BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : **15.04.2026**

DELIVERED ON : **27.04.2026**

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

AND

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

AND

THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

WP(MD)No.14274 of 2020

P.Muthu Mohanraj ...Petitioner

Vs

1. The Deputy Registrar of Co-operative Societies,
   Madurai Range, Madurai

2. Tmt.J.Subbulakshmi,
   Under Section 82 Enquiry Officer
   Cum Co-Operative Sub-Registrar,
   A-2547 Pasumalai Urban Co-Operative
   Credit Society, Pasumalai,
   Madurai. ....Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of certiorari to call for the records in Na.Ka.4620/2016/Sa.Pa. dated 23.6.2020 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.H.Arumugam
for Mr.S.Kumar

For Respondents : Mr.M.Ajmal Khan,
Addl. Advocate General I, Assisted by
Mr.S.P.Maharajan
Special Government Pleader for R1

Counsels assisted : Mr.Isaac Mohanlal, Senior Counsel
the Hon'ble Court : for M/s.Isaac Chambers
Mr.Sunny Sheenakkara

ORDER

(Order of the Court was delivered by MR.N.SATHISH KUMAR, J.)

This Larger Bench has been constituted on the basis of a reference made by the learned Single Judge of this Court [G.R. Swaminathan, J.] vide order dated 03.01.2024, to answer the issue as to whether surcharge proceedings could be initiated against a retired employee. The said reference was made in view of the observations contained in paragraphs 28 and 29 of the Larger Bench (comprising three Judges) of this Court in ***S.Andiyannan v. The Joint Registrar, Co-operative Societies and another*** reported in ***2015-3-L.W. 513***.

2. In ***S.Andiyannan's case,*** the Full Bench of this Court adjudicated upon the following questions:

> *"1. Whether the disciplinary proceedings initiated against an employee of a co-operative society, governed by the Tamil Nadu Co-operative Societies Act, 1983, could be continued even after retirement of the said employee?*
>
> *2. Whether Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, could be considered as an enabling provision empowered the disciplinary authority to continue the disciplinary proceedings even after the retirement of the employee?"*

3. While answering the reference, the Full Bench held that disciplinary proceedings cannot be continued against the concerned employee after his retirement. Such proceedings are bad in law in the absence of any service rules or bye-laws permitting their continuation. As regards the second question of law, the Full Bench held that 'surcharge' proceedings are not penal in nature, as they are concerned only with the recovery of money or property, or any part thereof, along with interest, from the retired employee in lieu of the financial loss caused by the concerned employee. The Full Bench further held that Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 is not an enabling provision permitting a

Co-operative Society to continue disciplinary proceedings against an erring employee, after retirement. In fact, the Full Bench answered the reference to the extent that only disciplinary proceedings are impermissible after the retirement of an employee. The question of initiation of surcharge proceedings was not directly adjudicated upon. However, in paragraphs 27 and 28, while making certain observations, the Full Bench recorded that surcharge proceedings cannot be initiated against a retired employee. This observation has led to confusion, resulting in the constitution of this Bench to determine whether surcharge proceedings can be initiated against a retired employee.

4. Mr.H.Arumugam, learned counsel appearing for the petitioner, fairly submitted that, insofar as the question of law is concerned, the language employed in Section 87 of the Tamil Nadu Co-operative Societies Act is clear and unambiguous, and that the said provision makes it evident that surcharge proceedings can be initiated even against former employees, provided such proceedings are commenced within the time stipulated under the Act. He further submitted that the observations made in paragraphs 28 and 29 of the Full Bench judgment in ***S. Andiyannan's case*** are, at best, attributable to clerical errors, and may be construed as *obiter dicta*, which are not binding.

5. Mr.M.Ajmalkhan, learned Additional Advocate General appearing for the first respondent, submitted that in ***S. Andiyannan's case,*** the Full Bench was constituted solely to answer the issue as to whether disciplinary proceedings could be continued after the retirement of an employee. The question of surcharge proceedings was never in issue. Hence, he contended that the Full Bench did not decide the question relating to the initiation of surcharge proceedings after retirement. Accordingly, he submitted that any observations contained in paragraphs 28 and 29 of the Full Bench judgment are, at best, an *obiter dicta* and, therefore, not binding. He further submitted that, as per Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, surcharge proceedings can be initiated against both past and present employees.

6. Mr.Issac Mohanlal, learned Senior Counsel assisting this Court, submitted that the observations contained in paragraphs 28 and 29 are clearly in the nature of an *obiter dicta* and, therefore, the same are not binding as precedent. He contended that the same may be disregarded, as the Full Bench was never called upon to decide that issue, having been constituted solely to answer the question as to whether disciplinary proceedings could be initiated against a retired employee. According to him, on a plain reading of Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, surcharge proceedings are very well maintainable.

7. Mr.Sunny Sheenakkara, learned counsel, who voluntarily assisted the Court, took us through the various prior legislations governing surcharge proceedings. According to him, under the predecessor enactment, namely the Madras Co-operative Societies Act, 1932, surcharge proceedings could be initiated under Section 49 against any person who had taken part in the organisation or management of the society, or any past or present officer thereof, who had misappropriated or fraudulently retained any money or other property, or had been guilty of breach of trust in relation to the society. Similarly, under the Tamil Nadu Co-operative Societies Act, 1961, analogous provisions existed in Sections 64, 65, and 66, relating to audit, enquiry, inspection, or winding up. Where, upon such audit or enquiry, it appears that any person, including a past or present officer or servant of the society, had misappropriated or fraudulently retained any money or property of the society, surcharge proceedings could be initiated under Section 71. A similar provision is contained in the present enactment, namely the Tamil Nadu Co-operative Societies Act, 1983. Section 87 of the said Act enables Co-operative Societies to initiate surcharge proceedings against any person who was entrusted with the organisation or management of the society, or any past or present officer or servant thereof, who has misappropriated or fraudulently retained any money or property of the society. Hence, it is his contention that the observations contained in the judgment of the earlier Full Bench of this Court are not binding, being in the nature of obiter dicta."

8. It was also brought to the notice of this Court that provisions *pari materia* with Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 exist in other State enactments. Under the Andhra Pradesh Co-operative Societies Act, 1964, Section 60 permits the initiation of surcharge proceedings against both present and retired employees. Similarly, Section 68 of the Kerala Co-operative Societies Act, 1969 and Section 88 of the Maharashtra Co-operative Societies Act, 1960 also provide for the initiation of surcharge proceedings against present as well as retired employees.

9. In the light of the above submissions, we have gone through the provisions of Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, which reads as follows:

> ***"87. Surcharge.***
>
> *(1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding-up of a society, it appears that, any person who is or*

was entrusted with the organisation or management of the society or any past or present officer or servant of the society, either on his own or in connivance with any other person, has misappropriated or fraudulently retained or transferred any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or negligence or has made any payment which is not in accordance with this Act, rules or by-laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the Board, liquidator or any creditor or contributory, may frame charges against such person or officer or servant or such other person and after giving a reasonable opportunity to the person concerned and in the case of his demise, to his representative who inherits his estate or a person who holds his estate, to answer the charges, make an order requiring him to repay or restore the money or property, or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retention or transfer of money or other property, breach of trust or negligence or payments which are not in accordance with this Act, rules or by-laws as the Registrar or the person authorised as aforesaid thinks just:

Provided that no action shall be commenced under this sub-section after the expiry of seven years from the date of detection 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.

(2)Without prejudice to any other mode of recovery which is being taken or may be taken under this Act or any other law for the time being in force, any sum ordered under this section to be repaid to a registered society or recovered as a contribution to its assets may be recovered as if it were an arrears of land revenue and for the purpose of such recovery, the Registrar shall have the powers of a Collector under the Tamil Nadu Revenue Recovery Act, 1864 (Tamil Nadu Act II of 1864).

(3)This section shall apply notwithstanding that such person or officer or servant may have incurred criminal liability by his act.

(4)The Registrar or the person authorised by him shall, when acting under this section, have all the powers of a Civil Court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely:~

(a)summoning and enforcing the attendance of any person and examining him on oath;

(b)requiring the discovery and production of any documents;

(c)reception of evidence on affidavits;

(d)requisitioning any public record from any Court or

office;

(e)issuing Commission for examining of witnesses."

10. The Tamil Nadu Co-operative Societies Act, 1983 came into force after the repeal of the predecessor enactments, viz., the Tamil Nadu Co-operative Societies Act, 1932 and the Tamil Nadu Co-operative Societies Act, 1961. Even under the earlier enactments, provisions for surcharge proceedings existed even prior to independence. The various enactments referred to above also clearly indicate that provisions existed for initiating action against past servants as well, in cases where misappropriation or fraudulent retention of money or property was found. Similar provisions are also contained in Section 60 of the Andhra Pradesh Co-operative Societies Act, 1964, which is *pari materia* with Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. Except for the procedural safeguard requiring the Registrar or his authorised representative to afford an opportunity of hearing to the person concerned to make a representation and establish otherwise, initiation of surcharge proceedings against past employees is permitted. Similarly, Section 68 of the Kerala Co-operative Societies Act, 1969 and Section 88 of the Maharashtra Co-operative Societies Act, 1960 also permit initiation of surcharge proceedings against past employees. Thus, Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, which is the culmination of various legislative models adopted across different States, though with certain variations from the Tamil Nadu Co-operative Societies Act, 1961, makes it clear that surcharge proceedings can also be initiated against retired employees."

11. The plain language of Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 makes it clear that where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 or the winding-up of a society, it appears that, any person who is or was entrusted with the organisation or management of the society or any past or present officer or servant of the society, either on his own or in connivance with any other person, has misappropriated or fraudulently retained or transferred any money or other property or been guilty of breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or negligence or has made any payment which is not in accordance with this Act, rules or by-laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the Board, liquidator or any creditor or contributory, may frame charges against such person or officer or servant or such other person and after giving a reasonable opportunity to the person concerned and in the case of his demise, to his representative who inherits his estate or a person who holds his estate, to answer the charges for the purpose of recovery of money or other property of the society.

12. The plain reading of the language employed in Section 87 makes it clear that there is no bar in law to initiate surcharge proceedings against any person, whether a past or present servant of the society. Therefore, we are of the view that proceedings under Section 87, namely surcharge proceedings, can be initiated against retired employees or against any person who was entrusted with the organisation or management of the society, or any past or present officer or servant thereof, if an audit under Section 80, or an enquiry or inspection or investigation under Section 82, or an inspection of books under Section 83, or the winding up of a society, discloses circumstances warranting such initiation of proceedings

13. The Full Bench, in the reference in question, answered two questions as follows:

> *"30. Answer to the first question referred to this Bench:*
>
> *Under the Tamil Nadu Cooperative Societies Act, 1983, once an employee retired from service, there could be no*

authority vested with the employer for continuing any disciplinary proceeding, in the absence of relevant service Rules permitting the employer to continue the disciplinary proceeding. In other words, if there is no service Rules or bye-law of the society empowering the employer to continue the departmental proceeding, the employer, would have no authority to continue the departmental proceeding after the retirement of the employee.

31. Answer to the second question referred to this Bench:

As contemplated under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983, the term -surcharge- is not penal in nature, hence if there is admission with regard to the loss caused by the employee or the same is established by the cooperative institution, based on the proceeding already initiated for surcharge, the same could be recovered in the manner known to law. However, the provision relating to surcharge under Section 87 of the Act is not impliedly empowering the disciplinary authority to continue any disciplinary proceeding against an employee, who retired from service, in the absence of any Service Rules or Bye-law. Hence, Section 87 of the said Act cannot be construed as an enabling provision or impliedly empowering provision to the employer to continue any disciplinary proceeding after the retirement of any employee, in the absence of any Service Rules."

14. The Full Bench has never gone into the issue of surcharge proceedings at all. However, in paragraphs 27 and 28, in the penultimate lines of those paragraphs, the Full Bench has observed as follows:

> *In paragraph 27, it is stated that, "however, surcharge proceedings cannot be initiated against any retired employee."*
>
> *In paragraph 28, it is stated that, "however, even surcharge proceedings cannot be initiated after the retirement of an employee to recover the same from his retiral benefits."*

15. In ***Director of Settlements, A.P. And others Vs. M.R.Apparao and another*** reported in ***(2002) 4 SCC 638***, the Hon'ble Supreme Court has held as follows:

> *"A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An 'obiter dictum' as distinguished from a ratio decidendi is an observation by Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced."*

16. In ***Arun Kumar Aggarwal Vs. State of Madhya Pradesh and others*** reported in ***(2014) 13 SCC 707***, the Hon'ble Supreme Court has observed as follows:

> *"24. At this stage, it is pertinent to consider the nature and scope of a mere observation or obiter dictum in the Order of the Court. The expression obiter dicta or dicta has been discussed in American Jurisprudence 2d, Vol. 20, at pg. 437 as thus:*
>
> *"74. -Dicta*
>
> *Ordinarily, a court will decide only the questions necessary for determining the particular case presented. But once a court acquires jurisdiction, all material questions are open for its decision; it may properly decided all questions so involved, even though it is not absolutely essential to the result that all should be decided. It may, for instance, determine the question of the constitutionality of a statute, although it is not absolutely necessary to the disposition of the case, if the issue of constitutionality is involved in the suit and its settlement is of public importance. An expression in an opinion which is not necessary to support the decision reached by the court is dictum or obiter dictum.*
>
> *"Dictum" or "obiter dictum: is distinguished from the "holding of the court in that the so- called "law of the case" does not extend to mere dicta, and mere dicta are not binding under the doctrine of stare decisis.*
>
> *As applied to a particular opinion, the question of whether or not a certain part thereof is or is not a mere dictum is sometimes a matter of argument. And while the terms "dictum" and "obiter dictum" are generally used synonymously with regard to expressions in an opinion which are not necessary to support the decision, in connection with the doctrine of stare decisis, a distinction has been drawn between mere obiter and "judicial dicta," the latter being an expression of opinion on a point deliberately passed upon by the court." (Emphasis*

supplied).

Further at pg. 525 and 526, the effect of dictum has been discussed:

> *"190. Decision on legal point; effect of dictum*
> *... In applying the doctrine of stare decisis, a distinction is made between a holding and a dictum. Generally stare decisis does not attach to such parts of an opinion of a court which are mere dicta. The reason for distinguishing a dictum from a holding has been said to be that a question actually before the court and decided by it is investigated with care and considered in its full extent, whereas other principles, although considered in their relation to the case decided, are seldom completely investigated as to their possible bearing on other cases. Nevertheless courts have sometimes given dicta the same effect as holdings, particularly where "judicial dicta" as distinguished from "obiter dicta" are involved."*

25. According to P. Ramanatha Aiyar's, Advanced Law Lexicon (3rd Edn. 2005), the expression "observation" means a

> *"view, reflection; remark; statement; observed truth or facts; remarks in speech or writing in reference to something observed."*

26. Wharton's Law Lexicon (14th Edn. 1993) defines term "obiter dictum" as an opinion not necessary to a judgment; an observation as to the law made by a judge in the course of a case, but not necessary to its decision, and therefore of no binding effect; often called as obiter dictum, a remark by the way."

27. The Black's Law Dictionary, (9th Edn., 2009) defines term "obiter dictum" as

> *"obiter dictum._ A judicial comment made while delivering a judicial opinion, but one that is unnecessary to the decision in the case and therefore not precedential (although it may be considered persuasive). -- Often shortened to dictum or, less commonly, obiter. .....*
>
> > *"Strictly speaking an "obiter dictum" is a remark made or opinion expressed by a judge, in his decision upon a cause, "by the way"__ that is, incidentally or collaterally, and not directly upon the question before the court; or it is any statement of law enunciated by the judge or court merely by way of illustration, argument, analogy, or suggestion.... In the common speech of lawyers, all such extrajudicial expressions of legal opinion are referred to as "dicta," or "obiter dicta," these two terms being used interchangeably."*

28. Words and Phrases, Permanent Edn., Vol. 29 defines the expression "obiter dicta" or "dicta" thus:

> *"Dicta are opinions of a judge which do not embody the resolution or determination of the court, and made without argument or full consideration of the point, are not the professed deliberate determinations of the judge himself; obiter dicta are opinions uttered by the way, not upon the point or question pending, as if turning aside for the time from the main topic of the case to collateral subjects; It is mere observation by a judge on a legal question suggested by the case before him, but not arising in such a manner as to require decision by him; "Obiter dictum" is made as argument or illustration, as pertinent to other cases as to the one on hand, and which may enlighten or convince, but which in no sense are a part of the judgment in the particular issue, not binding as a precedent, but entitled to receive the respect due to the opinion of the judge who utters them; Discussion in an opinion of principles of law which are not pertinent, relevant, or essential to determination of issues before court is "obiter dictum".*

29. The concept of "Dicta" has also been considered in Corpus Juris Secundum, Vol. 21, at pg. 309-12 as thus:

"190. Dicta

a. In General A Dictum is an opinion expressed by a court, but which, not being necessarily involved in the case, lacks the force of an adjudication; an opinion expressed by a judge on a point not necessarily arising in the case; a statement or holding in an opinion not responsive to any issue and noty necessary to the decision of the case; an opinion expressed on a point in which the judicial mind is not directed to the precise question necessary to be determined to fix the rights of the parties; or an opinion of a judge which does not embody the resolution or determination of the court, and made without argument, or full consideration of the point, not the professed deliberate determination of the judge himself. The term "dictum" is generally used as an abbreviation of "obiter dictum" which means a remark or opinion uttered by the way.

Such an expression or opinion, as a general rule, is not binding as authority or precedent within the stare decisis rule, even on courts inferior to the court from which such expression emanated, no matter how often it may be repeated. This general rule is particularly applicable where there are prior decisions to the contrary of the statement regarded as dictum; where the statement is declared, on rehearing, to be dictum; where the dictum is on a question which the court expressly states that it does not decide; or where it is contrary to statute and would produce an inequitable result. It has also been held that a dictum is not the "law of the case,"nor res judicata."

30. The concept of "Dicta" has been discussed in Halsbury's Laws of England, Fourth Edition (Reissue), Vol. 26, para. 574 as thus:

"574. Dicta.__ Statements which are not necessary to the decision, which go beyond the occasion and lay

down a rule that it is unnecessary for the purpose in hand are generally termed "dicta". They have no binding authority on another court, although they may have some persuasive efficacy. Mere passing remarks of a judge are known as "obiter dicta", whilst considered enunciations of the judge's opinion on a point not arising for decision, and so not part of the ratio decidendi, have been termed "judicial dicta". A third type of dictum may consist in a statement by a judge as to what has been done in other cases which have not been reported.

... Practice notes, being directions given without argument, do not have binding judicial effect. Interlocutory observations by members of a court during argument, while of persuasive weight, are not judicial pronouncements and do not decide anything."

31. In Municipal Corporation of Delhi v. Gurnam Kaur, (1989) 1 SCC 101 and Divisional Controller, KSRTC v. Mahadeva Shetty, (2003) 7 SCC 197, this Court has observed that

"12......Mere casual expressions carry no weight at all. Not every passing expression of a judge, however eminent, can be treated as an ex cathedra statement, having the weight of authority."

32. In State of Haryana v. Ranbir, (2006) 5 SCC 167, this Court has discussed the concept of the "obiter dictum" thus:

"13. ..... A decision, it is well settled, is an authority for what it decides and not what can logically be deduced therefrom. The distinction between a dicta and obiter is well known. Obiter dicta is more or less presumably unnecessary to the decision. It may be an expression of a viewpoint or sentiments which has no binding effect. See ADM, Jabalpur v. Shivakant Shukla. It is also well settled that the statements which are not part of the ratio decidendi constitute obiter dicta and are not

authoritative. (See Divisional Controller, KSRTC v. Mahadeva Shetty)"

33. In Girnar Traders v. State of Maharashtra, (2007) 7 SCC 555, this Court has held:

> *"53.....Thus, observations of the Court did not relate to any of the legal questions arising in the case and, accordingly, cannot be considered as the part of ratio decidendi. Hence, in light of the aforementioned judicial pronouncements, which have well settled the proposition that only the ratio decidendi can act as the binding or authoritative precedent, it is clear that the reliance placed on mere general observations or casual expressions of the Court, is not of much avail to the respondents."*

34. In view of above, it is well settled that obiter dictum is a mere observation or remark made by the court by way of aside while deciding the actual issue before it. The mere casual statement or observation which is not relevant, pertinent or essential to decide the issue in hand does not form the part of the judgment of the Court and have no authoritative value. The expression of the personal view or opinion of the Judge is just a casual remark made whilst deviating from answering the actual issues pending before the Court. These casual remarks are considered or treated as beyond the ambit of the authoritative or operative part of the judgment."

17. In ***Property Owners Association and Others Vs. State of Maharashtra and others*** reported in ***(2024) 18 SCC 1***, in a Constitution Bench, the Hon'ble Supreme Court has held as follows:

153. Not every observation in a judgement of this Court is binding as precedent. Only the ratio decidendi or the propositions of law that were necessary to decide on the issues between the parties are binding. Observations by the judge, even determinative statements of law, which are not part of her reasoning on a question or issue before the court, are termed obiter dicta. Such observations do not bind the Court. More simply, a case is only an authority for what it actually decides.

154. A Constitution Bench of this Court (speaking through Chief Justice Khare) in Islamic Academy of Education v. State of Karnataka111 pithily observed:

> *"2. The ratio decidendi of a judgment has to be found out only on reading the entire judgment. In fact, the ratio of the judgment is what is set out in the judgment itself. The answer to the question would necessarily have to be read in the context of what is set out in the judgment and not in isolation. In case of any doubt as regards any observations, reasons and principles, the other part of the judgment has to be looked into. By reading a line here and there from the judgment, one cannot find out the entire ratio decidendi of the judgment."*

18. Therefore, from the above judgments, the observations made by the Full Bench, which are in no way connected to the issue referred to the Full Bench, are, in our view, contrary to the plain meaning of Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the observations contained in paragraphs 27 and 28 in ***S.Andiyanna's case*** are to be held as an *obiter dicta* and not a binding precedent for holding that surcharge proceedings are not maintainable.

19. We also refer to the judgment of this Court in ***P. Thangavel vs. The Chairman, Common Cadre Committee***, reported in ***2012 (3) CTC 468***. In that case, this Court held that, although disciplinary proceedings cannot be initiated in the absence of service rules, a Co-operative Society can initiate surcharge proceedings against a retired employee. A similar view has been taken in ***R. Murugesan vs. Joint Registrar of Co-operative Societies***, reported in ***2014-2-L.W. 96***. Further, in ***M.K.S. Balasubramanian vs. The Kancheepuram Central Co-operative Bank Limited,*** reported in ***2010 (2) CTC 569***, a Division Bench of this Court held that, although disciplinary proceedings under Section 87 cannot be initiated against a deceased official, the loss sustained by the Society can be recovered from the legal representatives of the said erring official. Therefore, we are of the definite view that, as the issue before the Full Bench was not with regard to surcharge proceedings, the observations made therein can only be construed as *obiter dictum* and not as *ratio decidendi*. This has also been held in ***Kerala State Science & Technology Museum vs. Rambal Co. and Others***, reported in ***(2006) 6 SCC 258***.

20. In view of the above, and having regard to the legislative intent to recover the loss caused to the Society from its past or present employees, we answer the reference as follows:

> Surcharge proceedings against a retired employee are also permissible under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, provided that the same are initiated within the time limit stipulated under the said provision.

21. It is also brought to our notice as to the amendment made in the first proviso to Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983, wherein the following amendment has been made:

> *"Provided that no action shall be commenced under this sub-section after the expiry of seven years from the date of detection of any act or omission referred to in this sub-section".*

22. Prior to the amendment, the first proviso to Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983, read 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".*

23. Though the constitution validity of amendment was upheld by the Division Bench of this Court in W.P.No.21100 of 2022 ***(H. Rajasekar vs. The Principal Secretary to Government, Chennai 9)***, dated 18.08.2022, the issue regarding the period of seven years, whether it is to be reckoned from the date of the Act or omission or from the date of detection, is pending consideration before the Larger Bench. Therefore, while upholding the constitutional validity of the amendment, the Division Bench has left open the question as to whether the first proviso to Section 87(1) of the Tamil Nadu Co-operative Societies Act, 1983, will have prospective or retrospective effect, which would be governed by the outcome of the judgment of the Larger Bench in ***Special Officer, S.1945, Madgondapalli Primary Agricultural Co-operative Bank Ltd. vs. The Deputy Registrar of Co-operative Societies, Krishnagiri Circle and Others [W.A. No. 1522 of 2009]*** and connected batch. Therefore, the question of limitation has to be decided by the Larger Bench, as the issue is already seized by it, and we are not expressing any view on that aspect. However, on a plain reading of the

the Tamil Nadu Co-operative Societies Act, 1983, we answer the issue by holding that surcharge proceedings can be initiated against a retired employee.

24. The Writ Petition may be listed before the appropriate Court for orders in accordance with the answer given by us in the reference.

25. We also place on record our appreciation for the valuable assistance rendered by Mr. Issaac Mohanlal, learned Senior Counsel, Mr.M.Ajmal Khan, learned Additional Advocate General, Mr.H.Arumugam, learned counsel for the petitioner and Mr. Sunny Sheenakkara, learned counsel, who have brought to our notice various aspects of past legislations.

[N.S.K., J.] & [B.P.,J.] & [M.J.R., J.]
27.04.2026

NCC : Yes
Index : Yes
Internet : Yes
vsm

N.SATHISH KUMAR, J.
and
B.PUGALENDHI,J.
AND
M.JOTHIRAMAN, J.

vsm

To

The Deputy Registrar of Co-operative Societies,
Madurai Range, Madurai.

WP(MD)No.14274 of 2020

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