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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.18039 OF 2021

AND

W.M.P.NO.19269 OF 2021

1. P.Shanmugam,
S/o.Pakkirisamy (Deceased),
No.21, M.block,
Sivalingapuram,
K.K.Nagar,
Chennai - 600 078.
2. M.Chandrababu,
S/o.Murugesan,
No.85 Vazhama Nagar,
Otteri, Chennai - 600 012.
3. A.Dhanasekaran,
S/o.Arumugam,
No.28, Cimitry Lane,
Royapuram,
Chennai - 600 002.
4. B.Radha,
W/o.Baskar,
No.65/53, Irusappan Mesthiri,
1st Street, New Washarampet,
Chennai - 600 081.
5. B.Sajathi,
W/o.Bashir,
No.37, Kabursahib Street,
2nd Ice House,
Chennai.
6. K.Mythili,
W/o.Sangam,
No.21/20 Somasundari,
Bharathi Nagar,
2nd Street, Vadapalani,
Chennai - 600 026.



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7. P.Sridhar,
S/o.Purusothaman,
No.33, Muniyappan Chetty Street,
Sempiyam,
Chennai - 600 011.

8. S.Meena,
W/o.Late P.Shanmugam.

9. Ragul Shanmugam,
S/o.Late P.Shanmugam.

10. Ravichandrika
D/o.P.Shanmugam
(P8 to P10 substituted as Lrs of
Deceased petitioner P1 Vide Order
dated 17.09.2021 made in
W.M.P.No.21230 of 2021)

... Petitioners

.Vs.

1. The Deputy Registrar of
Co-operative Societies (Credit),
Kuralagam, 2nd Floor,
Chennai - 600 108.
2. The Sub Registrar of Co-operative
Societies/The Enquiry Officer under
Section 81 of the TNSCS Act, 1983,
O/o. The Deputy Registrar of
Co-operative Societies (Credit),
Kuralagam, 2nd Floor,
Chennai - 600 102.
3. The Chennai City Judicial Employees
Co-operative Thrift and Credit Society,
Rep. by its President,
High Court Campus,
Chennai - 600 102.

... Respondents

PRAYER:-

Writ petition is filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus calling for records pertaining to the Enquiry Reports submitted by the 2nd respondent, dated 05.02.2018 and 16.04.2019 under Section 81 of the Tamil Nadu State Co-operative Societies Act, 1983 which were communicated by the 1st respondent along with



the show cause notices dated 30.08.2018 and 06.01.2020 in Na.Ka.Nos.1970/18/Sa.Pa.1 and 3283/2019/Sa.Pa.1 and the surcharge orders, dated 25.02.2019 and 04.07.2020 issued by the 1st respondent in Na.Ka.No.1970/18/Sa.Pa.1 and Na.Ka.No.3283/2019/Sa.Pa.1, quash the same in so far as the findings given against them in the Enquiry Reports and in so far as the surcharge orders passed against the petitioners and forbear the respondents and their officials from insisting for payment of and recovering any amount based on and pursuant to the above reports and orders, award costs.

For Petitioners : Mr.V.Ajoy Khose

For Respondents : Mr.A.Selvendran
Government Advocate
For R1 and R2

Mr.U.Baranidharan
Government Advocate
For R3

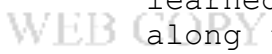
O R D E R

This writ petition has been filed by seven petitioners challenging the enquiry report under Section 81 of the Tamil Nadu State Co-operative Societies Act, 1983 (hereinafter referred to as 'the Act') and the surcharge orders passed against them by the 1st respondent through proceedings dated 25.02.2019 and 04.07.2020.

2. Heard Mr.V.Ajoy Khose learned counsel for the petitioner, Mr.A.Selvendran, learned Government Advocate for the respondents 1 and 2 and Mr.U.Baranidharan, learned Government Advocate for the third respondent.

3. The main ground that has been raised by the learned counsel for the petitioners is that the petitioners were only provided with the enquiry report under Section 81 of the Act and none of the documents or circulars that are relied upon in the report were served on the petitioners. The learned counsel therefore submitted that the matter has to be remanded back to the file of the 1st respondent by directing the respondents to serve all the relevant documents and circulars and some time limit may be fixed by this Court for the completion of the proceedings.

4. When the matter was taken up for hearing on 03.09.2021, this Court directed the learned Government Advocate to take instructions and report before this Court with regard to the



5. When the matter was taken up for hearing today, the learned Government counsel submitted the written instructions along with all the relevant documents. The learned Government Advocate submitted that all the petitioners were afforded sufficient opportunity and the petitioners have also given their explanations with regard to the charges made against them and therefore, if the petitioners are aggrieved with the order passed by the 1st respondent, they have to necessarily work out their remedy only by filing an appeal before the concerned Tribunal under Section 152 of the Act and the present writ petition is not maintainable.

7. A careful reading of the impugned order passed by the 1st respondent shows that all the charges were specifically put to the petitioners and all the petitioners have given their explanations. Sufficient opportunity has been provided to the petitioners to give their explanation. Considering the same, the impugned order has been passed by the 1st respondent. Nowhere the petitioners have raised the ground that they have not been provided with the relevant documents or circulars. This is the first time such a ground has been raised in the present writ petition. If really the petitioners were not able to give their explanations in the absence of the documents and circulars relied upon in the enquiry report, the petitioners should have raised the ground then and there before the 1st respondent, when the proceedings were initiated under Section 87 of the Act. The same has not been admittedly done in the present case. Each petitioner has given detailed explanation for the charges made against each one of them. If really they were deprived of the documents and circulars, the first ground that would have been raised by the petitioners is that they cannot give an explanation without those materials.

8. In view of the above, this Court does not find that the order passed by the 1st respondent is vitiated on the ground of violation of principles of natural justice. In view of the same, the petitioners will have to necessarily work out their remedy only by way of filing an appeal before the Tribunal under Section 152 of the Act. Since there is an efficacious



alternative remedy provided to the petitioners, this Court is not inclined to entertain the present writ petition. Liberty is granted to the petitioners to work out their remedy by filing an appeal before the concerned Tribunal.

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9. In view of the above discussion, this writ petition is disposed of by granting liberty to the petitioners to file an appeal before the concerned Tribunal within a period of two weeks from the date of receipt of a copy of this order. The Tribunal shall entertain the appeal without raising the ground of limitation and the Tribunal shall decide the appeal on merits. The Tribunal shall pass final orders within a period of three months from the date of filing of the appeal by the petitioners. It is made clear that the Tribunal will deal with the appeal on its own merits and in accordance with law and the Tribunal will not be influenced by any of the observations made in the present writ petition. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

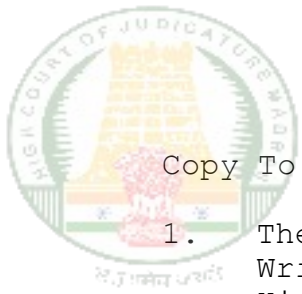
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Sub Assistant Registrar

RAP/RR

To

1. The Deputy Registrar of
Co-operative Societies (Credit),
Kuralagam, 2nd Floor,
Chennai - 600 108.
2. The Sub Registrar of Co-operative
Societies/The Enquiry Officer under
Section 81 of the TNSCS Act, 1983,
O/o. The Deputy Registrar of
Co-operative Societies (Credit),
Kuralagam, 2nd Floor,
Chennai - 600 102.
3. The President,
Chennai City Judicial Employees
Co-operative Thrift and Credit Society,
High Court Campus,
Chennai - 600 102.



Copy To:-

1. The Sub-Assistant Registrar,
Writ Section,
High Court, Madras - 104.

2. The Section Officer,
E.R. Section,
High Court, Madras - 104.

(To return back the original orders filed
along with the writ petition to the learned
counsel for the petitioners in order to
enable the petitioners to work out their
remedy by way of filing an appeal.)

+1cc to Mr.V.Ajoy Khose, Advocate, S.R.No.46243
+1cc to the Government Pleader, S.R.No.46474

W.P.NO.18039 OF 2021 AND
W.M.P.NO.19269 OF 2021

KSM(CO)
PBS/14/12/2021