

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.19594 of 2015
and
M.P Nos. 1 to 3 of 2015

P. Mahalakshmi

..Petitioner

Vs.

1. The Deputy Registrar of
Co-operative Societies
Mayiladuthurai Circle
Mayiladuthurai,
Nagapattinam District.

2. The Managing Director /
Deputy Registrar
Mayiladuthurai Consumer's Co-operative
Wholesale Stores Ltd. T-917
No.5-B, Narayana Pillai Street
Mayiladuthurai,
Nagapattinam 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 entire records relating to the order passed by the 1st respondent in his proceedings in Na.Ka. 2658/2014 Va.Th., dated 10.04.2015 and quash the same in so far as the petitioner is concerned and pass further orders.

For Petitioner : Mr. C. Prakasam

For Respondents : Ms. T. Girija,
Govt. Advocate for R1
Ms. T.P. Savitha for R2

O R D E R

The petitioner has filed the present writ petition challenging the impugned surcharge proceedings issued by the 1st respondent in his proceedings in Na.Ka. 2658/2014 Va.Th. dated 10.04.2015, under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983.

2. According to the petitioner, the petitioner has challenged the surcharge proceedings on the ground that the enquiry report made under Section 81 of the Act, has not been furnished to the petitioner. It is further stated that at the time of enquiry conducted by the respondents, the petitioner filed a writ petition in W.P. No. 8647 of 2015 before this Court, praying to direct the respondents to furnish the enquiry report. This Court ordered interim stay of all further proceedings on 26.03.2015. In spite of the said order, the 1st respondent has passed the impugned order. Therefore, the impugned order is liable to be quashed.

3. Learned Government Advocate appearing for the 1st respondent would submit that the petitioner was not denied with the 81 enquiry report and was permitted to peruse the records, as stated in the counter affidavit. As per the deposition made by the petitioner on 10.03.2015, she has admitted that the enquiry was conducted in a proper manner. Now, the petitioner has challenged the surcharge proceedings, on the ground of non-furnishing the enquiry report, is unsustainable in law.

4. Learned counsel for the 2nd respondent would submit that the surcharge order has been passed without any violation of the procedures, contemplated under the Tamil Nadu co-operative Societies Act, 1983 and therefore the writ petition is liable to be dismissed.

5. Heard the rival submissions of the learned counsel for the parties and perused the material available on record.

6. It is the contention of the petitioner that the respondent has passed the impugned order, without furnishing the enquiry report. At the time of enquiry, the petitioner has approached this Court, filing a writ petition in W.P. No. 8647 of 2015, with a prayer to direct the 1st respondent to furnish a copy of the enquiry report to the petitioner, enabling her to submit a detailed explanation for enquiry under Section 87 of the surcharge proceedings. This Court has entertained the said writ petition and granted interim stay, at the admission stage itself and the same is pending before this Court. In spite of that, the 1st respondent has passed the impugned order. Learned Government Advocate appearing for the 1st respondent submitted that subsequent to the impugned order passed by the 1st respondent, a communication has been received in the aforesaid W.P. No.8647 of 2015. Therefore, the contention of the petitioner is incorrect and the said contention is liable to be rejected. Subsequently, the respondents have not initiated any proceedings against the petitioner.

7. Now the issue involved in this writ petition is whether the enquiry report has been furnished to the petitioner at the time of enquiry. Under the provisions of Act, the respondent has to furnish a copy of the enquiry report to the petitioner. In the earlier occasion, this Court has considered and discussed in detail in W.P. Nos.7648, 16617 & 31309 of 2015 dated 06.01.2017, in the case of C. Kamaraj vs. The Registrar of Cooperative Societies, reported in 2017 (1) CTC 258. In view of the said judgement and the facts of the case, it is found that the enquiry report has not been furnished to the petitioner. Therefore, this Court has no hesitation to interfere with the order passed by the 1st respondent, that has been passed in violation to the principles of natural justice, by not furnishing the enquiry report to the petitioner.

8. Therefore, the impugned order passed by the 1st respondent in his proceedings in Na.Ka. 2658/2014 Va.Tha. Dated 10.04.2015, is quashed and the case is remanded back to the authorities concerned, to be considered afresh and pass orders on merits, as expeditiously as possible, after furnishing a copy of the enquiry report to the petitioner.

9. The writ petition is allowed, on the above terms. Consequently, the connected Miscellaneous petitions are closed. No costs.

Sd/-
Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

avr

To

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No.5-B, Narayana Pillai Street
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Nagapattinam District.

+1cc to Mr.Prakasam,Advocate sr.44887

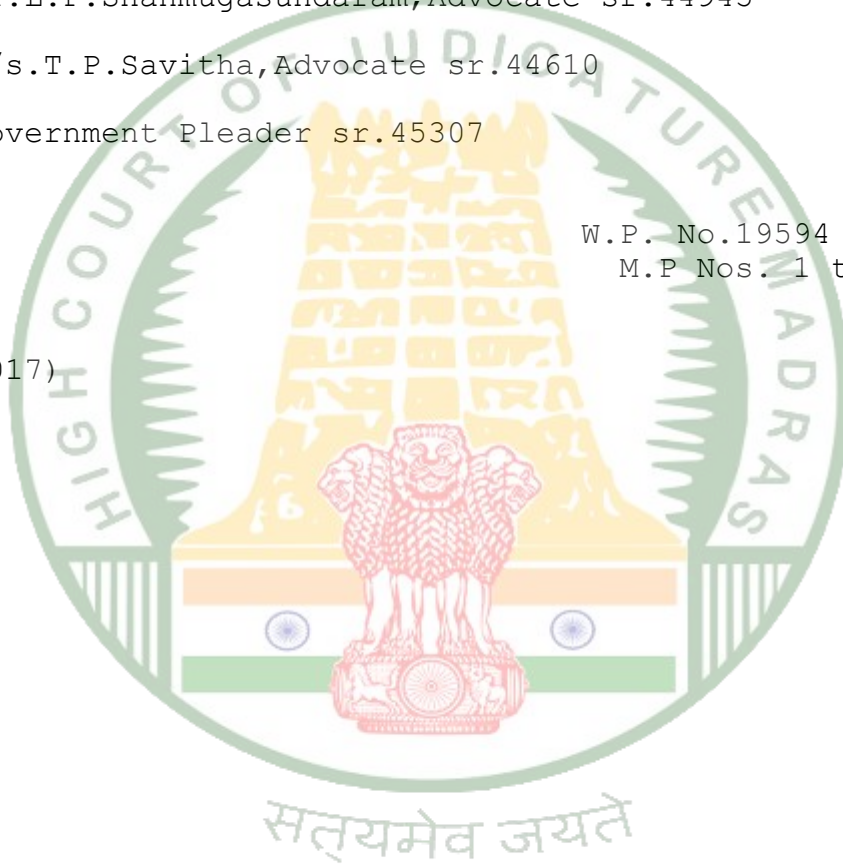
+1cc to Mr.L.P.Shanmugasundaram,Advocate sr.44945

+1cc to M/s.T.P.Savitha,Advocate sr.44610

+1cc to Government Pleader sr.45307

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M.P Nos. 1 to 3 of 2015

ks(co)
ss(11/8/2017)



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