

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.01.2020

CORAM:

THE HONOURABLE Mr. JUSTICE N. ANAND VENKATESH

W.P.NOs.35279 and 14805 of 2019
and
WMP Nos.14787, 36079 & 36080 of 2019

W.P.NO.35279 of 2019

A. Subramanian ...Petitioner

-Vs-

1. The Chairman,
Common Cadre Authority /
Joint Registrar of Cooperative Societies,
Villupuram Region, Villupuram,
Villupuram District.
 2. The Deputy Registrar of cooperative Societies,
Tindivanam Circle, Tindivanam,
Villupuram District.
 3. The President,
Nagandur Primary Agricultural Cooperative Credit Society
Nagandur Village & Post, Gingee Taluk
Villupuram District.
 4. Thangaraj
CL. SPL 95 Modaiyur Primary Agricultural
Cooperative Village & Post, Gingee Taluk
Villupuram District.
- ... Respondents

W.P.NO.14805 of 2019

A. Subramanian ...Petitioner

-Vs-

1. The Deputy Registrar of cooperative Societies,
Tindivanam Circle, Tindivanam,
Villupuram District.
2. The Enquiry Officer,
Nagandur Primary Agricultural Cooperative Credit Society
O/o. Deputy Registrar of Cooperative Societies,

Tindivanam Circle, Tindivanam
Villupuram District.

3. Kannappan

... Respondents

Prayer in W.P. No.35279 of 2019: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.2797/2019/Tho.Vae.Sa dated 10.12.2019.

Prayer in W.P. 14805 of 2019 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.03/2019/Tho.Vae.Sa(1) dated 29.03.2019.

For Petitioner : Mr. C. Prakasam in both petitions.

For Respondents : Mr. L.P. Shanmuga Sundaram
Special Government Pleader for
R1 & R2 in both petitions.

Mr. M.S. Palanisamy for R3 in
W.P.No.35279 of 2019 .

Mr.L.Chandrakumar for R3 in
W.P.No. 14805 of 2019.

COMMON ORDER

The issue involved in both the above Writ Petitions are inter linked and therefore, both the Writ Petitions are taken up together and a common order is passed.

2. The petitioner was working in the respondent Agricultural Cooperative Credit Society. The second respondent/Deputy Registrar Cooperative Society initiated an inquiry under Section 81 of the Tamil Nadu Cooperative Societies Act by his proceedings dated 29.03.2019 based on the complaint given by the President of the Society. The inquiry ordered by the second respondent has become the subject matter of challenge in W.P. No.14805 of 2019.

3. In the meantime, the first respondent/Joint Registrar of Cooperative Societies, by proceedings dated 10.12.2019 has assigned additional charge to one A.Thangaraj as the secretary of the Nagandur Primary Agricultural Cooperative Credit Society.

The petitioner who claims to be the Secretary of this Society, aggrieved by the proceedings, has filed W.P. No.35279 of 2019 questioning these proceedings.

4. As per W.P. No. 35279 of 2019, The case of the petitioner is that he was working as a Secretary of the Respondent Cooperative Credit Society. According to him, the president of the third respondent society, namely, one D.Kavitha, never used to come to the society office and everything is being run by her husband. According to the petitioner, the husband of the said D. Kavitha, threatens the employees and he takes all the decisions on behalf of the society and he does not allow the petitioner to perform his duty in the society. The petitioner gave a detailed representation in this regard to the Registrar of Cooperative Society on 24.09.2019 and requested to take note of the illegalities committed in the society and restore proper functioning of the society. There were several allegations made against the petitioner by the president of the society and the same resulted in the second respondent ordering for an inquiry under Section 81 of the Tamil Nadu Cooperative Societies Act. The first respondent by his proceedings dated 10.12.2019 has given additional charge to one A.Thangaraj to function as the Secretary of the third respondent society. According to the petitioner, the petitioner is the Secretary of the third respondent Society and without suspending him or transferring him to some other place, no one else can be allowed to act as a secretary of the third respondent Society.

5. Mr.C.Prakasam, the learned counsel appearing on behalf of the petitioner submitted that the husband of the President of the third respondent Society is completely in control of the society and he is running the Society on behalf of his wife and several irregularities have been committed in the running of the Society. The learned counsel further submitted that the husband of the President of the Society is preventing the petitioner from performing his duties since the petitioner is questioning the illegalities committed in the Society and the authority of the husband of the president of the Society in controlling the functioning of the Society. The learned counsel submitted that the inquiry ordered under Section 81 of the Tamil Nadu Cooperative Societies Act was based on the complaint given by the third respondent with false allegations and the same is attended with malafides. Therefore, the learned counsel submitted that the proceedings of both the first and second respondents requires interference of this Court. The second and third respondents have filed independent counter affidavits. According to the Deputy Registrar, Cooperative Societies, Tindivanam, the petitioner was only the Secretary (incharge) and that is how he was designated by the Special Officer by

Resolution dated 27.06.2013. Therefore, a stand has been taken to the effect that the petitioner is not a regular Secretary and the petitioner was never promoted as a Secretary and he continues to be a clerk. A further stand has been taken in the counter that the petitioner has not attended the office for so many months and the post of Secretary is lying vacant for the last six years and therefore, the abovesaid Thangaraj was given additional charge as the Secretary of the third respondent society. It was further contended that several irregularities were committed by the earlier office bearers and the petitioner also had a role to play and therefore, inquiry has been initiated under Section 81 of the Tamilnadu Cooperative Societies Act.

6. The President of the Cooperative Society has filed a counter affidavit to the effect that the petitioner is only a Senior clerk and he was only posted as a Secretary in charge. It is further contended that the petitioner has absented himself from 02.07.2019 to 22.11.2019 and therefore, the third respondent Society had issued a show cause notice to the petitioner calling upon the petitioner to give his explanation and directed him to report for duty. In the meantime, an inquiry was also ordered under Section 81 of the Tamil Nadu Cooperative Societies Act. This inquiry was challenged and an interim order was also passed. The same resulted in the functioning of the Society coming to stand still. The further contention that has been made in the counter affidavit is that the petitioner did not respond to the show cause notice and he refused to receive the notice and therefore, as per Special Bye-law Clause 14, the petitioner is deemed to have resigned from his post and the petitioner is no more in service with effect from 16.12.2019. In view of this development, the President of the third respondent Society has sought for the dismissal of both the Writ Petitions.

7. Heard Mr.C.Prakasam, the learned counsel appearing for the petitioner, Mr. L.P. Shanmuga Sundaram, the learned Special Government Pleader appearing for R1 and R2 and Mr. M.S.Palanisamy, the learned counsel appearing for R3.

8. This Court will first go into the issue as to whether the second respondent was right in ordering for an inquiry under Section 81 of the Tamil Nadu Cooperative Societies Act. In the present case, very serious allegations have been made against the petitioner and the allegations made by the petitioner against the President of the third respondent Society are also equally serious. In the light of the allegations and counter allegations, the same has to be necessarily inquired and the only way to do it is by initiating action under Section 81 of the Tamil Nadu Cooperative Societies Act. This Court exercising

its jurisdiction under Article 226 of the Constitution of India, cannot conduct a roving enquiry and find out the truth and it is fit and proper to leave this exercise to the competent authority who can go into the factual aspects by recording the statements of the persons concerned and the witnesses. As held by this Court in the case of D.Sathyamoorthy Vs. The Deputy Registrar of Cooperative Societies and Others reported in 2014(7) MLJ 850, an inquiry conducted under Section 81 of the Tamil Nadu Cooperative Societies Act., is in the nature of an investigation to find out whether the affairs of the Cooperative Society are conducted legally and whether there are financial improprieties in the matter of conduct of its affairs. No adjudication takes place during an inquiry under Section 81 of the Tamil Nadu Societies Act and the proceedings are aimed only to find out the facts and to submit a report to the authority concerned for initiation of further proceedings.

9. In view of the serious allegations that have been made against the petitioner and the previous officer bearers on the one hand, and the serious allegations made against the President of the third respondent Society on the other hand, an inquiry has to be conducted in order to find out the real fact and in order to enable the authority to initiate further action. It is made clear that the inquiry that has been initiated under Section 81 of the Tamil Nadu Societies Act, by the second respondent must also cover the allegations made by the petitioner against the President of the third respondent Society. In view of the same, this Court is not inclined to interfere with the inquiry initiated by the second respondent.

10. A specific stand has been taken by the second and third respondents to the effect that the petitioner is only holding the post of Senior Clerk and he was only made as a Secretary in charge and that the petitioner is not a regular Secretary of the Society. It is also contended that the petitioner has not been attending the office regularly from July 2019 onwards. Therefore, the first respondent thought it fit to give additional charge to one Thangaraj as the Secretary of the third respondent Society. This Court does not find any illegality in the order passed by the first respondent since the post of Secretary is very vital in carrying out the day today affairs of the Society. With the existing dispute between the petitioner and the President of the third respondent Society, the functioning of the Society must not come to a stand still. Therefore, the first respondent was right in posting a person and giving him an additional charge as the Secretary of the third respondent Society. The subsequent development that has taken place also has a lot of significance in the present case. The petitioner is alleged to have absented himself continuously for more than 60 days and therefore, the third respondent has

invoked Clause 14 of the Special Bye-law, which provides that such an employee is deemed to have resigned his post. By relying upon this clause, an order has been passed on 16.12.2019 by recording that the petitioner has resigned from his service with effect from 16.12.2019. The third respondent justifies this order on the ground that the petitioner being a clerk does not fall within the common cadre and therefore, he does not come within the purview of the common cadre authority and therefore, the third respondent is competent to pass such an order.

11. By virtue of this order, the petitioner ceases to be the employee of the third respondent Society. If the petitioner is aggrieved by the order, he has to agitate by invoking the statutory remedy under Section 153 of the Tamil Nadu Cooperative Societies Act. This subsequent development virtually makes W.P. No.35279 of 2019 infructuous and there is nothing to decide in this Writ Petition.

12. In the result, this Court does not find any merits in both the Writ Petitions and accordingly they are dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar(CS-I)

True Copy

Sub-Assistant Registrar

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Copy to

1. The Chairman,
Common Cadre Authority /
Joint Registrar of Cooperative Societies,
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Nagandur Village & Post, Gingee Taluk
Villupuram District.

+2 Ccs to Mr.L.P. Shanmuga Sundaram, Advocate sr 5935 & 5936.
+1 CC to Mr.L.Chandrakumar, Advocate sr 5827
+1 CC to Mr.C.Prakasam, Advocate sr 5634.
+1 CC to Mr.M.S. Palanisamy, Advocate sr 6302.
+1 CC to The Govt. Pleader sr 6153.

W.P.NOs.35279 and 14805 of 2019

VBA (CO)
SP (25/02/2020)



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