

(2011) 07 MAD CK 0032

In the Madras High Court

Case No : Writ Petition No's. 23530 and 33127 of 2003

P. Elias

APPELLANT

Vs

The Special Officer Kumari District Tailoring Women
Development Cottage Co-operative Society Ltd.

RESPONDENT

Date of Decision : 08-07-2011

Acts Referred:

Citation : (2011) 07 MAD CK 0032

Hon'ble Judges : T. Raja, J

Bench : Single Bench

Advocate : N. Hariharan, for U.M. Ravichandran, for the Appellant; A.S. Vijayaraghavan, for the Respondent

Final Decision : Allowed

Judgement

T. Raja, J.—Writ Petition No. 23530 of 2003 is filed by the Petitioner-P.Elias for issuance of a writ of Certiorari calling for the records

pertaining to the common judgment and decree in C.M.A.(C.S.)Nos. 22/1997 and 19/1999 on the file of Co-operative Tribunal, Kanyakumari

district at Nagercoil and quash the decree and judgment in C.M.A.(C.S.) No. 22/1997 on the file of Co-operative Tribunal, Kanyakumari District

at Nagercoil and consequently quash the award passed by the Arbitrator in A.R.C. No. 1/1994 dated 03.10.1996, on the file of the Industrial Co-

operative Officer/Arbitrator, Valliyur Union Tailoring Women Development Industrial Co-operative Societal., Valliyur, Tirunelveli District. Writ

Petition No. 33127 of 2003 is filed by the same Petitioner for issuance of a writ of Certiorari calling for the records pertaining to the decree and

judgment in C.M.A.C.S. No. 19/1999 dated 4/6/2003 on the file of Co-operative Tribunal, Kanyakumari District at Nagercoil and the

consequential order of the Surcharge Enquiry officer inarch. No. 66362/SP-3/94 dated 11-11-1998 on the file of Industrial Co-operative Officer,

Office of the District Social Welfare Officer, Kanyakumari District and quash the same.

2.(i) The case of the Petitioner is that he served as Special Officer in Kanyakumari District Tailoring Women Development Cottage Co-operative

Society Ltd., Nagarcoil. During the period 1993-1994, the Registrar of Co-operative Societies and Director of Social Welfare and Nutritious

Meals Programme had initiated disciplinary proceedings against the Petitioner in R.C. No. 71525/Admn.V(2)/94 for various irregularities.

Subsequently, he was also placed under suspension.

(ii) Aggrieved by the said suspension order and the other disciplinary proceedings, the Petitioner filed. Nos. 8343/1993 and 7064/1993 on the file

of the Thailand Administrative Tribunal to set aside the entire disciplinary proceedings and further prayed to allow him to retire with all service

benefits. The Tamil Nadu Administrative Tribunal, by its order dated 29.3.2000 besetting aside the entire disciplinary proceedings issued direction

to the Respondent to allow the Petitioner to retire from service without any condition. There was also common order directing the Respondents to

pay him all the pensionary benefits to which he was entitled to.

(iii) In the meanwhile, the Registrar of Co-operative Society and Director of Social Welfare and Nutritious Meals Programme had authorized one

Industrial Co-operative Officer/Special Officer, Valliyur Union Tailoring Women Development Industrial Co-operative Society, Tirunelveli to

initiate arbitration proceedings against him in proceedings A.R.C. No. 1/94-95 dated 03.10.1996. The said Industrial Cooperative Officer/Special

Officer proceeded with the arbitration proceedings and finally found the Petitioner guilty and passed an order directing him to pay the amount of

Rs. 1,33,454.60/-. In addition to that the Petitioner also suffered proceedings initiated by the Cooperative Society u/s 81 of the Tamil Nadu Co-

operative Societies Act, 1983 followed bisection 87. u/s 87 proceedings also the Petitioner was directed to pay a sum of Rs. 3,14,839.95/-.

(iv) The Petitioner having aggrieved by the award passed by the arbitrator has filed C.M.A.(C.S.) No. 22/1997challenging the very authority of the

arbitrator. Asagainst the surcharge order the Petitioner filed C.M.A.(C.S.) No.

19/1997.

(v) The said C.M.A.(C.S)Nos. 22/1997 and 19/1997 were dismissed by a common order dated 04.06.2003. Aggrieved by judgment and

decree passed in C.M.A. No. 22/1997, W.P. No. 23530/2003 is filed by the Petitioner and as against the judgment and Decree in C.M.A. No.

(C.S.) No. 19/1997 W.P. No. 33127/2003 is filed.

3. The learned Counsel appearing for the Petitioner placed threefold submissions:

(i) The first submission is when the Registrar has initiated proceedings u/s 81, the said proceedings finally came to an end and thereafter, on the

basis of the report submitted u/s 81 proceedings, the Registrar again initiated the proceedings u/s 87. The foremost contention raised on this basis

by the learned Counsel is u/s 87 of the Tamil Nadu Cooperative Societies Act, 1983 the surcharge proceedings should have been completed

within six months from the date of initiation. If for any reason the surcharge proceedings initiated u/s 87 failed to be completed within that stipulated

time of six months from the date of such commencement, the next higher authority may permit the continuation of the said proceedings for any

other period of six months in aggregate. But, in the present case, according to the learned Counsel, neither the period was extended to complete

the said proceedings nor the officer concerned has obtained any permission to continue the said proceedings. In any event, Section 87 clearly

contemplates six months time. In the present case, Section 87 proceedings was extended for more than one year and finally, Section 87

proceedings were completed only on 11.11.1988 even though the same was initiated on 11-1-1986. As per the judgment of this Court in the case

of T.V. Ekambaram and two others Vs. The Co-operative Tribunal cum District Judge, Madurai and 2 others, , the second proviso to Section 87

of the Act being mandatory in nature and the proviso also stated that the action should be completed within a period of six months and if it is

extended, there must be an extension from the earlier period. As the concerned officer has not obtained the extension from the higher authority, the

action initiated is not valid. Placing reliance on the judgment, the learned Counsel sought to set aside the proceedings initiated u/s 87 of the Act.

(ii) The second submission is going into the root of the jurisdiction or authority given to the arbitrator. The learned Counsel submits that when an

arbitrator was appointed, he has to be an officer having power to deal with the claim which is exceeding more than Rs. 10,000/-. But, in the present

case, the Industrial Co-operative Sub-Registrar was appointed. According to the learned Counsel, the officer who was appointed as Arbitrator

cannot deal with any claim exceeding Rs. 10,000/-. In support of this argument, the learned Counsel has also brought to the notice of this Court

G.O.Ms. No. 269, Co-operation Department, dated 08.6.1988 which provides power to Co-operative Sub-Registrar. As per the said G.O., a

Co-operative Sub-Registrar shall exercise powers u/s 87 or u/s 90 only in respect of monetary cases involving a sum not exceeding Rs. 10,000/-

and u/s 144 only in respect of cases involving a sum not exceeding. 5,000/-. The learned Counsel has also relied upon common judgment of this

Court in S. Udayakumar Vs. The Special Tribunal for Co-Operative Cases, Madurai District Judge (Madurai) and two Others, wherein this Court

while dealing with a similar situation has held that a Co-operative Sub-Registrar appointed to arbitrate any claim has No. jurisdiction to decide the

matter if the claim exceeds more than Rs. 10,000/-since he can decide those cases where the liability is Rs. 10,000/-and below. But in the present

case, since the Respondent has appointed Industrial Co-operative Sub-Registrar who is also holding similar status and same scale of pay as that of

Co-operative Sub-Registrar, the appointment of Industrial Co-operative Sub-Registrar to deal with the claim exceeding Rs. 10,000/-, cannot be

decided by the arbitrator. On this basis also the learned Counsel sought to dismiss the award affirmed by the degree and judgment passed in

C.M.A.(C.S.)Nos. 22/1997 and 19/1999.

(iii) The third submission is if the Respondent has initiated surcharge proceedings u/s 81 followed by Section 87 for the same charges he should not

have initiated arbitration proceedings by appointing Industrial Cooperative Sub-Registrar since the Respondent has initiated parallel proceedings

for the same allegation which shows non-application of mind. In any event, the arbitrator who was appointed has No. authority or power to deal

with the claim, the award passed by the arbitrator as confirmed by the degree and judgment in the appeals is liable to be set aside.

4. Opposing the abovementioned submissions, the learned Counsel appearing for the Respondent stated that the arbitrator, namely, the Industrial

Co-operative Sub-Registrar cannot be called as an equivalent officer to that of Co-operative Sub-Registrar for the simple reason that the Industrial

Cooperative Sub-Registrar is also drawing the same salary on par with that of the Co-operative Sub-Registrar, therefore the Court cannot

construe that the Industrial Cooperative Sub-Registrar is also an equivalent Officer and therefore he should not have been appointed as arbitrator

to try the claim which is exceeding more thanes. 10,000/-.

5 (i) Though the learned Counsel appearing for the Respondent has made an attempt to distinguish the status of the Industrial Co-operative Sub-

Registrar from that of Co-operative Sub-Registrar, he is not able to produce any document or any proceedings to show that the arbitrator, namely,

the Industrial Co-operative Sub-Registrar who is also receiving the same scale of pay on par with that foci-operative Sub-Registrar is exercising

more power or holding higher position than the Co-operative Sub-Registrar. Therefore, the argument advanced by the learned counsel appearing

for the Petitioner is that the arbitrator, namely, the Industrial Co-operative Officer appointed to arbitrate the matter cannot deal with the claim as

the claim admittedly exceeds Rs. 10,000/-. Another words, when the arbitrator has passed an award he has directed the Petitioner to pay a sum of

Rs. 1,32,000/-and odd which shows that the arbitrator, namely, Industrial Co-operative Officer has No. jurisdiction to deal with the saidclaim.

Again it is useful to borrow the ratio of this Court in S. Udayakumar Vs. The Special Tribunal for Co-Operative Cases, Madurai District Judge

(Madurai) and two Others, on the proposition that a Co-operative Sub-Registrar who is empowered to entertain an arbitration claim the value of

which should not be more than Rs. 10,000/-cannot embark upon any arbitration claim, if the value of such claim exceeds more than Rs. 10,000/-

As per G.O.Ms. No. 268, Co-operation Department, dated8.6.1998 issued u/s 3 of the Tamil Nadu Co-operative Societies Act, 1983,

Governor of Tamil Anguished Government Orders conferring powers on the officers under Co-operative Societies Act. u/s 3 of theca-operative

Societies Act, Government may appoint any officer of the Government to be Registrar of Co-operative Societies for the State of Tamil Nadu or

any portion of it or for any class or classes or category or categories of registered societies and may, by general or special order, confer on any

other officer of the Government or any officer of any body corporate owned or controlled by the Government all or any of the powers of a

Registrar under this Act. As per the said notification, the Co-operative Sub-Registrars are empowered to entertain arbitration claim u/s 87 or

Section 90 only in respect of the monetary cases involving a sum not exceeding Rs. 10,000/-. When the Co-operative Sub-Registrar is getting his

power only by the abovementioned notification, his powers are limited in regard to monetary claim only unto Rs. 10,000/-.

(ii) Secondly, if I come to the surcharge proceedings, the learned Counsel appearing for the Respondent after knowing the date of initiation of

surcharge proceedings on 11.1.1996, and having seen that the said proceedings came to an end on 11.11.1998, was unable to refute the argument

made by the learned Counsel appearing for the Petitioner that the surcharge proceedings initiated on 11.1.1996 have gone beyond the mandatory

conditions mentioned u/s 87 of the Tamil Nadu Co-operative Societies Act. As per Section 87, if surcharge proceedings is initiated it has to be

completed within six months. If it is not over, the higher officer should get permission to continue the said proceedings and in any event, the entire

proceedings should be completed within a period of one year. But in the present case, the learned Counsel for the Respondent is unable to explain

whether any extension of time was applied or whether extension of time was granted for continuing surcharge proceedings even beyond the time

limit given u/s 87. In any event, Section 87 prescribes only one year time. In similar circumstances, this Court while dealing with an identical issue in

T.V. Ekambaram and two others Vs. The Co-operative Tribunal cum District Judge, Madurai and 2 others, has vividly held that if surcharge

proceedings is initiated u/s 87 of the Tamil Nadu Co-operative Societies Act, 1983 it has to necessarily comply with the conditions mentioned in

the provision to Section 87 which makes the time limit mandatory on the part of the authority to complete the action within a period of six months

from the date of commencement of the proceedings. Even if the period expires beyond six months, the higher authority has to extend the period.

Therefore, it is relevant to extract the proviso to Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 which reads as follows:

Provided that No. action shall be commenced under this Sub-section after the expiry of seven years from the date of any act or omission referred

to in this Sub-section:

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.

A mere reading of the above proviso goes to show that the proviso to Section 87 categorically prescribes time limit of six months only for

completion of the proceedings. Further the proviso also states that the action shall be completed within a period of six months and if the period of

enquiry extends beyond the period of six months, there must be an order of extension from the higher authority. In the present case the

proceedings were initiated on 11.1.1986 and ended on 11.1.1988. Since the Respondent hasn't obtained any order of extension from the higher

authority, for having prolonged the proceedings u/s 87 for more than two years, the action initiated has to be held as non-est in the eye of law,

since in the present case, the proceedings have taken more than two years. In that view of the matter, as rightly contended by learned Counsel

for the Petitioner, the Respondent hasn't followed the second proviso to Section 87(1) of the Act which is mandatory. Even if the case of the

Petitioner is viewed from the original charges leveled against him, the allegation says that some vouchers were found missing. Forth mere allegation

of missing of vouchers, the Petitioner cannot be responsible for any alleged action unless it disproved that the society has incurred loss. In that view

of the matter, these writ petitions are deserved to be allowed.

6. Accordingly, the proceedings challenged in these writ petitions are set aside and the writ petitions stand allowed. There is No. order as to costs.