

(2009) 10 MAD CK 0100

In the Madras High Court

Case No : Writ Petition No. 9901 of 1999

Muruganandam

APPELLANT

Vs

The Principal District Court and Others

RESPONDENT

Date of Decision : 30-10-2009

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2009) 10 MAD CK 0100

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Advocate : R. Krishnaswamy, for the Appellant; G. Thilagavathi, for R-3, for the Respondent

Final Decision : Dismissed

Judgement

T.S. Sivagnanam, J.—The petitioner has filed the above writ petition to quash the order passed by the first respondent in CMA (Co. op.)

No. 32/97 dt.18.01.1999 confirming the order passed by the second respondent dt.15.02.1997.

2. The matter arises under the provision of Tamilnadu Co-operative Society Act 1983. The issue relates to surcharge proceedings, which were

initiated against the petitioner who is an employee of the third respondent's Co-operative Sugar Mills.

3. The facts leading to the filing of the writ petitioner are as follows:

The petitioner was working as an Assistant Stores Keeper in the third respondent's society from June 1988. During the relevant period, the fourth respondent herein was the store keeper and according to the petitioner, the store keeper was the solely responsible for the goods in the stores.

Since the mill was running on shifts and since the stores department was kept

open only during the general shift and therefore, during the night and earlier hours of first shift, the material used to be issued to the engineer for running the mill. Therefore, it is submitted that the store keeper alone knows about the issue of materials and the petitioner is no way responsible for any discrepancy in the stocks kept in the store.

4. It is submitted that the store keeper is the fourth respondent herein, was issued a charge memo and was placed under suspension from

11.01.1991. Subsequently, he was also dismissed from service and the fourth respondent has not challenged the order of the dismissal. After the

dismissal of the fourth respondent, the post of store keeper was kept vacant and on 12.03.1998, the petitioner was promoted as store keeper. It is

further submitted that the reason for dismissing the fourth respondent was based on an Audit report, which was submitted after conducting the

audit for the period of 1990-1991 and certified the deficit in the stock. In the departmental proceeding initiated against the fourth respondent, the

petitioner was cited as a witness on behalf of the management, and the entire allegation was on the fourth respondent. After the petitioner was

promoted as a Store Keeper, a charge memo came to be issued to the petitioner, dated 28.04.1993, containing two articles of charges which are

as follows;

(i) Thiru S. Muruganandham, as Assistant Store Keeper in the Stores in collusion with the other staff of the stores has caused to the mills monetary

loss of Rs. 2,01,595.57, which is a misconduct within the meaning of Clause 70 of Order 19 of the certified standing orders of the Mills.

(ii) Thiru S. Muruganandham, as Assistant Store Keeper in the stores in collusion with the other staff of the stores has acted fraudulently and

dishonestly in respect of the Mills' property worth Rs. 2,01,595.57, which is a misconduct within the meaning of Clause 3 of Order 90 of the

certified standing orders of this Mills.

It is further submitted that, on 25.05.1993 enquiry officer was appointed to conduct a domestic enquiry on the above charges. The enquiry officer

conducted the enquiry and submitted a report dated 15.09.1993 holding that the charges are not proved, thereafter, no further proceedings were

initiated and the matter was kept pending. After the lapse of nearly three years, a notice was issued to the petitioner u/s 87 of the Tamilnadu Co-

operative Society Act, and the petitioner was called upon to show cause why the deficit stores amount should not be recovered from the petitioner

and others and they were given liberty to submit their written explanation. It was stated that in the course of the final audit conducted u/s 80 of the

Tamilnadu Co-operative Society Act for the accounting year 1990-1991, the Co-operative Audit Officer found there were discrepancies between

the book stock and actual stock of the stores and requested to initiate necessary action against the persons responsible to recover a sum of Rs.

4,34,772.85/- being the deficit in stock of stores and the excess stock of Rs. 1,34,101.76 noticed. Subsequently, during the stock verification for

the year ended 31.03.1992, it was found that in respect of certain materials deficit noticed was incorrect and the deficits were adjusted in 1991-

1992 accounts and the actual stock deficit as on 31.03.1991 was arrived at Rs. 3,57,215.10/- and their statements were also recorded. As

requested by the petitioner and others, the engineers namely K. Mani, Mr. Suryamoorthy, G. Lakshmanan, G. Virmalanathan and K.

Senthilathipan were also summoned and their statements were recorded. Further, Mr. S. Ramadoss, Chief Accountant, Mr. S. Jagadeeswaran,

Superintendent and the petitioner was also asked to give statements in respect of the stock deficit. In the statement given by the fourth respondent,

he has blamed that the petitioner as being the sole reason for the stock deficit. In the statement of the petitioner, he has blamed the fourth

respondent, who was working till the store closed and as to how the stocks are given when the stores department is closed during the night shift

and early first shift. He would further state that deficit noticed in the stock verification have been consumed in the mills without getting stores

requisition slip from the store clerks. He has produced 40 indents, which have not been posed in the cardex to the value of Rs. 1,09,513.63. On

these grounds, the petitioner requested him to be exonerated from all the proceedings. The petitioner also placed reliance on the enquiry officer

report dated 15.09.1993 conducted by the Co-operative Society, where the enquiry officer held that the charges are not proved against the

petitioner. The second respondent after conducting the enquiry in respect of the petitioner and others by an order dated 15.02.1997, found the

stock deficit to the tune of Rs. 2,26,995.42/- and held that the petitioner and the respondent 4 to 7 have willfully neglected to maintain proper

accounts for receipt and issues of stores materials and failed to produce the same before the stock verification officers and thereby they have committed breach of trust and caused deficiency in the assets of the Tiruttani Co-operative Sugar Mills and are bound to recoup the loss along with interest. Accordingly, the second respondent directed the petitioner to pay a sum of Rs. 47,669.15/-. This order passed u/s 87 of the Act was challenged by the petitioner by filing an appeal before the second respondent u/s 152 of the Act. The first respondent, after a fullfledged hearing, dismissed the appeal by an order dated 18.01.1999. Aggrieved by that said order, the petitioner has filed the present writ petition.

5. Mr. R. Krishnaswamy, learned Counsel for the petitioner would assail the correctness of the order on the ground that the store keeper, the fourth respondent was responsible for maintenance of the stock and he has been dismissed from the service and in the subsequent enquiry which was conducted against the petitioner, the enquiry officer has given a report on 15.09.1993 mentioning that the charges are not proved. In such circumstances, after inordinate delay of more than two years proceedings u/s 87 of the Act have been initiated and that it is not sufficient to establish negligence on the part of the petitioner, but it is necessary to establish willful negligence. The learned Counsel further contended that, from the impugned orders, it is clear that there is no record to show that there is any willful negligence on the part of the petitioner. Further, the report of the enquiry officer dated 15.09.1993 could be considered as a material to come to a conclusion that there is no willful negligence on the part of the petitioner and it is not a case of misappropriation, when there is no finding of any loss caused to the third respondent mill and both the second respondent as well as the Tribunal failed to take into consideration all the above facts. The learned Counsel also submitted that surcharge notice was issued on 23.07.1996, for which the petitioner submitted his reply on 05.08.1996 and as per second proviso to Section 87(1) of the Act, proceedings have to be completed before six months in aggregate, however the period of limitation expired on 23.01.1997 and the impugned order was passed only on 15.02.1997. Therefore, the learned Counsel would contend that the entire proceedings are barred by limitation. Further, the learned Counsel contended that there is no clear finding about misappropriation by both the authorities and the basis, on which such amount

has been ordered to be recovered has not been stated and even if it is in proportion to the security deposit furnished each one at the time of joining service, it cannot be a yardstick for determining the amount payable. On all the above grounds, the learned Counsel submitted that the writ petition deserved to be allowed.

6. Mrs. G. Thilagavathi, learned Counsel for the respondent 2 and 3 would contend that the question of limitation does not arise in a proceedings

u/s 87 of the Act by relying upon the Judgment of the Hon''ble Division Bench of this Court in the case of S.V.K. Sahasraman v. Dy. Registrar of

Co-op. Societies reported in (2008) 8 MLJ 231, wherein it has been held that expression used in the Section 87(1) that action commenced under

the said Sub-section shall be completed within the period of six months from the date of said commencement cannot be constituted to be

mandatory and mere expression of the word ""shall"" alone is not decisive of the matter. The Hon''ble Division Bench of this Court, while considering

the period of limitation prescribed under Sections 81, 81(4) and 87 held as follows;

10. Before the learned Judge of the Writ Court, the appellant relied on two learned single Bench judgments of this Court rendered in the case of

T.V. Ekambaram and two others Vs. The Co-operative Tribunal cum District Judge, Madurai and 2 others, and in the case of Gabriel Vs. The

Deputy Registrar (Housing) and T.No.1735, Anna Nagar Co-operative Housing Building Society Ltd., . In both these two judgments, the

provisions of Section 87 of the said Act which relate to surcharge proceedings were examined and the learned Judges in both the aforesaid

judgments constructed the following proviso to Section 87.

Provided further that the action commenced under this Sub-section shall be completed within a period of six months from the date of such

commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six

months in the aggregate.

11. We are constrained to hold that even though no appeal has been taken to us from the said judgments, yet having regard to the well settled legal

position which has been referred to hereinabove, the finding of the learned Judges in these two judgments that the period of six months in the

second proviso to Section 87 of the said Act is mandatory is not a correct finding in law. We find that even though before the learned Judge of the

writ Court those two judgments of the learned single Bench were cited, the learned Judge of the writ Court was not swayed by those two

decisions and came to a correct finding, relying upon the well settled proposition laid down by the Supreme Court as pointed above hereinabove.

12. We, therefore, affirm the order of the learned single Judge in this case. We are of the view that in a case where there are allegations of

embezzlement and misappropriation of public funds, the members of general public who have been cheated have no control over those who hold

the enquiry in respect of the time limit. To hold that such an enquiry which has been continued beyond the time limit bad would cause great injustice.

13. Therefore, if such enquiry is continued beyond the time limit mentioned in the relevant statute, the said time cannot be held to be mandatory in

view of the principles laid down in *Montreal Street Railway Company v. Normandi* (supra), which has been affirmed by the Supreme Court.

Therefore, the learned Counsel for the respondent would submit that proceedings initiated against the petitioner are not barred by limitation. On the

other grounds raised by the learned Counsel for the petitioner, the learned Counsel for the respondent would submit that the findings of the enquiry

officer in the domestic enquiry is unsustainable and the same is not binding upon the officers exercising powers u/s 87 of Act. The enquiry u/s 87

of the Act is an independent proceeding and such enquiry is being conducted in public interest and in the interest of the respondent society.

Therefore, the finding rendered by any enquiry officer cannot be made binding upon the officer conducting surcharge proceedings, that apart the

learned Counsel would submit that no further action had been taken after the Enquiry officer's report dated 15.09.1993 and the petitioner cannot

rely upon such enquiry report. The learned Counsel would further submit that the reasoning given by the respondents are based on sustainable

materials and records and after affording full opportunity to the petitioner to be present for the enquiry conducted by the officer. The enquiry officer

while exercising his power u/s 87 of the Act took into consideration that the indent given by the petitioner, which were not accounted and after

giving credit to the same determined amount, which was recoverable. Therefore, the learned Counsel would submit that all the points raised by the

petitioner had been carefully scrutinized before the second respondent and passed such an order. The learned Counsel would submit that the duties and responsibilities of the staff in the stores department are very sensitive and are bound to be very vigilant and any negligence on their part to account for material has to be treated as breach trust and confidence reposed upon them by the management and endeavor a cause of willful negligence. Therefore, the learned Counsel would submit that all the officers of the stores were subjected to proceedings u/s 87 and thereafter only the order has been passed. Further, the learned Counsel would submit that the duties and responsibilities have been assigned for each post and the surcharge proceedings have been concluded after following the procedure established by law and there is no error and the writ petition is liable to be dismissed.

7. I have considered the submission made by the learned Counsel on either side and perused the material available on record.

8. On the question of limitation, as rightly contended by the learned Counsel for the respondents, the Hon''ble Division Bench of this Court was

considering the correctness of the decision made in a writ petition, where this Court refused to quash the report submitted by the enquiry officer u/s

81 of the Co-operative Society Act. Sheet anchor of the arguments in the said case was that u/s 81 and 81(4), it is necessary to complete the

enquiry within a period of three months or such further period or periods not exceeding three months at a time, provided that such extended period

shall not exceed six months in aggregate. Therefore, it was contended that the report submitted beyond the period stipulated under the Act cannot

be held to be valid. The Hon''ble Division Bench of this Court, after elaborately considering the issue, held that word ""shall"" used u/s 81, 81(4)

should be construed as directory and it should not be taken to be as mandatory. In para 10 of the judgment, a reference has been made to an

earlier decision of this Court reported in Gabriel Vs. The Deputy Registrar (Housing) and T.No.1735, Anna Nagar Co-operative Housing Building

Society Ltd., , which related to a proceedings u/s 87 of the Act as in the instant case. The Hon''ble Division Bench of this Court held that even

though no appeal has been filed from the said judgment, observed that the period of six months contained in Section 87 of the Act cannot be held

to be mandatory. In view of the finding rendered in the said judgment, the contention raised by the learned Counsel for the petitioner that the proceedings are barred by limitation is liable to be rejected.

9. Coming to the other submissions of the learned Counsel for the petitioner, it is to be noted that the enquiry u/s 87 of the Act, it is statutory a

enquiry. This enquiry has been ordered pursuant to a final audit conducted u/s 80 of the Act where it was found there were discrepancies between

the book stock and actual stock of the stores and therefore action was directed to be initiated. Therefore, such enquiry undoubtedly is of much

large scale and the purpose of such enquiry is to protect the asset of the society and to prevent any misappropriation or fraudulent action or breach

of trust. Therefore, a domestic enquiry, which was conducted by the society and the report submitted by the enquiry officer on 15.09.1993 cannot

be treated to have any bearing for the purpose of a statutory enquiry u/s 80 and further enquiry u/s 87. Therefore, the contention of the learned

Counsel that the enquiry report ought to have considered is not sustainable. Further, it is to be noted that after the enquiry report, the society has

not initiated any disciplinary proceedings against the petitioner and abandoned the charge. In such circumstances, the petitioner cannot be allowed

to utilize such report and state that the said report can be used to prove that there was no willful negligence. In my view, the said report of the

enquiry officer cannot be relied upon, since no disciplinary action or further proceedings have been taken on the departmental charge. On perusal

of the order passed by the second respondent would amply illustrate that the same has been made after recording the statements given by the

petitioner as well as the respondents 4 to 7, and the statements of the Engineers who are said to have taken the material during the various shifts.

Further it is seen that 40 indents and other materials were taken into consideration by the second respondent and the same were given credit.

Therefore, I find that the reasoning given in the order passed by the second respondent is after careful consideration of the entire oral and

documentary evidence. These reasonings are neither perverse nor arbitrary and the same cannot be interfered in a proceeding under Article 226 of

the Constitution. Likewise, the order passed by the first respondent/Tribunal has been made after independently considering the oral and

documentary evidence. In my view, the Tribunal has carefully considered the evidence and also taken note of the various statements recorded from

the officers. Therefore, I am of the view that the impugned orders do not call for any interference for the reason that:

i. Finding rendered by the enquiry officer on 15.09.93, in a domestic enquiry ordered by the management is not binding upon the statutory enquiry

contended by the second respondent u/s 87 of the Act, especially when no further action was taken by the Management after the submission of the enquiry report.

ii. From the evidence on record as well as the statement recorded from the petitioner, the respondents 4 to 7 and other Engineers, it is clearly

established that there has been a willful negligence and breach of trust on the part of the petitioner, who was one of the officer in the stores

department and the finding rendered by the respondents 1 and 2 calls for no interference.

iii. In view of the Judgment of the Hon'ble Division Bench of this Court in the case of S.V.K. Sahasraman as referred above, the proceedings u/s

87 of the Act initiated against the petitioner is not barred by limitation.

iv. Apportionment of the amount recoverable from each of the employees in the stores department is based upon their duties and responsibilities

and there is sufficient logic to effect that the recovery is based on the amount of security deposit which has been deposited by the employees at the

time of joining the employment.

10. In view of the above, the writ petition is dismissed. No Costs.