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CRP.No.4313 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10-11-2025

CORAM

THE HONOURABLE MRS.JUSTICE N. MALA

CRP.No.4313 of 2024

and

CMP.No.23958 of 2024

P.N.Karunanidhi

Petitioner(s)

Vs

1.The Deputy Registrar of Co-operative
Societies,
Tiruvannamalai, Tiruvannamalai District.

2.The Management,
Joint Registrar/Managing Director,
Tiruvannamalai District Consumer
Cooperative Wholesale Stores Ltd.,
Tiruvannamalai.

Respondent(s)

PRAYER

To set aside the order of the Co-operative Tribunal cum Principal District Judge Court, Tiruvannamalai, Dated 09.07.2024 in CMA.No.7 of 2019 confirming the order of the 1st respondent dated 10.04.2017 in Na.Ka.No.6206/2016 Sa.ba/Tha.Thee.No.04/2016-2017.



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For Petitioner(s): M/s.Balan Haridas

For Respondent(s): Mr.B.Tamilnidhi, A.G.P., for R1
Mr.N.Muthuvel, G.A., for R2

ORDER

The civil revision petition is filed challenging the order of the Appellate Court in CMA.No.7 of 2019 dated 09.07.2024 confirming the surcharge order dated 10.04.2017, passed by the first respondent/Deputy Registrar of Co-operative Societies.

2.The petitioner joined the services of the District Consumer Cooperative Wholesale Stores on 18.01.1986, as a Packer. On bifurcation of the Vellore District in 1997, the petitioner was deputed to the second respondent Society, on 24.07.1997. The Services of the petitioner were regularised by the Government Order dated 31.07.2007. The petitioner worked as Godown Keeper for the period from 01.09.2014 to 31.03.2015, in the Crackers Godown and he superannuated on 31.03.2015. While so, based on the second respondent's enquiry report dated 11.07.2016, the first respondent initiated surcharge proceedings under Section 87, of the Tamil Nadu Cooperative Societies Act, against the petitioner in respect of the



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alleged stock deficit of gunny bags amounting to Rs.6,14,893/- The petitioner participated in the Section 87 proceedings by submitting his explanation. The petitioner in his explanation stated that the gunny bags were damaged owing to rain water seepage from the terrace in the Godown.

3.The petitioner further stated that he wrote 2 letters to the second respondent, to salvage the gunny bags at the earliest before it could loose its value. According to the petitioner, the person, who took over charge from him received the gunny bags and that the gunny bags were very much available then. The petitioner stated that the gunny bags got damaged only because of the inaction of the second respondent, and hence, the surcharge proceedings against him were unsustainable. However, the first respondent passed the surcharge order on 10.04.2017, holding that the petitioner was liable for stock deficit of gunny bags to the tune of Rs.6,14,893/-. The petitioner challenged the said surcharge order before the Appellate Tribunal in CMA.No.7 of 2019. The petitioner raised several grounds including the violation of the principles of natural justice in not furnishing the Section 81 enquiry report.



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4. The petitioner further contended that the surcharge proceedings were vitiated since no finding of wilful negligence was recorded for the alleged loss caused by the petitioner to the Society. Despite the petitioner's aforesaid objections, the Appellate Court on 09.07.2024, dismissed the appeal confirming the surcharge order dated 10.04.2017, of the first respondent. Aggrieved by the order passed by the Appellate Court, the petitioner has filed the above civil revision petition for the aforesaid relief.

5. The learned counsel for the petitioner submitted that the impugned order was unsustainable for several reasons including violation of principles of natural justice, non-furnishing of Section 81 enquiry report and failure to record a finding on wilful negligence, which is a *sine qua non* for passing the Surcharge Order.

6. On the facts of the case, the learned counsel submitted that the appellate Court erroneously rejected the contention of the petitioner that he had informed the higher authorities about the damage caused to the gunny bags due to seepage of water by two letters, that the gunny bags were very much available and also that the loss, if any, was due to the negligence of the



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second respondent in not initiating any action to safe guard the gunny bags, despite the petitioner's information to take action to safeguard them.

7.Heard the learned counsel for both sides and perused the materials available on record.

8.The facts are not disputed. The issue to be decided in the CRP is as to whether the impugned order passed by the Appellate Court, confirming the Surcharge Order passed by the 1st respondent is sustainable or not.

9.Indisputably, the Surcharge proceedings were initiated against the petitioner pursuant to the Section 81 enquiry. It is the specific case of the petitioner that the enquiry report was not furnished to him. However, both the original as well as the Appellate Authority, did not consider the said plea of the petitioner. It is settled law that failure to supply the enquiry report vitiates surcharge proceedings, as it amounts to violation of the principles of natural justice. This Court in the case of **L.Ranganathan Vs. The Deputy Registrar of Cooperative Societies, Salem**, reported in 2007 WLR 502 held as follows:

“4. While referring to the provisions of Tamil Nadu Cooperative Societies Act, 1961 (Previous Act) this court has held that in the absence of serving the copy of the enquiry



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report, the surcharge proceedings initiated under Section 71 of the earlier Act is not sustainable and it is violation of the principle of statutory provisions and also natural justice.”

10. In the present case, both the authorities failed to consider the specific plea of the petitioner that Section 81 enquiry report was not furnished to him. When a specific plea was raised in the grounds of appeal before the appellate Court, the Appellate Court in all fairness ought to have considered the issue. The Appellate Court erred in not considering this vital aspect, despite a specific ground being raised. This Court therefore finds that since the petitioner was not furnished with the copy of the enquiry report, the surcharge proceedings are vitiated and unsustainable.

11. One more vital aspect that was completely ignored by both the authorities is with respect to a finding on wilful negligence. It is settled law that the finding of wilful negligence is mandatory for fixing liability under Section 87 of the Act. Upon a perusal of the order of the Appellate Court as well as the Surcharge order, it is evident that there is absolutely no finding on wilful negligence of the petitioner in causing loss to the Society. In the



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case of **Sathyamangalam Co-operative Urban Ltd., Vs. The Deputy**

Registrar of Co-operative Society and Another reported in (1980) 2 MLJ

17, this Court while considering the provisions of Section 71(1) of the Act, which is analogous to Section 87, held as follows:

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



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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. 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 reason-able 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



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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.

12.In Ramachandran Vs.The Deputy Registrar, Dairying, Tricky and others reported in 1981 T.L.N.N.292, this Court held as follows:

“It may be true that the petitioners failed to discharge the duties enjoined upon them with regard to direct scrutiny of the accounts, examination of the vouchers and the passing of the statement before they signed the minutes book. But this failure by itself cannot come within the expression 'wilful negligence' which has been construed as meaning something done 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 the existing circumstances. After all, the petitioner filled in the characters of Directors of the third respondent Secretary at the relevant point of time. The affairs of the third respondent Society were admittedly manned by the President, Secretary and the Manager and as stated above that if the petitioners reposed confidence in the said



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officials and they merely affixed the signature in the minutes book, that by itself would not constitute wilful negligence so as to bring them within the mischief of Section 71 of the Act.”

13.A reading of the aforesaid judgments, reveals that it is not ordinary negligence on failure to discharge the duties, that would be sufficient to mulct the liability for the loss caused to the Society, but it should be deliberate and reprehensible commission or omission with supine indifference to the consequences of the negligent act or omission. Since the mandatory requirement of a finding on wilful negligence is absent in the impugned order, I am of the view that the impugned order cannot be sustained and hence it is set aside.

14.At this juncture, the learned counsel for the petitioner submitted that only surcharge proceedings were initiated against the petitioner, but the respondents failed to disburse the terminal benefits of the petitioner, who was superannuated on 31.03.2015. Hence, a direction may be issued to the respondents to disburse the terminal benefits.

15. The learned counsel in support of the said submission relied on the judgment of this Court in the case of ***V.M.Sivaraj Vs.The Registrar of Co-operative Societies and others***, wherein it has been held as follows:



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"25. In such view of the matter, I am of the considered view that non furnishing of the enquiry report under Section 81 of the Act to the petitioner before surcharge proceedings so as to enable the petitioner to give proper explanation is fatal to the surcharge proceedings and accordingly, W.P.No.38603 of 2004 stands allowed and the impugned orders of respondents 1 and 2 in W.P.No.38603 of 2004 stand set aside, however with liberty to the second respondent in W.P.No.38603 of 2004 to furnish the report of the Enquiry Officer to the petitioner and then proceed in accordance with law.

26. Inasmuch as there are no disciplinary proceedings initiated nor it is the case of the respondents that as per the bye-law even after allowing the petitioner to retire the disciplinary proceedings could continue or that he was not allowed to retire for the purpose of facing the disciplinary proceedings as per the bye-law and the only proceedings which were initiated against the petitioner was in respect of the enquiry under Section 81 of the Act by way of surcharge proceedings under Section 87 of the Act, the impugned order challenged in W.P.No.38410 of 2003 has no legal basis and the third respondent has no manner of right to withhold the terminal benefits due to the petitioner. In such view of the matter, W.P.No.38410 of 2003 stands allowed with a direction



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to the third respondent to pay the retirement benefits to the petitioner, which of course shall be without prejudice to the right of the third respondent to proceed with the surcharge proceedings, as stated above, if so advised."

16.Following the aforesaid order of this Court, the impugned orders dated 09.07.2024 of the Co-operative Tribunal cum Principal District Court, Tiruvannamalai, and the order dated 10.04.2019 of the first respondent are set aside and the matter is remanded to the first respondent for fresh consideration. The first respondent shall furnish a copy of the Section 81 enquiry report to the petitioner, and thereafter, proceed with the surcharge proceedings by strictly following the procedure of Section 87 of the Act, and pass orders on merits and in accordance with law within a period of 12 weeks, from the date of receipt of a copy of this order. Since admittedly no disciplinary proceedings were initiated against the petitioner, this Court finds no justification for withholding the terminal benefits of the petitioner, who superannuated as early as on 31.03.2015. The second respondent is therefore directed to settle the terminal benefits of the petitioner, within a period of eight weeks, from the date of receipt of a copy of this order. Accordingly,



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this CRP is allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

To

1.The Deputy Registrar of Co-operative Societies,
Tiruvannamalai, Tiruvannamalai District.

2.The Management,
Joint Registrar/Managing Director,
Tiruvannamalai District Consumer Cooperative Wholesale Stores Ltd.,
Tiruvannamalai.

3. The Principal District Judge,
Tiruvannamalai.



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N.MALA J.
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