

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 03.07.2018	Delivered on 24.07.2018
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CORAM:

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

W.A.No.1029 of 2016
and CMP No.13445 of 2016

1. The Registrar of Cooperative Societies,
No.170, Periyar EVR Road,
Kilpauk, Chennai 10.
2. The Secretary to Government,
Cooperation, Food and Consumer
Protection Department,
Secretariat, Chennai 600 009. ... Appellants/Respondents

versus

K.Velusamy ... Respondent/Petitioner

Appeal filed against the order passed by this Court dated
20.03.2014 passed in W.P.No.32143 of 2013.

Prayer in W.P.No.32143 of 2013:

Writ Petition filed Under Article 226 of the Constitution of
India to issue a Writ of Mandamus or any other appropriate Writ,
direct the first respondent to drop the further proceedings in
respect of impugned charge Memo in R.C.1023 of 2002/PAI(4) dated
4.5.2009.

For appellants : Mr.L.P.Shanmugasundaram
Special Government Pleader

For Respondent : Mr.A.P.Surya Prakasam
for M/s.Ashok Chakaravarthy

J U D G M E N T

(Judgment of the Court was delivered by R.SUBRAMANIAN, J.)

The challenge in this intra Court Appeal is to the order of the learned Single Judge made in WP No.32143 of 2013, in and by which, this Court allowed the Writ Petition seeking issuance of Writ of Mandamus directing the 1st respondent in the Writ Petition, viz. the Registrar of Co-operative Society/the 1st appellant herein, to drop further proceedings in respect of impugned charge memo in RC No.1023 of 2002/ Pa1 (4), dated 04.05.2009.

The Writ Petition came to be filed in the following factual scenario.

2. The respondent was working as Co-operative Sub-Registrar was charge sheeted for certain delinquencies and a charge memo was issued to him on 04.05.2009. The same was also accompanied by a Statement of the substance of allegations and imputations made against him. The said charge memo was challenged by the respondent in WP No.14503 of 2009 before this Court. By an order dated 18.07.2011, this court while rejecting the challenge to the charge memo directed enquiry to be initiated pursuant to the charge memo and final orders to be passed within a period of six months from the date of receipt of a copy of the order. Thereafter, it is seen that the Government had appointed one Mr.K.Balachandran, I.A.S., the Commissioner of Civil Supplies and Consumer Protection as a common enquiry officer to go in to the charges framed against the respondent and the other delinquents. Since, the Enquiry Officer Mr.K.Balachandran, I.A.S., the Commissioner of Civil Supplies was transferred as the Chairman and Managing Director of the Tamil Nadu Cement Corporation, the Government appointed Mr.M.Basheer Ahmed, I.A.S as the Enquiry Officer to continue the enquiry proceedings.

3. In the mean time, the respondent had challenged the order of the learned Single Judge made in WP No.14503 of 2009 in WA No.1981 of 2011. It is not in dispute that the enquiry proceedings were stayed, during the pendency of the said Writ Appeal. By an order dated 06.12.2012, the Writ Appeal was dismissed with the direction to the Authorities to take up the Enquiry and complete the same within a period 6 months from the date of receipt of a copy of the judgment. The present Writ Petition was filed during December 2013 contending that the Enquiry has not been conducted, as per the directions of the

Division Bench and therefore, the Authorities are not entitled to proceed with the enquiry after the expiry of six months granted by the Division Bench in WA No.1981 of 2011.

4. The said Writ Petition came to be allowed by the learned Single Judge by an order dated 20.03.2014 on two grounds, viz. (1) The direction of the Division Bench made in WA No.1981 of 2011 has not been complied with and (2) that the charges found in the impugned charge memo dated 04.05.2009 are similar to the charge memo dated 03.05.2006 for which the proceedings under Section 81 of the Cooperative Societies Act, were initiated and the respondent was relieved from all the charges by the Authority constituted under Section 81 of the Cooperative Societies Act, viz. the Deputy Registrar of Cooperative Societies. It is against the said judgment of the learned Single Judge, the respondents in the Writ Petition, viz. the Registrar of Cooperative Societies and the Principal Secretary to Government, Department of Cooperation have come forward with this appeal.

5. We have heard Mr.L.P.Shanmugasundaram, learned Special Govt. Pleader appearing for the appellants and Mr.A.P. Surya Prakash, learned counsel appearing for M/s.Ashok Chakravarthy, for the respondent.

6. Since no counter affidavit was filed in the Writ Petition, the respondents/appellants herein were directed to file an affidavit setting out the present stage of the enquiry proceedings. Pursuant to the said direction, the Joint Registrar, Office of Registrar of Cooperative Societies had filed an affidavit setting out the sequence of events. It is stated that after the disposal of the Writ Appeals by the Division Bench on 06.12.2012, since Mr.M.Basheer Ahmed I.A.S, who was appointed as Enquiry Officer was transferred, Tmt.V.Kalaiarasi, I.A.S was appointed as Enquiry Officer under G.O.RT.No.371 dated 10.09.2013. Since the said Tmt.V.Kalaiarasi, went on long Medical Leave from 26.09.2013, the Government had again appointed Thiru. G.Ravikumar, Joint Registrar of Cooperative Societies as a enquiry officer on 11.02.2014. It is, at this stage the impugned order in the Writ Petition came to be passed on 20.03.2014 directing the appellants to drop all charges.

7. The learned Special Government Pleader has produced the gist of the charges framed on 06.07.2004, which is the subject matter of Section 81 proceedings and the charges that are framed

on 04.05.2009, we find that the charges are not substantially the same. There are several other charges, which have been included in the charge memo dated 04.05.2009. A perusal of the comparative statement filed by the learned Government Pleader would show that the charges are different and they relate to totally different scheme and different Cooperative Housing Society. Therefore, we are of the considered opinion, the reasoning of the learned Single Judge that the same set of charges, which were dropped by the Deputy Registrar of Cooperative Societies in the Enquiry proceedings under Section 81 are sought to be framed against the respondent by way of charge memo dated 04.05.2009.

8. Coming to the second ground on which the charge memo has been quashed by the learned Single Judge, we are constrained to observe that there has been no inordinate delay in the conduct of enquiry proceedings. Admittedly, the charge sheet which was issued in the year 2009 was subject matter of challenge in WP No.14503 of 2009 which came to be disposed of on 18.07.2011. The said order dated 18.07.2011 was challenged in Writ Appeal No.1981 of 2011, wherein, the enquiry proceedings were stayed by this Court on 03.01.2012. The Writ Appeal came to be disposed on 06.12.2012. Soon thereafter, the appellants had appointed an enquiry officer and unfortunately the said enquiry officer has gone on long leave. Therefore, the necessity to appoint another enquiry officer arose and the fresh enquiry officer was appointed on 11.02.2014.

9. It will also be pertinent to point out at this juncture that neither the learned Single Judge, nor the Division Bench that dealt with earlier challenge to the charge memo had said that the non-compliance with the time limit fixed would result in the charges being dropped. The charges are very serious in nature and they relate to handling of the funds of Cooperative Society. We are therefore, of the view that the respondent cannot be given the benefit of lapse of time to go scot free. Further as could be seen from the records the delay, at least up to 06.12.2012, could be attributed to the actions of the respondent in challenging the charge memo and obtaining stay of the enquiry. We are, therefore, of the view that the learned Single Judge was not right in allowing the Writ Petition and sparing the respondent from facing the enquiry.

10. For the foregoing reasons, the order of the learned Single Judge is liable to be set aside and it is accordingly set aside. The Writ Appeal is allowed. It is now brought to our notice that one Mr.G.Ravikumar, Joint Registrar of Cooperative

Societies, has been appointed as the Enquiry officer under G.O.RT No.50 dated 11.02.2014. The affidavit also states that the appellants would be in a position to complete the enquiry proceedings within a period of six (6) months. We therefore direct the appellants to take immediate steps to complete the enquiry proceedings within a reasonable time, as it is stated across the bar that the respondent is also likely to retire in the very near future. There will be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

jv

To

1. The Registrar of Cooperative Societies,
No.170, Periyar EVR Road,
Kilpauk, Chennai 10.
2. The Secretary to Government,
Cooperation, Food and Consumer
Protection Department,
Secretariat, Chennai 600 009.

+1cc to Mr.K.Ashok Chakravarthi, Advocate Sr.49143
+1cc to the Government Pleader Sr.50002

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