

(2010) 06 MAD CK 0049

In the Madras High Court

Case No : Writ Petition No. 4294 of 2008 and M.P. No. 1 of 2008

Ramalingam

APPELLANT

Vs

The Presiding Officer, Cooperative Tribunal, (Principal District Judge), The Deputy Registrar of Cooperative Societies and The Nallur Cooperative Primary Agriculture and Rural Development Bank

RESPONDENT

Date of Decision : 08-06-2010

Acts Referred:

Tamil Nadu Co-operative Societies Act, 1961 — Section 152, 81(1), 87
Tamil Nadu Co-operative Societies Rules, 1988 — Rule 149(2), 78(3)

Citation : (2010) 06 MAD CK 0049

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : C.R. Krishnamoorthy, for the Appellant; N. Senthilkumar, AGP for R2 and R. Parthiban, for R3, for the Respondent

Final Decision : Dismissed

Judgement

K. Chandru, J.—The petitioner has filed the present writ petition, seeking to challenge the order of the first respondent Cooperative

Tribunal, Cuddalore made in CMA No. 80 of 2005, dated 19.7.2007, by which it had confirmed the order passed by the second respondent,

dated 31.12.2002. The writ petition was admitted on 19.2.2008. Pending the writ petition, this Court granted an interim stay after recording the

statement of the counsel for the petitioner that there was no financial loss caused to the society and the property was with the society and the

irregular appointees are continued to be in service.

2. Heard the arguments of Mr. C.R. Krishnamoorthy, learned Counsel appearing for the petitioner, Mr. N. Senthilkumar, learned Additional

Government Pleader for second respondent and Mr. R. Parthiban, learned Counsel for third respondent.

3. The petitioner, who was a former President of the third respondent society, was issued with surcharge proceedings pursuant to an enquiry conducted u/s 81(1) of the Tamil Nadu Cooperative Societies Act. A notice, dated 1.4.2002 u/s 87 was given to the petitioner. After conducting an enquiry, it was found that in respect of two items, the petitioner along with other Board of Directors in collusion with the Secretary and employees of the society caused total loss of Rs. 9,21,055/-.

4. The first issue relating to the purchase of plots and the second issue relating to refixation of pay for improperly appointed staff. Subsequently, the petitioner did not give explanation to the notice and sought for further time. Despite extension of time, he did not give any explanation. Thereafter, the second respondent Surcharge Officer held both charges were proved and therefore, they jointly and severally liable to make good the loss, by an order dated 31.12.2002. As against the said order, the petitioner, who was the former President along with the Vice President and three Directors and one supervisor of the society filed an appeal u/s 152 of the Tamil Nadu Cooperative Societies Act to the first respondent Tribunal.

The said appeal was taken on file as CMA No. 80 of 2005.

5. According to the petitioner, surcharge proceedings were conducted by one Subbarayan and his signature was obtained subsequent to his retirement. Though the order is dated 31.12.2002, it was served on the appellants only on 27.9.2005. The properties purchased by the society was still with the society and amounts were paid by vouchers. Appointments of three employees were valid. They moved the Tamil Nadu Administrative Tribunal and the High Court and got back their employment. Since they are still under the court order, they are bound to pay salary due to them. Therefore, no loss was caused to the society. The first respondent Tribunal held that for appointments, the petitioner and others did not follow Rule 149(2) of the Tamil Nadu Cooperative Societies Rules, 1988. No approval was obtained from the competent authority. Even for utilizing the property and for purchase of sites, Rule 78(3) was not followed. Under the rule, no society shall dispose of any immovable property without prior sanction of the General Body and the Registrar. On the allegation

that there was no willful negligence, the same was rejected because charges were proved against the petitioner.

6. Mr. C.R. Krishnamoorthy, learned Counsel for the petitioner filed an additional typed set of documents in support of his contentions. Though these records were not available before the Tribunal, the learned Counsel stated that in the interest of the petitioner, this Court must take into account the records produced which are official records. The learned Counsel stated that in respect of appointments of Manivannan and Kanagaraj, the Inspector of Labour, Cuddalore has passed an order, dated 9.9.1999 directing their conferment of permanent status, besides appointments of Kanagaraj, Tamilselvi and Manivannan were also regularised by orders of the Joint Registrar of Cooperative Societies subject to the outcome of writ proceedings in W.A.Nos.2501 and 2502 of 2001. He had also enclosed a copy of legal notice issued by the counsel regarding the ownership of the property and seeking for specific performance as well as reply sent by the Special Officer, dated 4.9.2009. In that reply, the Special Officer has stated that the balance sale consideration will be paid after obtaining approval by the Registrar.

7. In his written argument, he had also contended that a cheque issued for a sum of Rs. 4,18,000/- was not advised and amounts are yet to be paid. With reference to the appointments, appointments are subject to the result of the writ appeals. A copy of the enquiry report was not furnished. For this purpose, the learned Counsel for the petitioner relied upon the judgment of this Court in M. Sambandam Vs. The Deputy Registrar (Credit) Co-operative Societies and Others, .

8. Per contra, the learned Counsel for the contesting respondent relied upon the judgment of the Supreme Court in Devi Singh Vs. State of Haryana and Others, and placed reliance upon the following passages found in paragraph 3 which reads as follows:

3. ...But the appellant being the President bears the overall responsibility. Being the President of the Society, he owes the collective responsibility with the Treasurer and the Secretary for its accounting. In the absence of accounting of the funds, the necessary inference is that there was improper management of the institution and thereby they are liable for making good the loss caused to the Society and the members. The crime

registered against them is in respect of an offence; but the surcharge proceedings are for unaccounted money by the officers or the persons

responsible therefor. Being the President of the Society, the appellant bears the collective responsibility to have the accounting properly done of the

funds of the Society. The omission thereof constitutes misappropriation.

9. The same judgment was also relied upon for the purpose of non furnishing the enquiry report, but that issue was raised for the first time before

this court.

10. In the light of the rival contentions, it must be stated that whether the petitioner is entitled to succeed in setting aside the order of tribunal

confirming the surcharge proceedings.

11. The first question is that appointments were made subject to result of the writ appeal. A Division Bench of this Court in *Justine v. Registrar of*

Co-operative Societies and Ors. 2002 (4) CTC 385 considered the validity of G.O. No. 86 as well as application of Tamil Nadu Industrial

Establishments (Conferment of Permanent Status to Workmen) Act. The Division Bench has dismissed all the petitions and held that irregular

appointments cannot be ratified and no order has reposed to Tamil Nadu Act 46/81. Subsequent challenge to that judgment before the Supreme

Court in *A. Umarani Vs. Registrar, Cooperative Societies and Others*, was also rejected. Therefore, any challenge with reference to the findings

regarding irregular appointment has to be necessarily rejected.

12. With reference to the purchase of properties, clearly there was infraction of Rule 78(3). Therefore, the petitioner cannot have advantage of his

own wrong. Finally, on the question of non supply of enquiry report, that issue was not argued before the Tribunal. The petitioner could have very

well summoned those documents before the Tribunal and made further arguments. He cannot make such argument for the first time before this

court.

13. In the light of the above, the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petition stands closed.