

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2015

CORAM

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

W.P.No.33808 of 2015
and
M.P.No.1 of 2015

D.Radhakrishnan

...Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Perambalur Region,
Perambalur Town,
Perambalur Taluk & District.
 2. The Deputy Registrar of Co-operative Societies,
Perambalur Circle,
Perambalur Town,
Perambalur Taluk & District.
- ...Respondents

Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records of the 2nd respondent against the petitioner under Section 87 of the Tamilnadu Co-operative Societies Act in his proceedings bearing Na.Ka.473/2015/Sa.Ba dated 30.09.2015 and quash the same.

सत्यमेव जयते

For Petitioner : Mr.G.Ilamurugu

For Respondents : Mr.L.P.Shanmughasundaram
Spl.Govt.Pleader

O R D E R

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

2. Heard Mr.G.Ilamurugu, learned Counsel appearing for the petitioner and Mr.L.P.Shanmughasundaram, learned Special Government Pleader appearing for the respondents.

3.The petitioner who is the President of an Agricultural Co-operative Society, has filed this Writ Petition, challenging the proceedings dated 30.09.2015, issued under section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (in short the 'Act').

4.The petitioner's case is that he assumed the Office as the President of the Society after being successfully elected in the election on 09.05.2013 and he was administering the Society in a very efficient manner. At the relevant time, it came to the notice of the petitioner that the Secretary of the Society one Gandhi Pillai, had committed serious irregularities and therefore, the petitioner issued show cause notice to him on 04.09.2014, for which an explanation was submitted by the Secretary and not being satisfied with the explanation given, the enquiry officer was appointed and the enquiry report was submitted on 16.02.2015. Based on the enquiry report, show cause notice was issued to one Tmt.Vasanth, who was the Clerk in charge of Fertilizer Sales and the petitioner also took steps by filing a petition under section 90 of the Act before the second respondent.

5.In such factual scenario, the petitioner received a notice under section 87 of the Act and simultaneously the petitioner's request for initiating proceedings under section 90 of the Act against the erring employees was rejected. In the background of these facts, the petitioner sought for copy of the investigation report made under section 82 of the Act by representation dated 16.3.2015. Though several grounds have been raised by the petitioner, those grounds need not be gone into and it was suffice to note the primary contention that the impugned order is violation of principles of natural justice.

6.It is seen that the earlier petitioner had filed two writ petitions being W.P.No.20820 of 2015 and W.P.No.21942 of 2015, challenging the show cause notice and the final order passed under Section 36 of the Act. It is not in dispute that those cases were listed before this Court on 21.09.2015 and it is stated that on the said date a request was made on behalf of the respondents to get instructions and file a counter and the matter stood adjourned. Since by then the present impugned proceedings under Section 87 of the Act was posted for enquiry on 22.09.2015, the petitioner filed a memo before the second respondent stating that those two writ petitions were adjourned

and there is an oral observation by the Court, not to finalise the proceedings initiated under section 87 of the Act.

7.This Memo filed by the petitioner is not in dispute since in the impugned order dated 30.09.2015, the second respondent has recorded the fact that the petitioner has filed a memo. However, without accepting or rejecting said memo or assigning fresh date of hearing, the second respondent has straight away proceeded to pass the impugned order. This in my view is in violation of the principles of natural justice.

8.One more aspect to be taken note of is that the report under Section 82 of the Act which is the basis for the proceedings under section 87 of Act as well as under section 36 of the Act has been furnished to the petitioner belatedly and therefore, the earlier writ petitions filed by the petitioners were allowed by this Court and liberty has been granted to the petitioner to submit his objections to the said report under Section 82 of the Act, which is the basis for the proceedings under section 87 of the Act as well as under section 36 of the Act, and thereafter, the matter to be decided afresh. In the instant case also the basis of the proceedings under Section 87 of the Act is a report under section 82 of the Act. This is one more reason to hold that the impugned order is not sustainable in law.

9.Accordingly, this Writ Petition is allowed, the impugned order is set aside and the second respondent is directed to afford an opportunity to the petitioner to submit his objections by referring to the report under Section 82 of the Act and after affording an opportunity of personal hearing to the petitioner and following the procedure contemplated under sub section (4) of ***Section 87** of the Act, the second respondent shall proceed in accordance with law. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CCC)

Dated:-01/12/2015

***Amended as per the order of
this Court dated 18/12/2015**

Sd/-Assistant Registrar

Dated 22/12/2015

//True Copy//

Sub Assistant Registrar

ssn/rpa

To

1. The Joint Registrar of
Co-operative Societies,
Perambalur Region,
Perambalur Town,
Perambalur Taluk & District.

Substituted the order already
despatched on 18/12/2015

2. The Deputy Registrar of
Co-operative Societies,
Perambalur Circle,
Perambalur Town,
Perambalur Taluk & District.

1 CC to Mr.G.Ilamurugu, Advocate SR.No. 68896

1 CC to the Government Pleader, SR.No. 63203

W.P.No.33808 of 2015

PA (CO)
PSI (07.12.2015)

CO-CA
JD 22/12/2015



WEB COPY