

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.09.2018

CORAM

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.7825 of 2018 and
W.M.P.No.9766 of 2018

V.Rajendran

... Petitioner

Vs

1.The Registrar of Cooperative Societies,
170, Periyar EVR High Road,
Kilpauk,
Chennai - 600 010.

2.The Joint Registrar-Cum-Managing Director,
Dharmapuri District Central Co-op Bank Ltd.,
10/H, Nethaji Bye Pass Road,
Post Box No.16,
Dharmapuri - 636 701.

3.The Deputy Registrar of Cooperative Societies,
Dharmapuri Circle,
The Presiding Officer for Surcharge Proceedings,
D. 14, Dharmapuri District Central
Cooperative Bank Employees Cooperative
Thrift and Credit Society,
Dharmapuri.

..Respondents

Prayer:- This Writ Petition has been filed under Article 226 of the Constitution of India for a writ of Certiorari calling for the records of the third respondent in Na.Ka.3558/2016 sapa2, dated 18.09.2017 and quash the same.

For Petitioner : Mr.S.Sathiaseelan

For Respondents : Mr.L.P.Shanmugasundaram,
Special Government Pleader

ORDER

This writ petition has been filed challenging the order passed by the third respondent under Section 87 of the Tamil Nadu Cooperative Societies Act (hereinafter referred to as "the Act") in Na.Ka.3558/2016 sapa2, dated 18.09.2017.

2. According to the petitioner, he was working as a Field Manager in Dharmapuri District Central Cooperative Bank Ltd., from 10.12.2010 to 15.04.2012 and he was also a Field Manager of No.14, Dharmapuri District Central Cooperative Bank Employees Cooperative Thrift and Credit Society. In No.14, Dharmapuri District Central Cooperative Bank Employees Cooperative Thrift and Credit Society, one Mrs.V.Vasumathi, the then Secretary said to have been misappropriated a sum of Rs.39,17,656/- and an enquiry under Section 81 of the Act has been ordered. Now, based on the enquiry report filed under Section 81 of the Act, proceedings under Section 87 of the Act has been initiated against the petitioner also. According to the petitioner, in the event of any enquiry conducted under Section 81 of the Act into the affairs of any Thrift society like, Dharmapuri District Central Cooperative Bank Employees Cooperative Thrift and Credit Society, in disbursement of loan by the Field Manager of Central Cooperative Bank, the enquiry officer should recommend to order for a separate enquiry under Section 81 of the Act or inspection under Section 82 of the Act against the employee of the Central Cooperative Bank.

3. In the instant case, without conducting the separate enquiry based on the report submitted by the Enquiry Officer under Section 81 of the Act, the present impugned order has been passed under Section 87 of the act, against the petitioner herein.

4. Mr.S.Sathiaseelan, learned counsel for the petitioner relied upon a circular issued by the first respondent in Rc.No.38614/2009/SF2 (1) dated 06.04.2009 wherein, it is held as follows:-

"whenever the officer holding inquiry under section 81 or Inspection or Investigation under section 82 of the Tamil Nadu Cooperative Societies or any other society indebted to a Central Cooperative Bank concluded in his report that staff of a Central Cooperative Bank are also responsible for the alleged irregularities in the sanction and disbursement of loans in the Primary Agricultural Cooperative

Societies, or in other indebted society from the funds borrowed or reimbursed from the Central Cooperative Bank, the Deputy Registrar / Joint Registrar shall order a separate inquiry under section 81 or inspection or investigation under section 82 of the Central Cooperative Bank also and shall take surcharge actions under section 87 against the staff of the Central Cooperative Bank based on the findings of the Enquiry Officer or Inspection or Investigation Officer for consequent deficiencies caused to the assets of the Central Cooperative Bank by way of breach of trust and willful negligence."

5. Relying on the said Circular, the learned counsel for the petitioner would submit that without ordering a separate enquiry under Section 81 of the Act, the impugned order has been passed based on the Section 81 Enquiry conducted along with the employees of the cooperative society as against the petitioner herein.

6. The first respondent has filed a detailed counter wherein, in paragraph Nos. 5, 6 & 7, it is stated as follows:-

"5. It is submitted that in the instant case, Deputy Registrar, Dharmapuri Circle has ordered inquiry under section 81 of the Tamil Nadu Cooperative Societies Act, 1983, in his proceeding Rc.2265/2015/Thava dated 17.12.2015 to find out the irregularities occurred in the D.D.14, District Central Cooperative Bank Employees Cooperative Thrift and Credit Society and the enquiry officer has submitted his report dated 25.07.2016. In the said inquiry report, the enquiry officer has recommended surcharge action against the Special Officer, Secretary of the Dharmapuri District Central Cooperative Bank Employees Cooperative Thrift and Credit Society, certain society members, Manager, Supervisor of Dharmapuri District Central Cooperative Bank and Board of Directors.

6. It is submitted that the Circle Deputy Registrar, Dharmapuri after receiving the enquiry report ought to have ordered separate enquiry under section 81 or investigation under section 82 for the

Central Cooperative Bank for the sanction and disbursement of loans by the Dharmapuri District Central Cooperative Bank Employees Cooperative Thrift and Credit Society for which the supervisors and Managers of the Central Cooperative Bank was also responsible, causing loss to the funds of the District Central Cooperative Bank. In the instant case, the Circle Deputy Registrar, Dharmapuri has not done so.

7.It is submitted that in these circumstances, the circle Deputy Registrar, Dharmapuri was requested to order a separate enquiry under Section 81 for the Dharmapuri District Central Cooperative Bank Employees Cooperative Thrift and Credit Society and causing losses to the Dharmapuri District Central Cooperative Bank. It is submitted that the copy of the letter R.C.58290/2018/SF4(1) dated 27.08.2018 addressed to the circle Deputy Registrar, Dharmapuri is enclosed for kind perusal of this Hon'ble Court."

7.In view of the counter affidavit filed by the first respondent admitting that the proceeding under Section 87 of the Act cannot be initiated based on Section 81 Enquiry Report filed, in respect of employees of the Central Cooperative Bank, the impugned order needs to be set aside.

8.In the result, the writ petition is allowed and the impugned order passed by the third respondent in Na.Ka.3558/2016 sapa2, dated 18.09.2017 is set aside. However, liberty is given to the respondents to initiate separate enquiry proceeding under Section 81 of the Act, against the petitioner herein. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jbm

To

1.The Registrar of Cooperative Societies,
170, Periyar EVR High Road,
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The Presiding Officer for Surcharge Proceedings,
DI.14, Dharmapuri District Central
Cooperative Bank Employees Cooperative
Thrift and Credit Society,
Dharmapuri.

+1cc to the Government Pleader Sr.62950
+1cc to M/S.L.P.Shanmugasundaram, Advocate Sr.63079
+1cc to M/S.Sathiaseelan, Advocate Sr.63029

W.P.No.7825 of 2018

skv[co]
srg 30/10/2018

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