

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06-03-2019

CORAM

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

W.P.No.18916 of 2018

And

W.M.P.Nos.22305 and 22306 of 2018

S.Ranganathan

.. Petitioner

- Vs. -

1.The Deputy Registrar of Cooperative Societies,
Chidambaram Circle,
Chidambaram.

2.E-2588 Nandhimangalam Primary Agricultural
Cooperative Credit Society,
Represented by its President,
Chockkalingapuram,
Chidambaram.

3.The Enquiry Officer,
Under Section 81 of the
Tamil Nadu Co-operative Societies Act,
Chidambaram Circle,
Chidambaram.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records of the enquiry report under Section 81
of the Tamil Nadu Co-operative Societies Act, dated 29.11.2012
on the file of the respondents 1 and 3 and consequent order of
suspension passed by the second respondent dated 6.10.2017 and
quash the same.

For Petitioner : Mr.M.S.Palaniswamy
For Respondents : Mr.L.P.Shanmugasundaram,
Special Government Pleader
(Co-op.).

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O R D E R

The enquiry report submitted under Section 81 of the
Tamil Nadu Co-operative Societies Act, 1983 dated 29.11.2012, is
under challenge in the present writ petition.

2. The learned counsel for the writ petitioner is
working as Secretary of the second respondent-Cooperative

Society and in respect of certain loan transactions, the allegations were made out against the functions of the Cooperative Society.

3. When it was brought to the notice of the Registrar/Competent Authority, an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter referred to as the 'Act') was ordered. The learned counsel for the writ petitioner states that the enquiry was already conducted by one Enquiry Officer, who in turn submitted his report.

4. Having not satisfied with the enquiry report in respect of certain transactions, another enquiry was ordered by the Registrar under Section 81 of the Act.

5. The learned counsel for the writ petitioner states that the second enquiry under Section 81 of the Act is impermissible. There is no necessity for the Registrar to order for the second enquiry under Section 81 of the Act, as the actions were initiated based on the enquiry report submitted by the Enquiry Officer appointed at the first instance.

6. At the outset, it is contended that second enquiry in respect of the same incident is impermissible under Section 81 of the Act.

7. The learned Special Government Pleader, appearing on behalf of the respondents, states that the Enquiry Officer, appointed at the first instance, conducted an enquiry and submitted his report. However, the competent authority found that the report submitted by the Enquiry Officer was not a full-fledged one and the Enquiry Officer had not assessed the quantum of civil liability and had not assessed the quantum of criminal liability. But he only recommended for disciplinary action against the writ petitioner.

8. Upon the scrutiny of the enquiry report, these lapses were found by the Deputy Registrar of Cooperative Societies. Thus, another Enquiry Officer was appointed to conduct the enquiry under Section 81 of the Act.

9. This apart, the person initially authorised to conduct the enquiry was charge sheeted for his lapses committed in performing his duty as an Enquiry Officer and as per Section 81(5) of the Act, the first respondent ordered for a fresh enquiry against the affairs of the second respondent-Society in proceedings dated 12.10.2011.

10. The learned Special Government Pleader for the respondents relied on the Circular No.36/2010 dated 20.12.2010, states that if at all there is any defect in the report of the

Enquiry Officer, the said Enquiry Officer shall be called upon to rectify the defects or deficiencies or discrepancies on the spot. If any additional information is needed, the Enquiry Officer should be asked to furnish them without any delay. The enquiry report is perfunctory or incomplete. The Assistant Registrar/Joint Registrar or Deputy Registrar may order for a fresh enquiry and should take severe disciplinary action against the Enquiry Officer, who has given such perfunctory or incomplete report. Under these circumstances, the first respondent had ordered for a second enquiry and took severe actions against the previous Enquiry Officer.

11. The facts and circumstances of the case on hand are to be considered.

12. The fact remains that the first Enquiry Officer conducted an enquiry and committed certain lapses, deficiencies and discrepancies. Those lapses were found by the competent authorities and actions were initiated against the first Enquiry Officer. Under these circumstances, it necessitated for the first respondent to order for the second enquiry under Section 81 of the Act, enabling the authorities to identify the misappropriation of funds or any other illegalities or irregularities in the administration of the Cooperative Societies.

13. The very purpose and the object of Section 81 of the Act, is to ensure that the functions of the Cooperative Societies are properly monitored and to control the financial aspects of the Cooperative Societies. Section 81 of the Act, reads as under:-

"81. Inquiry.- (1) 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.

(2) The Registrar or the person authorized by him under sub-section (1) shall have the following powers, namely:-

(a) He shall at all reasonable times have free access to the books, accounts, documents, security, cash and other properties belonging to, or in the custody of the society and may summon any person in possession of, or responsible for the custody of, any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the head quarters of the society or any branch thereof.

(b) Where any person summoned under clause (a) fails or refuses to produce any record or property of the registered society as specified in the summons, any Metropolitan Magistrate or any Judicial Magistrate of the first class in whose jurisdiction the office of such society or the records and properties of such society is or are situated, shall, on application by the Registrar, or the person authorized by him under sub-section (1), direct the delivery to the Registrar of such person of the possession of the records and properties of such society. Provided that no such application shall be made by the person authorized under sub-section (1) without the previous sanction of the Registrar.

(c) He may seize the books, accounts or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents or to facilitate his inquiry, and shall give the person from whose custody the books, accounts or documents have been seized a receipt for the same:

Provided that the books, accounts or documents seized shall be retained by him only for so long as may be necessary for their examination and for the purpose of inquiry:

Provided further that the books, accounts or documents seized shall not be retained for more than three months at a time except with the permission of the next higher authority.

(d) He may summon any person who, he has reason to believe, has knowledge of any the affairs of the society and may examine such person on oath and may summon any person to

produce any books, accounts or documents belonging to him or in his custody if the Registrar, or the person authorized as aforesaid has reason to believe that such books, accounts or documents contain any entry relating to transactions of the society.

(e) (i) He may, notwithstanding any rule or by-laws specifying the period of notice for a general meeting of the society or for a meeting of the board, require any officer of officers of the society to call a general meeting or a meeting of the board at such time and place at headquarters of the society or any branch thereof to consider such matters as may be specified by him and the provisions of sub-clauses (i) and (ii) of clause (b) of sub-section (4) of section 32 shall apply to any meeting called under this sub-clause as if it were a meeting called in pursuance of a requisition under clause (a) of sub-section (3) of that section.

(ii) If the officer or officers of the society refuses or refuse or fails or fail to call such meeting or if in the opinion of the Registrar there is no board or officer of officers competent under this Act, the rules or the by-laws to call such meeting, or if there be an order of the Registrar or of the Civil Court restraining the board to function, the Registrar or the person authorized by him under sub-section (1) shall have power to call the meeting himself and provisions of clause (b) of sub-section (4) of section 32 and sub-section (5) of that section shall apply to such meeting as if it were a meeting called under clause (a) of the said sub-section (4).

(3) When an inquiry is held under this section, the Registrar shall within such time as may be prescribed communicate the result of the inquiry- (i) In case the Government have subscribed directly to the share capital of the registered society or in case any moneys are due from the registered society either to the Principal State Partnership Fund or to the Subsidiary State Partnership Fund referred to in Chapter VI, to the Government or to any

officer appointed by the Government in this behalf; (ii) to the financing bank, if any, to which the society is affiliated, and (iii) to the society concerned.

(4) The inquiry shall be completed within a period of three months from the date of ordering the inquiry or such further period or periods not exceeding three months as a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate.

(5) It shall be competent for the Registrar to withdraw any inquiry from the person authorized by him under sub-section (1) and to hold the inquiry himself or entrust it to any other person as he deems fit.

(6) The Registrar may, by order in writing, direct the registered society or any officer of the society or its financing bank to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed as a result of the inquiry."

14. 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.

15. The very purpose of Section 81 of the Act is unambiguous that the Registrar is empowered to monitor the administration of the Cooperative Societies. In the event of any complaint or information in respect of misappropriation, irregularity or illegality, an enquiry may be ordered under Section 81 of the Act. Thus, Section 81 of the Act, which is a statutory enquiry, has no restriction and any number of such enquiry can be ordered in the interest of administration of the Cooperative Societies.

16. Inspection enquiry and audit are the routine administrative affairs of the authorities and it is not

necessary that there must be one enquiry under Section 81 of the Act. Any number of enquiries can be conducted by the Registrar in respect of the affairs of the Cooperative Societies.

17. This apart, such enquiry will not infringe the rights of employees, who all are working in the Cooperative Societies. As far as Section 81 of the Act is concerned, the employees are bound to cooperate with the Enquiry Officer for the purpose of ascertaining the facts and circumstances in relation to the administrative affairs of the Cooperative Societies. In other words, enquiry under Section 81 of the Act is conducted which is in the nature of fact finding.

18. During the course of finding the facts, it is duty mandatory on the part of the employees to cooperate with by submitting the files, ledgers and other registers before the Enquiry Officer and therefore, mere ordering for Section 81 enquiry or submission of the report by the Enquiry Officer would not provide any cause of action for the employees of the Cooperative Societies to challenge the report itself. The report of the Enquiry Officer under Section 81 of the Act, is absolutely unconnected with the employees of the Cooperative Societies. Section 81 enquiry report is a source for all further actions. If at all the actions are initiated based on the findings of the enquiry report, such actions can be defended by the employees of the Cooperative Societies.

19. Three fold actions are permissible based on Section 81 enquiry report. Firstly, the surcharge proceedings under Section 81 of the Act can be initiated. Secondly, if there is any monetary loss to the Cooperative Societies, disciplinary proceedings can be initiated against the employees if there is any misconduct or misappropriation or otherwise and thirdly, criminal prosecution can be initiated by registering a complaint before the Commercial Crime Wing of the Police Department.

20. This apart, the elected Board can be superseded based on Section 81 enquiry report. All these actions are possible based on the report submitted by the Enquiry Officer under Section 81 of the Act. Thus, the very report would not infringe the rights of the employees and the said report would not provide any cause of action for filing the writ petition as far as the employees of the Cooperative Societies are concerned. If any one of the actions are initiated based on the enquiry report, thereafter, the employees are entitled to defend their case in the manner prescribed and in accordance with law. Contrarily by challenging the very report, the employees cannot escape from the clutches of law.

21. With regard to the arguments advanced that the second enquiry report in respect of the same incident is impermissible, this Court is of the considered opinion that Section 81 of the Act contemplates the fact finding in respect of the administrative affairs of the Cooperative Societies. Thus, any number of enquiries are permissible and the Registrar, if not satisfied with the enquiry report submitted by the one Enquiry Officer, is empowered to order for another enquiry to identify all other left out discrepancies or lapses. Even otherwise also, the Registrar is empowered to order for Section 81 enquiry at any point of time and more than the one action. There is no restriction or otherwise in respect of the number of enquiries to be conducted under Section 81 of the Act. Ultimately, the Registrar is duty bound to find out the administration affairs of the Cooperative Societies and initiate all suitable actions in accordance with the provisions of the Act.

22. This being the interpretation to be followed in respect of Section 81 of the Act, the very ground raised that Section 81 enquiry is impermissible is not substantiated with any other legally acceptable ground. The Registrar is duty bound to order for an enquiry under Section 81 on any number of times and in the present case, the first Enquiry Officer committed certain serious lapses and actions were initiated against the first Enquiry Officer.

23. This being the factum, there is no error or infirmity in respect of the second enquiry ordered by the first and the third respondents dated 29.11.2012 and the relief, as such, sought for in the present writ petition cannot be granted and the writ petition is devoid of merits.

24. Accordingly, the Writ Petition stands dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(CS VIII)

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Sub Assistant Registrar

Svn

To

1.The Deputy Registrar of Cooperative Societies,
Chidambaram Circle,
Chidambaram.

2.E-2588 Nandhimangalam Primary Agricultural
Cooperative Credit Society,
Represented by its President,
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Chidambaram.

3.The Enquiry Officer,
Under Section 81 of the
Tamil Nadu Co-operatigve Societies Act,
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Chidambaram.

+1cc to Mr.M.S.Palanisamy, Advocate sr.no.21559
+1cc to Mr.L.P.Shanmugasundaram, Advocate sr.no.21159
+1cc to Government Pleader sr.no.21508

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