

(2003) 12 MAD CK 0001

In the Madras High Court

Case No : Writ Petition No. 3136 of 1996

V. Sundarajan

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 19-12-2003

Acts Referred:

Chit Funds Act, 1982 — Section 70

Chit Funds Rules, 1984 — Rule 58, 59

Citation : AIR 2004 Mad 277 : (2004) 1 LW 376

Hon'ble Judges : P. Sathasivam, J

Bench : Single Bench

Advocate : S. Senthilnathan, for the Appellant; S. Venkatesh, Addl. Govt. Pleader for Respondents 1 and 2, for the Respondent

Final Decision : Allowed

Judgement

P. Sathasivam, J.—Aggrieved by the proceedings of the first respondent, made in G. O. Ms. No. 16 Commercial Taxes and Religions

Endowment Department dated 11-1-1996 dismissing the appeal and confirming the order of 2nd respondent, the petitioner has filed the above

writ petition to quash the same on various grounds.

2. The case of the petitioner is briefly stated hereunder :

The third respondent herein, a chit company filed A. O. P. No. 77/90 (Arbitration Original Petition) on the file of 2nd respondent alleging that the

petitioner stood as guarantor in respect of a chit transaction. The petitioner has filed a written statement stating that he never stood as guarantor

and denied the execution of guarantee letter. It is also stated that his signature was forged for which he filed an application in I.A. No. 2/94 praying

the second respondent to issue summons to the hand writing expert of the Tamil

Nadu Forensic Laboratory, Madras-4. The third respondent filed a counter stating that the signature in the guarantee letter is only that of the petitioner. The second respondent by order dated 13-9-1994, rejected his request mainly on the ground that the matter is pending for 3 years. Against the order of the 2nd respondent dated 13-9-1994, the petitioner preferred an appeal u/s 70 of the Chit Funds Act, 1982 before the first respondent. The first respondent without following the provisions, particularly Rule 59 of Chit Funds Rules, 1984 and without affording an opportunity to the petitioner and personal hearing, dismissed the appeal; hence the present writ petition.

3. The respondents 1 and 2 have not chosen to file counter affidavit disputing various averments made by the petitioner. The third respondent alone has filed a counter affidavit reiterating their stand taken before the 2nd respondent.

4. Heard Mr. S. Senthilnathan, learned counsel for the petitioner, Mr. S. Venkatesh, learned Additional Government Pleader for respondents 1 and 2 and Mr. R. Nandakumar for third respondent.

5. (i) Mr. S. Senthilanthan, learned counsel for the petitioner, mainly contended that the first respondent has passed the impugned order without providing any opportunity to the petitioner, which is contrary to Rules 58 and 59 of the Chit Fund Rules, 1984 (in short "the Rules"). According to him, inasmuch as the appeal filed before the first respondent is a statutory appeal, as per Section 70 of the Chit Funds Act, 1982 (in short "the Act"), the first respondent ought to have fully complied with the procedure to be followed while disposing of the appeal.

(ii) On the other hand, learned Additional Government Pleader and the learned counsel appearing for third respondent contended that the Government, after considering all the relevant materials, rightly confirmed the order of the second respondent and there is no ground for interference.

6. I have carefully considered the rival submissions.

7. There is no dispute that in the Arbitration O. P. No. 77 of 90 filed by the third respondent, pending before the 2nd respondent, the petitioner filed an application in I. A. No. 2 of 1994, requesting the second respondent to issue summons to handwriting expert of Tamil Nadu Forensic

Laboratory, Chennai-4 in order to prove his claim that he never stood as a guarantor and that the signature found in the guarantee letter is forged

one. It is also seen that the second respondent-original authority, after holding that since the matter is pending for 3 years, by order dated 13-9-

1994, dismissed I. A. 2/94. There is no dispute that against the said order of the second respondent, an appeal lies to the State Government u/s 70

of the Act, which reads as follows :--

Section 70. Appeal against decision of Registrar or nominee. -- Any party aggrieved by any order passed by the Registrar or the nominee or the

award of the Registrar or the nominee u/s 69, may, within two months from the date of the order of award, appeal to the State Government.

The language used therein makes it clear that Section 70 provides for the appeal to the State Government not only against an award of the

Registrar or his nominee, but also against any order. Section 69 of the Act enables the Registrar or his nominee to make a decision in respect of

dispute referred to by way of an arbitration under Chapter 12 of the Act. It is clear that the appeal filed by the petitioner before the first respondent

u/s 70 is a statutory appeal.

8. Chapter VII of Chit Fund Rules, 1984 provides various procedures to be followed while disposing of appeal filed under Sections 70 and 74 of

the Act. Rule 58 speaks about filing an appeal which shall be in writing and presented either in person or sent by registered post to the appellate

authority. As per Sub-rules (2) and (3), the appeal shall be in the form of a memorandum accompanied by fee prescribed in Appendix II, specify

the names and addresses of the appellant as well as the respondent, grounds of objection, relief prayed for, date of the order appealed against etc.

Rule 59 speaks about hearing and disposal of the appeal, which is extracted hereunder :

Rule 59. Hearing and disposal of the appeal.--(1) On receipt of the appeal, the appellate authority shall as soon as possible examine it and ensure

that,

(a) whether relevant fee has been paid on the appeal memorandum;

(b) the person presenting the appeal has the locus standi to do so;

(c) it is made within the specified time limit; and

(d) it conforms to all the provisions of the Act and these rules.

(2) in the proceedings before the appellate authority the appellant and the respondent may be represented by an agent holding on power of

attorney or by a legal practitioner,

(3) The appellate authority, on the basis of the enquiry conducted and with reference to the records examined, pass such order on appeal as may

deem just and reasonable.

(4) Every order of the appellate authority under Sub-rule (3) shall be in writing and it shall be communicated to the parties concerned and the

Registrar.

Sub-rule (2) of Rule 59 shows that in the proceedings before the appellate authority (State Government) the appellant and the respondent are

permitted to represent by an agent holding on power of attorney or by a legal practitioner. Sub-rule (3) enables the appellate authority to conduct

an enquiry with reference to the records and pass an order which is just and reasonable. Sub-rule (4) enables the appellate authority to

communicate its decision to the parties concerned and the Registrar. Sub-rules (1) to (4) in Rule 59 provides elaborate procedure to be followed

by the appellate authority, while hearing and disposing of the appeal filed u/s 70 of the Act.

9. Now coming to the impugned order passed by the appellate authority, first respondent herein, it is seen that the petitioner had filed an appeal u/s

70 of the Act read with Rule 58 of the rules against the order passed in I. A. 2/94 dated 1-8-1994 in A. O. P. No. 77/90 on the file of Joint

Registrar of Chits, Salem, 2nd respondent herein. A copy of the appeal has been filed in the typed-set of papers (vide pages 25 to 29). A reading

of the impugned order does not show that after entertaining the appeal and satisfying itself, the petitioner was issued notice for enquiry and heard

either the petitioner has power of agent or legal practitioner as provided in Sub-rule (2) of Rule 59. I have already referred to the fact that as per

Sub-rule (3), the authority has to conduct enquiry, examine the records and take a decision which is just and reasonable. In the absence of counter

affidavit by the first respondent, and no reference in the order impugned, it is clear that petitioner was not given notice or opportunity of being

heard either in person or through legal practitioner as provided under Sub-rules

(2) and (3.) of Rule 59 of the Rules. The objection/ contention

raised by the learned counsel for the petitioner is well-founded. Though the petitioner had preferred appeal against the order passed in a

Interlocutory Application by the second respondent, in the light of the language used in Section 70, the appeal filed by the petitioner is a statutory

appeal in terms of Section 70 and the same has to be disposed of in accordance with the procedure prescribed in Rules 58 and 59 of the Rules. I

am satisfied that the first respondent has not complied with the above provisions and the impugned order cannot be sustained and the same is liable

to be quashed.

10. Under these circumstances, the impugned proceedings of the first respondent in G. O. Ms. No. 16 Commercial Taxes and Religious

Endowment Department dated 11-1-1996 is quashed and the matter is remitted to the first respondent for fresh disposal in accordance with Rule

59 of the Rules. Writ petition is allowed. No costs.