

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 11.09.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.24274 of 2017
and WMP.Nos.25659 & 25660 of 2017

R.Purushothaman

..Petitioner

Vs.

1. The Deputy Registrar,
of Cooperative Societies,
Udhagamandalam,
Nilgiris District

2. C.Ayyanar

..Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorarified mandamus calling for the records of the impugned enquiry report of the second respondent dated 10.12.2015 and quash the same as far as the petitioner is concerned and direct the respondents to conduct a fresh enquiry after issuing enquiry notice to the petitioner.

For Petitioner : Mr.V.Jeevagiridharan

For Respondents : Mrs.T.Girija,

Government Advocate for R1

ORDER:

According to the petitioner, the petitioner assumed charge as President of "Nilgiri District Teachers Cooperative Thrift and Credit Society" on 09.05.2013. At that time, the petitioner was informed that registers and records of the society had been taken away by the higher officials for auditing and for enquiry. The new board of directors suspended the then Secretary of the society. So, the Joint Registrar, Deputy Registrar and others entered the society and tampered with the documents. Having vengeance against the board of the society, the board was dissolved on 18.02.2015 and an enquiry was conducted. Without giving any notice, the second respondent concluded the same and found the petitioner guilty. Pursuant to

that, the first respondent has issued a show cause notice dated 28.06.2017. The petitioner sent a letter dated 10.07.2017 to the first respondent seeking some documents relating to the allegations. The first respondent without furnishing the documents, has taken steps to lodge a criminal complaint against the petitioner on the basis of the enquiry report submitted by the second respondent. Hence, challenging the enquiry report, the petitioner has filed the present writ petition before this Court.

2. The learned Government Advocate has drawn attention on the decision of this Court in the case of K.Sathyamoorthy Vs. The Deputy Registrar of Cooperative Societies & Others reported in CDJ 2014 MHC 2475 : 2014 (7) MLJ 850, and stated that the writ petition is liable to be dismissed.

3. In the present case, the petitioner has challenged the enquiry report dated 10.12.2015 passed by the second respondent, based on which the said show cause notice has been served to the petitioner under Section 87 (1) of the Act. The petitioner has challenged only the enquiry report before this Court by submitting that no opportunity was given to the petitioner at the time of enquiry conducted under Section 81 of the Act. The issue of 'opportunity to examine the witnesses' has already been discussed by this Court in the aforesaid decision, wherein this Court has held in Paragraphs 11, 12 and 13 as follows.

"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.

12. The learned counsel for the petitioner would further submit that since there was an order from this Court directing the Sub Registrar to permit the petitioner to cross examine the witnesses, the same should have been scrupulously followed. In my considered opinion, with great respect to the Hon'ble Judge who decided the matter, I am constrained to declare that the said view taken in W.P.No.34265 of 2013 is per incuriam as the same is contrary to the express provisions contained in Section 82 of the Act. Investigation or inspection is supposed to be a secret affair to find out the truth. The officer holding such investigation or inspection may summon any person to explain in respect of the affairs of the society. Except to this extent, there is no enabling provision or mandatory provision in the Tamil Nadu Cooperative Societies Act or in the rules thereunder requiring the officer to hold inspection or investigation in the presence of any individual and to permit him to cross examine any person. It is needless to state that during such proceeding under Sections 80, 81, 82 and 83 of the Act no oath is administered on any witness. Therefore, question of cross examining any person by any adverse party does not at all arise. In view of such position, I am impelled to reject the contention of the learned counsel for the petitioner.

13. In respect of all other grounds raised in this writ petition, as extracted above, I have to state that these are all matters which are to be gone into during surcharge proceeding under Section 87 of the Act during which, the petitioner will be afforded sufficient opportunity. As I have already pointed out, what is challenged before this Court is only a surcharge proceeding initiated under Section 87 of the Act. The petitioner has got alternative

remedy to raise all his defences during such proceeding and to prove his innocence. Thus, I do not find any merit at all in this writ petition and the writ petition is highly misconceived."

4. In view of the above said facts and in the light of the decision of this Court cited supra, no case has been made out to interfere with the enquiry report submitted by the second respondent at this stage. Hence, the writ petition is liable to be dismissed.

5. In the result, the writ petition is dismissed. However, liberty is granted to the petitioner to agitate and raise all the above grounds before the authority concerned. Consequently, the connected miscellaneous petitions are closed. No costs.

-Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

To

The Deputy Registrar,
of Cooperative Societies,
Udhagamandalam,
Nilgiris District

- 1cc to Mr.V.Jeevagiridharan, Advocate Sr.No.65818
- + 1cc to The Government Pleader Sr.No.66447

सत्यमेव जयते

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KP (23/11/2017)

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