

B.S. Somasundaram Vs. the Thanjavur District Co-operative Supply Market Society Ltd., Represented by the Liquidator and ors.

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Court : Chennai

Decided On : Nov-29-1982

Reported in : (1983)2MLJ523

Appellant : B.S. Somasundaram

Respondent : The Thanjavur District Co-operative Supply Market Society Ltd.,
Represented by the Liquidator and or

Advocate for Pet/Ap. : Mr. I. Subramanian

Judgement :

ORDER

T. Sathiadev, J.

1. The impugned orders are assailed on two grounds. The petitioner was the Branch Manager of the first respondent Society at Kumb konam, during the year 1961 to 1964. A surcharge notice under Section 71 of the Act LIII of 1961 dated 22nd August, 1968, was served on him claiming a sum of Rs. 15,949 representing the loss suffered with reference to paddy business and informing him that h e had committed breach of trust and wilful negligence. Another notice under Section 71 was issued on 4th November, 1970 representing alleged loss suffered by the Society due to stock deficit under gunnies and super, phosphate to the value of

Rs. 10,106. Again another notice under Section 71 was issued on 27th February, 1971, covering all these items, and holding that petitioner has to restore a sum of Rs. 11,116 with interest at 12 per cent. He submitted his representation and a surcharge order was passed on 19th April, 1971, by the Deputy Registrar of Co-operative Societies, Thiruvarur, which was set aside by the Tribunal on 28th June, 1972, and the matter was remanded for fresh disposal. Again, notice was issued on 17th May, 1976, claiming a sum of Rs. 10,546 with interest. The Deputy Registrar, by order dated 20th August, 1976, held that the petitioner is liable to pay a sum of Rs. 10,546 because he (the petitioner) was solely responsible for the deficit suffered by the Society. On appeal, by a cursory order, the Tribunal confirmed it on 12th December, 1977. Aggrieved with the impugned orders, this writ petition is filed.

2. Mr. I. Subramanian, learned Counsel for the petitioner first contends that when the acts of commissions and omissions took place in the year 1962 to 1965, the surcharge notice issued from time to time ending with 27th February, 1971, is barred by limitation, by virtue of the proviso to Section 71. He also resists this, claim by reference to the surcharge notice issued on 20th September, 1976, to the effect that, though issued after the order of remand, the said surcharge notice supersedes the earlier notice, and hence such a notice being issued beyond the period contemplated under the Act, the proceedings are invalid. He contends that when the emphasis under Section 71 is regarding the holding of the enquiry the first proviso by using the expression, 'no such enquiry shall be commenced' means, that the relevant date would be the date on which the above surcharge notice was issued.

3. On behalf of the respondents, the learned Government Pleader contends, that, when the notice dated 27th February, 1971, refers to the fact that a surcharge claim had been filed on 8th May, 1968, irrespective of the later show-cause notices issued from time to time, the relevant date would be the date when the claim had been lodged. He equates the lodging of the claim to the filing of suits and petitions before Courts statutory tribunals and quasi-judicial authorities, and contends that if the date of issue of notice or the service of it be taken as a relevant date, it would enable these persons against whom proceedings were

instituted, to avoid service of notice, and thereby, get the claim time-barred. Even on the aspect whether the date of notice would be relevant, he would state, that it may take some time to process the issue of notice, and therefore, the relevant date could be only the date on which the claim had been lodged and registered.

4. When the expression used is 'commenced' it could be only with reference to the date on which the claim had been lodged, as provided under Section 71. On such claims filed, they are registered, and thereafter further action is taken by the statutory authority who exercises powers by virtue of Section 71. Therefore the relevant date for the first proviso to Section 71, would be the date on which a surcharge claim is lodged as providedj under the Act.

5. Hence, when the claim had been filed on 8th May, 1968, on the acts of commissions and omissions pertaining to the period 1962 to 1965, the plea that the claim is barred by limitation, though taken only in this writ petition and not earlier, fails.

6. The next contention is that, in neither of the orders passed by the Deputy Registrar, had any finding been given that the petitioner had committed wilful negligence or breach of trust. He refers to the orders passed, and points out that, except to state that loss had been suffered by the Society due to the stock deficit of gunny bagsandsuper-phosphate, no firmfinding, as contemplated under Section 71, had been rendered., He relies upon the decision of this Court Sathyamangulam Co-operative Urban Bank Ltd. v. The Deputy Registrar of Co-operative Societies and Anr. : (1980)2MLJ17 . Whenever a claim is lodged under Section 71, it is not mere negligence or callousness which would bring about a surcharge order, unless it be established that the acts committed were pursuant to any negligence wilfully or deliberately committed by the concerned person. Hence, when the Deputy Registrar had not rendered any finding as required under Section 71, be the claim of surcharge under Section 71 cannot stand.

7. No doubt, the Tribunal had stated that the petitioner herein, had committed gross negligence by his callousness and consequently he has to bear the brunt of the burden. In its order there is no indication any where that it was in any way satisfied by the genuineness of the claim made, as against the petitioner. Except

to refer in a general manner to the claim pertaining to paddy and fertiliser account, the order nowhere refers to the nature of the claim made and the points taken by the petitioner as to why the order of the Deputy Registrar, is illegal or unjustified. None of the contentions taken by the petitioner had ever been considered in the order, not even a single factual particular was considered fit to be understood by him. Except to generalise as to what would happen to Co-operative institution by the difference among Co-operators, the order of the Tribunal avoids consideration of the merits of the matter.

8. Functioning as an appellate authority, it is duty bound to refer to the factual aspects and render its finding on each one of the points taken in the appeal. The order contains sentences which are ready-made in nature, which could fit it with any other matter which may come before the Tribunal. Therefore, the conclusion arrived at as if the petitioner had committed gross negligence, is without any reference to the pleas raised by him. As to whether the Deputy Registrar had given a finding to such effect or not, is not even referred to in the order,. If the Tribunal had taken care to read the order of the Deputy Registrar it would have remanded the matter for rendering he proper finding. Therefore, when the order of the Tribunal, as stated above, is a ready-made order, which can fit in with any matter that may come before it, by inducting into it a single sentence to how semblance of relevance it is set aside, even though it has made or accepting finding that the petitioner is guilty of gross negligence.

9. It must further be stated that when such a finding is not rendered by the Deputy Registrar, and a contrary finding is to be rendered by the Tribunal, it can only be done by reference to the factual aspects of the matter. In the absence of any such considerations, the order of the Tribunal is set aside. Passing of such orders, without any regard to the facts before the appellate Tribunal had been already denounced by this Court in W. P. No. 2784 to 2786 of 1979. This order is no better than what had come before this Court in the earlier writ petition.

10. In the light of what has been stated above, in the absence of any finding about wilful negligence, the writ petition is allowed. No costs.

