



C.R.P.(MD).No.2315 of 2018

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 08.04.2024

DELIVERED ON: 17.04.2024

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).No.2315 of 2018

The Deputy Registrar of Co-operative Societies
Palani Circle Now at
No.11/223, Raja Nagar
Lakshmipuram
Palani 624 601

...Petitioner/Respondent

Vs

K.M.Marikannu

...Respondent/Appellant

PRAYER: The Civil Revision Petition has been filed under Article 227 of Constitution of India, to set aside the fair and decretal order passed by the Tribunal in C.M.A(CS).No.11 of 2007 dated 22.12.2015, setting aside the the impugned surcharge order passed the Deputy Registrar of Co-operative Societies, Palani, in his Tha.Va.No.4/2005/Sa.Pa. Dated 06.05.2005 by allowing this Civil Revision Petition.



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C.R.P.(MD).No.2315 of 2018

For Petitioner : Mr.C.Satheesh
Government Advocate

For Respondent :Mr.S.Louis

ORDER

The revision petition has been filed by the respondent in CMA(CS).No.11 of 2007 on the file of the Principal District Court, Dindigul challenging the reversal of the award passed under Section 87 of the Tamil Nadu Co-operative Societies Act.

2.The respondent herein was working as a Secretary of K.Agraharam Primary Agricultural Co-operative Credit Society. He was issued with a show cause notice under Section 81(1) of Tamil Nadu Co-operative Societies Act, 1983 on 23.03.2005. He was charged with misconduct of issuing crop loans to nine members of the Society by fabricating and forging the statement of assets and disbursed binami loan for nine members and made loss to the Society to a tune of Rs.1,93,554/-. On receipt of the said notice, the respondent herein had not submitted his explanation and he failed to appear for the enquiry. Therefore, an exparte order was passed by holding that the respondent herein was liable for loss of Rs.1,93,554/- and along with interest at the rate of 18% p.a. Challenging



C.R.P.(MD).No.2315 of 2018

the same, the respondent herein had filed CMA(CS).No.11 of 2007.

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3.Before the Appellate Tribunal, the respondent herein had contended as follows:

(i) He was not given sufficient opportunity to defend the case and an exparte award has been passed against him.

(ii)The enquiry was not completed within the statutory period as contemplated under Section 87 of the Act.

(iii) A copy of the enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act was not furnished to him.

(iv)The copies of the relevant documents that were relied upon by the Society were also not furnished to him despite his request through a letter dated 20.04.2005.

(v)Though the President was also involved in the alleged misconduct, no action was initiated as against the President and selectively, action was initiated as against the Secretary.



C.R.P.(MD).No.2315 of 2018

4.The Co-operative Tribunal had allowed the appeal on the following grounds:

(i)The delinquent had requested the Enquiry Officer on various occasions for furnishing the documents. However, those documents were not furnished to him.

(ii)The Enquiry Officer has recommended for initiating action as against the President of the Society also, but Section 87 proceedings were not initiated as against the President and therefore, it is discriminatory in nature.

(iii)The order passed by the Enquiry Officer is exparte in nature and no reasonable opportunity was granted to the delinquent.

(iv)Since the enquiry report under Section 81 of the Tamil Nadu Co-operative Societies Act was not furnished, the enquiry is vitiated for violation of statutory provisions.

(v)The Enquiry Officer had arrived at a finding that based upon the fraudulent documents, the delinquent had disbursed the loan amount. However, no one was enquired or no statement was recorded from any other person to prove the same.



C.R.P.(MD).No.2315 of 2018

(vi)The enquiry commenced under Section 87 of Tamil

Nadu Co-operative Societies Act, was not completed within a period of six months from the date of commencement and therefore, the entire enquiry proceedings are vitiated and they are liable to be set aside.

5.Based upon the above said grounds, the Co-operative Tribunal had allowed the appeal. Challenging the same, the present revision has been filed by the Deputy Registrar of Co-operative Society.

6.According to the learned Government Advocate appearing for the appellant, the Hon'ble Division Bench of this Court in a judgement reported in **(2008) 8 MLJ 231 (S.V.K.Sahasranamam Vs. Deputy Registrar of Co-operative Societies)** has categorically held that the time fixed under Section 87 of the Tamil Nadu Co-operative Societies Act for completion of enquiry is only directory in nature and not mandatory. If the enquiry proceedings get extended beyond the said period, they do not get vitiated. He had further contended that despite the notice, the delinquent has not chosen to appear. Only when he appears before the authority, the



C.R.P.(MD).No.2315 of 2018

WEB COPY

question of considering the request for furnishing the document would arise.

7.The Enquiry Officer has relied upon the records to arrive at a finding that the delinquent has fabricated the documents and disbursed the crop loan amount to his binamidars. Therefore, non-examination of any independent witness would not be a fatal to the case. He had further contended that as against the President also proceedings were initiated and therefore, the delinquent Secretary cannot contend that the proceedings are discriminatory in nature. Hence, he prayed for allowing the revision petition.

8.Per contra, the learned counsel appearing for the respondent had contended that it is an admitted fact that the document relied upon by the Enquiry Officer and the enquiry report have not been furnished. Unless the documents sought for were furnished, the delinquent would not be in a position to submit his explanation and thereafter, participated in the enquiry proceedings. The enquiry report itself was furnished only after the proceedings under Section 87 of the Act were completed and that too after the direction of the Hon'ble High Court. Hence, he prayed for dismissing the revision petition and to confirm the order of the Co-operative Tribunal.



C.R.P.(MD).No.2315 of 2018

9.I have carefully considered the submissions made on either side and perused the material records.

10.The respondent herein was working as a Secretary of Co-operative Society has received the show cause notice under Section 81(1) of Tamil Nadu Co-operative Societies Act on 23.03.2005. Within a month, the appellant on 20.04.2005 has addressed a communication to the Enquiry Officer to furnish the copy of the enquiry report, statement recorded by the Enquiry Officer, certificate issued by Village Administrative Officer, loan cash book, issuance register and other documents. It is not in dispute that such a communication was addressed to the Enquiry Officer. Since those documents were not furnished, the delinquent Secretary was not able to submit his explanation. The Enquiry Officer without waiting for explanation or providing any further opportunity, had proceeded with the enquiry and submitted his report that the delinquent Secretary is liable for the said amount. The charges as against the petitioner are very serious in nature and therefore, without providing proper opportunity to the delinquent Secretary, the enquiry proceedings ought not to have been continued.



C.R.P.(MD).No.2315 of 2018

WEB COPY

11.The Tribunal has rightly relied upon the judgment of our High Court reported in 1999 (III) M.L.J 310 (*M. Sambandam vs. The Deputy Registrar (Credit)*) wherein this Court has held that the non-furnishing of enquiry report would vitiate the surcharge proceedings under Section 87 of the Co-operative Societies Act.

12.In view of the above said fact, it is clear that the Co-operative Tribunal has properly appreciated the factual and legal position and has arrived at a finding that the liability upon the delinquent has been fixed in violation of principles of natural justice. Therefore, there are no merits in this Civil Revision Petition and the same stands dismissed. No costs.

17.04.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
msa



C.R.P.(MD).No.2315 of 2018

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To

1. The Principal District Judge
Dindigul District
3. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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C.R.P.(MD).No.2315 of 2018

R.VIJAYAKUMAR, J

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Pre-delivery order made in
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