



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 19.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD) Nos. 21753 of 2018

and

W.M.P. (MD) No. 19675 to 19678 of 2018

K. Gunasekaran

... Petitioner

Vs

1. The Joint Registrar of Co-operative Societies,
Ramanathapuram Region,
Ramanathapuram District,
Ramanathapuram.
2. The Deputy Registrar of Co-operatives Societies,
Paramakudi, Ramanathapuram District,
Ramanathapuram.
3. The Enquiry Officer,
The Co-operative Sub-Registrar / Field Officer,
Kamuthi and Q-1285 Kavadi Patti Primary
Agricultural Co-operative Credit Society,
Kavadi Patti, Kamuthi Taluk,
Ramanathapuram.
4. M.R. Madasamy,
Enquiry Officer,
The Co-operative Sub-Registrar / Field Officer,
Kamuthi and Q-1285 Kavadi Patti Primary
Agricultural Co-operative Credit Society,
Kavadi Patti, Kamuthi Taluk,
Ramanathapuram.

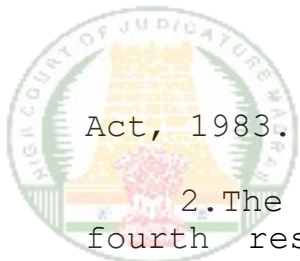
... Respondents

PRAYER: Petitions filed under Article 226 of the Constitution of India to issue a Writ of Certiorari Mandamus, to call for the records pertaining to the impugned proceedings made in Na.Ka.No.1785/2017/Sa.Pa(3), dated 03.11.2017 passed by the second respondent and quash the same and consequently to direct the respondents 1 and 2 to order for re-enquiry in accordance with law.

For Petitioner : Mr.D.Sadiq Raja

ORDER

The writ petitioner was appointed as Junior Inspector in the Co-operative Department on 06.11.2018. He was promoted as Deputy Registrar in the year 2017 and retired from service on 30.01.2007. He questions the impugned proceeding dated 03.11.2017 issued by the second respondent herein appointing the fourth respondent as Enquiry Officer under Section 81 of the Tamil Nadu Co-operative Societies



Act, 1983.

2.The learned Counsel for the writ petitioner submits that the fourth respondent ought not to have been appointed as Enquiry Officer because he was a party to the proceedings which are the subject matter of the enquiry. He alleged that the appointment of the fourth respondent is vitiated by bias. The learned Counsel for the writ petitioner reiterated all the contentions set out in the affidavit filed in support of this writ petition and the typed set of papers. He placed reliance on the order dated 07.04.2011 made in W.P.No.12561 of 2005 and the decision rendered by the Honourable Supreme Court on 29.04.1969 made in W.P Nos.173 to 175 of 1967 (**A.K.Kraipak and others vs Union of India.**)

3.He would further contend that the above said decision will be applicable not only in quasi judicial proceedings but also in administrative proceedings. According to him, the report submitted in terms Section 81 of the Act will furnish cause of action for launching consequential action such as criminal prosecution, surcharge proceedings, etc. He would further submit that the issue raised by him goes to the root of the matter and that therefore the order impugned will have to be set aside.

4.The submissions made by the learned Counsel for the writ petitioner no doubt are attractive. But then this Court cannot lose sight of the laches on the petitioner's part. Admittedly, the second respondent appointed the fourth respondent as Enquiry Officer under Section 81 of the said Act on 03.11.2017. His appointment was subsequently extended on more than one occasion. The report was submitted on 12.06.2018. This writ petition came to be filed only on 22.10.2018. The writ petitioner was issued with summons by the Enquiry Officer. The writ petitioner also participated in the enquiry process.

5.The writ petitioner would further contend that he objected the fourth respondent from acting as the Enquiry Officer. The order under challenge in this writ petition is only the initial order dated 03.11.2017. The subsequent extensions given by the second respondent are not questioned in this writ petition.

6.The writ petitioner appears to be a fence sitter. He probably wanted to know the outcome of the enquiry. After he came to know that the report is adverse to him, he chose to challenge the appointment of the fourth respondent. Therefore, I am of the view that the writ petitioner cannot be permitted to challenge the communication issued on 03.11.2017 by filing a writ petition in the last week of October 2018.

7.I non suit the writ petitioner on the ground of laches. It is made clear that the dismissal of the writ petition will not affect the rights of the writ petitioner. The defences of the writ petitioner are left open. The learned Counsel for the writ

petitioner states that the writ petitioner is presently facing criminal prosecution. Nothing stated herein will come in the way of writ petitioner from establishing his innocence in the criminal proceeding.

8. With these observations, the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Joint Registrar of Co-operative Societies,
Ramanathapuram Region,
Ramanathapuram District,
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Kamuthi and Q-1285 Kavadi Patti Primary
Agricultural Co-operative Credit Society,
Kavadi Patti, Kamuthi Taluk,
Ramanathapuram.
- +2cc to Mr.K.P.Ramesh, Advocate, SR.No.48161,48162
+1cc to Mr.D.Sadiq Raja , Advocate, SR.No.48255
+1cc to Special Government Pleader, SR.No.48496

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19.02.2019

SP/03.04.2019/ 3P/8C