



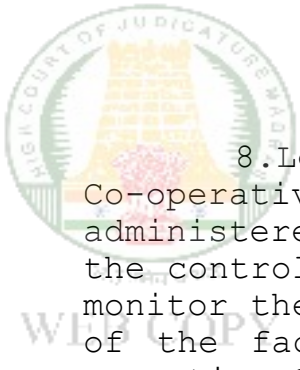
3. Pursuant to the enquiry ordered by the writ petitioner, Enquiry Officer submitted his report under Section 81 of the Act and all further actions were taken. Shockingly, the respondent issued charge memo against the writ petitioner, despite the fact that he ordered for enquiry to cull out the truth regarding the stock deficit and other irregularities.

4. The learned Senior Counsel appearing on behalf of the writ petitioner raised three grounds. Firstly, the learned Senior Counsel contended that the enquiry under Section 81 of the Act was ordered by the writ petitioner and therefore, the very charge is untenable. Secondly, the writ petitioner was relieved from service from the Co-operative Wholesale Store on 14.03.2013 and the charge was in relation to fire accident took place on 10.07.2013. On that day, the writ petitioner was not holding the post of Special Officer of the Kancheepuram District Consumer Co-operative Wholesale Store. Thirdly, the learned Senior Counsel is of an opinion that the surcharge proceedings under Section 87 of the Act were initiated against the writ petitioner, pursuant to the enquiry report submitted under Section 81 of the Act. The surcharge proceedings issued by the competent authorities has been stayed by this Court in W.P.(MD)No.12294 of 2015 filed by the writ petitioner. In view of the fact that the surcharge proceedings have been stayed by this Court, the disciplinary proceedings cannot be conducted.

5. It is stated that the surcharge proceedings are stayed and therefore, the charge memo under Rule 17(b) of the Rules cannot be proceeded with. Raising these three grounds, the learned Senior Counsel contended that the present charge memo is liable to be scrapped.

6. The learned Additional Government Pleader appearing on behalf of the respondent opposed the contentions by stating that the charge memo was framed independently, based on the allegations and surcharge proceedings are pending and the pendency of the surcharge proceedings is not a bar for the continuance of the disciplinary proceedings. In respect of the charge memo, the Registrar of Co-operative Society sent a proposal to the Government for conversion of charges and the said application is also pending. Therefore, the charge memo framed against the writ petitioner has not been proceeded with and on account of interim stay granted by this Court, the respondent is unable to continue the disciplinary proceedings.

7. This Court is of the considered opinion that the scheme of the Act is independent and absolutely, unconnected with the provisions of the Rules. The Act being the special Act is to be applied independently without reference to the provisions of the Rules, which is exclusively, applicable to the Government servants.



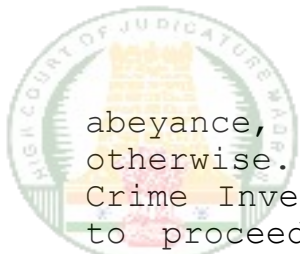
8. Let us elaborately, look into the scheme of the Act. A Co-operative Society registered under the provisions of the Act is administered by the elected Board of Members and functioning under the control of the Act. The Registrar is the competent authority to monitor the administration and other affairs of the Society, in view of the fact that the public funds are invested in all such Co-operative Societies.

9. In order to monitor the functioning of the Societies, a statutory enquiry under Section 81 of the Act is contemplated. The Registrar on application or on his own motion, shall order for enquiry under Section 81 of the Act, which is statutory in character. Thus, the Registrar is competent to order for an enquiry to identify the irregularity, illegality, misappropriation, fraudulent activities or financial losses etc., in any Co-operative Society. An Enquiry Officer appointed by the Registrar must conduct an enquiry by verifying the records and by perusing the evidences, if required. Based on the final report submitted under Section 81 of the Act, three bold actions are permissible:-

- (i) departmental disciplinary proceedings can be initiated.
- (ii) criminal prosecution can be launched by registering complaint before the Commercial Crime Investigation of the Police Department.
- (iii) surcharge proceedings can be initiated under Section 87 of the Act.

10. All these three bold actions can be initiated simultaneously based on the report submitted under Section 81 of the Act. An employee cannot take a defence that during the pendency of the surcharge proceedings, criminal case cannot be registered or disciplinary proceedings cannot be proceeded with. All these actions can be proceeded with simultaneously and these three actions are having independent purposes and the very procedures are also distinct.

11. Criminal prosecution are conducted based on the offences established. Surcharge proceedings are initiated for the purpose of recovering the monetary loss occurred to the Co-operative Society. Disciplinary proceedings are initiated for the purpose of punishing the employee for the misconduct committed under the Conduct Rules as well as the Discipline and Appeal Rules. Thus, all these three actions are distinct and different and the procedures to be followed for all the proceedings are also absolutely unconnected with each other and therefore, the employee cannot take a stand that during the pendency of the criminal case, surcharge proceedings cannot be initiated. Only in certain peculiar circumstances, where during the pendency of the criminal case, disciplinary proceedings are unable to be proceeded with on account of want of documents, then alone, the authorities competent can keep the disciplinary proceedings in



abeyance, till the final disposal of the criminal case and not in otherwise. If the original documents are seized by the Commercial Crime Investigation Wing and the discipline authorities are unable to proceed with the disciplinary proceedings, then they are at liberty to take a decision to keep the disciplinary proceedings in abeyance, till the disposal of the criminal case. In all other circumstances, all the actions initiated against these officials are to be proceeded with simultaneously.

12.The delinquent officials should not be allowed to prolong and protract the issues and should not be allowed to escape from the clutches of the proceedings. Once the allegation is set out in respect of the irregularities, financial losses or otherwise, all such actions are to be continued and the same should reach its logical conclusion.

13.As far as the present Writ Petition is concerned, the charge memo issued under Section 17(b) of the Rules is sought to be quashed. No Writ Petition can be entertained against the charge memo in a routine manner. The judicial review against the charge memo is undoubtedly limited. A charge memo can be challenged, if the same was issued by an incompetent authority having no jurisdiction, an allegation of *mala fide* is raised, if the same is in violation of statutory rules. Even in case of raising the allegation of *mala fide*, the authority against whom such an allegation is raised, has to be impleaded as a party respondent in the writ proceedings in his personal capacity. In the absence of any such legal grounds, no charge memo can be entertained by way of Writ Petition.

14.Intermittent intervention in the disciplinary proceedings is not preferable. The recent trend is that on receipt of charge memo, the delinquent officials are filing Writ Petition after Writ Petition in order to prolong the issues, so as to escape from the clutches of disciplinary proceedings. Such an attitude of the employee can never be encouraged by the High Court the charge memo now under challenge in the present Writ Petition cannot be quashed, in view of the fact the grounds raised in the present Writ Petition are in relation to the merits of the allegations and the said merits cannot be adjudicated in a Writ proceedings. The disputed facts and the issues ought to be adjudicated with reference to the original files and by adducing the evidences and the said exercise is undoubtedly beyond the scope of the judicial review contemplated under Article 226 of the Constitution of India.

15.The Honourable Supreme Court of India in Paragraph No.6 of the case of ***Union of India and others Vs. Upendra Singh***, reported in **(1994) 3 SCC 357** has held that:-

"..In the case of charges framed in a disciplinary inquiry the tribunal or court can interfere only if on the

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charges framed (read with imputation or particulars of the charges, if any) no misconduct or other irregularity alleged can be said to have been made out or the charges framed are contrary to any law. At this stage, the tribunal has no jurisdiction to go into the correctness or truth of the charges. The tribunal cannot take over the functions of the disciplinary authority. The truth or otherwise of the charges is a matter for the disciplinary authority to go into. Indeed, even after the conclusion of the disciplinary proceedings, if the matter comes to court or tribunal, they have no jurisdiction to look into the truth of the charges or into the correctness of the findings recorded by the disciplinary authority or the appellate authority as the case may be. The function of the court/tribunal is one of judicial review, the parameters of which are repeatedly laid down by this Court. It would be sufficient to quote the decision in *H.B. Gandhi, Excise and Taxation Officer-cum-Assessing Authority, Kamal v. Gopi Nath & Sons*. The Bench comprising M.N. Venkatachaliah, J. (as he then was) and A.M. Ahmadi, J., affirmed the principle thus : (SCC p. 317, para 8) "Judicial review, it is trite, is not directed against the decision but is confined to the decision-making process. Judicial review cannot extend to the examination of the correctness or reasonableness of a decision as a matter of fact. The purpose of judicial review is to ensure that the individual receives fair treatment and not to ensure that the authority after according fair treatment reaches, on a matter which it is authorized by law to decide, a conclusion which is correct in the eyes of the Court. Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. It will be erroneous to think that the Court sits in judgment not only on the correctness of the decision making process but also on the correctness of the decision itself."

16. In the case of **Secretary, Ministry of Defence and Others Vs. Prabhash Chandra Mirdha [(2012) 11 SCC 565]**, the Hon'ble Apex Court of India has held as follows:-

"10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction / competence to do so. A writ lies when some right of a party is infringed. In fact, charge-sheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be



quashed by the Court.

11. In **State of Orissa V. Sangram Keshari Misra** (SCC pp.315-16, para 10) this Court held that normally a charge-sheet is not quashed prior to the conducting of the enquiry on the ground that the facts stated in the charge are erroneous for the reason that to determine correctness or truth of the charge is the function of the disciplinary authority.

12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject-matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues. Proceedings are not liable to be quashed on the grounds that proceedings had been initiated at a belated stage or could not be concluded in a reasonable period unless the delay creates prejudice to the delinquent employee. Gravity of alleged misconduct is a relevant factor to be taken into consideration while quashing the proceedings."

17. In the case of **Union of India vs. Kunishetty Satyanarayana [(2006) 12 SCC 28]**, it was held that:-

"13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge-sheet or show-cause notice vide *Executive Engineer, Bihar State Housing Board V. Ramesh Kumar Singh*, *Special Director V. Mohd. Ghulam Ghouse*, *Ulagappa V. Divisional Commr., Mysore*, *State of U.P. V. Brahm Datt Sharma*, etc.

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and / or hold that the charges are not established. It is well settled that a writ petition lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of anyone. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be



said to have any grievance."

18. It is relevant to cite that the grounds raised by the learned Senior Counsel appearing on behalf of the writ petitioner that enquiry itself was ordered by the writ petitioner, cannot be considered by this Court in the present Writ Petition. However, all these grounds are to be taken by the writ petitioner at the time of conducting enquiry by the enquiry officer. Relevancy of the ground and the occurrence of the facts are to be ascertained by the enquiry officer with reference to the documents available. Thus, this Court cannot come to the conclusion that merely because the writ petitioner ordered for enquiry under Section 81 of the Act, he is absolutely unconnected with the allegations. With reference to the allegations, an enquiry is certainly warranted and the writ petitioner has to establish his innocence or otherwise only by submitting documents in this regard. As far as the completion of tenure is concerned, the writ petitioner is also at liberty to establish his innocence with reference to the documents available with him.

19. In respect of the pendency of the surcharge proceedings, this Court has held that the surcharge proceedings initiated under the provisions of the Act would absolutely unconnected with the disciplinary proceedings initiated against the Government Officer under the provisions of the Rules. Even in such cases, the surcharge proceedings are initiated to recover the monetary loss occurred to the Co-operative Society and the disciplinary proceedings are initiated for the purpose of ascertaining the misconduct or otherwise, if any committed by the Government concerned.

20. This being the procedures as well as the object of these two Act and Rules, this Court has no hesitation in coming to the conclusion that mere pendency of the surcharge proceedings in a competent Court of law is not a bar for the discipline authority to continue the disciplinary proceedings and pass final orders on merits and in accordance with law.

21. Long pendency of the disciplinary proceedings are causing prejudice to the employees. Undoubtedly, pendency of the disciplinary proceedings is a bar for promotion, even in some circumstances, the employees are unable to get terminal benefits. Thus, on initiation of disciplinary proceedings, the authorities competent must ensure that such proceedings are concluded as expeditiously as possible without causing any undue delay.

22. This being the principles to be followed, the writ petitioner is directed to co-operate with the enquiry proceedings and the respondent must also proceed with the enquiry as expeditiously as possible. The respondent in the event of any non-



cooperation shall record the same in the proceedings itself. Thus, the writ petitioner is duty bound to co-operate for the completion of the enquiry in all respects. The respondent is directed to proceed with the enquiry proceedings, conclude the same by affording opportunity to the writ petitioner as prescribed under the Rules and accordingly, pass final orders on merits and in accordance with law as expeditiously as possible.

23. With these directions, this Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-II)

/TRUE COPY/

Sub Assistant Registrar

To

The Registrar of Co-operative Societies, Kilpauk, Chennai-600 010.

+1 CC to M/s.SPL GP (SR-79469[F] dated 02/08/2019)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-79571[F] dated 02/08/2019)

W.P. (MD) No.17811 of 2015

AM/13.08.2019/8P/4C