

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED: 27.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.11149 of 2019
and WMP.Nos.11546 and 11548 of 2019

M.Elumalai Petitioner

Vs

1. The Joint Registrar of Co-operative Societies
Villupuram Region
Master Complex,
Villupuram 605 602.
2. The Deputy Registrar of Co-operative Societies,
Tindivanam Circle,
Tindivanam 604 001
3. The Co-operative Sub Registrar,
Enquiry Officer under Section 81
in respect of The management
CL.Spl.148 Melpakkam Primary
Agricultural Co-operative Credit Society
Melpakkam Village, Iyyanthope Post,
Tindivanam Taluk,
Villupuram District 604 307.
4. The Management
CL.Spl.148 Melpakkam Primary
Agricultural Co-operative Credit Society
Rep.by its Administrator,
Melpakkam Village, Iyyanthope Post
Tindivanam Taluk,
Villupuram District 604 307.

... Respondents

Prayer:- Writ petition filed under 226 of the Constitution of India, praying to issue a writ of Certiorarified Mandamus after calling for the concerned records from the third and second respondents quash the report of the third respondent dated 23.11.2018 submitted under Section 81 of the Tamil Nadu Co-operative Societies Act and the consequential notice of the second respondent dated 14.02.2019 bearing Na.Ka.No.2847/2018 Sa.Ba 14.02.2019 as illegal, arbitrary and contrary to law and consequently direct the respondent No.1 to 3 to conduct

the fresh proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act for surcharge proceedings, after giving due opportunity of hearing to the petitioner.

For Petitioner : M/s.Balan Haridas

For Respondents: M/s.T.Girija

Government Advocate for R1 to R3

Mr.L.P.Shanmugasundaram

Special Govt.Pleader for R4

ORDER

The prayer in the writ petition is for writ of Certiorarified Mandamus after calling for the concerned records from the third and second respondents quash the report of the third respondent dated 23.11.2018 submitted under Section 81 of the Tamil Nadu Co-operative Societies Act and the consequential notice of the second respondent dated 14.02.2019 bearing Na.Ka.No.2847/2018 Sa.Ba 14.02.2019 as illegal, arbitrary and contrary to law and consequently direct the respondent No.1 to 3 to conduct the fresh proceedings under Section 81 of the Tamil Nadu Co-operative Societies Act for surcharge proceedings, after giving due opportunity of hearing to the petitioner.

2. The learned counsel for the petitioner submitted that notice of summons have been issued to the petitioner under Section 81 of the Tamil Nadu Co-operative Societies Act and at that stage, the petitioner has sought for some particulars from the third respondent and requested time for submitting his explanations. However, without granting time, an ex-parte enquiry report was submitted to the second respondent/Deputy Registrar by the third respondent. Pursuant to the enquiry report, the second respondent/Deputy Registrar has issued a show cause notice to the petitioner under Section 87(1) of the Tamil Nadu Co-operative Societies Act.

3. The present writ petition has been filed by the petitioner alleging that the respondents had not furnished all the documents sought for by the petitioner and sufficient time has not been granted for submitting his objections. The third respondent has submitted the ex-parte enquiry report before the second respondent/Deputy Registrar. The petitioner has challenged the impugned show cause notice issued under Section 87(1) of the Tamil Nadu Co-operative Societies Act by alleging that the second respondent has violated the principles of natural justice by not furnishing the documents to the petitioner.

4. The learned Government Advocate appearing for the respondents R1 to R3 submitted that notice of summons have been issued to the petitioner but the petitioner has not appeared for the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. However it is submitted that the said enquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act is a fact finding enquiry and therefore present enquiry is conducted under Section 87(1) of the Tamil Nadu Co-operative Societies Act by the second respondent. Further, it is submitted that the second respondent shall follow the procedure contemplated under the provisions of the Act and pass orders in accordance with law.

5. The learned Government Advocate, further submitted that pending the writ petition, the second respondent has furnished the required documents as requested by the petitioner vide his representation made before the authorities.

6. At this juncture, the learned counsel for the petitioner submitted that the observation in the enquiry report that the petitioner was set exparte would prejudice the petitioner's right to appear in the present enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and the said aspect to be clarified by this Court and enquiry to be conducted without being influenced by the said observation.

7. By considering the aforesaid facts and going through the records, it is found that admittedly the petitioner was served with the notice to appear for the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. The petitioner made a request to the authority concerned to furnish a copy of the document, subsequently, exparte report was submitted, it is also an admitted fact that an enquiry report submitted by the enquiry office is only a fact finding enquiry. Therefore an opportunity to be afforded to the petitioner, is not a mandatory one. But, it is the contention of the Petitioner that the petitioner's request for an opportunity was negatived by the respondents and report has been submitted to the second respondent. But, in my considered view, the ground raised by the Petitioner that the enquiry report is vitiated and not followed the procedures contemplated under law, cannot be accepted.

8. In view of the above discussion, no further relief could be granted to the Petitioner. It is made clear that the second respondent shall conduct an enquiry independently without taking note of the facts regarding the non appearance of the petitioner before the enquiry

officer under Section 81 of the Act. With the above direction the writ petition is disposed of. No cost. Consequently connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

dpq

To

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+1 cc to spl Government Pleader(co-op) Sr.No. 41911
+1cc to Mr.L.P.Shanmugasundaram , Advocate SR.No. 42814

W.P.No.11149 of 2019
and
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A.SK(27/06/2019)