



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.08.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.13479 OF 2020

AND

W.M.P.NOS.16652 & 16655 OF 2020

N.Dhanapal

... Petitioner

.Vs.

1. The Deputy Registrar of
Co-operative Societies,
Krishnagiri Circle,
Krishnagiri
2. S 1063 PULIYAMPATTI PRIMARY AGRICULTURAL
Co-operative Credit Society Ltd.,
Rep by its Secretary,
Puliyampatti,
Pochampalli Taluk,
Krishnagiri District.
3. The Enquiry Officer,
S-1063 Puliyampatti Primary Agricultural
Co-operative Credit society Ltd.,
Puliyampatti Pochampalli Taluk,
Krishnagiri District.

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, Calling for the records of the enquiry report Under Section 81 of the TNCS Act dated 21.8.2019 on the file of the 3rd Respondent and consequential surcharge notice issued by the 1st respondent in Tha.thee.2/2020/sa.pal DATED 10.3.2020 quash the same in so far as the Petitioner is concern and direct the 1st Respondent not to precipitating any penal action under the criminal law against the Petitioner pursuant to the enquiry report dated 21.8.2019.



WEB COPY

For Petitioner : Mr.M.S.Palaniswamy

For Respondents : Mr.A.Selvendran
Government Advocate
For R 1 to R 2

ORDER

This writ petition has been filed challenging the enquiry report of the 3rd respondent dated 21.08.2019 and the consequential surcharge notice issued by the 1st respondent dated 10.03.2020.

2. The case of the petitioner is that he was appointed as a night watchman on 02.03.1987, in the Puliampatti Primary Agricultural Cooperative Credit Society and he was allowed to retire from service on 31.05.2017. Even after retirement, the petitioner was not paid the retirement benefits and the petitioner was not aware as to the reason why the retirement benefits were not paid to him.

3. It is at this point of time, the petitioner received the notice dated 10.03.2020 from the 1st respondent informing the petitioner about the enquiry report submitted under Section 81 of the Tamil Nadu Cooperative Societies Act [hereinafter referred to as "the Act"] and the consequent initiation of proceedings under Section 87 of the Act. The petitioner submitted his explanation on 24.04.2020, by giving all the facts including the fact that the petitioner had retired on 31.05.2017 itself and there is absolutely no ground to initiate proceedings against the petitioner, who was only a watchman in the Society. Thereafter, the petitioner was once again issued with the proceedings of the 1st respondent dated 29.06.2020, wherein, the petitioner was served with the enquiry report under Section 81 of the Act.

4. The petitioner, being aggrieved by the enquiry report of the 3rd respondent and also the proceedings initiated by the 1st respondent under Section 87 of the Act, has approached this Court by filing the above writ petition.

5. The learned counsel for the petitioner submitted that, the enquiry as against the petitioner is a clear abuse of process of law since the petitioner, who was only a watchman can never be proceeded against under Section 87 of the Act. The learned counsel further submitted that the entire reading of the enquiry report submitted by the 3rd respondent shows that there are absolutely no reasons assigned and the same is in violation of Rule 106(4) of the Rules and the petitioner has been



mechanically added as a party in the consequential proceedings initiated under Section 87 of the Act, even without considering the explanation given by the petitioner. The learned counsel further submitted that even assuming that the surcharge proceedings are initiated and explanation is given by the petitioner, the same cannot be a ground to deprive the petitioner his retirement benefits and such a power is not available to the respondents and ultimately the livelihood of the petitioner is now in question. The learned counsel submitted that under normal circumstances, a writ will not be entertained against an enquiry report under Section 81 of the Act. However, this is a peculiar case where the report of the enquiry officer does not satisfy the requirements under Rule 106 and there is absolutely no finding with regard to the involvement of the petitioner and the petitioner cannot be made to undergo the proceedings under Section 87 of the Act, without any basis. Therefore, the learned counsel submitted that this is a fit case where the enquiry report of the 3rd respondent is liable to be interfered insofar as the petitioner is concerned and consequently, the petitioner should be relieved from undergoing the proceedings initiated by the 1st respondent under Section 87 of the Act.

6. The 1st respondent has filed a counter affidavit in this case. In the counter affidavit, the 1st respondent has taken a preliminary objection with regard to the maintainability of the writ petition. That apart, even on the merits of the case, the 1st respondent has stated in para 8 of the counter affidavit, the various depositions that are available against the petitioner and which were recorded at the time of enquiry under Section 81 of the Act. The 1st respondent has taken a stand that the petitioner has also connived and abetted the Secretary and he has played a part in the misappropriation that took place in the Society. The 1st respondent has also challenged the stand taken by the petitioner that he is a night watchman and according to the 1st respondent, the petitioner has signed the attendance register as a peon and he is an Office Assistant in the Society and therefore, according to the 1st respondent, the petitioner has to give his explanation for the notice issued by the 1st respondent. The 1st respondent has further stated that the notice issued by the 1st respondent while initiating proceedings under Section 87 of the Act can never be put to challenge and the petitioner can only submit his explanation and the same will be considered on its own merits and a decision will be taken by the 1st respondent.

7. The learned Government Counsel appearing on behalf of the 1st respondent submitted that the enquiry report under Section 81 of the Act and the surcharge proceedings initiated by the 1st respondent by issuing notice to the petitioner, cannot become a



8. This Court has carefully considered the submissions made on either side and the materials available on record.

10. The Division Bench of this Court in P.Krishnan .v. Deputy Director of Industries and Commerce and Others reported in (2020) 2 LW P 849, has categorically held that, Section 81 of the Act is only a fact finding enquiry and the same cannot be put to challenge since nobody can be said to be prejudiced and no opportunity need to be given while conducting such an enquiry as contemplated under the Act. If this Court starts interfering at the stage of Section 81 of the Act, there will be no progress in any enquiry conducted in a Society.mThe petitioner may be having a justification to question the enquiry report on the ground that there is no finding against the petitioner and there is no reference to any material in the enquiry report connecting the petitioner to the allegation of misappropriation. However, that by itself cannot be a ground for this Court to interfere with the enquiry report since the enquiry report does not only deal with the petitioner, but, it deals with the entire Board of Directors including the office bearers. Therefore, this Court is not inclined to interfere with the enquiry report submitted by the 3rd respondent.

<https://hcservices.ecourts.gov.in/hcservices/>



to necessarily take into consideration all the grounds raised by the petitioner and the petitioner cannot be mechanically made to suffer without any materials against him. This Court does not want to go into the merits of the case and therefore, it is left open to the 1st respondent to consider the materials available on record and also the grounds that have been raised by the petitioner and take an appropriate decision. The 1st respondent is directed to take a decision and pass orders strictly in accordance with law, within a period of six weeks from the date of receipt of copy of this order. It is made clear that the observations made in the writ petition shall not come in the way of the 1st respondent while dealing with the explanation given by the petitioner and the proceedings can be independently conducted without being influenced by this order. The 1st respondent has to necessarily consider the grounds raised by the petitioner before coming to a final conclusion. The learned counsel for the petitioner submitted that the retirement benefits has not been released till date. It is left open to the petitioner to make a representation to the 1st respondent in this regard and the 1st respondent shall take a decision independently and inform the petitioner.

12. This writ petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kp

To

1. The Deputy Registrar of
Co-operative Societies,
Krishnagiri Circle,
Krishnagiri
2. S 1063 PULIYAMPATTI PRIMARY AGRICULTURAL
Co-operative Credit Society Ltd.,
Rep by its Secretary,
Puliyampatti,
Pochampalli Taluk,
Krishnagiri District.



3. The Enquiry Officer,
S-1063 Puliampatti Primary Agricultural
Co-operative Credit society Ltd.,
Puliampatti Pochampalli Taluk,
Krishnagiri District.

WEB COPY

+1cc to Mr.R.Balaramesh, Advocate, S.R.No.39846
+1cc to Mr.M.S.Palaniswamy, Advocate, S.R.No.40104
+1cc to the Government Pleader, S.R.No.40071

W.P.NO.13479 OF 2020

PMK (CO)
PBS/08/09/2021