



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.12.2020

CORAM

THE HONOURABLE MR. JUSTICE ABDUL QUDDHOSE

W.P (MD) No.16701 of 2020

and

W.M.P. (MD) .No.13954 of 2020

(Through Video Conferencing)

WEB COPY

1.K.Vijayakumar
2.R.P.Sreekumar
3.V.Enanos
4.C.Amarabhai
5.J.Latha Mahendran
6.K.Sarojini
7.S.Manoranjana

... Petitioners

Vs

The Joint Registrar of Co-operative Societies,
Collector Office New Building,
2nd Floor, Nagercoil,
Kanyakumari District.

... Respondent

PRAYER: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned notice issued by the respondent in Na.Ka.No.1643/2020/Sa.Pa dated 13.08.2020 and quash the same as illegal.

For Petitioners	:	Mr.M.Jerin Mathew
For Respondent	:	Mr.M.Rajarajan Additional Government Pleader

O R D E R

This Writ Petition has been filed challenging the impugned notice dated 13.08.2020 passed by the respondent under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983, seeking for removal of the petitioners from Y.167, Vialthural Primary Agricultural Co-operative Credit Society, Kanyakumari District.

2. The petitioners are the members of the aforementioned Society. They challenged the impugned notice on the ground that no notice was received from the respondent to rectify the defects as per the provision of Section 82 (5) of the Tamil Nadu Co-operative Societies Act, 1983. The impugned notice has also been challenged on the ground that as per Rule 104 (7) of the Tamil Nadu Co-operative Societies Rules, 1988, the petitioners are entitled to get a copy of the enquiry report, based on which, action has been initiated by the



respondent against the petitioners under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983, for removal.

3. According to the petitioners, without jurisdiction and by violating the principles of natural justice, the impugned notice has been issued to the petitioners under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983. In such circumstances, this Writ Petition has been filed.

4. Heard Mr.Jerin Mathew, learned counsel for the petitioners and Mr.M.Rajarajan, learned Additional Government Pleader for the respondent.

5. The learned counsel for the petitioners drew the attention of this Court to the impugned notice dated 13.08.2020 issued under Section 36 of the Tamil Co-operative Societies Act, 1983 and would submit that the Inspection Report dated 04.08.2017 reflected in the impugned notice was never sent to the petitioners. He also drew the attention of this Court to Section 82 (5) of the Tamil Nadu Co-operative Societies Act, 1983 and would submit that no prior notice was sent to the petitioners before initiating proceedings under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983, for removal.

6. The learned counsel for the petitioners would further submit that without jurisdiction, the impugned order has been passed and the respondent has violated the principles of natural justice. He also drew the attention of this Court to Rule 104(7) of the Tamil Nadu Co-operative Societies Rules, 1988 and would submit that the same has not been complied with by the respondent as a copy of the enquiry report was not furnished to the petitioners. Therefore, according to him, the impugned notice passed by the respondent is arbitrary, illegal and has violated the principles of natural justice and has been issued without jurisdiction.

7. Per contra, the learned Additional Government Pleader appearing for the respondent would submit that the impugned notice has been issued on account of irregularities committed by the petitioners in the subject Society. According to him, sufficient opportunity was granted to the petitioners and a copy of the enquiry report has also been furnished to them as seen from the impugned notice. It is also submitted by the learned Additional Government Pleader that the impugned notice is only a notice issued under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983 and if at all the petitioners are having any objections with regard to the same, they are at liberty to raise the same before the respondent as and when the enquiry proceedings are held under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983.



8. This Court has considered the materials available on record and also heard the rival submissions.

9. Section 82(5) of the Tamil Nadu Co-operative Societies Act, 1983, reads as follows:-

"82.(1)...

82.(2)...

82.(3)...

82.(4)...

82.(5).The Registrar may, by order in writing, direct the registered Society or any officer of the Society 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 inspection or investigation."

10. As seen from Section 82 (5) of the Act, the Registrar will have to first call upon the erring members of any Society to rectify the defects. In the case on hand, no such notice is reflected in the impugned notice issued under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the mandatory statutory procedure required for initiating action under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983, has not been complied with by the respondent.

11. Rule 104(7) of the Tamil Nadu Co-operative Societies Rules, 1988, reads as follows:-

"104.(1)...

104.(2)...

104(3)...

104(4)...

104(5)...

104(6)...

104(7).The Registrar shall communicate the result of the inquiry or inspection or investigation, in brief, without going into details and without disclosing matters of confidential nature within a period of three months from the date of receipt of the report-

(a).in the case of inquiry, to

(i).The Government or to any officer appointed by the Government, where the Government have subscribed to the share capital of the Society;

(ii).the financing bank to which the society is affiliated;

(iii).to the Society concerned;

(iv).to the District Collector in case the inquiry is ordered at his request;

(v).to the federal society concerned;



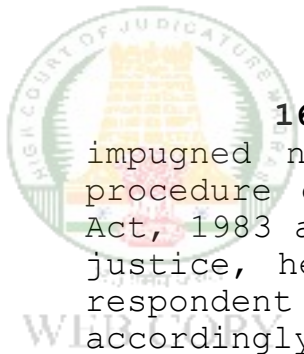
(b).in the case of inspection or investigation, to-
(i).the Society concerned;
(ii).the financing bank to which the society is affiliated;
(iii).the federal Society concerned; and
(iv).to the creditor concerned where the inspection or investigation is made on the application of the creditor."

12. As seen from the said Rule, the enquiry report based on which the respondent has initiated action under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983, will have to be furnished to the members of the Society, who have committed irregularities. Even though the enquiry report dated 04.08.2017 is reflected in the impugned notice issued under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983, it is not mentioned in the impugned notice as to whether the copy of the said report was furnished to the petitioners or not. It is the contention of the petitioners that the same has not been received by them. Since it has not been reflected in the impugned order, the contention of the petitioners will have to be accepted by this Court.

13. The learned counsel for the petitioners drew the attention of this Court to an order rendered by a learned Single Judge of this Court in the case of **C.Sivashankar Vs, The Registrar of Co-operative Societies, Office of the Registrar of Co-operative Societies, Chennai-10 and others** dated 28.02.2017 reported in **(2017) 1 CTC 258** in support of his submissions.

14. This Court has perused and examined the same and the matters involved in this petition is identical to the issues involved in **(2017) 1 CTC 258**, wherein, the learned Single Judge has held that an enquiry under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983, should be undertaken before initiating proceedings under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, it is made clear that without calling upon the petitioners to rectify the alleged irregularities committed by them and without furnishing a copy of the enquiry report, the respondent ought not to have initiated proceedings under Section 36 of the Tamil Nadu Co-operatives Act, 1983, for the removal of the petitioner.

15. Even though the impugned notice is only a notice issued under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983, unless and until, the respondent had followed the statutory procedure prior to the issuance of impugned notice, it cannot be contended that the petitioners can very well send a reply to the impugned notice. Therefore, the contention raised by the learned Additional Government Pleader for the respondent is rejected.



16. For the foregoing reasons, it is made clear that the impugned notice has been issued without following the statutory procedure contemplated under the Tamil Nadu Co-operative Societies Act, 1983 and has been issued by violating the principles of natural justice, hence, the impugned notice dated 13.08.2020 issued by the respondent is hereby quashed and the Writ Petition is allowed accordingly. However, liberty is granted to the respondent to initiate action against the petitioners for their alleged irregularities committed in the Society in accordance with law, by following the statutory procedure contemplated under the Tamil Nadu Co-operative Societies Act, 1983. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

tsg

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.

To

The Joint Registrar of Co-operative Societies,
Collector Office New Building,
2nd Floor, Nagercoil,
Kanyakumari District.

+1 CC to Mr.M.E.ILANGO, Advocate (SR-24506[F] dated 08/12/2020)

W.P (MD) No.16701 of 2020
04.12.2020

TP (CO)
CS (17.12.2020) 5P 3C