

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.07.2017

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

WP.No.18335 to 18337 of 2017 and
WMP.No.19907 to 19909 of 2017

Velmurugan ... Petitioner in W.P.No.18335/2017
Gangadevi ... Petitioner in W.P.No.18336/2017
Durairaj ... Petitioner in W.P.No.18337/2017

Versus

The Deputy Registrar of Co-Op. Societies
Athiyaman Poonga
Back side of District Collectorate,
Dharmapuri. Respondent

PRAYER: Writ petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondent to consider the representation dated 07.06.2017 and 13.07.2017 in WP:18335/2017, dated 02.06.2017 and 13/07/2017 in WP:18336/2017 and WP:18337/2017 sent to him by the petitioner seeking to furnish the petitioner the copies of enquiry report and other related documents in the enquiry conducted u/s 81 of the Tamil Nadu Co-op. Societies Act.

For Petitioner : Mr.V.Jeevagiridharan

For Respondents : Mr.L.P.Shanmuga sundaram,
Spl Govt Pleader (Co-operative)

ORDER

The relief sought for in this writ petitions are to furnish the petitioner with the copies of the enquiry report and other related documents in the enquiry conducted under Section 81 of the Cooperative Societies Act, 1983. This Court is of the view that if the registrar is of the opinion that, certain irregularities occurred in any Cooperative Society, he may order for an enquiry under Section 81 of the Cooperative Societies Act, which states that

" 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'".

2. The registrar on receipt of the enquiry report from the authorities who conducted enquiry, shall initiate proper action for criminal prosecution and surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act. Thus, the enquiry report under Section 81 shall be the basis for enquiry of both criminal prosecution as well as surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act.

3. The learned counsel appearing for the writ petitioner would contend that the action has been taken against the writ petitioner under Section 87 of the said Act, is based on the enquiry report submitted under Section 81 of the said Act and therefore, unless the copies of Section 81 of the said Act is furnished to the writ petitioner, it may not be possible for the writ petitioner to submit their explanation/objection. This Court took note of this arguments on the ground that Section 81 report shall be submitted covering all the aspects of the Society. The registrar on application of his mind, may initiate action either for criminal prosecution or to initiate surcharge proceedings under Section 87 of the Act. Thus, the discretion is vested with the authorities to decide the course of action to be undertaken against the officials concerned.

4. In this regard, this Court is of the firm view that after considering the findings in the enquiry report under Section 81 of the Act, before initiating surcharge proceedings under Section 87, the Registrar should issue show cause notice to all the persons concerned against whom, the action is proposed to be initiated. Admittedly in the case on hand, the action is proposed to be initiated against the writ petitioner under Section 87 of the Cooperative Societies Act. Thus, the show case notice has to be issued in this regard.

5. On perusal of the typed set of papers filed along with this writ petition, the show cause notice was issued to the writ petitioner in proceedings dated 15.05.2017. The show cause

notice contains all the details with regard to the alleged irregularities committed by the writ petitioner. Therefore, it is for the writ petitioner to submit his explanation/objection on the allegation set out in the show cause notice. No doubt, the writ petitioner may have to say and find out, if any other defense are available on the enquiry report submitted under Section 81 of the said Act. Certainly, all the connected documents to be availed by the writ petitioner for an effective defense.

6. This Court has not disputed the rights of the delinquent officer to defend their case in accordance with Act and Rules but the way in which the writ petitions have been filed shows that the writ petitioners are filing these kind of writ petitions to protract or prolong the issues. The writ petitioners have an option to approach the authorities under the Right to Information Act. So, that such documents which are necessary for the respondents shall be provided with. When such a course is available, they filed the writ petitions with a novel idea to get the interim order and keep the petition pending, so as to prolong the further action on the surcharge proceedings initiated against them.

7. This Court is of the considered opinion that such writ petitions are filed either to prevent the authorities from proceeding further or to stall the surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act. The way in which the writ petitioners have moved this writ petitions are deprecated. This Court can never and ever entertain such kind of attitude of the litigants in frequently filing writ petitions, during initiation or progress of the Surcharge Proceedings under Section 87 of the said Act. This Court cannot act as an agency to receive the documents from the respondents and hand over the same to the writ petitioners for the purpose of verification and defending their case. Such an exercise shall be undertaken by the Courts only on exceptional circumstances or in the interest of public at large.

8. In this regard, this Court is of the view that in any enquiry, it is for the authorities to decide what all are the documents which can be supplied to the delinquent and what all are the documents which cannot be supplied to the delinquent. Since, certain documents are protected under the head of confidentiality, certain confidential aspects cannot be disclosed to the delinquents. Thus, the discretion is vested with the authorities to decide, whether all the documents sought for by the delinquent can be supplied or not. In this regard, the Right to Information Act also provides that the authorities are entitled to reject certain documents which are all protected

or confidential or on security reasons. Thus, all these aspects has to be looked into. It is not as if the writ petitioners can simply file writ petitions for a direction to supply the copies of the entire enquiry report containing all the details with regard to the Cooperative Societies concerned. This Court cannot issue direction in a routine manner. In this regard, the authority must be given opportunity to decide whether the documents are required to be supplied to the delinquents or whether such a documents can be issued in respect of allegation raised against the petitioner. In this view of the matter, it is left open to the writ petitioner to approach the authorities under the Right to Information Act or under any other law, seeking the copy of the documents which they wants either at the preliminary stage or during the course of enquiry and at this juncture, this Court is not inclined to entertain these writ petitions.

9. The learned counsel appearing for the respondent citing the judgment of this Court reported in Equivalent Citations: 1993 3 MLJ 310 [M.Sambandam Vs. The Deputy Registrar(Credit) on 29.07.1998]and it is relevant to extract Para.9

Para-9:

"The said provision makes it clear that if any proceeding is initiated under Section 71, before passing final order, the person concerned must be given an opportunity to put forth his claim. In our case, eventhough an enquiry was conducted under Section 65 of the Act, at the instance of the Registrar of Co-operative Societies the copy of the said enquiry report has not been furnished to the petitioner. The said position is clear even from the order of the third respondent. In the light of second proviso to Section 71 (1) in the absence of proof for furnishing copy of the enquiry report further action taken by the first respondent, in pursuance of the enquiry report cannot be sustained on the principles of violation of statutory provision as well as natural justice. Accordingly, I sustain the contention made by the learned counsel appearing for the petitioner."

10. The Judgment cited by the learned counsel relates to the old provisions of the Act. May that it be, this Court is also of an undoubted opinion that all reasonable opportunities to be provided to the delinquents at the time of conducting enquiry. However, the relief sought for in this writ petition is for supplying the copies of the enquiry report submitted under Section 87 of the said Act. The Enquiry Report submitted by the Enquiry Officer to the Registrar is in relation to the

irregularities / illegalities or other affairs of the Cooperative Society concerned. Thus, this is an internal report forming a source for initiation of further action against the erred officials, under the Tamil Nadu Co-Operative Societies Act. Subsequent to the judgment cited supra, the Right to Information Act, 2005, was enacted and is in force in order to develop transparency in the Public Administration. Under these circumstances, it is not necessary to consider the findings of the judgment, cited supra and the same was delivered with reference to the old Act.

11. Thus, the writ petition stands disposed of. Consequently connected Miscellaneous petitions are closed. No costs.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

The Deputy Registrar of Co-Op. Societies
Athiyaman Poonga
Back side of District Collectorate,
Dharmapuri.

+3cc to M/s.Jeevagiridharan, Advocate, S.R.No.51167, 51166 & 51165/17

+1cc to the Government Pleader, S.R.No.52020

WP.No.18335 to 18337 of 2017 and
WMP.No.19907 to 19909 of 2017

GP(CO)
CU(22/08/2017)