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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.08.2021

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THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.16563 of 2021
and W.M.P No.17535 of 2021

S.Manickam

... Petitioner

Vs.

1. The Deputy Registrar of Co-operative Society,
Salem Circle,
Salem.

2. The Management of the
S.1299 V.Mannarpalayam Primary Agricultural
Cooperative Credit Society,
Rep. by its Secretary
V.Mannarpalayam Post,
Valapadi Taluk,
Salem District.

... Respondents

Prayer:

Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order passed by the 1st respondent in Na.Ka.No.6342/2016 Sa Pa dated 04.12.2020 under section 87 of Tamil Nadu Co-Operative Societies Act, 1983 and quash the same in so far as the petitioner is concerned and consequently remand back to the 1st respondent to hold fresh enquiry in accordance with law.

For Petitioner : Mr.L.P.Shanmuga Sundaram

For Respondents : Mr.A.Selvendiran
Government Advocate for R1

Mr.K.Rajendran for R2



ORDER

By consent of both sides, this writ petition is taken up for final disposal.

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2.The subject matter of challenge in the present writ petition is the impugned proceedings of the 1st respondent dated 04.12.2020 passed under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (herein after called as "Act").

3.The case of the petitioner is that he is the elected President of the 2nd respondent Society from the year 2013 onwards. An enquiry was initiated under Section 81 of the Act and based on the Enquiry Report dated 28.02.2018, sur-charge proceedings were initiated and Show Cause Notice was issued seeking for explanation. Thereafter, the 1st respondent has proceeded to pass orders through the impugned proceedings dated 04.12.2020. Aggrieved by the same, the present writ petition has been filed before this Court.

4.Heard Mr.L.P.Shanmugasundaram, learned counsel appearing on behalf of the petitioner Mr.A.Selvendran, learned Government Advocate appearing on behalf of the first respondent and Mr.K.Rajendran, learned counsel appearing on behalf of the 2nd respondent.

5.The main grievance of the petitioner that has been expressed by the learned counsel for the petitioner is that the 1st respondent has not furnished the Enquiry Report issued under Section 81 of the Act and the copy of the documents that were relied upon to the petitioner and therefore the impugned order is vitiated on this ground alone. The learned counsel further submitted that the procedure laid down under Section 87(4) of the Act is mandatory and the same being not followed by the 1st respondent makes the impugned order illegal on the face of it. The learned counsel submitted that the petitioner must be given the Enquiry Report and also the documents relied upon and an explanation must have been sought for from the petitioner and thereafter, the petitioner must be given an opportunity to participate in the enquiry and defend himself. In the absence of following any of these procedures, the impugned order passed by the 1st respondent is liable to be interfered on the ground of violation of principles of natural justice. More particularly, since the order has civil consequences.

6.The learned Government Advocate appearing on behalf of the 1st respondent based on written instructions submitted that the petitioner and the other Board Members were intentionally dragging on with the proceedings without giving their explanations or appearing for the enquiry and this was going on



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for nearly eight months. Since there was absolutely no cooperation on the side of the petitioner and others, the 1st respondent had no other go except to pass orders based on the available materials. The learned counsel submitted that the petitioner not having participated in the proceedings and not having cooperated during the enquiry, cannot turn around and now complain that the order is vitiated due to violation of principles of natural justice. The learned counsel submitted that there is no ground to interfere with the impugned proceedings of the 1st respondent and the present writ petition is liable to be dismissed.

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

8. It is mandatory on the part of the 1st respondent to have followed the procedure as contemplated under Section 87 of the Act. An order passed under Section 87 has civil consequences and therefore, the procedure has to be strictly followed, failing which, it will be liable to be interfered on that ground alone.

9. In the present case, admittedly the Enquiry Report under Section 81 of the Act and the documents relied upon were not furnished to the petitioner. Without these materials, the petitioner could not have given any explanation. The only reason that has been given by the 1st respondent is that the petitioner did not seek for any of these documents and was not cooperating for the completion of the enquiry. It is not necessary for the petitioner to seek for the Enquiry Report and other documents relied upon and it is the duty of the 1st respondent to have furnished all these materials. If in spite of furnishing those documents, if the petitioner did not give any explanation or did not participate in the enquiry, then it will be justifiable for the 1st respondent to proceed further with the available materials. Since, the 1st respondent did not fulfil the mandatory requirements, this Court has to necessarily interfere with the proceedings of the 1st respondent and remand the matter back to the file of the 1st respondent to conduct a fresh enquiry after furnishing all the materials to the petitioner and to conclude the same within a time frame.

10. In view of the above discussion, the impugned proceedings of the 1st respondent dated 04.12.2010 is quashed insofar as the petitioner is concerned. The matter is remanded back to the file of the 1st respondent and the 1st respondent is directed to immediately furnish the Enquiry Report and the relevant documents to the petitioner. The petitioner shall thereafter submit his explanation. The petitioner shall also be afforded opportunity by the 1st respondent in accordance with Section 87 of the Act. The 1st respondent shall complete the proceedings and pass final orders, within a period of eight weeks from the date



of receipt of copy of this order.

11. In the result, this writ petition is allowed with the above directions. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar (CS)

//True Copy//

Sub Assistant Registrar

ssr

To

1. The Deputy Registrar of Co-operative Society,
Salem Circle,
Salem.
2. The Secretary
The Management of the
S.1299 V.Mannarpalayam Primary Agricultural
Cooperative Credit Society,
V.Mannarpalayam Post,
Valapadi Taluk,
Salem District.

+1 cc to Special Government Pleader SR.No.39423

W.P No.16563 of 2021
and W.M.P No.17535 of 2021

SSI (CO)
CT (27/08/2021)