



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2021

CORAM:

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

W.P.No.21558 of 2009

and

M.P.No.1 of 2009

V.K.Arulvelan

...Petitioner

vs.

1. The Deputy Registrar of Cooperative Societies,
Pollachi Circle, Market Road,
Pollachi-1, Coimbatore District.

2. No.K.1106, Poolankinar Primary Agricultural
Cooperative Bank, rep by its Special Officer,
Poolankinar-642122, Udumalpet Taluk,
Coimbatore District.

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the entire records relating to the impugned proceedings passed by the 1st respondent in the proceedings Tha.Thee.No.2/2008 Sa.Pa dated and signed on 28.11.2008 but served only on 15.04.2009 and quash the same and consequently direct the 1st respondent to conduct the inquiry and trial under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 by providing opportunity to the petitioner to defend his charges effectively by furnishing the relied documents applied for on 12.02.2008, 24.05.2008, 16.06.2008, 21.06.2008 25.09.2008 and 11.11.2008 and to decide the case on merits and in accordance with law.

For Petitioner : M/s.K.Premkumar

For Respondents : Mr.T.Arunkumar,
Additional Government Pleader for R1
Mr.Neduchezhiyan
for Mr.G.Sankaran for R2

O R D E R

The petitioner, challenging the impugned order of surcharge dated 28.11.2008 passed by the first respondent, has filed the writ petition.



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2. The case of the petitioner is that he was working as Secretary in the services of the second respondent Cooperative Society and he was placed under suspension with effect from 27.12.2006 and an enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 [in short "TNCS Act" was conducted with regard to certain irregularities and the Enquiry Officer submitted his report on 22.11.2007 stating that the petitioner has misappropriated amounts to the tune of Rs.4,99,500/- along with two other employees and therefore, the Enquiry Officer recommended to recover the said amount through Surcharge Proceedings under Section 87 of TNCS Act and further recommended for initiation of disciplinary proceedings against the petitioner. Thereafter, Surcharge Proceedings were initiated under Section 87 of TNCS Act and the respondents served summons to the petitioner, for which the petitioner has requested the first respondent vide communications dated 27.11.2007 and 14.01.2008 for furnishing of certain documents relating to the inquiry proceedings and only part of the records were furnished to the petitioner on 08.02.2008. The petitioner reiterated his claim and requested to furnish the relied on documents vide various representations dated 12.02.2008, 24.05.2008, 16.06.2008, 21.06.2008, 25.09.2008 and 11.09.2008, but neither considering the said representations nor any response to the said representations, the impugned surcharge order was passed by the first respondent and therefore, the petitioner has filed the present writ petition.

3. The learned counsel for the petitioner would contend that the impugned order has been passed in flagrant violation of the principles of natural justice, as the first respondent has failed to provide opportunity as contemplated under Section 87 of the TNCS Act to effectively defend the charges by furnishing the documents relied along with the evidences recorded in the Enquiry Report and therefore, prays for setting aside the impugned order. The learned counsel for the petitioner, in support of his submissions, has placed reliance on the decision of this Court in C.Kamaraj and Others v. The Registrar of Cooperative Societies and Others reported in 2017 (1)CTC 258.

4. The learned Additional Government Pleader for the first respondent would submit that the copies of documents relied were furnished to the petitioner and the same was admitted by the petitioner also and the intention of the petitioner is to drag on the conclusion of the surcharge proceedings and without exhausting the appeal remedy, the petitioner has straight away approached this Court with the present writ petition and prays for dismissal of this writ petition.



5. This Court has considered the submissions made and also perused the materials available on record.

6. Admittedly, the petitioner had made repeated representations to the respondents seeking to furnish the documents relied in response to the summons issued to him in the surcharge proceedings. It is the contention of the respondents that the intention of the petitioner is to drag on the surcharge proceedings, however this Court is unable to countenance the said contention for the reason that the petitioner has to be necessarily provided with all the documents relied in the enquiry, so as to defend himself effectively in the Surcharge Proceedings. However, in the present case on hand, the petitioner has been deprived of the said opportunity and the respondents have not followed the rules as contemplated under the Act by furnishing copies of documents to the petitioner before passing the impugned order and on that sole ground, the impugned order is liable to be set aside.

7. Accordingly, the impugned order of the first respondent in Proceedings in Tha.Thee.No.2/2008 Sa.Pa. Dated 28.11.2008 is set aside and the matter is remitted to the first respondent for fresh consideration. The first respondent shall furnish all the relevant documents relating to the enquiry as sought for by the petitioner in his aforesaid representations and after affording opportunity to the petitioner, shall conclude the proceedings on its own merits and pass appropriate orders in accordance with law, as expeditiously as possible within a period of six months from the date of receipt of a copy of this order. It is made clear that the petitioner shall also cooperate with the first respondent for conclusion of surcharge proceedings. No costs.

8. With the above directions, this writ petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

Jvm

To

1. The Deputy Registrar of Cooperative Societies,
Pollachi Circle, Market Road,
Pollachi-1, Coimbatore District.



2. The Special Officer,
No.K.1106, Poolankinar Primary Agricultural
Cooperative Bank,
Poolankinar-642122, Udumalpet Taluk,
Coimbatore District.

+1cc to M/s.K.Premkumar, Advocate, S.R.No.62751
+1cc to the Government Pleader, S.R.No.63476

W.P.No.21558 of 2009

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NSK 10/12/2021