

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.9059 of 2017
& W.M.P.No.9982 of 2017

1. T.Vasudevan
2. S.Ambika
3. L.Rani
4. R.Murugan
5. R.Seetharaman
6. R.Thiruppathi

...Petitioners

Versus

The Joint Registrar of Co-operative Societies,
Krishnagiri Region, Krishnagiri.

... Respondent

Prayers: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a writ of certiorari, calling for the records of the respondent in his notice in Na.Ka.No.1008/2016.sa.pa dated 09.12.2016 quash the same.

For Petitioner

: Mr.M.S.Palaniswamy

For Respondent

: Mr.L.P.Shanmuga Sundaram,
Spl.G.P.

ORDER

This petition has been filed to call for the records of the respondent in his notice in Na.Ka.No.1008/2016.sa.pa dated 09.12.2016 and quash the same.

2. The petitioners were elected as Board of Directors of S.615, Gundalapatti Primary Agricultural Co-operative Credit Society Ltd., Gundalapatty Village, Krishnagiri Taluk on 30.04.2013 and assumed office on 09.05.2013 and one A.Mathivanan was elected as President of the said Society.

3. According to the petitioners, a show cause notice was issued by the respondent in Na.Ka.No.1008/2016sa.pa, dated 09.12.2016 under Section 88 of the Tamil Nadu Co-operative Societies Act. In the aforesaid notice, it was informed to the petitioner as to why the Board of Society should not be superseded for the reasons stated in the notice. According to the petitioners, it seems from the contents of the notice that prior to the show cause notice, an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was conducted and enquiry report was also submitted to the Department against the Society. On the basis of the enquiry report, action has been initiated by issuance of the proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, and the present impugned notice has been issued to the petitioner, which is challenged in this writ petition.

4. The contention of the petitioners is that the respondent has violated the principles of natural justice and not followed the mandatory

provisions under Sections 81(3) and 81(6) of the said Act and Rule 104(7) of the Tamil Nadu Co-operative Societies Rules before issuing show cause notice to the petitioners. The petitioners also relied upon the decision of this Court in the case of Arignar Anna Weavers Co-operative Society Ltd. Vs. State of Tamil Nadu and others reported in AIR 1999 MADRAS 254 and also in the case of M.Marimuthu Vs. Regional Joint Registrar of Co-operative Societies reported in 2014 (6) CTC 296. In the light of the above said judgments as well as violation of Rules, the impugned show cause notice is liable to be quashed.

5. The learned Special Government Pleader appearing for the respondent would submit that the contentions of the petitioners before this Court are false and denied the same and he has filed additional counter affidavit, wherein it has been specifically stated that the respondent has followed the procedures as contemplated under Sections 81(3), 81(6), 88(1) of the Act and rules 104(7) and 105 of the said Rules. Therefore, there is no violation of the said Act and Rules. However, the learned Special Government Pleader furnished relevant documents to the learned counsel for the petitioners as well as before this Court. In the light of the above, challenging the show cause notice before this Court is a premature one and hence the writ petition is liable to be dismissed.

6. Heard the learned counsel for the petitioners as well as the learned Special Government Pleader appearing for the respondent and perused the materials available on record.

7. The only point for consideration in this petition is as to whether the respondent has followed the procedures as contemplated under the Tamil Nadu Co-operative Societies Act and Rules before issuing the impugned show cause notice under Section 88 of the said Act. According to the petitioner, the respondent has not followed the procedures contemplated under provisions of the Sections 81(3), 81(6) and Rule 104(7) of the said Act. Without following the said procedures, the impugned show cause notice issued is illegal and without jurisdiction.

8. In support of the said contentions, the learned counsel for the petitioners also relied on the decision of this Court reported in AIR 1999 MADRAS 254 (cited supra), wherein this Court in paragraphs 11, 12 and 13 held as follows:

"11. I have already extracted Section 82(5) of the Act. The said provision empowers the Registrar to direct the registered society or any officer of the society to take remedial measures after disclosing the result of the inspection or investigation. The rule also provides for the same. If remedial measures are taken, and if the defects, if any pointed out by the Inspection Committee are cured,

respondents will not be justified in taking action under Section 88 of the Act. In this case, no notice or direction has been given by the respondents under Section 82(5) of the Act. According to me, the supersession of the Board must be done as a last resort, and that is why Section 88(1)(a)(i) empowers the Registrar to supersede the Board if the society wilfully disobeys or fails to comply with the directions. The action of the respondents in initiating proceedings under Section 88 of the Act/is therefore, improper.

12. The further question that arises for consideration is, whether the Order itself is violative of the principles of natural justice. The only reason stated is that the Society is not functioning properly. The basis for such an assumption is the Inspection Report. Even in the counter, respondents have no case that the Report or any portion thereof is confidential in nature, nor are the respondents claiming any privilege under Sections 123, 124, 129 and 131 of the Indian Evidence Act. Rule 173 of the Co-operative Societies Rules enables any person to get certified copy of a document filed in the Registrar's Office, on payment of requisite fees. The word used in that Rule is 'person' and not 'a member of society'. Therefore, even a third party is entitled to get copies of a document, subject to payment of the requisite fees. If a third party is entitled to get a certified copy, naturally, a member of the Board, who is an aggrieved person, will be entitled to get a copy of the Report, which is the basis for issuing show-cause notice. Even Rule 104, portions of which I have extracted supra, says that the Registrar is duty bound to communicate the result of the inquiry in brief to the concerned Society. Sub-rule (9) of Rule

104 further says that the Registrar has to communicate necessary details available in the report of inquiry or inspection or investigation required for taking action against the officer or servant. From these provisions, it is clear that there is a duty cast on the respondents to inform the affected person and also the society about the result of the inquiry with the necessary details. If the respondents do not comply with the provisions of Section 82 and the Rules, they cannot initiate action under Section 88 (1) (a) (i) of the Act.

13. The argument of learned Additional Government Pleader is that in the show cause notice itself the result of the inquiry has been given. I do not think that the same will specify the statutory requirement. The result of the enquiry in the show cause notice is only an intimation for taking action under Section 88 of the Act. The petitioners are entitled to challenge validity of the enquiry report verifying the data is given therein, and, for that purpose, they are entitled to have a copy of the same. Only if the Report is based on acceptable materials, it can be held to be valid, and then only on the basis of such a Report, proceedings under Section 88 of the Act can be had. In the instant case, petitioners have not been given such an opportunity."

In the light of the above said decision, the learned counsel for the petitioners submitted that there is violation of said Act and Rules of natural justice, when the same is without jurisdiction and therefore, the impugned show cause is also liable to be quashed.

9. The learned counsel for the petitioners also relied on the decision reported in 2014 (6) CTC 296 (cited supra), wherein this Court held in paragraph 73, 74 and 75 as follows:

"73. Sub-section 6 of Section 88 of the Act states that before passing an order under sub-section (1)(a)(i) in respect of any registered society, the Registrar shall consult, in the manner prescribed, the Board of the financing bank to which the society is indebted.

74. Admittedly, the financing bank is the Pudukkottai District Central Cooperative Bank. There is nothing on record to show that there was any consultation with the Central Cooperative Bank. This Court in the case of K.Thangavelu (cited supra), while considering Section 72 of the Act, which is a para materia of Section 88 of the Act, held that if there is no consultation before issuing show cause notice and if the Joint Registrar ultimately finds that the irregularities have not been established, then the consultation with the financing bank would become a mere formality and sheer waste of time. However, such consultation is necessary before an order of supersession is passed under Section 72 of the Act. Therefore, in the absence of any record to show that there has been consultation with the Central Cooperative Bank, this also is one more ground to set aside the impugned order of supersession.

75. In the case of Arignar Anna Weavers Co-op, Society Ltd. (cited supra), one of the issues, which fallen for consideration, is the power of supersession, under Section 88 of the Act. While considering the scope of the provisions of the Act, this Court pointed out that the very legislation was

enacted for an orderly development of the cooperative movement in accordance with the co-operative principles such as open membership, democratic management, etc. If this is the purpose of the enactment, and the Board has been duly elected to manage the Society, the democratic management can be removed from the Office only after fully satisfying the provisions of the Statute. It is to prevent the mismanagement, such actions are taken, and if the management could be prevented by some other action preserving the democratic principles, retaining the management with the elected body, the same will have to be adopted before proceeding to supersede the Board. Accordingly, Question Nos.6 & 7 are decided in favour of the petitioner."

Hence, the learned counsel for the petitioner submitted that in the absence of any records to show that the respondent has followed the procedure as contemplated under the Act, even the impugned show cause notice is liable to be quashed.

10. The respondent has refuted the contentions of the petitioner and stated in the counter affidavit that the procedures as contemplated under the said Act and Rules have been followed by the respondent before issuing the show cause notice under section 88 of the said Act. As far as the present case is concerned, the said contentions raised by the petitioners, is disputed by the respondent and also produced documents and communication before this Court to show that the rules has been followed

by the respondent and the said copy has been communicated to the Secretary of the Society. The said fact has been disputed by the learned counsel for the petitioners. Whether it is served or not to the Society as contemplated under Rules, cannot be gone into at this stage, which is a disputed fact. It is a settled law by the Hon'ble Supreme Court as well as this Court that when there is disputed question of fact, this Court cannot entertain a writ petition at the show cause stage and the same is premature. In this context, it is to be relied on the decision of the Hon'ble Supreme Court, in the case of Union of India and Another Vs. Kunisetty Satyanarayana, reported in (2006) 12 Supreme Court Cases 28, the Supreme Court, held that,

"15. Writ jurisdiction is discretionary jurisdiction and hence, such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet."

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

11. Considering the above decisions of Supreme Court and this Court and circumstances of the case, this Court is not inclined to interfere

with the impugned show cause notice. Therefore, no case is made out in the writ petition, and the same is liable to be dismissed. However, at the request of the learned counsel for the petitioners, liberty is granted to the petitioners to seek for further documents, if necessary, within a period of one week from the date of receipt of a copy of this order and after receipt of the said documents, the petitioners shall submit their explanation within a period of four weeks thereafter. It is needless to say that thereafter, the respondent shall pass detailed orders, on merits and in accordance with law.

12. With the above observations and directions, the writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

29.08.2017

Index: Yes/ No
Internet: Yes/No
pvs

To
The Joint Registrar of Co-operative Societies,
Krishnagiri Region, Krishnagiri.

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D. KRISHNAKUMAR, J.,

pvs



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