

(2011) 05 MAD CK 0014

In the Madras High Court

Case No : W.A. No. 812 of 2010 and M.P. No. 1 of 2011

Special Officer, Atomic Energy Employees Consumer
Cooperative Stores Ltd.

APPELLANT

Vs

Joint Registrar of Cooperative Societies and K.
Nedunchezian, Secretary (under suspension)

RESPONDENT

Date of Decision : 11-05-2011

Acts Referred:

Citation : (2011) 7 MLJ 230

Hon'ble Judges : M. Venugopal, J; Elipe Dharma Rao, J

Bench : Division Bench

Advocate : N. Damodaran, for the Appellant; Malar Vizhi Udayakumar, Special Government Pleader and C. Krishnan, for the Respondent

Judgement

M. Venugopal, J.—The Appellant/Petitioner has projected this Writ Appeal as against that portion of the order dated 30.11.2009 passed by the Learned Single Judge in W.P. No. 14118 of 2009 in so far as it is against the society.

2. The Learned Single Judge while passing orders in W.P. No. 14118 of 2009 dated 30.11.2009 filed by the Appellant/Petitioner as among other things observed in paragraph 6 as follows:

The first Respondent, while going into the correctness of the order placing the second Respondent under suspension, without confining its revision conferred u/s 153 of Tamil Nadu Co-operative Societies Act, 1983, on the ground that there was a bias said to have been noticed by the first Respondent, had gone beyond the scope of revisional jurisdiction and set aside the entire disciplinary proceedings and thereby exceeded his jurisdiction. Therefore, this Court is inclined to set aside the impugned order passed by the first Respondent. While doing so the Petitioner is directed to proceed afresh as if there was no charge made against the second Respondent by giving him a fresh notice and affording reasonable opportunity. Further, the period during which the second Respondent was under suspension is treated as the period on duty. Further the Petitioner

shall pay subsistence allowances in accordance with law. Since the matter is pending for a long time, the Petitioner shall dispose the matter within five months from the date of receipt of a copy of this order.

3. The Learned Counsel for the Appellant/Writ Petitioner urges before this Court that the Impugned Order of the Learned Single Judge in W.P. No. 14118 of 2009 dated 30.11.2009 which is against the Appellant/Society is contrary to law.

4. It is the contention of the Learned Counsel for the Appellant/Petitioner that the Learned Single Judge after having accepted the case of the Appellant/Petitioner and also having allowed the Writ Petition by quashing the impugned proceedings issued by the First Respondent/Joint Registrar of Cooperative Societies, Kancheepuram District further held that the First Respondent has gone beyond the scope of revisional jurisdiction in setting aside the entire disciplinary proceedings and has committed a serious error in directing the Appellant/Petitioner to proceed afresh as if there has been no charge levelled against the Second Respondent by providing him a fresh notice and affording a reasonable opportunity.

5. That apart, it is the submission of the Learned Counsel for the Appellant that the Learned Single Judge ought to have adverted to the fact that already a Charge Memo dated 24.02.2009 has been issued to the Second Respondent. Moreover, he has been called upon to offer his explanation dated 06.03.2009 to the charges levelled against him.

6. The stand of the Appellant/Petitioner is that the Second Respondent before the First Respondent has questioned only the order of suspension, pending disciplinary enquiry and the Learned Single Judge while setting aside the same, should have permitted the Appellant to proceed with the Domestic Enquiry by the Sub committee as per Bye-Laws of the Society pursuant to the Charge Memo, issued and the explanation projected by the Second Respondent.

7. Lastly, the Learned Counsel for the Appellant contends that the further order passed by the Learned Single Judge in W.P. No. 14118 of 2009 dated 30.11.2009 to the effect that the period during which the Second Respondent has been under suspension is treated as duty period is contrary to law, inasmuch as the same will depend upon the outcome of the Disciplinary Enquiry that is pending against the Second Respondent.

8. In short the learned Counsel for the Appellant/Petitioner submits that the Learned Single Judge while passing the Impugned Order, in W.P.14118 of 2009 dated 30.11.2009 has not adverted to the factual, material aspects of the matter in a real and proper perspective, which has resulted in serious miscarriage of justice.

9. The Appellant/Petitioner in the affidavit in W.P. No. 14118 of 2009 has stated that the Second Respondent (Secretary under Suspension) has been served with the Charge Memo dated 24.02.2009 and a explanation has been called for from

him. The Second Respondent has furnished his explanation dated 06.03.2009, to the charges framed against him.

10. It is the case of the Appellant/Petitioner that the Special Officer of the Appellant/Petitioner Society by means of an order dated 19.03.2009, and also by virtue of the powers conferred upon him as per the amended special Bye-Laws has appointed a Sub Committee comprising of four officers to enquire into the charges framed against the Second Respondent. The said sub committee proceeded with the enquiry and commenced examining the witnesses. Pending, disciplinary proceedings, the Second Respondent/Secretary has been placed under suspension as per order dated 04.05.2009 passed by the Appellant/Petitioner.

11. According to the Appellant/Petitioner, the Second Respondent/Secretary addressed a communication dated 12.06.2009 to the Chairman of Domestic Employee Sub-Committee, raising certain objections including the inclusion of one Delhidurai, (Former Special Officer of the Society) as one of the sub committee members. Also the Second Respondent/Secretary raised objection as regards enquiries made in regard to several employees of the stores relating to the charges in his absence. The Chairman of the Domestic Enquiry/Sub Committee, after considering the letter of the Second Respondent has addressed a communication dated 25.06.2009, informing him of the compliance of all the requests. Based on the said letter, the Sub committee has also intimated the date of hearing for cross examination of the witnesses as 30.06.2009 and 01.07.2009. The Second Respondent/Secretary has been informed that no further adjournment would be granted. However, the Second Respondent has failed to attend the enquiry.

12. The Second Respondent/Secretary has failed to take part in the disciplinary proceedings and absented himself for several hearings. In the mean while, the Appellant/Petitioner has received a notice dated 02.06.2009 from the First Respondent/Joint Registrar of Co-operative Societies, Kancheepuram informed about the filing of revision petition by the Second Respondent/Employee before the authority as per Section 153 of the Tamil Nadu Co-operative Societies Act, 1983. Also, the date of hearing of revision petition on 22.06.2009 has been intimated.

13. The plea of the Appellant/Petitioner is that the Second Respondent/Secretary has filed the revision petition only challenging the order of suspension passed by the Appellant/Petitioner dated 04.05.2009 and for setting aside the same besides seeking consequential reliefs.

14. The Appellant/Petitioner has been shocked to receive the impugned order in Na. Ka. No. 3871/2009 A3 dated 24.06.2009 from the First Respondent on 17.07.2009, wherein the said authority has cancelled the entire proceedings including the Departmental Proceedings initiated by the Society as against the Second Respondent.

15. As a matter of fact, the First Respondent/Joint Registrar of Co-operative Societies, Kancheepuram has gone into the charges issued against the Second Respondent and held that the charges have not been proved beyond the reasonable doubt, has set aside the proceedings initiated against him.

16. The core contention advanced on behalf of the Appellant/Petitioner is that the First Respondent/Joint Registrar of Co-operative Societies, Kancheepuram should have taken into account of the fact that what has been challenged before him is only the suspension order dated 04.05.2009 passed by the Appellant/Petitioner on numerous grounds as stated in the revision petition and not the entire disciplinary proceedings as wrongly presumed.

17. As regards the inclusion of one P. Delhidurai, a member of a sub committee, it is pointed out that separate orders have been passed and the said member on his own has opted out from the said sub committee.

18. It is to be borne in mind that the Sub Committee through its letter, dated 25.06.2009 has informed the Second Respondent that he will be given an opportunity to cross examine all the witnesses who have let in evidence in connection with the charges framed therein. Also, the dates 30.06.2009 and 01.07.2009 have been fixed and the same has been intimated to the Second Respondent. In this connection, it is needless to state that the Second Respondent has been allowed to have a Defence Assistant to help him in the enquiry with a condition that the said Assistant will be an employee of AEECC stores, Kalpakkam. Therefore, the First Respondent should have taken into consideration of the fact that the Sub Committee has been proceeding with the enquiry in accordance with law, after following the principles of Natural Justice.

19. The other submission made by the Learned Counsel for the Appellant/Petitioner is that the Domestic Enquiry is only on a preliminary stage and that the said committee has not submitted its Enquiry Report to the disciplinary authority which is to take a final decision on the basis of the report of the said committee. However, this aspect of the matter has not been adverted to in a real and proper perspective, which in turn has caused serious prejudice to the Appellant/Petitioner. As such the Appellant/Petitioner has prayed for issuance of an order by this Court holding that the Impugned Order passed by the First Respondent as per proceedings dated 24.06.2009 is illegal and non est in law.

20. The stand of the Second Respondent/Secretary is that there is no provision in the Special Bye-Law pertaining to the service conditions of the Employees of the Appellant/Petitioner for appointing the sub committee in regard to the conduct of domestic enquiry into charges levelled against the employees of the Appellant. Therefore, the order of the Appellant/Petitioner dated 19.03.2009 in appointing the sub committee comprising of four persons to conduct the Domestic Enquiry on the charges framed against him is an illegal one. Also the same is in negation of the ingredients of the Special Bye- Laws of the Appellant/Petitioner.

21. According to the Second Respondent/Secretary, the provisions mentioned in

the special Bye-Laws relates to the sub committee from among the elected members of the board only to decide the quantum of punishment to be imposed on any employee for the proved charges. As such the Appellant/Petitioner has misconstrued the provisions of special byelaws and has appointed a sub committee to conduct a domestic enquiry on the charges levelled against him.

22. The plea of the Second Respondent is that he has furnished a letter dated 12.06.2009 to the Chairman of the Sub committee because of the fact that the subcommittee has proceeded with the Domestic Enquiry and obtained statements from the witnesses in his absence and the copies of the same have not been furnished to him. The Appellant has informed the Second Respondent that Delhidurai (Former Special Officer) has opted out from the Committee. He has not attended the Domestic Enquiry proceedings continued by the Sub committee in a biased manner.

23. The Appellant/Petitioner by as per order dated 19.03.2009 appointed the Enquiry Committee. According to the Second Respondent, the enquiry has been conducted on different dates and the statement of Witnesses have been recorded by the former Special Officer P. Delhidurai without providing him an opportunity to take part in the enquiry proceedings. The Second Respondent has been placed under suspension on 04.09.2009 based on the out come of an illegal enquiry viz., after appointment of Sub committee.

24. The Second Respondent has preferred a Revision Petition before the First Respondent/Joint Registrar of Co-operative Societies, Kancheepuram(Challenging his order of suspension dated 04.05.2009), who is empowered to deal with the same as per Section 153 of the Tamil Nadu Cooperative Societies Act 1983.

25. The Second Respondent takes a plea that since the entire proceedings of the enquiry is a unlawful one and also against the Principles of Natural Justice, the First Respondent has passed a conceded order holding that the entire proceedings of the enquiry are void in law and therefore there is no impropriety or any infirmity in the impugned order of the First Respondent dated 24.06.2009.

26. At this stage this Court aptly points out a decision in M. Thanigaivelu Vs. The Joint Registrar of Co-operative Societies, at page 183 at page 186, wherein in paragraph 8 it is inter alia observed as hereunder.

...when the Petitioner has raised specific ground in the affidavit filed in support of the writ petition, that surcharge proceedings was not even marked before the first Respondent in any of the hearing dates, the said factor has not been refuted at all in the counter-affidavit filed by the first Respondent. In fact, the counter affidavit has been filed by the very same officer who has passed the order impugned in this Writ Petition. Therefore, it could not have escaped his attention while dealing with the point raised by the Petitioner in the affidavit. In such circumstance, it will only lead to the conclusion that the surcharge proceedings relied upon by the first Respondent was not part of the material records in the Revision Proceedings, in which event, the reliance placed upon by the first

Respondent to reject the Petitioner's revision, cannot be countenanced. In any event, when it is pointed out by the Petitioner that the said surcharge proceedings have been challenged by way of an appeal before the Tribunal and that the operation of the said proceedings have been stayed, if only the first Respondent had put the Petitioner on notice about his idea of relying upon the said proceedings, the Petitioner would have had an opportunity to show that the said proceedings have been stayed by the Tribunal and therefore, the same could not have been relied upon. By such conduct of the first Respondent in relying upon the proceedings behind the back of the Petitioner, the Petitioner was really put to serious prejudice and therefore, in every respect, the order of the first Respondent is faulty and the same cannot be allowed to remain. Therefore, while setting aside the order impugned in the writ petition, the first Respondent is directed to hold the enquiry afresh and after giving specific marking of all the material documents placed before him and after giving due opportunity to the Petitioner as well as the second Respondent, pass fresh orders within six months from the date of receipt of copy of the order.

27. This Court has heard the learned Counsel appearing for the parties and noticed their contentions.

28. It transpires from the Revision Petition dated 22.05.2009 that the Second Respondent/Secretary has prayed for setting aside the order of temporary suspension passed against him by the Appellant dated 04.05.2009. However, on going through the impugned order in Na. Ka. No. 3871/09 A3 dated 24.06.2009 passed by the First Respondent, it is quiet evident that the First Respondent has set aside the proceedings initiated against the Second Respondent which in our considered opinion is beyond the ambit and power of the said authority. As such that portion of the order of the First Respondent, which relates to setting aside of the entire Disciplinary proceedings is liable to be set aside and accordingly we set aside the same to prevent an aberration of justice. Furthermore, the other portion of the order passed the Learned Single Judge, in W.P. No. 4118 of 2009 dated 30.11.2009 in directing the Appellant/Petitioner to proceed afresh as if there is no charge made against the Second Respondent by providing him a fresh notice and affording a reasonable opportunity is also not a valid one in our considered opinion. Hence the same is set aside by this Court to promote Substantial cause of Justice. Viewed in that perspective, the Writ Appeal succeeds.

29. In the result, the Writ Appeal is allowed leaving the parties to bear their own costs. The Appellant/Petitioner is directed to proceed with the disciplinary proceedings against the Second Respondent/Secretary from the stage of conducting the disciplinary enquiry by the sub committee (appointed in this regard) as per the rules and regulations of the Society, in conformity with the Principles of Natural Justice, pursuant to the Charge Memo dated 24.02.2009 and the explanation submitted by the Second Respondent dated 06.03.2009, in accordance with law, by providing him with an adequate opportunity. Further the

Appellant/Petitioner is to complete the disciplinary proceedings against the Second Respondent within a period of three months from the date of receipt of a copy of this order. It is open to the Second Respondent/Secretary to raise factual and legal pleas available to him before the competent authority, as envisaged by law. Consequently, connected Miscellaneous Petition is closed.