



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.08.2020

CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

W.P(MD).No.7350 of 2020

and W.M.P.(MD).Nos.6800 & 7595 of 2020

WEB COPY

P.Silopathy

.. Petitioner

Vs.

- 1.The Registrar of Cooperative Societies,
Kilpauk, Chennai - 600 010.
- 2.The Joint Registrar of Cooperative Societies,
Thanjavur - 613 004.
- 3.The Deputy Registrar of Cooperative Societies,
Pattukottai, Thanjavur District.
- 4.The Cooperative Sub Registrar,
The Enquiry Officer,
T.A.28, Maharajasamudram Primary Agricultural
Cooperative Credit Society Ltd.,
Pattukottai Taluk,
Thanjavur District.
- 5.The President,
T.480, Alakkudy Primary Agricultural
Cooperative Credit Society Ltd.,
Pattukottai Taluk,
Thanjavur District.

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of Constitution of India for issuance of Writ of Certiorari, calling for the records relating to the impugned notice issued by the 4th respondent in proceedings No.NIL, dated 12.05.2020 and quash the same as illegal.

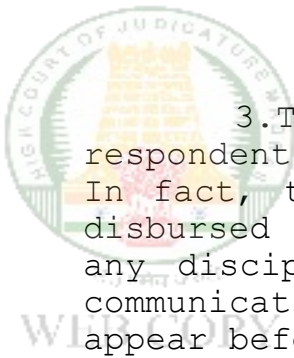
For Petitioner : Mr.T.A.Ebenezer

For Respondents : Mrs.S.Srimathy
Special Government Pleader

ORDER

Heard the learned counsel appearing for the petitioner and the learned Special Government Pleader, appearing for the respondents.

2.The petitioner challenges the notice issued by the fourth respondent for enquiring him. The fourth respondent has summoned the petitioner under Section 81 of the Tamilnadu Co-operative Societies Act.



3.The petitioner's case is that he was employed in the fifth respondent's society and that he retired from service on 31.03.2018. In fact, the retirement benefits of the petitioner have also been disbursed and the Management did not reserve any right to initiate any disciplinary action against him. While so, by the impugned communication, dated 12.05.2020, the petitioner has been summoned to appear before the Enquiry Officer for enquiry.

4.The petitioner's counsel states that surcharge proceedings cannot be initiated against the past employee in terms of Section 87 of the Act and that the retired employee may not be summoned for being enquired in an enquiry under Section 81 of the Act.

5.I carefully went through the Section 81 of the Act. Section 81 of the Act reads as follows:

"81. Inquiry.__ (1) 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 inquiry, or direct some person authorised by him by order in writing in this behalf to hold an inquiry in to the constitution, working and financial condition 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.

(2) The Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely:__

(a) He shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession of, or responsible for the custody of, any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof.

(b) Where any person summoned under clause (a) fails or refuses to produce any record or property of the registered society as specified in the summons, any Metropolitan Magistrate or any Judicial Magistrate of the first class in whose jurisdiction the office of such society or the records and properties of such society is or are situated, shall on application by the Registrar or the person authorised by him under sub-section (1), direct the delivery to the Registrar or such person of the possession of the records and properties of such society :

<https://hcservices.ecourts.gov.in/> that no such application shall be made by the



person authorised under sub - section (1) without the previous sanction of the Registrar.

(c) He may seize the books, accounts or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents or to facilitate his inquiry, and shall give the person from whose custody the books, accounts or documents have been seized a receipt for the same:

Provided that the books, accounts or documents seized shall be retained by him only for so long as may be necessary for their examination and for the purpose of inquiry:

Provided further that the books, accounts or documents shall not be retained for more than three months at a time except with the permission of the next higher authority.

(d) He may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody if the Registrar, or the person authorised as afore said has reason to believe that such books, accounts or documents contain any entry relating to transactions of the society.

(e) (i) He may, notwithstanding any rule or by - law specifying the period

of notice for a general meeting of the society or for a meeting of the board,

require any officer or officers of the society to call a general meeting or a meeting of the board at such time and place at the headquarters of the society or any branch thereof to consider such matters as may be specified by him and the provisions of sub - clauses (i) and (ii) of clause (b) of sub-section (4) of section 32 shall apply to any meeting called under this sub-clause as if it were a meeting called in pursuance of a requisition under clause (a) of sub-section (3) of that section.

(ii) If the officer or officers of the society refuses or refuse or fails to call such meeting or if in the opinion of the Registrar there is no board or officer or officers competent under this Act, the rules or the by-laws to call such meeting, or if there be an order of the Registrar or of the Civil Court restraining the board to function, the Registrar or the person authorised by him under sub-section (1) shall have power to call the meeting himself and the provisions of clause (b) of sub-section (4) of section 32 and sub- section



(5) of that section shall apply to such meeting as if it were a meeting called under clause (a) of the said sub-section (4).

(3) When an inquiry is held under this section, the Registrar shall within such time as may be prescribed communicate the result of the inquiry —

(i) in case the Government have subscribed directly to the share capital of the registered society or in case any moneys are due from the registered society either to the Principal State Partnership Fund or to the Subsidiary State Partnership Fund referred to in chapter VI, to the Government or to any officer appointed by the Government in this behalf;

(ii) to the financing bank, if any, to which the society is affiliated; and

(iii) to the society concerned.

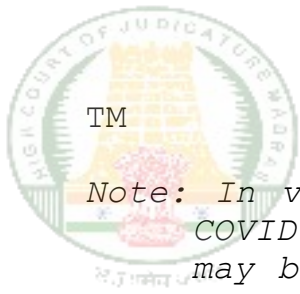
(4) The inquiry shall be completed within a period of three months from the date of ordering the inquiry or such further period or periods not exceeding three months at a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate.

(5) It shall be competent for the Registrar to withdraw any inquiry from the person authorised by him under sub-section (1) and to hold the inquiry himself or entrust it to any other person as he deems fit.

(6) The Registrar may, by order in writing, direct the registered society or any officer of the society or its financing bank to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed as a result of the inquiry."

6. Section 81 does not contain any prohibition against enquiring a past employee. In fact, the Enquiry Officer can summon any person for enquiry. Therefore, there is no basis to the petitioner's contention in the express text of the provision. I wanted to know if there is any case law on this point. But, no such case law has been cited. Therefore, I find no ground to interfere with the proceedings. I must also note that the petitioner has received only a notice. It is not in any way affecting his rights. The petitioner can always place his case before the Enquiry Officer. If the impugned notice has been issued illegally or without jurisdiction, then I could have interfered. But, no such case has been made out.

7. Hence, reserving the rights and defence of the petitioner, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

Sd/-

Assistant Registrar ()

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/ /2020

Sub Assistant Registrar(CS)

To

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- 5.The President,
T.480, Alakkudy Primary Agricultural
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Pattukottai Taluk,
Thanjavur District.

+1 CC to M/s.T.A.EBENESER, Advocate (SR-13712[F] dated 06/08/2020)

W.P (MD) .No.7350 of 2020
05.08.2020

KB (09.09.2020) 5P 7C