

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24-07-2018

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.17757 of 2016

And

W.M.P.No.15439 of 2016

B.Babu

Petitioner

-vs-

- 1.The Deputy Registrar of Co-operative Societies,
Vandavasi Road,
Opp. Collectorate,
Kanchipuram.
- 2.The Joint Registrar / Managing Director,
Kanchipuram Central Cooperative Bank,
No.15, G.Sheckpet Nadu Street,
Kanchipuram - 631 501.
- 3.The Regional Joint Registrar of Cooperative Societies,
Kanchipuram Region,
Vandavasi Road,
Opp. Collectorate,
Kanchipuram.
- 4.The Sub-Registrar cum Enquiry Officer, Section 81,
Cooperative Society,
C/o.Kanchipuram Central Cooperative Bank,
No.15, G.Sheckpet Nadu Street,
Kanchipuram - 631 501.

Respondents

Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, calling for the records on the file of the fourth respondent in proceedings No.Nil dated 29.4.2016 and quash the same as manifestly erroneous, illegal, unconstitutional, incompetent irregular.

For Petitioner - Mr.V.Raghavachari for
M/s.Avinash Wadhwani.

For Respondents - Mr.L.P.Shanmugasundaram,
Special Government Pleader (Co-op.).

ORDER

The summon dated 29.4.2016, issued by the fourth respondent under Section 81 (2) of the Tamil Nadu Co-operative Societies Act, is under challenge in this writ petition.

2. The learned counsel, appearing on behalf of the writ petitioner, made a submission that the writ petitioner is employed as an Assistant in the District Central Co-operative Bank, Kancheepuram. On account of certain allegations of misappropriation of the funds of the District Central Co-operative Bank, Kancheepuram, to the tune of Rs.35 crores, an enquiry under Section 81 of the Act, was earlier conducted and pursuant to the report submitted by the Enquiry Officer, surcharge proceedings were already initiated against the writ petitioner and the writ petitioner is in the process of defending the surcharge proceedings.

3. However, on the same line, another enquiry is ordered under Section 81 of the Act, and the writ petitioner is summoned through the impugned proceedings dated 29.4.2016. Thus, the writ petitioner is constrained to move the present writ petition.

4. The learned counsel for the writ petitioner is of an opinion that once an enquiry under Section 81 of the Act, was conducted and surcharge proceedings were already initiated against the writ petitioner under Section 87 of the Act, then once again, there cannot be any enquiry under Section 81 in respect of the same subject matter.

5. The learned Special Government Pleader, appearing on behalf of the respondents, opposed the said contention of the learned counsel for the writ petitioner, by stating that the enquiry under Section 81 is a statutory enquiry to be conducted by the Enquiry Officer appointed by the Competent Authority under the provisions of the Act, to cull out the irregularities, illegalities, malpractices or corrupt activities in any registered Co-operative Societies. Such being the scope of the Section, the writ petitioner cannot challenge the summon issued by the competent authority to proceed with the enquiry.

6. The writ petitioner is called upon to submit his explanations/objections and to assist the Enquiry Officer to find out the truth behind the allegations of mala fides or

otherwise. Thus, the writ petition itself cannot be maintained in view of the fact that the challenge in the writ petition is the summon issued by the Enquiry Officer to the writ petitioner for attending the enquiry.

7. This Court is of an opinion that a summon or notice issued to assist the Enquiry Officer or to submit explanations/objections, cannot be entertained by way of a writ petition in a routine manner. Judicial review against summons or notices are limited and only on exceptional circumstances, the Court can entertain the writ proceedings against such summons or notices. A summon can be challenged if the same is in violation of the statutory provisions or if there is any allegation of mala fides intention or if the same is issued by an incompetent authority. Even, in case of raising the allegation of mala fides, the authority against whom such an allegation is raised to be impleaded as party respondent in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no writ can be entertained against summons or notices in a routine manner.

8. May that it be.

9. In respect of the present writ petition, it is relevant to consider Chapter IX of the Tamil Nadu Co-operative Societies Act, 1983, Section 80 provides "audit". The Section speaks about the conduct of audit in registered Co-operative Societies. Section 81 deals with inquiry. Section 81, sub-clause (1) 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 authorized by him by order in writing in this behalf to hold an inquiry into the constitution, working and financing condition of a registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice, or mismanagement in relation to that society or into any particular aspect of the working of that society."

10. The provision is general in nature. The section is provided to cull out the truth in respect of any such irregularity or illegality and working of the Society, more specifically, such being the scope and the intention of the Statute, there cannot be any restriction in respect of directing an employee to attend Section 81 enquiry on the own motion of the competent authority or on application by any person. Thus, the competency of the authorities to order for Section 81 enquiry into the affairs of the Co-operative Society, can never be restricted nor be questioned. However, as stated supra, such enquiries can be questioned only on limited grounds. Otherwise

all such statutory enquiries must be allowed to be proceeded with and the report submitted, in this regard, must be considered for all further actions under the provisions of the Act.

11. After conducting an enquiry, the Enquiry Officer has to submit a report. On receipt of the report from the Enquiry Officer, the competent authorities are empowered to initiate threefold actions. The competent authorities, based on the enquiry report and considering the materials available in the report, shall initiate disciplinary proceedings against the employees of the Co-operative Societies. Secondly, surcharge proceedings can be initiated under Section 87 of the Co-operative Societies Act, to compensate the financial loss, if any, caused to the Co-operative Societies. Thirdly, criminal prosecution can be launched by filing a complaint by the competent authority before the Commercial Crime Investigation Wing. Thus, all these threefold actions can be initiated simultaneously by the competent authorities based on the report submitted by the Enquiry Officer under Section 81 of the Act. Each action is to be initiated based on the enquiry report is independent. Thus, there is no bar or prohibition for initiating all these threefold actions simultaneously by the competent authorities against the erred officials or against the persons, who have committed any such misconducts or illegalities.

12. This being the scope of the provision, the present writ petition has been filed challenging the very summon issued by the Enquiry Officer to the writ petitioner. The powers under Section 81 of the Act, is quasi judicial in nature and the authorities competent are empowered to summon or issue notice to any members of the Society or employees of the Society for the purpose of gathering informations, particulars or otherwise.

13. Thus, the writ petitioner is bound to attend the enquiry and submit his explanations/objections or documents, if any, in order to assist the Enquiry Officer for the purpose of conducting the enquiry to cull out the truth behind the allegations.

14. The learned counsel for the writ petitioner made a submission that in respect of the allegations of misappropriation, surcharge proceedings under Section 87 has already been initiated against the writ petitioner and on some other persons. Therefore, in respect of the very same allegation, there cannot be any second surcharge proceedings or enquiry. It is made clear that in respect of the allegations set out in the surcharge proceedings and the transactions, there need not be any further surcharge proceedings. However, the authorities competent are at liberty to proceed with any other independent allegations or transactions not covered under the

surcharge proceedings and take appropriate actions in accordance with law.

15. With these clarifications, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Svn
To

- 1.The Deputy Registrar of Co-operative Societies,
Vandavasi Road,
Opp. Collectorate,
Kanchipuram.
- 2.The Joint Registrar / Managing Director,
Kanchipuram Central Cooperative Bank,
No.15, G.Sheckpet Nadu Street,
Kanchipuram - 631 501.
- 3.The Regional Joint Registrar of Cooperative Societies,
Kanchipuram Region,
Vandavasi Road,
Opp. Collectorate,
Kanchipuram.
- 4.The Sub-Registrar cum Enquiry Officer, Section 81,
Cooperative Society,
C/o.Kanchipuram Central Cooperative Bank,
No.15, G.Sheckpet Nadu Street,
Kanchipuram - 631 501.

+1cc to M/s.Avinash Wadhwani, Advocate sr.no.49635
+1cc to M.s.R.Gopinath, Advocate sr.no.50207
+1cc to Government Pleader in sr.no.50003

WP 17757 of 2016

pa(co)
nr 02/08/2018