

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.08.2018

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

W.P.Nos.5215, 3654 to 3656 of 2016

and

W.M.P.Nos.4591, 18923, 3010 to 3012 of 2016

Kalaiselvi ..Petitioner in W.P.No.5215 of 2016
Ravichandran ..Petitioner in W.P.No.3654 of 2016
A.Kulandaisamy ..Petitioner in W.P.No.3655 of 2016
Velu ..Petitioner in W.P.No.3656 of 2016

vs

- 1.The Deputy Registrar of Co-operative Societies,
Thirukoilur,
Villupuram District.
- 2.The President,
E2595, Kallakurichi Agricultural Producers
Cooperative Marketing Society Limited,
Kallakurichi - 606 202,
Villupuram District. ..Respondents in all W.Ps

Common Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records on the file of the first respondent dated 06.01.2016 made in Na.Ka.No.2898/2011 Sa.Pa. and quash the same.

For Petitioner : Mr.S.Sairaman(in all W.Ps)

For Respondents : Mr.L.P.Shanmugusundaram
Special Government Pleader
(Co-operatives)
(in all W.Ps)

C O M M O N O R D E R

The show cause notices issued under Section 87(1) of the Tamil Nadu Cooperative Societies Act, 1983(hereinafter referred to as the Act) is under challenge in these writ petitions.

2.The writ petitioner in respect of W.P.No.5215 of 2016 is employed as Cooperative Sub-Registrar and posted as Special Officer; in respect of W.P.No.3654 of 2016, the writ petitioner is employed as Clerk and posted as Manager/Incharge; in respect of W.P.No.3655 of 2016, the writ petitioner is employed as Clerk; in respect of W.P.No.3656 of 2016, the writ petitioner is employed as Movement Assistant in the 2nd respondent Cooperative Society respectively.

3.On account of certain allegations of irregularities, actions were initiated against the writ petitioners and the learned counsel for the writ petitioners state that initially an Arbitration proceedings were initiated in respect of the same irregularity and an order was passed by the Deputy Registrar of Cooperative Societies. This being the factum of the case, no further action can be taken against the writ petitioners under the Surcharge proceedings. Thus, the very show cause notice is bad in law.

4.The learned Special Government Pleader appearing on behalf of the respondents opposed the contentions raised on behalf of the writ petitioners by stating that 81 Enquiry was ordered by the competent authorities to enquire into the allegations of irregularities in respect of the 2nd respondent Cooperative Society. However, there were some defects and no enquiry was ordered by the competent authorities to conduct a revised enquiry in respect of the irregularities took place in the Cooperative Society. Based on the enquiry report submitted by the Enquiry Officer under Section 81 of the Act, Surcharge proceedings were initiated against the writ petitioners under Section 87 of the Tamil Nadu Cooperative Societies Act. Thus, there is no irregularity in respect of the actions taken against the writ petitioners.

5.This Court is of an opinion that the Arbitration proceedings are in relation to the business transactions between the Cooperative Societies and the person with whom an agreement was signed namely, the merchants. However, that will not prevent the competent authorities from initiating actions against the employees of the Cooperative Societies to recover the financial loss caused to the Cooperative Societies. The actions initiated against the employees under Section 87 of Act is independent and unconnected with the Arbitration proceedings, which were conducted between the Cooperative Society and the merchants based on the terms and conditions of the business agreements. Thus, the writ petitioners cannot take shelter from and out of the Arbitration proceedings conducted between the merchants and the Cooperative Society.

6.This apart, the present writ petitions have been filed, challenging the show cause notice issued under Section 87(1) of the Tamil Nadu Cooperative Societies Act. The Surcharge proceedings under Section 87 of the Tamil Nadu Cooperative Societies Act was initiated based on the enquiry report submitted by the Enquiry Officer under Section 81 of the Act. If an enquiry is conducted in respect of the irregularities took place in any of the Cooperative Societies, three fold actions are permitted. The competent authorities can initiate criminal prosecution by registering a complaint with the Commercial Crime Investigation Wing of the Police Department. Secondly, they are empowered to initiate disciplinary proceedings against whom the allegations are raised. Thirdly, the Surcharge proceedings can be initiated against all the persons concerned to recover the financial loss occurred to the Cooperative Societies. Yet another action is also possible under Section 34 of the Tamil Nadu Cooperative Societies Act for disqualifications, if the allegations are against the Elected members of the Board. Thus, all these actions can be initiated simultaneously by the competent authorities in respect of irregularities occurred in the Cooperative Societies.

7.As far as the present writ petitions are concerned, the same is filed against the show cause notice. No writ petition can be entertained against a show cause notice in a routine manner. Judicial review against the show cause notice is limited and a writ petition can be entertained, if the show cause notice has been issued by an incompetent authority having no jurisdiction or an allegation of mala fides are raised or if the same is in violation of the statutory rules in force. Even in case of raising allegation of mala fides against the authority, it is necessary that such an authority against whom allegations are raised is to be impleaded as a party in the writ proceedings in his personal capacity. In the absence of any one of the legal grounds, no writ can be entertained against a show cause notice.

8.Beyond this, the Surcharge proceedings are initiated under Section 87 of the Act and after conducting an enquiry by providing a reasonable opportunity to the person against whom such a show cause notice is issued. A final order is to be passed under Section 87 of the Act. If at all, the final order has been passed under Section 87 of the Act, the person aggrieved has to approach the Cooperative Tribunal constituted under Section 152 of the Tamil Nadu Cooperative Societies Act. Cooperative Tribunals are constituted and the learned District and Sessions Judges are discriminated to function as a Cooperative Tribunal.

9. Such being the legal position, the writ petitioners are at liberty to submit their explanation/objections and defend their case before the competent authorities. The writ petitioners after defending their case before the competent authorities under Section 87 of the Act, has to approach the Cooperative Tribunal to redress their grievances, if any exists, after passing the final order in the Surcharge proceedings.

10. Thus, the writ petitions can be entertained when the show cause notice has been issued under Section 87(1) of the Act and further, the merits raised in this regard can also to be adjudicated before the competent authorities at the time of conducting enquiry under Section 87 of the Act.

11. In this view of the matter, all the writ petition stands dismissed with the above observations. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Deputy Registrar of Co-operative Societies,
Thirukoilur, Villupuram District.

2. The President,
E2595, Kallakurichi Agricultural Producers
Cooperative Marketing Society Limited,
Kallakurichi - 606 202,
Villupuram District.

+1cc to the Government Pleader, S.R.No. 55651

+4cc to Mr.S.SAIRAMAN, Advocate, S.R.No. 55424 TO 55427

W.P.Nos.5215, 3654 to
3656 of 2016

CA(CO)
TR(30/08/2018)