/s.87 of the Act and a Circular was also issued by the Registrar of Co-operative Societies complying the order on 25.04.2018.

16.In this case, the surcharge proceedings was initiated on 07.02.2018 and the final order was passed on 01.02.2019. The respondent claims that the enquiry report was furnished to the petitioner along with the enquiry notice. The enquiry was conducted nearly for 16 hearings from 07.02.2018 till 01.02.2019 before the respondent. It appears that the petitioner has not made any specific request for furnishing this enquiry report u/s.81 of the Act during the proceedings pending before the Deputy Registrar. In fact, the petitioner, in his memorandum of grounds of appeal filed before the



CRP(MD)No.933 of 2020

Co-operative Tribunal in CMA(SC)No.7 of 2019, has taken a specific stand

WEB as under:-

“6. It is submitted that the above surcharge proceedings has been initiated on the basis of Sec.81 Enquiry Report given by the Enquiry Officer and the copy of the said Report has been supplied and deposition and other documents has not been served to this appellant. So, the opportunity to make his defence for the surcharge has been denied to this appellant by the respondent herein, so that ground alone the surcharge order has to be set aside inlimine.”

17.Having taken such a plea in the grounds of appeal that the enquiry report was furnished, the petitioner is now taking a different stand that the enquiry report was not furnished.

18.Be that as it may, in order to give a quietus to this issue of the matter, this Court has directed the respondent to furnish a copy of the enquiry report to this petitioner and also provided an opportunity to the petitioner to make out his case based on the enquiry report.



CRP(MD)No.933 of 2020

19.Submissions made by the petitioner on the enquiry report:-

19.1.The first charge that the jewel loan of Ramaiya dated 15.12.2015 is bogus one is not correct. The said loan amount was repaid on 30.06.2016, however, the petitioner was held responsible for the same and he was directed to pay the loan amount of Rs.41,000/-.

19.2.The second charge is that he has taken a sum of Rs.50,000/- from the account of the President without any voucher. The President has, in fact, received this amount and has also issued a voucher, however, without considering the same, the petitioner was held responsible for the same.

19.3.The third charge levied against him is that a false jewel loan has been created in the name of one Kavitha and he misappropriated a sum of Rs.1,37,000/-. This Kavitha, according to the petitioner, participated in the enquiry u/s.81 of the Act and has admitted that she borrowed the jewel loan from the Society and she has also repaid the loan amount and requested to return the jewels.



CRP(MD)No.933 of 2020

WEB COPY

19.4. The fourth charge is that there was a deficit in the stock of the fertilizer, for which, a sum of Rs.11,332/- was stated as misappropriated by the petitioner. According to the petitioner, the entire fertilizer was taken by the President and without considering this statement and without verifying the liability for the President, who is also responsible for the same and the Clerk, who is maintaining the fertilizer stock, the liability has been fixed as against the petitioner alone.

20. Reply arguments made by the respondent:-

20.1. Learned Additional Government Pleader, in response, submitted that as per by-law 31 & 48 of the Society, the petitioner is the Chief Executive of the Society and he was entrusted with the cash of the Society. Without any voucher, he recorded in the register as if a sum of Rs.50,000/- was disbursed to the President on 03.08.2016. Since there was no voucher for this entry, the petitioner was held responsible for this amount of Rs.50,000/-.



CRP(MD)No.933 of 2020

WEB COP 20.2. He further submitted that the petitioner was suspended on 12.08.2016 for his misdeeds. He did not hand over the records and heavy cash balance of the Society. One Kavitha is the sister-in-law of the petitioner. She is dwelling at Selvanayagapuram, 20 km away from the Society. The petitioner before handing over the records, cash balance, manure stock and other items to the incharge Secretary, tried to reduce the cash balance of the Society by writing false accounts on 16.08.2016. He visited the Society along with the appraiser and his sister-in-law Kavitha. As he had the key of the Society, he opened the Society and created records as if two jewel loans were given to Kavitha, in collusion with the appraiser. He had written jewel loan disbursement register, jewel loan ledger, jewel loan stock register as if General Jewel Loan No.1235 to the tune of Rs. 96,000/- and General Jewel Loan No.1236 to the tune of Rs.41,000/-, totally Rs.1,37,000/- was disbursed to Kavitha. But the jewels pledged by her for the aforesaid loans were not received from her.



CRP(MD)No.933 of 2020

20.3.The petitioner had written day book on 16.08.2016 about the jewel loan issue of Rs.1,37,000/- to Kavitha, by which he reduced the cash balance to such extent. The appraiser himself before the enquiry officer u/s. 81 of the Act deposed that without the jewels, he prepared the aforesaid jewel loan disbursement and signed all the records at the instance of the petitioner. The Inspection Committee which visited the Society on 02.01.2017 had found that jewel packets for the aforesaid loans as no.1235, 1236 were not at the iron safe and two jewel pockets were deficit as per the jewel loan stock register.

20.4.As per the by law no.38(4) of the Society, the petitioner was the entrusted person of the assets of the Society. He had signed the manure stock register manure purchase invoice from TAFED. He was the key holder of the manure godown. As per the manure stock register page no.26, as on 21.03.2016, there were 436 urea bags signed by the petitioner. He had handed over the manure stock register, bill book and also 412 bags of urea to the in-charge secretary on 09.02.2017. Thus, he caused deficit of 24 bags of urea valuing Rs.6,492/-.



CRP(MD)No.933 of 2020

WEB COP 21. This Court considered the rival submissions made on either side based on this enquiry report.

22. The petitioner claimed that he was not provided with the enquiry report u/s.81 of the Act and therefore, he was not able to defend the surcharge proceedings effectively. The surcharge proceedings was conducted for nearly one year from 07.02.2018 to 01.02.2019 and there was nearly 16 hearings. The petitioner has not raised this plea of enquiry report during the enquiry before the respondents. The petitioner has specifically admitted in the grounds of appeal before the Tribunal that he was provided with the enquiry report, however, the deposition and other documents were not served on him. Learned Counsel for the petitioner justified that it has been inadvertently made as on typographical error. This specific admission in the grounds of appeal cannot be taken as a typographical error or an inadvertent one. However, this Court has also enabled the petitioner to make out his case by directing the respondent to furnish the enquiry report. Even then, the petitioner could not make out a case as



CRP(MD)No.933 of 2020

against the findings of the enquiry officer. It appears that this petitioner was suspended for certain irregularities on 12.08.2016 and the jewel loans in the name of Kavitha was entered on 16.08.2016 without any jewels. Moreover, this Kavitha is the sister-in-law of the petitioner. The petitioner has made vague arguments without any materials.

23.The petitioner has also taken a stand that the enquiry u/s.81 and the enquiry u/s.87 has not been concluded within the specified time. However, it appears that the competent authority have granted extension of time for concluding the enquiry u/s.81 and also u/s.87 of the Act. Both the proceedings were concluded within the extended period eligible under the Act.

24.Therefore, this Court does not find any error in the order passed by the respondent as well in the order passed by the Tribunal.



CRP(MD)No.933 of 2020

WEB COPY

Accordingly, this civil revision petition is dismissed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

Index : Yes / No
NCC : Yes / No
Internet : Yes
gk

23.10.2024

To

- 1.The Principal District and Sessions Judge,
Ramanathapuram.
- 2.The Deputy Registrar of Co-operative Societies,
Paramakudi Division,
Paramakudi,
Ramanad District.



WEB COPY



CRP(MD)No.933 of 2020

B.PUGALENDHI, J.

gk

CRP(MD)No.933 of 2020

23.10.2024