



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 13.11.2019	Pronounced on: 20.11.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.28022 of 2019
& W.M.P.No.27636 of 2019

Mr.V.Pavankumar,
S/o.D.Vijayaraj,
No, 27/19, Sannadhi Street,
Tiruvannamalai - 606 601.

... Petitioner

/versus/

The Joint Registrar of Co-operative Societies,
Tiruvannamalai Region,
District Collector's Master Plan Complex,
Vengikkal,
Tiruvannamalai -04.

.... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, calling for the records of the respondent in his proceedings bearing Na.Ka.No.3750/2018/Sa.Pa, dated 29.07.2019 and quash the same and direct the respondent to provide an effective hearing to the petitioner in the proceedings in conformity with Section 36(2) of the Tamil Nadu Co-operatives Act, 1983.

For Petitioner : Mr.Sathish Parasaram,
Senior Counsel

For Respondent : Mrs.T.Girija,
Government Advocate

W E B C O P Y
O R D E R

Heard the Learned Counsel for the Petitioner and the Learned Government Advocate for the Respondent.

2. The petitioner is an elected member of Tiruvannamalai District Consumer Co-operative Wholesale Stores, Society. He is one of the Board of Directors of the said Society subsequently got elected as its President in the year

2014. While so, in view of certain alleged irregularities in the Shops run by the petitioner Society, enquiry under Section 81 of the Tami Nadu Co-operative Societies Act, 1983, was initiated by the Sub-Registrar/Field Officer, Thandrampet. The enquiry report was submitted on 27.10.2017 to the Deputy Registrar of Co-operative Societies, Tiruvannamalai Circle. This enquiry was conducted behind the back of the petitioner and other Directors of the Board. The Enquiry Officer neither found negligence on the part of the Board of Directors nor he recommended action against the Directors. While so, after lapse of one year of the Section 81 enquiry report, the respondent issued a show cause notice to the petitioner under Section 36(1) of the Tamil Nadu Co-operative Society Act, calling for the explanation why action should not be taken for permanently disqualifying the petitioner from holding any post in the Society. The said show cause notice dated 17.10.2018 was served on the petitioner on 31.10.2018. Since Section 81 enquiry report was not submitted to the petitioner, the petitioner requested the respondent to furnish the enquiry report dated 20.11.2017 referred in the show cause notice and other documents. The respondent furnished documents on 08.01.2019 with a covering letter. To his shock, he was furnished with an enquiry report dated 03.11.2017 instead of 20.11.2017. Even in this report, the Enquiry Officer has neither found any negligence on the part of Board of Directors nor recommended any action against the Board of Directors including the petitioner.

3. Facing threat of permanent disqualification under Section 36(1) of the Act and apprehending serious concern about the fairness of the proposed enquiry, the petitioner filed statutory appeal to the Registrar of Co-operative Societies under Section 152 (2) (a) (v) of the Act, on 23.01.2019. Pending appeal, without awaiting for the orders, the respondent herein has issued two reminder notices dated 28.01.2019 and 26.02.2019 calling for submission of explanation to the show cause notice. Therefore, the petitioner informed the respondent about the pending appeal before the Registrar of Co-operative Society and sought time for submission of his explanation. Meanwhile, on 29.03.2019, the Registrar of Co-operative Societies returned the appeal papers presented by the petitioner with direction to the Joint Registrar to decide the dispute after hearing the petitioner. Disregarding the direction of the Registrar as well as the mandatory requirement, the respondent has passed order dated 29.07.2019 disqualifying the petitioner permanently from holding any post in the Tiruvannamalai District Consumer Co-operative Wholesale Stores or any other Societies.

4. Alleging that, the said order is against the Principle of Natural Justice, arbitrary and illegal. The present Writ Petition is filed to quash the same.

5. According to the Learned Senior Counsel appearing for the petitioner while the show cause notice refers about Section 81 enquiry report dated 20.11.2017 when the petitioner sought for copy of the said report, the Enquiry report dated 13.11.2017 was furnished to him. Even in that report, there is no incriminating finding against the petitioner nor recommendation to take action against him under Section 36(2).

While so, the respondent has passed order disqualifying the petitioner without affording proper opportunity and based on antedated records. The enquiry under Section 81 ought to be completed within the time stipulated under the Rule 104 of the Tamil Nadu Co-operative Rules, 1988. The report of the enquiry ought to have been submitted within 10 days from the completion of the enquiry. When the enquiry alleged to have been completed on 27.10.2017, the report was submitted only on 03.11.2017, which is beyond 10 days time prescribed under the Rule. Therefore, the order of the respondent dated 29.07.2019 is liable to be quashed.

6. The respondent has filed a detailed counter, wherein, it is admitted that in the show cause notice issued to the petitioner due to inadvertence, the date of the enquiry report was erroneously mentioned as 20.11.2017 instead of 13.11.2017. In fact, the report of the Enquiry Officer is dated 03.11.2017 and it was received by the Respondent Office on 20.11.2017. Therefore, when the petitioner sought for copy of the enquiry report, the enquiry report dated 03.11.2017 was furnished to him. On receipt of the enquiry report, the petitioner submitted his explanation after obtaining required documents. Before filing his explanation, when the petitioner herein sought for certain documents vide letter dated 01.11.2018 same was furnished to him by the respondent vide letter on 03.01.2019. On receipt of those documents, the petitioner filed petition before the Registrar of Co-operative Society. The said petition was returned, pointing out that only show cause notice is served to the petitioner and no final order has been passed. Hence, petition returned with direction to the petitioner to submit his explanation to the show cause notice and participate in the enquiry.

7. The petitioner, thereafter submit his explanation on 06.03.2019 to the show cause notice. After considering his explanation and the gravity of misconduct, the order of permanent disqualifying was passed by the respondent. Being a speaking order, passed after affording opportunity, there is no right for the petitioner to seek Certiorarified Mandamus. If he has any grievance regarding the order of permanent disqualification, the statute provides for appeal under Section 152 (2)(a)(v) of the Act, which the petitioner can avail. Instead of exhausting the statutory remedy, the petitioner has

approached this Court with untenable ground and hence liable to be dismissed.

8. Under Section 81 of the Co-operative Society Act, power is vested with the Registrar or any person authorised by the Registrar, to hold enquiry regarding the 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 particularly aspect of the working of the Society.

9. The Enquiry under Section 81 is a nature of fact finding process. The Enquiry Officer may recommend for departmental action, disqualification, surcharge proceedings or criminal Act. Under this Section, the Registrar has power to withdraw any enquiry from any person authorised by him and hold enquiry by himself or to any other person as he deems fit.

10. Rule 104 of the Tamil Nadu Co-operative Rules, 1988, prescribes procedure regarding Enquiry (Section 81), inspection or investigation (Section 82). While, Section 81(4) of the Act, prescribes time limit for completion of the enquiry, Rule 104 of the Tamil Nadu Co-operative Society Rules, provides 10 days time for the enquiry Officer or inspecting Officer or investigating Officer to submit his report on the matter, which the enquiry is ordered and the said report shall contain the finding of the Enquiry Officer and the reasons thereof.

11. From the counter affidavit of the respondent, this Court finds that, in the present case, in view of the irregularity found in the Stores while the petitioner was serving as President, the Deputy Registrar of Co-operative Societies ordered enquiry under Section 81 vide proceedings dated 30.01.2017. After conducting enquiry, the Enquiry Officer has submitted his report dated 03.11.2017 which was received by the Office of Deputy Registrar of Co-operatives, Tiruvannamalai, on 20.11.2017. The Enquiry Officer has recommended for a). Surcharge action, b).Disciplinary Action, c). Criminal Action. Since adequate information/details were not furnished in the report as contemplated under Rule 104 (6)(b), the Enquiry Officer was instructed to submit the informations, which are necessary as per Rule 104(6)(b). Accordingly, the Enquiry Officer has submitted additional report dated 16.04.2018, which was received by the Officer of Deputy Registrar, on 24.04.2018. On the basis of the said additional report, surcharge action and disciplinary action were taken against the employees of the stores including criminal action. As far as the petitioner is concerned, being the elected member of the Board of Directors,

action under Section 36 of the Act, disqualifying him from holding the post in Society was contemplated and accordingly show cause notice dated 17.10.2018 was issued, wherein, the report of the Inquiry Officer dated 20.11.2017 and the letter Na.Ka.276/2017/Sa.Pa, dated 24.05.2018 has been referred. Though the Inquiry report was dated 03.11.2017, it was inadvertently mentioned as 20.11.2017.

12. As far as the other documents sought by the petitioner, it is admitted by the respondent that the additional report of the Inquiry Officer dated 16.04.2018 was received by the respondent Office of the Deputy Registrar, on 24.05.2018 and in these connection two letters were sent by the Deputy Registrar of Co-operative Society. However, by inadvertence, only one report dated 24.05.2018 was furnished to the petitioner. So, the respondent contention is that except one report dated 24.05.2018 of the Deputy Registrar of Co-operative Society, all other documents sought by the petitioner herein was submitted to him for giving his explanation. The petitioner has also given his detail explanation vide letter dated 06.03.2019. Hence, only after affording adequate opportunity and considering the explanation given by the petitioner, order of permanent disqualification has been passed.

13. The perusal of the impugned order reveals that the petitioner was served with show cause notice. After receipt of his request to furnish enquiry report and other documents, those documents were furnished to him. The petitioner initially took time. Referring the pendency of the appeal petition before the Registrar. The Registrar returned the said appeal on the ground that appeal against the show cause notice cannot be maintained and the petitioner has to contest the enquiry proceedings and then after passing of final order, can invoke under Section 152.

14. After the disposal of the appeal petition by the Registrar on 29.03.2019, the petitioner has not turned up for enquiry and after waiting for some considerable time, the impugned order has been passed.

15. From the order passed by the Registrar on the appeal petition, this Court finds that the petitioner has approached the Registrar without stating the provision for challenging the show cause notice. It was not under Section 152 as stated in the affidavit. He has preferred the petition without reference to any provisions of Co-operative Societies Act but had fixed the stamp under Schedule-III(6)(k) which is meant for petitions and applications under the provision of the Act, Rules or by-law not specifically provided for.

16. In the said circumstances, the Registrar of Co-operative Society, has returned this petition on 29.03.2019 stating that, such a petition is not maintainable under the law and if the petitioner is aggrieved by any final order passed in the enquiry initiated under Section 36(1) of the Act, he can approach the Appellate Authority under Section 152 of the Act. So, from the conduct of the petitioner, it could be seen that after getting the documents and submitting his explanation had delayed passing of order by filing petition before the Higher Authority under the wrong provisions of law. After rejection of that petition, he has not turned up for further enquiry. He having awaited till the order, disqualifying him under Section 36 of the Act, passed instead of preferring appeal under Section 152 before the Registrar, which is now available for him, has not approached the right Appellate forum but had invoked Writ Jurisdiction by filing the present Writ Petition canvassing the merits of his case.

17. In the light of the above fact, this Court holds that the Writ Petition is to be dismissed as not maintainable. However, the petitioner is entitled to explore the appeal remedy. Hence, the petitioner is given liberty to file the appeal under Section 152 of the Co-operative Societies Act, challenging the order passed by the respondent herein. If there is any delay in preferring the appeal, same is condoned in view of the pendency of the present Writ Petition.

18. It is left open to the petitioner herein to canvas all the points raised in this Writ Petition. The Appellate Authority shall decide the appeal in accordance with law, without being influenced by observations made in this Writ Petition.

19. Accordingly, the Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

सत्यमेव जयते

Sd/-
Assistant Registrar

// True Copy//

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Sub Assistant Registrar

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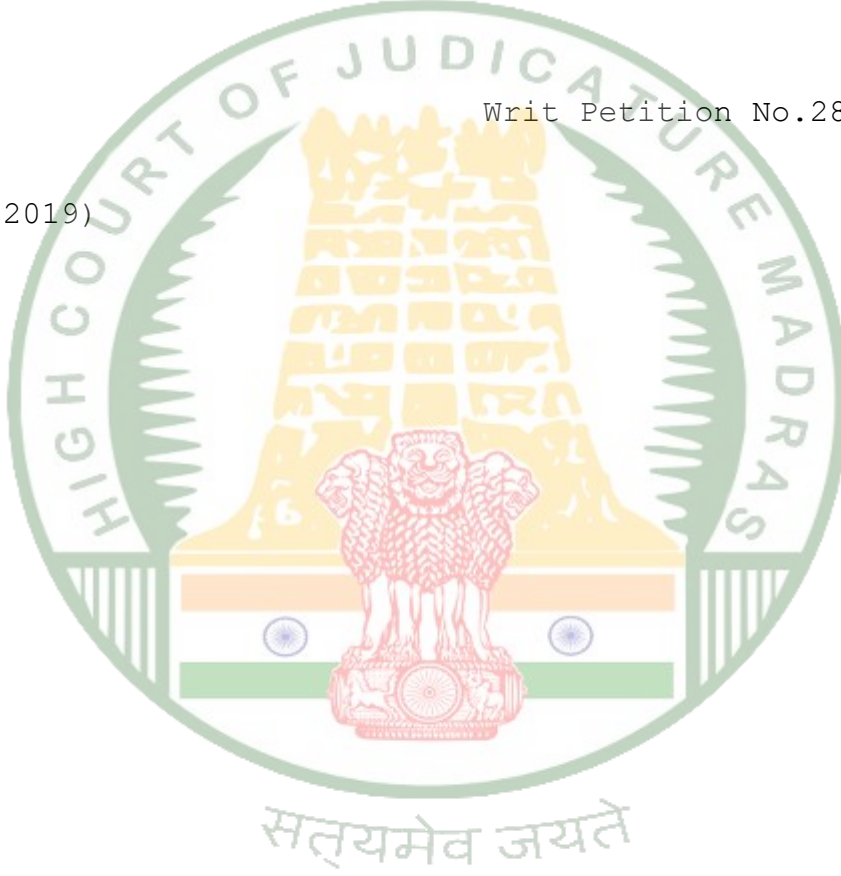
To,

The Joint Registrar of Co-operative Societies,
Tiruvannamalai Region,
District Collector's Master Plan Complex,
Vengikkal,
Tiruvannamalai -04.

+lcc to Mr.Kempraj, Advocate, SR.No.96438.
+lcc to Government Pleader, SR.No.97056.

order in
Writ Petition No.28022 of 2019

NMS (CO)
CSR(17/12/2019)



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