IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.01.2017

Coram

The Hon'ble Mr. Justice **T.RAJA**

W.P. Nos.43238 and 43239 of 2016

1.N.R.Chandrasekaran
2.V.Jegannathan
3.S.Ramasamy
4.Tmt.E.Saleemabeebi
5.Tmt.S.Kalyani
6.K.Manoharan
7.N.Krishnan
8.S.Ramachandran
9.K.Anthonyraj
10.Tmt.R.Chithra
11.Tmt.Palaniammal .. Petitioners in both WPs

Vs

1.The Joint Registrar of Cooperative Society,
Erode Region, Erode,
Erode District.

2.The Management of No.3324,
Nerunjipettai Primary Agricultural
Cooperative Credit Society Limited,
Nerunjipettai Post,
Anthiyur Taluk,
Erode District.
Rep. By its Secretary ... Respondents in both Writ Petitions

3.Mrs.N.N.Malarkode ... 3rd respondent in W.P.No.43238/16

Prayer in W.P.No.43238 of 2016:- Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari to call for the records relating to the order in Na.Ka.8291/2015/Saba, dated 21.11.2016 on the file of the first respondent and quash the same.

Prayer in W.P.No.43239 of 2016:- Writ Petition filed under Article 226 of the Constitution of India praying to issue Writ of certiorari to call for the records relating to the order in Na.Ka.8282/2015/Saba, dated 22.11.2016 on the file of the first respondent and quash the same.

For petitioner in both WPs .. Mr.S.Doraisamy

For R1 & R2 in both WPs .. Mr.L.P.Shanmughasundram, Spl.GP

For R3 in WP.No.43238/16 .. Mr.C.Prakasam

C O M M O N O R D E R

The first petitioner is the President, the second petitioner is the Vice-President and the petitioners 3 to 11 are the Executive Members of the second respondent Society. They have filed two writ petitions.

2. In W.P.No.43238 of 2016, they have challenged the

impugned order dated 21.11.2016 passed by the first respondent / the Joint Registrar of Cooperative Society, Erode Region, Erode, in and by which, the first respondent has superseded the Board of the second respondent Society under Section 88(1) of the Tamil Nadu Cooperative Societies Act, 1983 (in short "the Act").

3. In W.P.No.43239 of 2016, they have challenged the impugned order dated 22.11.2016 passed by the first respondent / the Joint Registrar of Cooperative Society, Erode, in and by which, the petitioners were disqualified from holding the post of Directors in any of the Cooperative Societies under Section 36(1) of the Act.

4. Learned counsel for the petitioners submitted that the first respondent in his proceedings dated 18.04.2013 had ordered an enquiry under Section 81 of the Act against one Mr.Murugesan, who was working as Secretary of the second respondent Society. Thereafter, the Enquiry Officer submitted his report on 15.06.2013, whereby it is stated that the

employees of the Society have caused loss to the tune of Rs.11,02,745.50/- to the Society. Based on such report, a complaint was lodged by the Deputy Registrar of Cooperative societies, Gobichettipalayam before CCIW Police, Erode in Cr.No.1/2013 against the Secretary / Murugesan and two others. The said Murugesan was placed under suspension with effect from 26.07.2013 by the Board of Management. Thereafter, the Board of Management initiated departmental proceedings against the said Murugesan and thereby it has awarded a punishment of reduction with cumulative effect for a period of one year. Subsequently, he was also reinstated into the services of the Society on 25.07.2014.

5. Continuing his argument, it is further stated that another enquiry was initiated against the said Murugesan and on the basis of the report submitted, a fresh criminal case was registered on 28.08.2014 and thereafter, he was arrested and remanded to Judicial custody. Subsequently, he was also placed under suspension on 28.08.2014. It is further stated that both the suspension order as well as the stoppage of

increment were revoked on 13.04.2015. The said Murugesan had also filed a petition seeking subsistence allowance for the suspended period before the Assistant Commissioner of Labour, who, in turn, vide his order dated 27.03.2015, directed the respondents to pay subsistence allowance to the tune of Rs.4,51,669/- to the said Murugesan. In compliance of such order, a sum of Rs.2,78,974/- was paid to him through a cheque, after deducting a sum of Rs.90,813/- and Rs.81,882/- which were already paid to him. However, the first respondent, by presuming that the petitioners have caused loss to the Society by paying such amount to Murugesan, issued a show cause notice dated 09.12.2015 to the petitioners asking them to explain as to why the Board of Management should not be superseded. Thereafter, the petitioners have submitted their explanation dated 10.11.2016 denying the allegation of misappropriation of the funds belonging to the Society and they further stated that the alleged amount was paid to him only in accordance with law as per the orders passed by the Assistant Commissioner of Labour. However, without taking note of such explanations offered by the petitioners, the first respondents through the impugned orders dated 21.11.2016 and 22.11.2016 has passed an order of supersession and also the order of disqualification preventing the petitioners from functioning in the second respondent Society.

6. By narrating the above facts, it is further submitted that the entire proceedings have emanated from a report said to have been submitted by the Enquiry Officer under Section 81 of the Act, however, the said report has not been communicated to the Members of the Society / the petitioners herein as contemplated under Rule 104(7) of the Tamil nadu Cooperative Rules, 1983 (in short "the Rules"), which envisages the Registrar to communicate the result of the enquiry to the Society. Thus, he contended, without communicating the said report, taking action based on such report is a clear violation of the principles of natural justice and hence, the same is not sustainable in law and therefore, the impugned order of supersession is liable to be set aside.

7. Taking support from the decision in ***Arignar Anna Weavers Coop. Society Ltd. V. State of Tamil Nadu [AIR 1999 MADRAS 254],*** it is submitted that the non-furnishing of the copy of the enquiry report on the basis of which the order of supersession had been issued would result in violation of principles of natural justice and that while the Board has been elected to manage the Society, the democratic Management can be removed from the office only after fully satisfying the conditions and procedures mentioned under Sections 36, 81 and 88 r/w Rule 104 (7) of the provisions of the statute. On the contrary, he contended, the first respondent, while passing the order of supersession, has not followed such mandatory conditions of statute. Thus, on these basis, he prayed for quashing the impugned orders of supersession as well as disqualification.

8. Again, by relying upon Section 88(1) of the Act, it is submitted that though the Registrar has power to supersede Board, the Registrar will have to appoint an Administrar as provided under the Act within a period of two months from the date of issuance of notice for

supersession. However, such mandatory provision has not been complied with by the first respondent till now. It is further stated that although Section 88(1) provides sufficient power to the Registrar to supersede the Board, sub-section 6 of Section 88 envisages that the Registrar shall consult, in the manner prescribed, the Board of the Financing Bank to which the Society is indebted, however, if the Financing Bank does not communicate its comments within 15 days of the receipt of a communication from the Registrar, the Board of Financing Bank shall be deemed to have no comments to make on the order proposed to be passed under sub-section (1) of Section 88. However, in the case on hand, he pleaded, the Registrar has not even taken any steps to consult the Board of the Financing Bank as contemplated under Section 88(6) of the Act. Thus, he contended, the impugned order of supersession passed by the second respondent without following the procedures adumbrated in sub-section (6) of Section 88 of the Act cannot be sustained.

9. Per contra, learned Special Government Pleader appearing

for the respondents submitted that the said Murugesan, Secretary of the second respondent Society, was placed under suspension on 26.07.2013 for the irregularities committed by him and two others in Loan Waiver Scheme, 2006, for misappropriation of society funds by way of giving bogus medium terms loans, TAHDCO Loans, irregularities in share capital withdrawal, agricultural insurance scheme, Agro Service centre etc. Thereafter, an enquiry under Section 81 of the Act was initiated by the Registrar of Cooperative Societies, vide proceedings dated 18.04.2013. The Enquiry Officer, on completion of the enquiry, submitted his report on 15.06.2013, stating that the employees of the Society have caused loss to the tune of Rs.11,02,745.50/- to the Society.

10. It is further stated that yet another enquiry was also held under Section 81 of the Act and thereafter, the Enquiry officer submitted his report dated 10.03.2014 stating that the employees of the society have caused loss to the tune of Rs.3,34,244/- to the Society and in total, it is contended, the said Murugesan and two others have caused huge loss to

the Society to the tune of Rs.14,36,989.50/-. In the meanwhile, the said Murugesan also approached the Assistant Commissioner of Labour, Salem, seeking to provide subsistence allowance and the said claim was also allowed. Contending further, it was argued that since the said Murugesan / Secretary of the Society is the Chief Executive Officer of the said society, he is not entitled to the subsistence allowance as per Section 2(a) of the Tamil Nadu Subsistence Allowance Act, 1981, therefore, it is a fit a case for preferring an appeal against the order of the Assistant Commissioner of Labour, Salem, however, the Management of the Board did not prefer any appeal against the order of the Assistant Commissioner of Labour, Salem, willfully, deliberately and maliciously. Due to their wilful act, the second respondent Society has suffered a huge financial loss.

11. It is further submitted that the Deputy Registrar of Cooperative Societies, Gobichettipalayam, has ordered an inspection under Section 82 of the Act, to inspect the payment of subsistence allowance to the said Murugesan, Secretary of the Society, to the tune of Rs.4,51,669/-,

another payment of Rs.49,545/- towards surrender leave salary to the suspended employees, payment of society contribution towards the provident fund to the tune of Rs.52,335/-, totalling a sum of Rs.5,61,949/-. Thereafter, the Inspection Officer submitted his report on 08.09.2015 recommending to take the following actions;

(a) surcharge proceedings under Section 87;

(b) disciplinary action against the employees of the society;

(c) supersession of the board under Section 88 of the Act;

(d) permanent disqualification of the Board of the Society under Section 36.

12. Pursuant thereto, the impugned order of supersession under Section 88 of the Act was passed, which is not only for the payment of subsistence allowance to the Secretary, but also for the illegal payment of bonus, payment of surrender leave salary to the employees without having the service registers, payment of society's contribution to the employees towards the provident fund for the non-regularized suspension period, which, ultimately, imply gross mismanagement of the society and

mismanagement of the funds of the society. Therefore, he contended, due to such misappropriation of the society funds by the petitioners, a show cause notice dated 09.12.2015 was issued to the petitioners asking them to explain as to why the Board of Management should not be superseded under Section 88 of the Act. Thereafter, on receiving the explanations offered by the petitioners, the first respondent has passed the impugned order of supersession under Section 88 of the Act and also disqualified the Members of the Society / petitioners herein under Section 36 of the Act. Thus, he pleaded, such a well reasoned impugned orders passed by the first respondent need not be interfered with.

13. Controverting the argument of the learned counsel for the petitioners that the first respondent, before passing the impugned order of supersession, did not consult with the Board of Financing Bank to which the Society is indebted as per sub-section 6 of Section 88, learned counsel for the respondents stated that though the first respondent sent a letter dated 09.12.2015, they did not receive any communication from them,

thus, he contended, as per the Act, the Financing Bank ought to have communicated its comments within 15 days, however, as they did not give any comment on the proposal of the first respondent to supersede the Board under Section 88 of the Act, the Board of Financing Bank shall be deemed to have no comments to make on the order of proposal, hence, he pleaded, the above said contention of the petitioners cannot be sustained.

14. Heard learned counsel appearing for the petitioner and perused the materials available before this Court.

15. The main crux of the contention of the learned counsel for the petitioners is that though they have conducted an enquiry under Section 81 of the Act and thereby the Enquiry Officer had also submitted his report on 15.06.2013, the first respondent, before passing the impugned orders of supersession under Section 88 of the Act and disqualification under Section 36 of the Act, did not communicate a copy of the report submitted by the Enquiry Officer to the petitioner as per Rule 104(7). Such

act of non-furnishing a copy of the enquiry report has not been mentioned in the counter affidavit filed by the respondents 1 and 2, moreover, learned Special Government Pleader appearing for the respondents 1 and 2 also fairly conceded that a copy of the report of the Enquiry Officer was not furnished to the petitioner as per sub-rule 7 of Rule 104.

16. It is no doubt true that as per Section 88 (1), if the Registrar is of the opinion that the Board is not functioning properly or wilfully disobeys or wilfully fails to comply with any order or direction issued by the Registrar, after giving the board an opportunity of making its representations, by order in writing, he can supersede the board and appoint a Government servant as the special Officer to manage the affairs of the society for a specified period not exceeding one year. For better appreciation, Section 88(1) is extracted below:-

> ***"88. Supersession of the Board. ___***
>
> *(1) Where the board of any registered Society, ___*
>
> *(i) is of persistent default in managing the affairs of the society in accordance with the*

provisions of this Act, the rules or the bylaws; or

(ii) is of negligence in the performance of its duties; or

(iii) has committed any act prejudicial to the interests of the Society or its members; or

(iv) there is stalemate in the constitution or functions of the board;

the Registrar may, after giving the board of the registered Society an opportunity of making its representations, by order in writing, supersede the Board and appoint a Government servant or an employee of any body corporate owned or controlled by the Government (hereafter referred to as the administrator) to manage the affairs of the society for a specified period not exceeding six months*:*

Provided that an order under this sub-section shall be passed within a period of two months from the date of issue of notice of supersession:

Provided further that the board of any such registered society shall not be superseded where there is no Government shareholding or loan or financial assistance or any guarantee by the Government:

Provided also that in the case of a registered society carrying on business of banking the provisions of the Banking Regulation Act, 1949, shall also apply:

Provided also that in the case of a registered Society carrying on business of banking, the provisions of this sub-section shall have the effects as if for the words 'six months', the words 'one year' had been substituted."

17. Besides, section 81 envisages holding of an enquiry. As per Section 81(3), if an enquiry is held, the Registrar shall, within such time as may be prescribed, communicate the result of the enquiry to the affected person. Section 81(3) reads as under:-

"***Section 81(3):--*** ***<u>When an inquiry is held under this section, the Registrar shall, within such time as may be prescribed, communicate the result of the enquiry ---</u>***

(i) in case the Government have subscribed directly to the Share Capital of the registered Society or in case any moneys are due

from the registered society either to the Principal State Partnership Fund or to the subsidiary State Partnership Fund referred to in Chapter VI, to the Government or to any officer appointed by the Government in this behalf;

(ii) to the Financing Bank, if any, to which the Society is affiliated; and

(iii) to the Society concerned."

From a careful reading of the above Section, it shows that the Registrar shall communicate the result of the enquiry to the Society concerned, but, in the instant case, the result of the enquiry was not communicated to the petitioners / members of the Society. Therefore, there is a clear breach of Section 81(3) of the Act.

18. In addition thereto, under Rule 104(7) of the Rules, the Registrar is required to communicate the result of the inquiry or inspection or investigation, in brief, without going into details and without disclosing matters of confidential nature. Rule 104(7) is extracted below:-

"***(7) The Registrar shall***

communicate the result of the inquiry or inspection or investigation, in brief, without going into details and without disclosing matters of confidential nature within a period of three months from the date of receipt of the report **---**

(a) in the case of inquiry, to

(i) the Government or to any officer appointed by the Government, where the Government have subscribed to the Share Capital of the Society;

(ii) the Financing Bank to which the Society is affiliated;

(iii) to the Society concerned;

(iv) to the District Collector in case the inquiry is ordered at his request;

(v) to the Federal Society concerned;"

From a mere perusal of Section 88 and Section 81(3) r/w Rule 104(7), it is clear that the Registrar has power to supersede the Board under Section 88(1) of the Act, however, at the same time, there is a duty cast on the Registrar to inform the affected person and also the Society about the result of the inquiry, with necessary details. If the authorities do not comply with the provisions of Section 81(3) and the Rules, they cannot initiate action under Section 88(1) of the Act for supersession of Managing Body of a Co-operative Society.

19. This Court, in ***Vallipattu Primary Agricultural Coop. Bank v. Registrar of Coop. Societies, Chennai [1998 (2) CTC 351],*** by observing that the supersession of the elected board is a serious step, held thus at paragraph Nos.19 and 20:-

> *"19. If the dispute of facts cannot be considered by this Court under Article 226 of the Constitution of India, then what is the remedy? Section 88(1) of Act says that the power of registration of society should be given an opportunity of making a representation. What is the scope of an opportunity of making a representation? Will it be sufficient by sending a show-cause notice and getting an explanation. I do not think that alone will be sufficient.* ***Under Co-Operative Societies Act and the Rules, it is clear that in a democratic set up unless grounds are made out, the management must be within the elected members.***

<u>Supersession of the election Board is a serious step and the authorities are not expected to interfere with the management of the society. If that is the intention, I feel that the opportunity of making a representation includes a reasonable opportunity before final orders are passed.</u> *When there are disputed questions of fact, a duty is cast on the authorities to verify whether the facts stated by it alone are sufficient to supersede an Election Board.*

20. A reading of the entire provisions of the Act makes it clear that the Registrar and the authorities under the Act have to act very cautiously. It is also clear that it is an extra-ordinary power which could resorted to unless there is extra- ordinary situation. If an elected body feels certain acts taken are in the best interests of Society, that is the matter the authority will have to consider very seriously. They are not expected to stick on to their views, all that the society has done is against the provisions of the Act or Rules. Only after reasonable opportunity is given to the Board, the satisfaction has to be entered that supersession is necessary and if the authorities feel that the grounds have been made out for supersession, it shall not look back, except to supersede. May be the satisfaction is subjective, but it cannot be exercised arbitrarily. The principle of natural justice has to be fully applied in such

> *cases. Even though the court cannot act as an appellate authority, when from the file it is clear that there was no real consideration of the explanation and when reasonable opportunity is also not given to the Board, I feel that the action of the respondent require reconsideration."*

If this Court follows the above stated legal principles, then, in my view, the impugned order of supersession is liable to be interfered with, for, the sum and substance of the above said judgment is that non-furnishing of the copy of the enquiry report on the basis of which the order of supersession under Section 88 had been issued would result in violation of the principles of natural justice. It is further held that opportunity of making a representation includes a reasonable opportunity before final orders are passed and it has been further made clear that when there are disputed questions of fact, a duty is cast on the authorities to verify whether the facts stated by it alone are sufficient to supersede an Elected Board. Therefore, in the case on hand, although the learned counsel for the respondents during the course of arguments admitted that an enquiry was held under Section 81 and thereby a report dated 15.06.2013 was also made ready, but that was not admittedly furnished to the petitioners as per Section 81(3) read with Rule 104(7), which show that he was not afforded with a reasonable opportunity of being heard as adumbrated in the provisions of the Act as well as the principles laid down by this Court in the above referred judgment. While dealing with a similar issue of supersession of the Elected Board of Society under Section 88 of the Act, I have set aside the order of supersession in ***W.P.Nos.7648, 16617 and 31309 of 2015, dated 06.01.2017 (C.Kamaraj and another v. the Registrar of Cooperative Societies and others).***

20. Thus, in the light of the above, I am of the view that the first respondent, before passing of the orders of supersession and disqualification, has neither followed the principles set out in the above referred case nor Section 88 of the Act nor Section 81(3) read with Rule 104(7) of the Rules, that too without taking note of the fact that the passing of an order of winding up / supersession is analogous to the passing of capital sentence of an individual, therefore, the impugned proceedings are per-se illegal, hence, the same are liable to be set aside.

21. However, taking note of the fact that in addition to payment of subsistence allowance to the said Murugesan / Secretary of the second respondent Society, the Members of the Board have made alleged payment of bonus, payment of surrender leave salary to the employees, payment of society's contribution to the employees towards the provident fund for the non-regularized suspension period, this Court grants liberty to the first respondent to take remedial measures by proceeding against the petitioners as per the provisions of the Act, judgment referred supra and also by following the aforesaid observations of this Court, if they are found responsible on the proved charges levelled against them.

22. In fine, the writ petitions are allowed by quashing the impugned orders passed by the first respondent. No Costs. Consequently, connected miscellaneous petitions are closed.

18.01.2017

Index:yes/no
rkm

To

1.The Joint Registrar of Cooperative Society,
Erode Region, Erode,
Erode District.

2.The Management of No.3324,
Nerunjipettai Primary Agricultural
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