

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :24.08.2017

CORAM :

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WRIT PETITION No.18831 & 4943 of 2015
and
M.P.No.1 & 1 of 2015

P.Ramesh Rajamani ... Petitioner in both WPs

Vs.

1. The Deputy Registrar of Co-operative Societies,
Tiruvallur Circle, Collectorate Campus,
Tiruvallur,
Tiruvallur District.

2. The Enquiry Officer/
Cooperative Sub Registrar,
Uthukottai Primary Agricultural
Cooperative Credit Society,
Uthukottai,
Tiruvallur District.

... Respondents in both WPs

Prayer in W.P.No.18831 of 2015: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to furnish the copy of the U/s.81 enquiry report to the petitioner.

Prayer in W.P.No.4943 of 2015: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents to consider and pass orders on merits by disposing the written representation made by the petitioner on 13.02.2015 within a stipulated time.

For Petitioners: Mr.C.Prakasam(in both WPs)

For Respondents : Mr.L.P.Shanmugasundaram

Special Government Pleader(in both Wps)
(Co-operatives)

C O M M O N O R D E R

The relief sought for in these writ petitions is for a direction to direct the respondents to furnish a copy under Section 81 enquiry report to the petitioner and directing the

respondents to consider and pass orders on merits by disposing the written representation made by the petitioner on 13.03.2015.

2. The petitioner was holding the Post of Secretary in the Uthukottai Primary Agricultural Co-operative Credit Society and was placed under suspension, on account of certain allegations. Furnishing of Section 81 Enquiry report in this case will not arise at this stage, in view of the fact that the writ petitioner is at liberty to peruse the documents and the relevant records only at the time of enquiry or such a request to be made before the competent authority in this regard.

3. This apart, Section 81 of the Tamil Nadu Co-operative Societies Act speaks about inquiry as below:

"The Registrar may, of his own motion and shall, on the application of a majority of the board or of not less than one-third of the members or on the request of the financing bank or of the District Collector, hold an inquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial conditions of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mis-management in relation to that society or into any particular aspect of the working of that society."

4. The Registrar may appoint an officer to conduct an inquiry under Section 81 and the officer so appointed under Section 81 shall conduct inquiry into the allegations or irregularities of a particular co-operative society and submit his detailed report to the Registrar for further action. This report submitted under Section 81 is an internal report between the Registrar and the enquiry officer. Such a statutory enquiry conducted under the provisions of Section 81 of the Act is only for the purpose of finding out the nature of the irregularities and the actual irregularities committed in the administration of the society. Such a statutory inquiry conducted by the Registrar through his officers cannot be construed as a document to be directly supplied to the delinquents'. The report is internal in nature and based on the Section 81 report, the Registrar has to initiate further action under the Act.

5. The Tamil Nadu Co-operative Societies Act contemplates an inquiry to be conducted under Section 81 of the Act, by the Registrar by appointing an officer, so also, an Inspection and Investigation under Section 82 of the Act. Section 83 speaks about Inspection of books by Financing Bank. Section 84 speaks about Maintenance of accounts and books by registered Society. Section 85 speaks about Costs of Inquiry and Inspection, etc.

Section 86 speaks about the Registered Society to pay certain expenses. Section 87 states that "Where in the course of an audit under Section 80 or an inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83 or the winding-up of a Society, it appears that any person who is or was entrusted with the organization or management of the Society or any past or present officer or servant of the Society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the Society or has caused any deficiency in the assets of the Society by breach of trust or wilful negligence or has made any payment which is not in accordance with this Act, the Rules or the By-laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the Board, Liquidator or any creditor or contributor may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned and in the case of a deceased person, to the representative who inherits his estate, to answer the charges, make an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect of the misappropriation, mis-application of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are not in accordance with this Act, the Rules or the By-laws as the Registrar or the person authorised as aforesaid thinks just".

6. If any surcharge proceedings are initiated under the said provision, sufficient opportunity has to be provided to the delinquent and an inquiry is also required in this regard. This apart, the Registrar may file a criminal complaint before the Commercial Crime Investigation Wing for registration of a criminal case for the offenses committed by the employees of the co-operative societies or by the management. Thus, the action are two-fold in respect of an enquiry report submitted under Section 81 of the Act. Accordingly, it is left open to the Registrar based on the seriousness of the allegations in the report either to initiate surcharge proceedings, to register a criminal case and to initiate departmental disciplinary proceedings. In all these three proceedings, an opportunity has to be provided for the person against whom such actions are initiated and the surcharge proceedings are to be conducted in the manner prescribed under the Tamil Nadu Co-operative Societies Act, the criminal case registered will take its course in accordance with the criminal procedure code and the departmental proceedings initiated will be conducted in accordance with the service rules in force in this regard.

Thus, all the three proceedings are independent and separate and the same can be allowed together simultaneously without any interruption. Thus, Section 81 inquiry report is only a source for the commencement of all the proceedings stated supra and the same need not be given or furnished directly to the delinquent at the first instance. If the employee is of the opinion that such an enquiry report is of same reliance for establishing his innocence, he may be allowed to peruse the same during the course of enquiry either under Section 87 or in the departmental disciplinary proceedings and he may be allowed to raise defence on the basis of the report. However, no writ can be entertained at this stage for a direction to furnish a copy of Section 81 report to the delinquents. It is left open to the writ petitioner to participate in the actions if any initiated against the petitioner and thereafter he can seek the same before the enquiry officer or before the authorities concerned either for perusal of the same or to get the copy of the same.

7. The learned counsel appearing for the respondents have stated that the irregularities and the illegalities committed by the writ petitioner is serious in nature and in their counter, they have narrated the nature of irregularities as extracted hereunder:

"4. I respectfully submit that the above writ petition is not maintainable either in Law or on Facts. The Petitioner was working as a Secretary in the Uthukottai Primary Agricultural Co-operative Credit Society. While he was discharging as a Secretary on 02.12.2014 the 1st Respondent viz. The Deputy Registrar of Co-operative Societies, on a surprise visit to the said Society and inspected the records and checked cash balance as per cash book it was found that out of Rs.5,66,797/- the cash balance available only Rs.2,81,825/-. The remaining amount of Rs.2,84,972/- was not produced before the 1st Respondent. This was one of the misappropriation committed by the petitioner.

5. I respectfully submit that on verification of jewel loan and jewel bags as per jewel loan ledger, the following jewels were pledged before the said Society.

Sl.No	Loan No./Date	Member No.& Name	Jewel Loan Amount
1.	3249/15.10.2014	2441/Stephen	1,26,000
2.	3250/15.10.2014	2441/Stephen	95,000
3.	3251/15.10.2014	2441/Stephen	89,000
4.	3252/15.10.2014	2441/Stephen	81,000
5.	3253/21.10.2014	1603/M.G.Siva	4,06,000
		Total	7,97,000

6. The above jewels were pledged under the Jewel Loan account and they were not produced for the inspection by the Petitioner who was the custodian of the above mentioned jewels which the petitioner had misappropriated in the jewel loan head to the tune of Rs.7,97,000/-

7. I respectfully submit that the inspection Officer has found that a cash balance of Rs.2,84,972/- and the Jewel Loan of Rs.7,97,000/- was misappropriated by the Secretary. The total amount in both the items works out to Rs.10,81,972/- Hence the inspection officer concluded that a detailed statutory enquiry will bring the misappropriation and other affairs of the society. So the Enquiry under Section 81 of the Tamil Nadu cooperative Societies was ordered in proceedings in Rc.No.2890/2014/E2 dated 15.12.2014 and the Inquiry Officer viz. one P. Kathavarayan was appointed. The enquiry Officer started the Enquiry on 18.12.2014."

8. In view of the fact that the allegations are relating to huge amount of misappropriation, certainly all required actions under the Tamil Nadu Co-operative Societies Act, the criminal law and the departmental disciplinary proceedings are warranted against the writ petitioner. Thus, it is for the writ petitioner to participate in all these proceedings initiated against him and defend his case in accordance with law.

9. This apart, if a surcharge order is passed, taking enquiry by the competent authority under the provisions of the Tamil Nadu Co-operative Societies Act. An appeal lies before the Co-operative Tribunal constituted under Section 152 of the Tamil Nadu Co-operative Societies Act. Thus, a remedy lies to the writ petitioner even before the Co-operative Tribunal constituted under Section 152 of the Tamil Nadu Co-operative Societies Act. Therefore, it is not as if the writ petitioner has no remedy under law for the purpose of perusing the report submitted under Section 81 of the Act, this Court is of the opinion that the writ petitioner is adopting a tactics to prolong or protract and in order to avoid further disciplinary proceedings under law. Such an attitude of the delinquent officials is certainly to be deprecated and the Hon'ble High Court under Article 226 of the Constitution of India cannot provide rope for this kind of attitude of the litigants filed in order to prolong the disciplinary proceedings for personal gains. Such being the view of this Court, the prayer as such sought for in this writ petition need not be considered and it is left open to the writ petitioner to seek appropriate remedy before the appropriate forum under law.

10. Accordingly, the writ petitions stand dismissed. However, there is no order as to costs. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Registrar of Co-operative Societies, Tiruvallur Circle, Collectorate Campus, Tiruvallur, Tiruvallur District.

2. The Enquiry Officer/
Cooperative Sub Registrar, Uthukottai Primary Agricultural Cooperative Credit Society, Uthukottai, Tiruvallur District.

+ 1 cc to MR. L.P. Shanmugasundaram, Advocate SR.61772
+ 2 ccs to Mr. C. Prakasam, Advocate SR.61480

W.P.No.18831 & 4943 of 2015

MSM(CO)
EU(06/10/2017)