

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07-12-2018

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THE HON'BLE Mr. JUSTICE S.M.SUBRAMANIAM

W.P.No.25728 of 2005

And

W.P.M.P.No.28132 of 2005

And

W.V.M.P.No.2457 of 2005

K.R.Palanisamy ...Petitioner

Vs

The Assistant Director,
Department of Handlooms and Textiles,
Erode,
Erode District. ... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records pertaining to the proceedings of the respondent dated 3.5.2002 made in Na.Ka.No.17458/99/E, quash the same in so far as the petitioner herein is concerned.

For Petitioner : Mr.N.Manokaran

For Respondent : Mrs.R.Janaki,
Additional Government Pleader.

O R D E R

The notice issued under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as the 'Act'), initiating surcharge proceedings against the writ petitioner, is under challenge in the present writ petition.

2. The writ petitioner was employed as Clerk in the Sethunampalayam Handloom Weavers Co-operative Society, which is registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983. An enquiry under Section 81 of the Act, was issued and the Enquiry Officer, who conducted the statutory enquiry, submitted a report to the Competent Authorities. The respondent, based on the enquiry report submitted by the Enquiry Officer under Section 81 of the Act, initiated surcharge proceedings against the writ petitioner by issuing notice under

Section 87 of the Act. The said notice is under challenge in the present writ petition.

3. The learned counsel for the writ petitioner states that the respondent has not produced the copy of the enquiry report submitted under Section 81 of the Act and therefore, the writ petitioner was not in a position to submit the explanations on the notice. Thus, the writ petitioner is constrained to move the present writ petition.

4. The learned Additional Government Pleader, appearing on behalf of the respondent, states that the challenge in the present writ petition is a notice issued under Section 87 of the Act and therefore, the writ petitioner has to submit his explanations or otherwise in respect of the allegations set out in the impugned notice. Contrarily, the writ petitioner preferred the present writ petition and therefore, the writ petition is liable to be dismissed as not maintainable.

5. It is further contended by the learned Additional Government Pleader for the respondent that earlier the writ petitioner filed WP No.3785 of 2003 and the said fact regarding the filing of the earlier writ petition is also suppressed by the writ petitioner in the present writ petition. Thus, the writ petitioner has not approached this Court with clean hands and on that ground also, the writ petition is liable to be rejected.

6. This Court is of an opinion that enquiry under Section 81 of the Act, is a statutory enquiry. Such an enquiry is conducted to find out the irregularities, if any, occurred in respect of the affairs of the Co-operative Societies. Such a report is a source for initiating all further actions against the persons, who have committed any such irregularities or illegalities.

7. Three fold actions are permissible based on Section 81 enquiry report. The Competent Authority, on receipt of the report under Section 81 of the Act, is empowered to initiate surcharge proceedings and to initiate disciplinary proceedings against the employees of the Co-operative Societies and if there is any other allegations, then a criminal case also can be registered before the Criminal Crime Investigation Wing of the Police Department. All the three actions can be initiated simultaneously and there is no bar. Once the surcharge proceedings are initiated, then the persons concerned are bound to submit their explanations/objections in respect of the allegations set out in the surcharge notice.

8. Contrarily, no writ petition can be entertained against such notice. This apart, the notice issued under Section 87 of the Act, cannot be challenged in a writ petition under Article 226 of the Constitution of India. In view of the fact that on receipt of the explanations from the writ petitioner, the Competent Authority has to pass final orders in the surcharge proceedings. If any final order is passed under surcharge proceedings, then the aggrieved persons are entitled to prefer an appeal before the Co-operative Tribunal under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983.

9. The District Judges are designated as the Presiding Officers under Section 152 of the Act, to deal with the appeal. This being the legal provisions and the remedies available to the writ petitioner, the present writ petition, challenging the very notice issued under Section 87 of the Act, cannot be sustained at all. Thus, the writ petitioner is at liberty to submit his explanations/objections, if any, in respect of the allegations set out in the surcharge notice and on receipt of the same, the Competent Authority shall pass orders on merits and in accordance with law and by following the procedures contemplated under the Co-operative Societies Act. In this view of the matter, the writ petitioner has not established any ground for the purpose of quashing the surcharge notice issued against him.

10. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

Svn
To

The Assistant Director,
Department of Handlooms and Textiles,
Erode, Erode District.

+1cc to M/S.N.Manokaran, Advocate Sr.84772

WP No.25728 of 2005

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srg 03/01/2019