



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.06.2019

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P(MD)No.13365 of 2019

and

W.M.P(MD)Nos.9944 & 9945 of 2019

P.Karnan

... Petitioner

Vs

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

2.RS 745, Sooranam Primary Agricultural Co-operative
Credit Society,
Rep. by its Administrator,
Sooranam Post,
Sooranam,
Ilayangudi Taluk,
Sivagangai District.

3.J.Mari,
Administrator,
RS 745, Sooranam Primary Agricultural Co-operative
Credit Society,
Sooranam Post,
Sooranam, Ilayangudi Taluk,
Sivagangai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned charge memo made in R.S.745/1/19 dated 26.04.2019 issued by the second respondent and quash the same.

For Petitioner : Mr.P.R.Prithiviraj

For R1 & R2 : Mr.M.Pandiarajan,
Additional Government Pleader

ORDER

The charge-memo dated 26.04.2019 issued by the Administrator of RS 745, Sooranam Primary Agricultural Co-operative Credit Society, Sooranam Post, Ilayangudi Taluk, Sivagangai District is under challenge in the present writ petition.



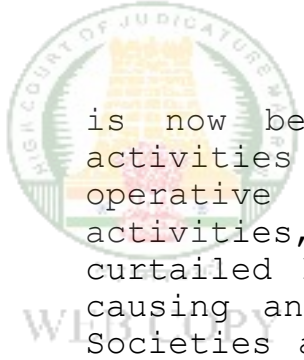
2. The charges against the writ petitioner are serious in nature. The allegations are in relation to the illegal sanctioning and disbursement of loans and misappropriations. Several allegations are set out in the impugned charge-memo.

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3. The learned counsel appearing on behalf of the writ petitioner vehemently contended that the writ petitioner is not responsible for any of the allegations. The petitioner states that the Administrator, who sanctioned the loan alone is responsible for such financial loss to the Co-operative Society and further liable for illegalities and irregularities in the matter of sanctioning of loans in violation of rules in force. It is further contended that the writ petitioner was holding the post of the Secretary of the Society and the Administrator, who is the sanctioning authority, disburse the loan amount by approving the loan.

4. This Court is of the considered opinion that all these allegations are to be enquired into by the Competent Authorities. The first respondent, if necessary, should order for an enquiry under Section 81 of the Co-operative Societies Act and find out the irregularities and illegalities and accordingly further actions are to be initiated against all the persons, who are liable for such irregular and illegal sanctioning of loans or misappropriation or fraudulent activities or corrupt activities in the Co-operative Societies.

5. The learned counsel appearing for the petitioner also states that such an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act was already conducted. It is pertinent to note that three-fold actions are permissible based on the Section 81 of the Co-operative Societies Act, 1982. If the illegalities, misappropriation or financial loss etc., are noticed, then a criminal case can be registered by filing a complaint before the Crime Investigation Agency. The Disciplinary Proceedings can be initiated against the employees as well as the Department Officials and a surcharge proceedings also can be initiated under Section 87 of the Tamil Nadu Co-operative Societies Act. All the three-fold actions are permissible and the authorities competent are empowered to initiate all the proceedings simultaneously to make good the financial loss occurred to the Co-operative Societies and to punish the employees for misconduct. This being the scope of the act and the charges against the writ petitioner are serious, this Court is of an undoubted opinion that the enquiry into the allegations are warranted and imminent. The very concept of the Co-operative movement is Constitutionally recognised now. The movement of Co-operation is included in the 7th Schedule of the Constitution. Thus, the movement of the co-operation is to be encouraged and developed by the States as well as by the authorities concerned. Through the movement of co-operation, social development achieves and the people are benefited. More specifically, the farmers and the middle class people are benefited to a larger extent. Such co-operative movement



is now being paralysed on account of the large scale corrupt activities in the co-operative institutions. The Registrar of Co-operative Societies is duty bound to ensure that the corrupt activities, misappropriation and illegalities should not only be curtailed but action should be initiated then and there, without causing any undue delay. In fact, large number of Co-operative Societies across the State are facing financial crunch on account of such misappropriation, illegalities and corrupt activities. The officials once found corrupt or committed certain misappropriation and financial irregularities, they must be dealt with iron hand and there cannot be any leniency or misplaced sympathy against those corrupt officials. These corrupt officials are blockades for the development of our great nation. Undoubtedly, corruption is an anti-developmental element. Thus, the corrupt activities are to be brought down by effective monitoring inspections and enquiries etc.,

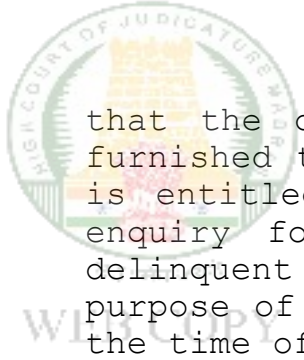
6. As far as the lis on hand is concerned, the charge-memo itself is issued by the Administrator of the Co-operative Society. The Co-operative Society is not a "State" within the meaning of Article 12 of the Constitution of India. Thus, no writ can be entertained against the Co-operative Societies. An efficacious alternative remedy is provided under Section 153 of the Tamil Nadu Co-operative Societies Act, 1983 for the redressal of his grievances. All these employees working in the Co-operative Societies without exhausting the remedy provided under Section 153 of Co-operative Societies Act and filing writ petition under Article 226 of the Constitution of India is not maintainable against the surcharge order. Exhausting the alternative remedy is the rule. Admitting the writ petition by disturbing the alternative remedy is in exceptional circumstances. Thus, the High Court can entertain the writ petition only on exceptional circumstances if the alternative remedy provided under the Constitution has not been exhausted by the aggrieved person. This Court also settled the legal principles in the matter of *M/s. Hyundai Motor India Limited vs. The Deputy Commissioner of Income Tax* in W.P.No.22508 of 2017, dated 16.07.2018.

7. Thus, the writ petitioner is bound to exhaust the remedy provided under the Act. This apart, the maintainability of the writ petition in respect of the Co-operative Societies Act has been settled by the Larger Bench of this Court in ***Marappan v. The Deputy Registrar of Co-operative Societies, Namakkal*** reported in **2006(4) CTC 689**.

8. For all these reasons, the writ petitioner is at liberty to approach the Competent Authority under the provisions of the Act. Even on merits, a charge-memo cannot be entertained in a routine manner. A writ petition against the charge-memo is to be entertained only on exceptional circumstances and the judicial review is limited.

<https://hcservices.ecourts.gov.in/hcservices/>

9. The learned counsel appearing for the petitioner states



that the documents in relation to the allegations have not been furnished to the writ petitioner. Undoubtedly, the writ petitioner is entitled to peruse the documents at the time of conducting an enquiry for the purpose of defending his case factually. The delinquent official is entitled to peruse the documents for the purpose of defending his case. Such an opportunity can be given at the time of conducting an enquiry by the officer competent to do so.

10. This Court is of the considered opinion that the present writ petition filed by the petitioner with reference to the merits in relation to the allegations set out in the charge-memo cannot be adjudicated. Disputed facts and issues raised in the charge-memo can never be adjudicated in a writ petition. Such disputed facts are to be adjudicated only with reference to the original documents and by adducing evidence, if required. Thus, the facts regarding the allegations cannot be adjudicated at this point of time in the present writ petition and it is left open to the writ petitioner to defend his case by participating in the process of enquiry.

11. This being the factum of the case, the writ petitioner has not established any acceptable grounds for the purpose of considering the relief as such sought for in the writ petition.

12. Accordingly, the writ petition is dismissed both on merits as well as on the ground of maintainability. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar

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Sub Assistant Registrar(CS)

To

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Sivagangai Circle,
Sivagangai District,
Sivagangai.

2.RS 745, Sooranam Primary Agricultural Co-operative
Credit Society,
Rep. by its Administrator,
Sooranam Post,
Sooranam,
Ilayangudi Taluk,
Sivagangai District.



+1cc to Mr.D.SADIQ RAJA, Advocate, SR.No. 68623
+1cc to M/s.Special Government Pleader,SR.No. 68834

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