

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13.03.2017

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THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

Writ Petition No.5843 of 2017

and

W.M.P.No.6260 of 2017

C.Maran

.. Petitioner

/versus/

- 1.The Joint Registrar of Co-operative Societies,
Collectorate, Salem.
- 2.The Deputy Registrar of Co-operative Societies,
Omalur Regional Office, Katchery Road,
Omalur, Salem District.
- 3.The Management of
S777, Nangavalli Primary Agricultural Co-operative
Credit Society Ltd.
Nagavalli Post,
Mettur Taluk,
Salem District.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the records relating to the order dated 19.01.2017 made in Na.Ka.10740/2016 on the file of the first respondent herein and quash the same.

For Petitioner :Mr.C.Munusamy

For Respondents :Mr.L.P.Shanmugasundaram

Spl.G.. for R1 to R3

Mr.P.Thirunavukkarasu Co-operative
Society Registrar appeared in Court.

O R D E R

The Writ Petition has been filed praying for issuance of a Writ of Certiorari, to call for the records relating to the order, dated 19.01.2017 made in Na.Ka.10740/2016 on the file of the first respondent herein and quash the same.

2. By consent, the writ petition is taken up for final disposal at the admission stage itself.

3. Mr.L.P.Shanmugasundram, learned Special Government Pleader takes notice on behalf of respondents 1 to 3. Mr.P.Thirunavukkarasu, Sub Registrar of Co-operative Society is appeared in person before this Court.

4. Learned Counsel appearing for the petitioner submitted that the petitioner was elected as one of the Directors of the Society in the year 2013. The resolution has been passed on 07.11.2016 by the Board Members to the effect that malpractice committed by the employees should be brought to the notice of the second respondent. Furthermore, the delinquent employee's properties were attached under Section 167 (1) of the Tamil Nadu Co-operative Societies Act, 1983(herein after referred as "the Act") and they were suspended from service on 08.11.2016 in pursuant to the resolution dated 07.11.2016. On the basis of the resolution passed by the elected Board dated 07.11.2016, the second respondent had initiated enquiry under Section 81 of the Act. The first respondent has issued impugned show cause notice under Section 88 of the Act, without furnishing enquiry report to the petitioner. In pursuant to the show cause notice, impugned order has been passed by the second respondent. The petitioner has filed the present writ petition challenging the impugned order passed by the second respondent on the ground that the respondents department have not furnished a copy of the enquiry report to the petitioner, as contemplated under the provision of law as well as the decision of the Court.

5. In support of his contention, the learned counsel appearing for the petitioner, relied upon a decision of this Court in [N.R.Chandrasekaran and others v. The Joint Registrar of Cooperative Societies, Erode Region, Erode, Erode District and another, W.P.Nos. 43238 and 43239 of 2016, dated 18.01.2017], wherein in a similar issue, this Court has considered the issue raised in this case in paras 20 and 22, which are extracted as follows:-

"20. Thus, in the light of the above, I am of the view that the first respondent, before passing of the orders of supersession and disqualification, has neither followed the principles set out in the above referred case nor Section 88 of the Act nor Section 81(3) read with Rule 104(7) of the Rules, that too without taking note of the fact that the passing of an order of winding up/supersession is analogous to the passing of capital sentence of an individual, therefore, the impugned proceedings are per-se-illegal, hence, the same are liable to be set aside.

22. In fine, the writ petitions are allowed by quashing the impugned orders passed by the first respondent. No costs. Consequently, connected miscellaneous petitions are closed."

6. On the contrary, the learned Special Government Pleader for the respondents, on instruction, submitted that the enquiry report has not been furnished to the petitioner. If at all this Court can set aside the impugned order, a liberty may be granted to the respondents-department to proceed with the enquiry in accordance with law.

7. I have heard the rival submissions made by the learned counsel for both sides.

8. The submission of the respondents-department clearly indicates that the enquiry report has not been furnished to the petitioner. Therefore, I have no hesitation to quash the impugned order passed by the second respondent, but, this order will not stand in the way of the second respondent to proceed with the enquiry under Section 81 of the Act.

9. In the light of the judgment cited supra and having regard to the observations made above, this writ petition is allowed and liberty is granted to the second respondent to proceed with the enquiry against the petitioner as per provisions of the Act. No costs. Consequently, connected M.P. is closed.

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

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To

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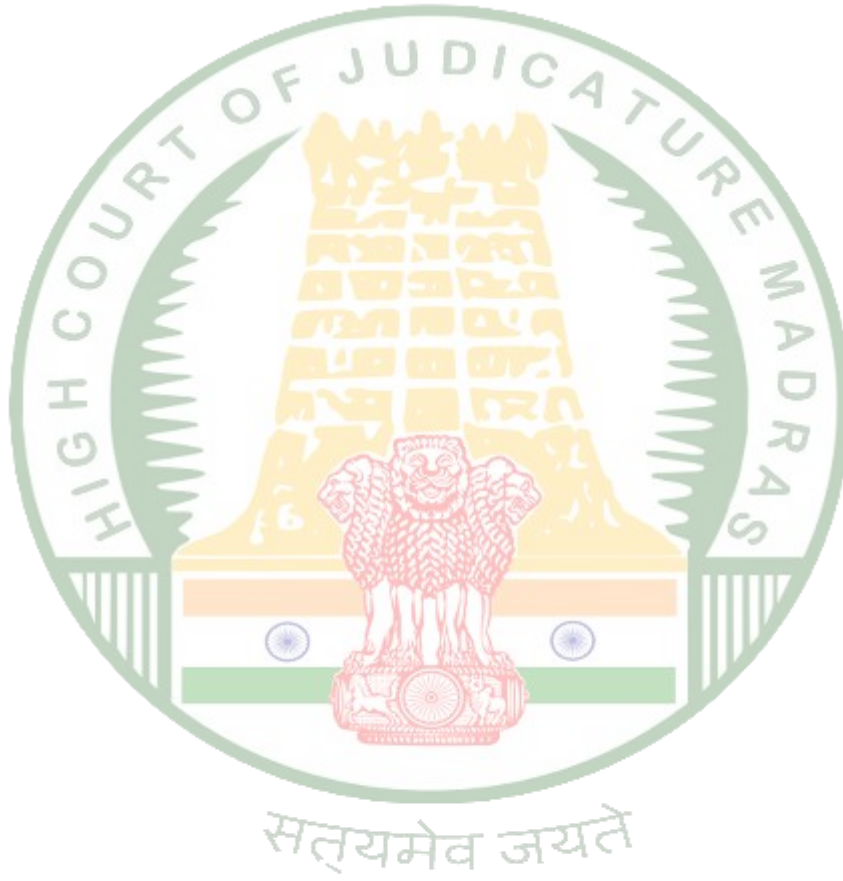
+1cc to Mr.C.Munusamy,Advocate sr.15529

+1cc to Mr.L.P.Shanmugasundaram,Advocate sr.15975

+1cc to Government Pleader sr.16262

W.P.No.5843 of 2017

lrs(co)
ss(28/3/2017)



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