



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.01.2018

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THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.(MD) No.13797 of 2016

and

W.M.P.(MD) No.10286 of 2016

M.Premalatha

...Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Tiruchirapalli Range,
Tiruchirapalli.

2.The Co-operative Sub-Registrar,
Varaganeri Town Co-operative Bank,
Tiruchirapalli District.

3.The General Manager,
Tiruchirapalli Central Co-operative Bank,
Rockfort Branch, Tiruchirapalli. ...Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the report dated 15.06.2016 under Section 81 of the Tamil Nadu Co-operative Societies Act and the notice by the 1st respondent herein in Na.Ka.No.1797 of 2016/SP dated 15.7.2016 under Section 87 (1) of the Tamil Nadu Co-operative Societies Act and quash the same and forbear the respondents from taking any action against the petitioner on the basis of the said report and notice.

For Petitioner

:M/s.AL.Gandhimathi

For R1 & R2

:Mr.M.Muthu

Additional Government Pleader.

For R3

:D.Shanmugaraja Sethupathi

O R D E R

The relief sought for in this writ petition is to call for the records relating to the report dated 15.06.2016 under Section 81 of the Tamil Nadu Co-operative Societies Act and the notice issued by the first respondent in proceedings dated 15.7.2016 under Section 87 (1) of the Tamil Nadu Co-operative Societies Act and quash the same and to forbear the respondents from taking any action against the petitioner on the basis of the said report and notice.



post of Branch Manager in the Rock Fort Branch, Tiruchirapalli District, Central Co-operative Bank Limited. The competent authority under the provisions of Tamil Nadu Co-operative Societies Act, ordered for an enquiry under Section 81 of the Act. The enquiry officer appointed for the purpose of conducting the enquiry scrutinized the records, conducted enquiry in relation to the affairs of the Central Co-operative Bank Limited and submitted a report under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983.

3. Pursuant to the report of the enquiry officer under Section 81 of the above said Act, a criminal case was registered in Cr.No.4 of 2016 under Sections 120 B, 408, 409, 418, 420, 468, 471 and 477 IPC. The allegation is that spurious jewels were pledged and investigation was conducted and the criminal case is still pending. Under these circumstances, the competent authority issued a notice under Section 87 (1) of the Tamil Nadu Co-operative Societies Act for initiating surcharge proceedings. Challenging both the report under Section 81 and the notice issued under Section 87 (1), the present writ petition is filed.

4. The learned counsel appearing on behalf of the writ petitioner states that the writ petitioner was holding the post of the Branch Manager and the details were verified by the authority concerned and therefore, she cannot be held responsible in respect of the spurious jewels. The writ petitioner is of an opinion that she was administering the overall administration of the branch and in respect of the irregularities and the illegalities committed by the staff members, she cannot be held responsible.

5. The learned counsel appearing on behalf of the Central Co-operative Bank Limited opposed the contentions by stating that there was a collusion between the officials of the branch and spurious jewels were pledged causing huge financial loss to the Central Co-operative Bank Limited. Based on the enquiry conducted under Section 81 and based on the report submitted action was initiated in accordance with law against all the officials, who had involved in those allegations. Thus, there is no irregularity.

6. The learned counsel appearing on behalf of the third respondent made a submission that the writ petition is not maintainable and that the writ petitioner has not exhausted the remedies available under the Act itself. Thus, the writ petition is premature and is to be rejected in *limine*.

7. The learned Additional Government Pleader appearing on behalf of the respondents 1 and 2 made a submission that the action was taken by registering a criminal case based on the report submitted by the enquiry officer under Section 81 of the Act. The surcharge proceedings are also to be initiated to compensate if any loss occurred in respect of the Central Co-operative Bank Limited. Thus, there is no irregularity in respect of the initiation of the



proceedings and the writ petitioner has to avail the opportunity provided under the rules and defend her case in accordance with law.

8. Now, this Court has to consider the arguments as advanced by the learned counsels appearing on behalf of the respective parties.

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9. The Tamil Nadu Co-operative Societies Act, 1983, deals with Audit, Inquiry, Inspection and Investigation, Surcharge and so on. Section 80 provides Audit, Section 81 provides Inquiry.

10. Section 81 (1) of the Tamil Nadu Co-operative Societies Act, 1983, provides 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 authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial 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.

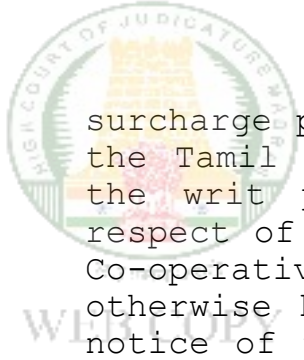
11. There is no irregularity or infirmity in respect of the proceedings for an enquiry under Section 81. In the present case on hand, the competent authority ordered an enquiry under Section 81, pursuant to that order the enquiry officer conducted a detailed enquiry and submitted a report. Once the report of enquiry is submitted then the actions are to be initiated based on the report. It is made clear that on receipt of the enquiry report under Section 81 of the Act, the competent authorities have to consider the following action.

1. Preferring a complaint before the commercial Crime investigation wing for registration of a criminal case for investigation.

2. To initiate Surcharge proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, for the purpose of compensating the loss if any, occurred to a particular Co-operative Society.

3. To initiate departmental disciplinary proceedings against the erred officials under the bye-laws or the rules as applicable in that particular case.

12. Thus, this Court is of an opinion that three fold actions are permissible based on the report submitted under Section 81 of the above said Act. In the present case on hand, the criminal complaint was given by the competent authority and the case was registered by the police in Cr.No.4 of 2016 and the investigation is in progress. Secondly, the competent authority has initiated the

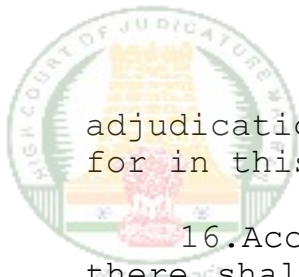


surcharge proceedings and issued the notice under Section 87 (1) of the Tamil Nadu Co-operative Societies Act, 1983. Thus, it is for the writ petitioner to submit her explanations / objections in respect of the notice issued under Section 87 (1) of the Tamil Nadu Co-operative Societies Act, 1983 and prove her innocence or otherwise before the competent authorities. It is brought to the notice of this Court that a charge memo was also issued initiating departmental disciplinary proceedings against the writ petitioner. In that case also the writ petitioner is bound to submit her explanations / objections in respect of the allegations set out in the charge memo. However, the present writ petition is filed challenging the report submitted under Section 81 as well as the notice issued under Section 87 (1) of the Tamil Nadu Co-operative Societies Act, 1983. No writ petition can be entertained in respect of the enquiry report.

13. In view of the fact that it is a statutory report submitted to the competent authority for initiating further actions. Thus, a report cannot be challenged by the writ petitioner on the ground that no action can be taken against her. If any action is initiated under the provisions of the above said Act, the writ petitioner has to defend the allegations in accordance with the rules and the procedures contemplated thereunder. However, at this stage, the writ petition cannot be entertained by this Court under Article 226 of the Constitution of India.

14. This apart, Section 81 report provided a base for registration of a criminal case and for initiation of surcharge proceedings and also the departmental disciplinary proceedings. Section 87 (1) notice has to be defended by the writ petitioner in accordance with procedures laid down in the Act itself. If any final order is passed after considering the explanation of the writ petitioner under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, the writ petitioner has to prefer an appeal under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983 before the Co-operative Tribunal constituted for the purpose of dealing with the co-operative cases. The writ petitioner has to exhaust the remedies provided under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983, against the final order passed in the surcharge proceedings.

15. In the present writ petition, the writ petitioner has challenged the very notice itself issued under Section 87 (1) of the Tamil Nadu Co-operative Societies Act, 1983. No writ can be entertained against the notice and it is left open to the writ petitioner to submit her explanations / objections and defend her case in the manner known to law. In this view of the matter, this Court is of an opinion that the present writ petition cannot be entertained and it is left open to the writ petitioner to defend the allegations set out against her by proving her innocence by producing the relevant documents and adducing evidence, if any available with her. In this view of the matter no further



adjudication needs to be undertaken in respect of the prayer sought for in this writ petition.

16. Accordingly, the writ petition stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (ADI)
/True Copy/

Sub-Assistant Registrar

To

1. The Deputy Registrar of Co-operative Societies,
Tiruchirapalli Range,
Tiruchirapalli.

2. The Co-operative Sub-Registrar,
Varaganeri Town Co-operative Bank,
Tiruchirapalli District.

+One cc to M/s. AL. Ganthimathi, Advocate, SR.No.45036

+One cc to M/s. D. Shanmugarajasethupathi, Advocate, SR.No.45528

+One cc to The Special Government Pleader, SR.No.45542

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RL/6C/5P/SKN/RSK/SAR4/27/2/2018

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