

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2016

CORAM:

THE HON'BLE MR.JUSTICE B.RAJENDRAN

W.P.No.27782 of 2016

J.Padmanaban

... Petitioner

Versus

1. The Deputy Registrar,
Office of the Deputy Registrar
of Co-operative Society,
Thiruvarur Circle, Town, Taluk and District.
2. Muthurangan,
Co-operative Sub Registrar,
Section 81 Enquiry Officer,
Valangaiman, Kudavasal Taluk,
Thiruvarur District.

... Respondents

Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of mandamus, to direct the 1st respondent to furnish the petitioner the documents sought by him in his representation dated 01.08.2016 in respect of the enquiry being conducted by the Enquiry Officer, the 2nd respondent herein, under Section 81 of the Tamil Nadu Co-operative Society Act, 1983 and conclude the enquiry under Section 87 of Tamil Nadu Co-operative Society Act, 1983 thereafter within a time frame fixed by this Court.

For Petitioner : M/s.P.Adhavan Seral

For R-1 : Mr. L.P. Shanmuga Sundaram,
Special Government Pleader

ORDER

The petitioner joined the services of Kattur Primary Agricultural Co-operative Credit Society as a Clerk on 25.03.1985 and thereafter, he was promoted as a Secretary on 19.02.1997. The petitioner was due to retire from service on 30.06.2015. At the verge of his retirement, the 1st respondent, vide proceedings dated 24.06.2015, had initiated the proceedings under Section 81 of the Tamil Nadu Co-operative Society Act, 1983 and appointed the 2nd respondent as Enquiry Officer for the said Proceedings. After conducting the enquiry under Section 81 of the Tamil Nadu Co-operative Society

Act, 1983, the Enquiry Officer filed his enquiry report on 29.09.2015. Based on the said enquiry report, the first respondent initiated proceedings under Section 87 of the Tamil Nadu Co-operative Society Act, 1893. Immediately, the petitioner requested the first respondent to furnish certain documents relied by the 2nd respondent in his enquiry report dated 29.09.2015. Instead of producing the documents sought for by the petitioner, the first respondent sent summon dated 26.07.2016, directing the petitioner to be present before him and to show cause as to why proceedings under Section 87 of the Tamil Nadu Co-operative Society Act, 1983 be not initiated against him. For such enquiry, the petitioner was directed to be present on 18.08.2016 at about 10.00 a.m. On receipt of the summons, the petitioner made a representation dated 01.08.2016 to the first respondent to furnish the documents pertaining to the proceedings under Section 81 of the Tamil Nadu Co-operative Society Act, 1983, to enable to him to give a reply for the said proceedings. Since there was no response from the first respondent, the present writ petition has been filed by the petitioner.

2. According to the learned counsel for the petitioner, the second respondent did not conduct the enquiry properly and the enquiry report does not contain any details. Further, the first respondent ought to have followed the principles of natural justice and ought to have sent all the documents requested by him, before sending the summon under Section 87 of the Tamil Nadu Co-operative Society Act, 1983. Moreover, the first respondent ought to have given reasonable opportunity to him to peruse and file reply for the show cause notice issued under Section 87 of the Tamil Nadu Co-operative Society Act 1983. The learned counsel for the petitioner would further contend that the petitioner is ready and willing to co-operate with the enquiry, provided the documents sought by him is furnished to him by the first respondent.

3. The learned counsel appearing for the first respondent, relying upon the Judgment of this Court, reported in 2014 (2) CWC 615 (D.Sathyamoorthy vs. The Deputy Registrar of Co-operative Societies, Uthakamandalam and two others) would contend that there is no provision for cross examination in the proceedings initiated under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983. Further, there is no violation of principles of natural justice in the summons relating to the enquiry sought to be conducted under Section 81 of the Tamil Nadu Co-operative Society Act, 1983. The learned counsel for the first respondent also undertakes that if the petitioner appears on 10.08.2016, he will be furnished with a copy of the enquiry report as well as the evidence recorded therein to enable him to give a reply for the proceedings.

4. In the judgment relied upon by the learned Standing Counsel appearing for the first respondent, this Court has held as follows:

8. Now comes the crucial provision contained in Section 87 of the Act. A plain reading of Section 87, would make it abundantly clear that a Surcharge proceeding under Section 87 shall be initiated on the basis of audit under Section 80, or inquiry under Section 81, or inspection or investigation under Section 82, or inspection of books under Section 83, or winding up of the Society. Therefore, it is crystal clear that for initiation of a Surcharge proceeding under Section 87 of the Act, a Report submitted under Section 80, or under Section 81, or under Section 82, or under Section 83, is the foundation. The actual adjudication happens only in the Surcharge proceeding under Section 87 of the Act. That is the reason why, Section 87, makes it mandatory that before making an Order in the Surcharge proceeding a reasonable opportunity should be given to the persons concerned. It is only at this stage, witnesses are examined and documentary evidences are tendered and the persons against whom Surcharge proceeding has been initiated is allowed to cross-examine the witnesses if he so wishes and also to lead evidence on his side, both oral and documentary. Section 87(4) of the Act also makes it clear that the Officer, who conducts Surcharge proceeding shall have all the powers of the Civil Court in respect of matters enumerated therein such as, summoning and enforcing attendance of any person and examine him on oath; requiring the discovery and production of any document; reception of evidence on Affidavits; requisitioning any public record from any Court or office; and issuing commission for examining of witnesses. Any Award passed under Section 87 of the Act is appealable to the Cooperative Tribunal under Section 152 of the Act. The Award could be executed like a Civil Court Decree under Chapter XVI of the Act.

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11. In view of the above legal position, it is manifestly clear that affording opportunity to cross-examine any person during the proceedings under these provisions is nowhere contemplated in the Act. Even Principles of Natural Justice have got no role to play inasmuch as there is no decision taken under these provisions by means of an adjudication so as to result in any Civil consequence against any person. As a matter of fact, it is like an investigation conducted by a Police Officer under Chapter XII of the Code of Criminal Procedure in respect of a Crime, during which, Accused shall have no opportunity to cross-examine any witness, who is examined by the Police officer under Section 161 of Cr.P.C. Therefore, it is crystal clear that during the course

of inspection or investigation under Section 82 of the Act, question of examining any witness in the presence of the person against whom proceeding has been initiated is unknown to the provisions of the Act. Therefore, the contention of the Petitioner that he was not allowed to cross-examine any witness during inspection under Section 82, is untenable and the same deserves only to be rejected.

5. Having regard to the above decision of this Court and in view of the submission made by the learned Standing Counsel appearing for the first respondent, the petitioner is directed appear before the first respondent on 10.08.2016 and on such appearance, the first respondent is directed to furnish a copy of the enquiry report and evidence recorded during the course of enquiry, to the petitioner. On such details being furnished, the petitioner shall give a reply to the first respondent. Thereafter, the first respondent shall proceed further in accordance with law. Accordingly, this writ petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Registrar,
Office of the Deputy Registrar
of Co-operative Society,
Thiruvavur Circle, Town, Taluk and District.

+1cc to M/s.P.Adhavan Seral, Advocate, S.R.No.45343
+1cc to the Government Pleader, S.R.No.45592

W.P.No.27782 of 2016

GJ II(CO)
CA(17/08/2016)