

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.08.2017

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THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

WP. No.19940 of 2017
and WMP.No.21508 of 2017

C.Moorthy .. Petitioner

Vs.

The Deputy Registrar of
Cooperative Societies,
Tiruvannamalai Zone,
Tiruvannamalai,
Tiruvannamalai District. .. Respondent

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India to issue a writ of certiorari to call for the records of the respondent in Tha.Thee.No.02/2017-18 dated 18.07.2017, quash the same.

For petitioner : Mr.R.Thirumoorthy

For respondent : Mr.V.Selvaraj,
Additional Government Pleader

ORDER:

According to the petitioner, the petitioner was elected as President of V.T.465, Venkikal Primary Agricultural Cooperative Credit Society, Vengikkal and assumed charge on 13.05.2013. While being so, by proceedings dated 25.01.2016, the work allotment in respect of the Secretary and other two clerks had been done and got approved. A preliminary inspection under Section 82 of the Tamil Nadu Cooperative Societies Act, 1983 was conducted and in the report submitted on 29.06.2017 nothing was noted against the petitioner. On 18.07.2017, the respondent has issued a notice directing the petitioner to submit his explanation as to why action should not be taken against the petitioner for the loss of

Rs.20,62,402/- for having caused financial loss. Against the said notice, the petitioner has filed the writ petition before this Court.

2. The learned counsel for the petitioner would submit that in the inspection report, no allegations has been made against the petitioner. But the respondent has issued the impugned notice. Therefore, it is a violation of principles of natural justice and hence, the petitioner has filed the present writ petition before this Court.

3. The learned Additional Government Pleader would submit that a preliminary inspection was conducted under Section 82 of the said Act and the petitioner's name was also found in the enquiry report. Hence, the impugned show cause notice has been issued by the respondent to submit explanation for the loss sustained to the society. Therefore, there is no prima facie case is made out to entertain this writ petition, since the matter is only at pre-mature stage and the same is not maintainable before this Court.

4. By considering the submissions made by the learned counsel for the parties, on perusal of the said report, it is found that the petitioner's name has also been noted in the inspection report. Hence, on the basis of the aforesaid report, the respondent has issued the show cause notice to the petitioner to submit explanation. When the writ petition came for admission before this Court, by order dated 03.08.2017, without prejudice to the rights, the petitioner submitted his explanation before the authority and the same has been submitted. The petitioner has challenged the show cause notice stating that there is violation of principles of natural justice.

5. In the following decisions, the Hon'ble Supreme Court has laid down the law as under:

(i) In State of U.P. v. Brahm Datt Sharma reported in 1987 (2) SCC 179, at Paragraph 9, held as follows:

"When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts

should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. 'The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice.

(ii) In Whirlpool Corporation v. Registrar of Trade Marks reported in 1998 (8) SCC 1, the Supreme Court, held that,

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the

enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal".

(iii) The Supreme Court in *Special Director v. Mohd. Ghulam Ghouse* reported in 2004 (3) SCC 440, at paragraph 5, held as follows:

"This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of

routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted."

(iv) In *Union of India v. Kunisetty Satyanarayana*, reported in 2006 (12) SCC 28, the Supreme Court, held that,

"15. Writ jurisdiction is discretionary jurisdiction and hence, such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

6. In the light of the legal principles laid down by the Hon'ble Supreme Court as well as by the High Court in various decisions, the writ petition challenging the show cause notice is not maintainable at this premature stage and the same is liable to be dismissed.

7. However, the respondent is directed to consider the petitioner's explanation on merits and in accordance with law, after providing an opportunity to the petitioner.

8. In the result, the writ petition is dismissed with above observations. Consequently, the connected miscellaneous petition is closed. No costs.

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sd/
ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

To

The Deputy Registrar of Societies,
Tiruvannamalai Zone,
Tiruvannamalai,
Tiruvannamalai District.

+1CC to MR.R.THIRUMOORTHY Advocate SR.NO.56629
+1CC to Govt. Pleader SR.NO.56893

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and WMP.No.21508 of 2017

AD[CO]
MK:22/11/2017

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