

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.04.2019

C O R A M

THE HONOURABLE Mr. JUSTICE S.M.SUBRAMANIAM

Writ Petition No. 33128 of 2018
and
M.P. Nos. 38425 & 38428 of 2018

N.Girija ... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies
Erode Circle, Erode, Erode District.

2.The Enquiry Officer/ Co-operative Sub Registrar
AA.713, Kodumudi Primary Agricultural
Co-operative Credit Society
Kodumudi, Erode District. ...

... Respondents

PRAYER Petition filed under Article 226 of the
Constitution of India to issue a Writ of Certiorari,
calling for the entire records relating to the impugned
order passed by the 1st respondent in his proceedings
Na.Ka.4615/2018 Tho.Vae.Sa, dated 27.11.2018 and quash the
same.

For Petitioner : Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader[Co-op]

ORDER

The statutory enquiry order under Section 81 of Tamil Nadu Co-operative Societies Act passed by the competent authorities vide proceedings dated 27.11.2018 is under challenge in the present writ petition.

2.The writ petitioner is working as a Secretary in a Co-operative Society registered under the Tamil Nadu Co-operative Societies Act [hereinafter referred to as 'the Act'].

3. The grievances of the writ petitioner is that based on the complaint given by one of the members was entertained by the authorities competent and an enquiry under Section 81 of the Act was ordered to conduct an

enquiry into the affairs of the co-operative society.

4. Section 81 of the Act enumerates 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 enquiry or direct some person authorised by him by order in writing in this behalf to hold an inquiry into the constitution, working and financial conditions 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.

5. Whether the complaint is given by a single person or not, under Section 81 of the Act, the Registrar may of his own motion initiate action under Section 81 of the Act. Thus, it is not necessary that 1/3rd of the members of the Society has to sign in the complaint for the purpose of initiating an enquiry under Section 81 of the Act. When a suo motu power is provided under Section 81 of the Act for ordering an enquiry, this Court is of an opinion that such a contention of 1/3rd of the members of the Society should signed in the complaint is unnecessary and a statutory enquiry ordered by the Registrar, in order to find out irregularities, illegalities, misappropriation or otherwise in respect of the administration of the co-operative society can never be found fault with. The statutory inquiries are ordered for the purpose of ascertaining the manner of functioning of the society and to identify the illegalities, irregularities or misappropriation if any occurred. This being the very purpose and objection of Section 81 of the Act, the very order of enquiry under Section 81 of the Act cannot be challenged by way of a writ petition. The writ petitioner cannot be construed as an aggrieved person in respect of such enquiry ordered by the competent authorities. The enquiry officer has to conduct the enquiry by verifying the records and by obtaining statement by the employees and other persons in order to verify the transactions and other administrative affairs of the co-operative societies. This being the factum, the writ petitioner cannot be construed as an aggrieved person and no cause has been established for the purpose of considering the relief as such sought for in the present writ petition. After conducting the enquiry under Section 81 of the Act, the enquiry officer has to submit his report and based on the enquiry report submitted by the Enquiry Officer under Section 81 of the Act, threefold actions are

permissible if any irregularities, illegalities or misappropriation activities are identified. Then, the surcharge proceedings can be initiated under Section 87 of the Act for the purpose of recovering the financial loss occurred to the Cooperative Societies, if any found. The disciplinary proceedings can be initiated against the employees of the registered co-operative societies. The criminal prosecution can be initiated by registering the police complaint before the Commercial Crime Investigation Wing of the Police Department. Thus, all these actions can be initiated simultaneously by the competent authorities in respect of irregularities occurred in the Cooperative Societies.

6.However, the petitioner, who is working as an employee of the society cannot challenge the order of enquiry passed by the competent authorities to conduct the enquiry under Section 81 of the Act. Accordingly, the writ petition is not maintainable as the writ petitioner has not established any cause for granting the relief.

7.With the above, this writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1.The Deputy Registrar of Co-operative Societies
Erode Circle, Erode, Erode District.

2.The Enquiry Officer/ Co-operative Sub Registrar
AA.713, Kodumudi Primary Agricultural
Co-operative Credit Society
Kodumudi, Erode District.

+1cc to Mr.C.Prakasam , Advocate SR.No. 31705

+1 cc to Government Pleader SR.NO. 31967

W.P. No. 33128 of 2018

A.SK(29/04/2019)