

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.11.2015

CORAM

THE HON'BLE Mr.JUSTICE T.S.SIVAGNANAM

W.P.No.19485 of 2015 &
M.P.Nos. 1 & 2 of 2015

R.Mallan

[PETITIONER]

Vs

- 1 The Deputy Registrar of Co-operative Societies
(Full Additional Charge)
Dharmapuri Circle, Dharmapuri.
- 2 The Co-operative Sub Registrar/
Enquiry Officer
O/o.Deputy Registrar of Co-operative Societies
Dharmapuri.

[RESPONDENTS]

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent in his proceedings in Na.Ka. 1475/2015/Sa.Pa1 dated 26.05.2015 quash the same.

For Petitioner ..Mr.M.S.Palaniswamy

For Respondents ..Mr.Bala Ramesh
Addl.Govt.Pleader

ORDER

By consent of the learned counsel on either side, the writ petition is taken up for final disposal.

2. Heard Mr.M.S.Palaniswamy, learned Counsel appearing for the petitioner and Mr.Bala Ramesh, learned Additional Government Pleader appearing for the respondents.

3. In the present proceedings, the petitioner who is the President of the Primary Agricultural Co-operative Credit Society Ltd., has challenged the notice issued by the first respondent and proposing to conduct an enquiry under section 81 of the Tamil nadu Co-operative Societies Act, 1983 (in short the 'Act').

4. The petitioner would state that he and other Board Members are being repeatedly harassed at the behest of certain other Board Members who are acting against the interest of the Society. It is his further submission that three of the Board Members have been removed from the Office and they have also represented as if they are the Board Members and given a complaint. Further, the learned counsel submitted that the earlier enquiry which was conducted pursuant to an order dated 28.01.2014, the enquiry officer has rendered a specific finding that the charges/allegations are not proved. Therefore, once again referred to a fresh proceedings against the petitioner and other Directors for the same cause of action, would amounts to double jeopardy and abuse of process of law.

5. In the counter affidavit filed by the first respondent, in paragraph No.9, it has been admitted that the earlier enquiry in which one N.A.Bashkaran, Co-operative Sub Registrar was appointed as an enquiry officer by order dated 15.4.2015 to conduct an enquiry under section 81 of the Act, which was directed to be held pursuant to the order of the first respondent dated 28.01.2014.

6. The counter does not specifically state that what was the outcome of the said enquiry. The learned Additional Government Pleader on instructions submitted that the findings in the enquiry are in favour of the petitioner. However, till date the copy of the report has not been furnished to the petitioner.

7. From the counter affidavit, it is further seen that the second enquiry has been initiated under section 81 of the Act, and the first respondent would state that it is not a fresh enquiry. The reason for conducting the enquiry for the second time is by contending that there is misappropriation of huge amount of Rs.14.36,430/-.

8. On a perusal of the complaints given on 12.08.2013 and on 20.04.2014, it is evident that they pertain to the same allegation of alleged misappropriation of funds allotted by the Government for the benefit of the farmers. Therefore, the petitioner is entitled to know as to on what basis the enquiry officer who was appointed by an order dated 15.4.2015, held that the charges/allegations were not made out. Only if the petitioner is furnished with the copy of the said report under section 81 of the Act, the petitioner would be able to put forth his defence and without furnishing the copy of the said enquiry report, if the respondents initiate fresh action on the same cause action by virtue of the impugned notice, it would amount to clear violation of principles of natural justice. Therefore, unless and until the petitioner is furnished with the copy of the enquiry report submitted by N.A.Bashkaran, who was appointed pursuant to the order dated 15.4.2015, the first respondent cannot proceed with the impugned notice.

8. Accordingly, the first respondent is directed to furnish the copy of the enquiry report submitted in the statutory enquiry ordered under section 81 of the Act by proceedings dated 28.1.2014, within a period of two months from the date of receipt of a copy of this order. On receipt of the same, the petitioner is entitled to raise all objections and the petitioner is also entitled to canvass all legal points as well as the factual issues. It is only after receipt of the same, the first respondent shall afford an opportunity of personal hearing to the petitioner and then has to pass order as to why he is satisfied and entitled to order for second enquiry. It is only after communicating such an order, action can be proceeded in accordance with law.

The Writ Petition is disposed of accordingly. No costs. Consequently, connected Miscellaneous Petitions are closed.

Rpa

Sd/-

Assistant Registrar (CCC)

/True Copy/

Sub-Assistant Registrar

To

- 1 The Deputy Registrar of Co-operative Societies
(Full Additional Charge)
Dharmapuri Circle, Dharmapuri.
- 2 The Co-operative Sub Registrar/
Enquiry Officer
O/o. Deputy Registrar of Co-operative Societies
Dharmapuri.

+1 C.C.TO Government Pleader in SR.NO.63530

+1 C.C.TO M.S.Palaniswamy, Advocate in SR.NO.63439

W.P.No.19485 of 2015

CA (CO)

sd : 14/12/2015