



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WEB COPY

W.P(MD)No.20485 of 2013

and

MP(MD)Nos.1 & 2 of 2013 and 1 of 2014

R.Arunmozhi

... Petitioner

Vs.

1.The Regional Deputy Registrar (Housing)
16/1, Samathu School Street,
Khajamalai,
Mannarpuram,
Trichy - 20.

2.The Co-Operative Sub Registrar (Housing),
(Enquiry Officer u/s.81 of the Co-Operative Society Act,
TVS.Nagar, Co-Operative Building Society,
B100, Racecourse Road, TVS.Nagar,
Khajamalai, Trichy - 600 023.

3.S.Muthukrishnan

4.M.Thenmozhi

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari calling for the Impugned proceedings in Na.Ka.No.469/2013 Sa.Ba. dated 2.7.2013 issued by the 1st respondent and quash the same.

For Petitioner	: No Appearance
For Respondents 1 & 2	: Mr.K.C.Ramalingam
For Respondents 3 & 4	: No appearance

ORDER

The order dated 02.07.2013 issued by the first respondent under Section 81 of the Tamil Nadu Co-operative Societies Act, is under challenge.

2.None appeared on behalf of the writ petitioner.

3.On perusal of the affidavit filed in support of the writ petition states that the writ petitioner was appointed as Junior Assistant on 11.05.1989 in Co-Operative Department and promoted as Junior Inspector in the year 1996. Subsequently, the petitioner was promoted as Senior Inspector and to the post of Sub Registrar of Co-



Operatives in the year 2012. The Deputy Registrar of Co-Operative Societies, issued an order under Section 81 of the Tamil Nadu Co-operative Societies Act. Accordingly, enquiry officer is to appointed and enquiry officer has to conduct enquiry and submit a report. Challenging the enquiry order, the present writ petition has been filed.

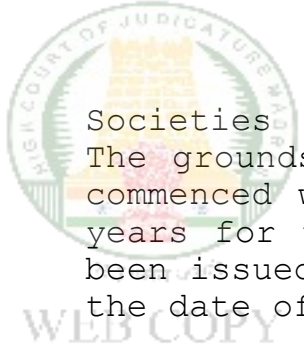
4.The learned Counsel appearing on behalf of the respondents 2 & 3 states that mere order of an enquiry under Section 81 of the Tamil Nadu Co-Operative Societies Act, will not constitute any cause of action for the writ petitioner to move the present writ petition. This apart, the enquiry is ordered in order to find out the truth regarding certain irregularities, which occurred in the Co-operative Society. Such an enquiry cannot be prevented and in fact the enquiry order under Section 81 of the Act, is a Statutory enquiry, which is to be conducted by the enquiry officer appointed by the Deputy Registrar of Co-Operative Societies. Thus, the writ petitioner has filed the present writ petition without any cause of action. Accordingly, the writ petition is liable to be dismissed.

5.This Court is of an opinion that Section 81 of the Tamil Nadu Co-Operative Societies Act, deals with inquiry.

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.

6.The very purpose and object of the provision is to identify the irregularities, illegalities and misappropriations, if any committed by the management of the Tamil Nadu Co-Operative Societies. The order of enquiry is Statutory in nature, on mere appointment of enquiry officer by ordering enquiry under Section 81, no writ cannot be entertained. The enquiry is ordered on merits, in respect of certain allegations raised against the Co-Operative Society. Thus, it is duty mandatory on the part of the official concerned to cooperate for the enquiry, in order to find out truth regarding allegations levelled against the Co-operative society.

7.Thus, the order of enquiry issued under Section 81, cannot constitute any cause of action for the writ petitioner to move the present writ petition. Such enquiry orders are challenged in routine manner in order to prevent the enquiry officer from conducting enquiry. When the statutory enquiry is prescribed under the Act, the writ petitioner, who is working as Sub Registrar of Co-Operative



Societies cannot prevent the authorities from conducting enquiry. The grounds raised in the writ petition is that no action shall be commenced with regard to any act or omission after expiry of seven years for the date of such act or omission. The impugned order has been issued by the first respondent after the expiry of 8 years from the date of purchasing the plots.

8. Admittedly, the time limit prescribed in the Act, is only directory in nature and not mandatory. This apart, the limitation is to be reckoned from the date of knowledge and not from the actual date of offences or misappropriations. In this regard, this Court passed an elaborate order in W.P(MD)No.8488 to 8490 of 2010, dated 10.01.2018, considering the aspects in respect of the time limit prescribed under the Statute and the relevant paragraphs are extracted here under:

6. The power of suo motu revision is very much provided under Section 153 of the Act itself. The Registrar on his own motion or on an application is empowered to revise the orders or decision, if any passed or taken by the management of co-operative societies. The power of the Registrar of Co-operative Societies under the Tamil Nadu Co-operative Societies Act was delegated to the Joint Registrar of Co-operative Societies, pursuant to the notification issued by the Government Under the Act. Thus, initiation of suo-motu revision by the Joint Registrar of Co-operatives is well within his jurisdiction and exercise based on the delegation of powers provided by the Registrar by way of notification issued by the Government under the provisions of the Act. Thus, there is no irregularity or illegality in respect of the initiation of suo-motu revision by the respondent under Section 153 of the Act. However, in respect of the limitation prescribed under the Proviso to Section 153 of the Act, which stipulates that every application to the Registrar or from the Government have exercise of power under Section 153 shall be preferred within 90 days from the date of the proceedings, decision or order.

7. This Court is of a considered opinion that the Proviso to Section 153 cannot have any implication in respect of suo-motu revisional power to be exercised by the Registrar of Co-operative Societies under the provisions of the Act in certain circumstances. The very object sought to be achieved through the power of suo-motu revision is to prevent the maladministration, misappropriation, illegality or irregularity if any committed by the employees are properly dealt with in accordance with law and the erred management or officials are to be punished under the law. In other words, the employees of the co-operative societies, if found committed any act in violation of the Act or Rules, then they should not be allowed to escape



from the clutches of law. Under these circumstances, this Court should have a pragmatic approach and to consider the very purpose and object of the power of suo-motu revision. However, the Act or Rules are to be interpreted and the implied part of the Act are also to be interpreted by the Constitutional Courts to see that the employees committing misconduct are not escaped from the disciplinary proceedings or otherwise. The silence in the Constitution and the silence in certain enactments are integral part. It is the duty of the Courts to see and cull out such silence of the Constitution or the Act and provide a practical and workable interpretation so as to see that the purpose and object sought to be achieved is fulfilled.

8. It is possible in this vast country that many irregularities and illegalities are unnoticed by the State and Authorities. Thousands of co-operative societies are functioning through out the State and most of the primary societies are functioning in remote areas of the State. Practically it may not be possible for the higher officials to notice such irregularities and illegalities within the time limit. Sometimes it may be not be possible for the officers to bring to the notice of the higher officials in respect of the irregularities or illegalities. The power of suo-motu revision is provided to deal with all such cases where there is a delay in identifying or noticing the illegalities or irregularities or misappropriation, if any found in respect of the management of the co-operative societies. Thus, this Court has to conclude the time limit prescribed under the proviso to Section 153 is directory in nature and can never be construed as mandatory.

9. Quashing of disciplinary proceedings merely on the ground of delay is certainly not preferable, in the matter of initiation of suo-motu revision. The very objective of the provision of suo-motu revision is to mitigate the injustice caused both to the society as well as to the public at large. Public money is being invested in co-operative society and thus, poor people are investing their hard earned money with a fond hope that the assets will be properly dealt with and protected in all respects. Such being the expectation of the citizens of this great nation, the authorities committing any irregularity or illegality, misappropriation or otherwise has to be dealt with in accordance with law. Those officials cannot be allowed to escape from the clutches of law, merely on the ground of delay. Question of delay would not arise, in case of knowledge in respect of the order is also to be considered. Thus, it is not as if, the case can be decided mechanically on the ground of delay. The reasons are also to be considered. Even in case of misappropriation,



illegality or irregularity are apparent on the face of record, then the Courts have to apply its mind to see that those persons who all are indulging in such misappropriation are properly dealt with in accordance with law. In many enactments time limits are provided only for the purpose of guiding the competent authorities under the statute and to ensure the speedy disposal of the proceedings initiated under the particular statute and to ensure speedy disposal of the proceedings initiated under the particular statute. The intention of the legislators are to see that the proceedings initiated under a particular Act, is concluded within a reasonable period of time. It is apparently clear that time limits are fixed only by way of guidelines to the competent authorities and it cannot be construed as mandatory provision. The principles of reasonableness is the sole criteria for prescribing the time limits in statutes. However, such principles are to be adopted, subject to the particular and peculiar facts and circumstances of each case. In general, those time limits prescribed are to be construed as directory in nature and not mandatory. Non adherence of such directions would not vitiate the entire proceedings. If such concept or idea is allowed by the Courts, then we are causing injustice to the public at large. While rendering justice to an individual, the Courts are equally bound to see that if any relief causes injustice to the society at large, balancing of minds in this regard is of paramount important. The Courts have to strike the balance of mind between these two events. Justice is a concept and such concept has to be implemented by adopting a balanced approach and it cannot be used as blunt concept so as to quash certain proceedings, merely on certain technical grounds. In certain circumstances, such technical grounds may have an avail to the aggrieved person, but not always. Thus, each and every case is to be considered on its own merits and demerits. In the present case on hand, the allegations are serious and relating to misappropriation. This being the factum, this Court cannot consider the arguments as advanced on behalf of the writ petitioner.

10. In respect of the case on hand, the Proviso clause cited by the learned counsel for the petitioner, prescribing the time limit of 90 days cannot have any implication in respect of exercise of power of suo-motu revision. The time limit would be applicable only in respect of submitting an application to the Registrar. Thus, it is clarified that the time limit of 90 days prescribed is only for submitting an application by the aggrieved person before the Registrar or to the Government. However, the same cannot be made applicable in respect of the exercise of suo-motu powers by the Registrar of Co-Operative societies or by the Government.



In this regard, this Court is of an undoubted opinion that the time limit is prescribed for the purpose of entertaining the application from the aggrieved person. This cannot be made applicable for suo-motu revision power to be exercised by the competent authorities. Accordingly, the time limit is only directory in respect of the suo-motu revision and the same cannot be held as mandatory. It is clarified that suo-motu power can be exercised immediately after noticing any irregularity or any misappropriation by the Registrar or by the Government is only in the interest of larger public in order to make the administration more efficient. The rule of Constructive interpretation is to be followed. The pragmatic approach has to be adopted while interpreting this kind of provisions where certain time limits are prescribed.

11. It is well settled that the question whether an expression used in a Section is mandatory or not has to be decided on various factors and the mere expression of the word "shall" alone is not decisive of the matter. This question came up for consideration before the Privy Council in the celebrated case of Montreal Street Railway Company Vs. Normandin AIR 1917 Privy Council 142. SIR ARTHUR CHANNEL, speaking for the judicial Committee of the Privy Council, clarified the position at page 144 of the report as follows:

"The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statutes must be looked at."

The learned Judge relied on Maxwell on "The Interpretation of Statutes" and the portion on which reliance was placed is set out herein below:

"Where the prescription of a statute relate to the performance of a public duty and where the invalidation of acts done in neglect of them would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty without promoting the essential aims of the legislature, such prescriptions seem to be generally understood as mere instructions for the guidance and government of those on whom the duty is imposed, or, in other words as directory only. The neglect of them may be penal, indeed, but it does not affect the validity of the act done in disregard of them."

The aforesaid principles have been followed by the Constitution Bench of the Supreme Court in the case of State of U.P. Vs. Manbodhan Lal (supra), wherein paragraphs 10 and 11 at pages 917 and 918 of the report are relevant and they are extracted here under:



"The question may be looked at from an other point of view. Does the Constitution provide for the contingency as to what is to happen in the event of non-compliance with the requirements of Article 320 (3) (c)?. It does not, either in express terms or by implication, provide that the result of such a non-compliance is to invalidate the proceedings ending with the final order of the Government."

This aspect of the relevant provisions of part XIV of the Constitution, has a direct bearing on the question whether Article 320 is mandatory. The question whether a certain provision in a statute imposing a duty on a public body or authority was mandatory or only directory, arose before their Lordships of the Judicial Committee of the Privy Council in the case of Montreal Street Railway Company Vs. Normandin, 1917 A.C.170(B).

In that case the question mooted was whether the omission to revise the jury lists as directed by the statute, had the effect of nullifying the verdict given by a jury. Their Lordships held that the irregularities in the due revision of the jury lists, will not ipso facto avoid the verdict of a jury. The Board made the following observations in the course of their judgment.

"...The question whether provisions in a statute are directory or imperative has very frequently arisen in this country, but it has been said that no general rule can be laid down, and that in every case the object of the statute must be looked at. The cases on the subject will be found collected in MAXWELL, on the INTERPRETATION OF STATUTES, 5th Edn., p.596 and following pages. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience, or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable, not affecting the validity of the acts done. "

The principle laid down in this case was adopted by the Federal Court in the case of Biswanath Khemka Vs. King-Emperor, 1945 FCR 99: AIR 1945 FC 76 (C). In that case, the Federal Court had to consider the effect of non-compliance with the provisions of Section 256 of the Government of India Act, 1935, requiring consultation between public authorities before the conferment of magisterial powers or of enhanced magisterial powers etc.,



The Court repelled the contention that the provisions of Section 256, aforesaid, were mandatory. It was further held that non-compliance with that Section would not render the appointment otherwise regularly and validly made, invalid or inoperative. That decision is particularly important as the words of the Section then before their Lordships of the Federal Court, were very emphatic and of a prohibitory character.

An examination of the terms of Article 320 shows that the word "shall" appears in almost every paragraph and every clause or sub-clause of that article. If it were held that the provisions of Article 320 (3) (c) are mandatory in terms, the other clauses or sub-clauses of that article, will have to be equally held to be mandatory.

If they are so held, any appointments made to the public services of the Union or a State, without observing strictly, the terms of these sub-clauses in clause (3) of Article 320, would adversely affect the person so appointed to a public service, without any fault on his part and without his having any say in the matter.

This result could not have been contemplated by the makers of the Constitution. Hence, the use of the word "shall" in a statute, though generally taken in a mandatory sense, does not necessarily mean that in every case it shall have that effect, that is to say, that unless the words of the statute are punctiliously followed, the proceedings or the outcome of the proceeding, would be invalid.

On the other hand, it is not always correct to say that where the word "may" has been used, the statute is only permissive or directory in the sense that non-compliance with those provisions will not render the proceeding invalid. In that connection, the following quotation from Crawford on Statutory Constitution Article 261 at p.516, is pertinent:

"The question as to whether a statute is mandatory or directory depends upon the intent of the legislature and not upon the language in which the intent is clothed. The meaning and intention of the legislature must govern, and these are to be ascertained, not only from the phraseology of the provision, but also by considering its nature, its design, and the consequences which would follow from construing it the one way or the other..."



The very same passage from the judgment of the Privy Council referred to above has been approvingly quoted by the Supreme Court in extenso. Similar principles have been reiterated in a subsequent Constitution Bench judgment of the Supreme Court in the case of State of U.P. Vs. Babu Ram Upadhyaya (supra). JUSTICE. K. SUBBA RAO as His Lordship then was, speaking for the majority, quoting the same passage from Mantreal Street Railway Company Vs. Normandi (supra), has come to the same conclusion.

"The relevant rules of interpretation may be briefly stated thus: When a statute used the word "shall", prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered."

The decision of the Supreme Court in State of U.P. Vs. Manbodhan Lal (supra) was also reiterated.

The two judges Bench of the Hon'ble Supreme Court of India, in the case of T.V. Usman Vs. Food Inspector, Tellicherry Municipality AIR 1994 SC 1818: (1994) 1 SCC 754, the same principles have been reiterated.

"In Maxwell on Interpretation of Statutes, Eleventh Edn., at page 362 it is stated as under:

Where, indeed, the whole aim and object of the legislature would be plainly defeated if the command to do the thing in a particular manner did not imply a prohibition to do it in any other manner, no doubt can be entertained as to the intention; that is to say, such a requirement would be imperative.

It is further stated on page 364 that:

The general rule is, that an absolute enactment must be obeyed or fulfilled exactly, but it is sufficient if a directory enactment be obeyed or fulfilled substantially.

When a public duty is imposed and the statute requires that it shall be performed in a certain manner, or within a certain time, or under other specified conditions, such prescriptions may well be regarded as



intended to be directory only in cases when injustice or inconvenience to others who have no control over those exercising the duty would result if such requirements were essential and imperative.

In Craies Statute Law, Seventh Edn., at page 62 it is stated thus:

When a statute is passed for the purpose of enabling something to be done, and prescribes the formalities which are to attend its performance, those prescribed formalities which are essential to the validity of the thing when done are called imperative or absolute; but those which are not essential and may be disregarded without invalidating the thing to be done, are called directory.

At page 250 it is further stated thus:

The question whether the provisions in a statute are directory or imperative has frequently arisen in this country, but it has been said that no general rule can be laid down and that in every case the object of the statute must be looked at. ... When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in respect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty, and at the same time would not promote the main object of the legislature, it has been the practice to hold such provisions to be directory only, the neglect of them, though punishable not affecting the validity of acts done.

In Dattatraya Moreshwar v. State of Bombay, A.I.R. 1952 S.C.

181, it was held as under:

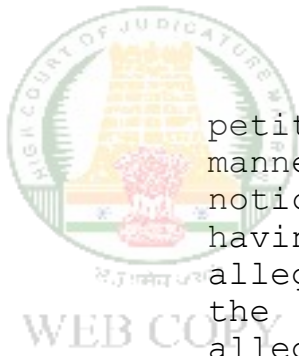
S.V.K. Sahasramam vs The Deputy Registrar Of Co-Op. ... on 29 August, 2008

Generally speaking the provisions of a statute creating public duties are directory and those conferring private rights are imperative. When the provisions of a statute relate to the performance of a public duty and the case is such that to hold null and void acts done in neglect of this duty would work serious general inconvenience or injustice to persons who have no control over those entrusted with the duty and at the same time would not promote the main object of the legislature, it has been the practice of the Courts to hold such provisions to be directory only, the neglect of them not affecting the validity of the acts done.



In Rule 7(3) no doubt the expression shall is used but it must be borne in mind that the rule deals with stages prior to launching the prosecution and it is also clear that by the date of receipt of the report of the Public Analyst the case is not yet instituted in the court and it is only on the basis of this report of the Public Analyst that the authority concerned has to take a decision whether to institute a prosecution or not. There is no time-limit prescribed within which the prosecution has to be instituted and when there is no such limit prescribed then there is no valid reason for holding the period of 45 days as mandatory. Of course that does not mean that the Public Analyst can ignore the time-limit prescribed under the rules. He must in all cases try to comply with the time-limit. But if there is some delay, in a given case, there is no reason to hold that the very report is void and on that basis to hold that even prosecution cannot be launched. May be, in a given case, if there is inordinate delay, the court may not attach any value to the report but merely because the time-limit is prescribed, it cannot be said that even a slight delay would render the report void or inadmissible in law. In this context it must be noted that Rule 7(3) is only a procedural provision meant to speed up the process of investigation on the basis of which the prosecution has to be launched. No doubt, sub-section (2) of Section 13 of the Act confers valuable right on the accused under which provision the accused can make an application to the court within a period of 10 days from the receipt of copy of the report of Public Analyst to get the samples of food analysed in the Central Food Laboratory and in case the sample is found by the said Central Food Laboratory unfit for analysis due to decomposition by passage of time or for any other reason attributable to the lapses on the side of prosecution, that valuable right would stand denied. This would constitute prejudice to the accused entitling him to acquittal but mere delay as such will not per se be fatal to the prosecution case even in cases where the sample continues to remain fit for analysis in spite of the delay because the accused is in no way prejudiced on the merits of the case in respect of such delay. Therefore it must be shown that the delay has led to the denial of right conferred under Section 13(2) and that depends on the facts of each case and violation of the time-limit given in sub-rule (3) of Rule 7 by itself cannot be a ground for the prosecution case being thrown out."

12. The Challenge in these writ petitions are only the notices therefore it is left open to the writ petitioners to submit their respective explanations/objections and participate in the enquiry proceedings to be conducted by the first respondent and prove their innocence. A writ



petition a notice cannot be entertained in routine manner. A writ petition can be entertained against a notice or an order, if the same is issued by the authority having no jurisdiction or competency or if any mala fide allegations are raised or if the same is in violation of the Statutory Rules in force. Even in case, raising allegations on mala fides, the authority against whom allegation is raised to be impleaded as party respondent in his personal capacity.

13. In this view of the matter, no further adjudication needs to be undertaken in respect of the grounds raised in these writ petitions. The first respondent while conducting enquiry proceedings under Section 153 of the Act, has to provide all reasonable opportunities contemplated to the petitioner and after conducting enquiry, take a decision and pass final order on merits and in accordance with law.

14. With these observations, the presents writ petitions are dismissed. However, there shall be no orders as to costs. Consequently, connected, miscellaneous petitions are closed.

It is held that the time limits prescribed in the Statute in this regard are guidance and directory in nature. The same cannot be construed as mandatory. Non adherence of the time limit prescribed in the Act, cannot vitiate the entire proceedings, in such an event, the very purpose and object of the provisions will be defeated.

9. This being the view taken by this Court, the present writ petition deserves no further adjudication. Accordingly, the writ petition stands dismissed. However, there shall be no orders as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (AS)

/True Copy/

Sub Assistant Registrar

To

1. The Regional Deputy Registrar (Housing)
16/1, Samathu School Street,
Khajamalai,
Mannarpuram,
Trichy - 20.



2.The Co-Operative Sub Registrar (Housing),
(Enquiry Officer u/s.81 of the Co-Operative Society Act,
TVS.Nagar, Co-Operative Building Society,
B100, Racecourse Road, TVS.Nagar,
Khajamalai, Trichy - 600 023.

+1cc to Special Government Pleader, SR.No. 55089
+1cc to M/S.K.C.Ramalingam, Advocate SR.No. 54750

W.P (MD) No.20485 of 2013
and
MP (MD) Nos.1 & 2 of 2013 and 1 of 2014
12.03.2018

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