



WEB COPY

IN THE HIGH COURT OF JUDICATURE OF MADRAS

DATED : 23.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

W.P.NO.24957 OF 2021

AND

W.M.P.NO.26272 OF 2021

S.Radhakrishnan

...Petitioner

-Vs-

1. The Additional Registrar
Chennai Zone, Chennai 600 018.
2. The Deputy Registrar (Non Credit)
Kuralagam, 2nd Floor
Chennai 600 108.
3. The Deputy Registrar / Managing Director
North Chennai Co-operative Wholesale Stores Ltd.,
No.58, Ibrahim Salai, Chennai 600 001.
4. R.Sargunam

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records pertaining to enquiry report filed after completion of inquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, by the 4th respondent and the consequent surcharge notice Na.Ka.869/2021/sa.ba 1 dated 29.07.2021 and 20.09.2021 issued under Section 87(1) of the Tamil Nadu Cooperative Societies Act, 1983 by the 2nd respondent and quash the same.

For Petitioner : Mr.S.Pushpakaran

For Respondents : Ms.Akila Rajendran,
Government Advocate
- for RR 1 and 2
Mr.C.Jayaprakash,
Government Advocate-for R3



O R D E R

The prayer sought for herein is for a Writ of Certiorari to call for the records pertaining to enquiry report filled after completion of inquiry conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, by the 4th respondent and the consequent surcharge notice Na.Ka.869/2021/sa.ba 1 dated 29.07.2021 and 20.09.2021 issued under Section 87(1) of the Tamil Nadu Cooperative Societies Act, 1983 by the 2nd respondent and quash the same.

2. The petitioner was working as a Junior Assistant at the third respondent Society. In respect of the alleged mismanagement and misappropriation of funds of the Society in the year 2017-18 and 2018-19, the authorities concerned, under the Tamil Nadu Cooperative Societies Act, 1983 (In short 'the Act') had ordered an enquiry under Section 81 of the said Act. Accordingly, enquiry was conducted and a report to that effect was filed by the second respondent on 17.09.2021.

3. Followed by the said Section 81 enquiry report, since there has been some material as per the said report that there has been mismanagement and misappropriation, it became necessitated for the authorities concerned to initiate surcharge proceedings under Section 87 of the Act. Accordingly, a notice under Section 87(1) of the Act was issued on 29.07.2021 against the petitioner and three others.

4. On receipt of the notice, the petitioner filed his interim reply dated 18.08.2021 and had sought for a copy of the Section 81 enquiry report, so that the petitioner would be in a position to give a full fledged reply to the notice under Section 87(1) issued in this regard.

5. Considering the said request of the petitioner through his interim reply dated 18.08.2021, the respondents furnished the copy of the Section 81 enquiry report. Thereafter, once again a notice under Section 87(1) was issued against the petitioner and other co-delinquents on 20.09.2021. After having gone through the Section 81 enquiry report, the petitioner has given a final reply to the second notice under Section 87(1), by his final reply dated 27.09.2021, where he has explained that, he is only a Junior Assistant and therefore he is no way connected with the alleged mismanagement and misappropriation of the Society's funds. Therefore, he sought to exonerate him from the charges framed against him under Section 87 of the Act.

6. Thereafter, so far, no final order under Section 87 has been passed. Only at this juncture, the petitioner has chosen



7. Heard Mr.S.Pushpakaran, learned counsel appearing for the petitioner, who would submit that, the petitioner was only working as a Junior Assistant. In fact, in respect of some other charges, the petitioner has already been removed from service and as against the said order of removal, he has already filed a writ petition before this Court, which is pending.

9. On the other hand, Ms.Akila Rajendran, learned Government Advocate appearing on behalf of respondents 1 and 2 and Mr.C.Jayaprakash, learned Government Advocate appearing on behalf of the third respondent would submit that, Section 81 enquiry was conducted properly and accordingly the report was submitted by the second respondent, where lot of issues have been unearthed and therefore it has become necessitated for the authorities to initiate Section 87 surcharge proceedings against all the erring persons including the petitioner. Accordingly, Section 87(1) notice was already issued against the petitioner



and others on 29.07.2021 and pursuant to which the petitioner had given only an interim reply on 18.08.2021 and he sought for the copy of the enquiry report under Section 81 and that was also furnished to him. Therefore, it has become necessitated for the respondents to issue notice under Section 87(1) of the Act and that is how the second notice was issued on 20.09.2021, pursuant to which, the petitioner has filed his final reply dated 27.09.2021. Therefore, the learned counsel appearing for the respondents submit that, the reply submitted by the petitioner would be considered on merits and in accordance with law and a final decision would be taken on the surcharge proceedings.

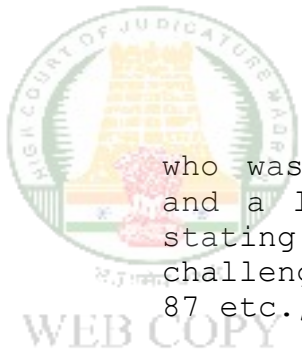
10. The learned counsel for the respondents therefore would contend that, absolutely there could be no plausible ground available to the petitioner to challenge the Section 81 enquiry report as well as the notices issued under Section 87(1) of the Act and therefore, this writ petition is liable to be rejected, they contended.

11. I have considered the submissions made on either side and have perused the materials available on record.

12. Admittedly, there was a Section 81 enquiry report followed by proceedings initiated under Section 87 of the Act. After receipt of the notice under Section 87(1) dated 29.07.2021, the petitioner had given an interim reply on 18.08.2021, where he sought for the copy of the Section 81 enquiry report and the same, according to the petitioner, having been furnished to him, in the meanwhile a second notice was also issued under Section 87(1) of the Act on 20.09.2021 and therefore, responding to both the notices, after going through the enquiry report, the petitioner has chosen to give his reply finally on 27.09.2021.

13. After having acted upon and giving reply to the said notice under Section 87(1) by way of interim reply as well as final reply, it is for the petitioner to agitate the same by facing the surcharge proceedings and in this regard, if he wants to give further input, he can very well give the same before the authorities concerned. However, the petitioner cannot now challenge the Section 81 enquiry report as well as Section 87(1) notice. The reason being that, there is no other infirmity in the Section 87(1) notice as it was only pursuant to the Section 81 enquiry report as contemplated under the provisions of the Act.

14. Moreover, the very same Section 87(1) notice dated 27.09.2021 was challenged by a co-delinquent one M.Elangovan,



who was the President of the Society in W.P.No.19954 of 2021, and a learned Judge of this Court dismissed the writ petition stating that, the petitioner in that case, cannot at every stage challenge the proceedings like issuance of notice under Section 87 etc.,

15. Therefore, the very same impugned notice since has been put under challenge in this writ petition, the said view taken by the learned Judge would be squarely applicable to the facts of the present case also, as the very same notice under Section 87(1) is under challenge in the present writ petition also.

16. In that view of the matter, this Court feels that, the petitioner has not made out any case with plausible reasons to interfere with the impugned notice issued under Section 87(1) of the Act and therefore, this Court feels that this writ petition fails and hence it is liable to be rejected.

17. Accordingly, this writ petition is dismissed. However, it is open to the petitioner to submit further input or file a reply explaining his position as a Junior Assistant and that he is no way connected with the alleged irregularities which are the source for Section 87 proceedings and accordingly he can seek for exoneration from the Section 87 surcharge proceedings and in that case, along with the earlier reply given by the petitioner, the further input also in this regard to be supplied, if any, by the petitioner can also be considered by the respondents and ultimately, a final decision can be taken in the Section 87 surcharge proceedings initiated through the impugned communications.

18. With the above observations, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Additional Registrar
Chennai Zone, Chennai 600 018.



2. The Deputy Registrar (Non Credit)
Kuralagam, 2nd Floor
Chennai 600 108.

3. The Deputy Registrar / Managing Director
North Chennai Co-operative Wholesale
Stores Ltd., No.58, Ibrahim Salai,
Chennai 600 001.

+1cc to M/s.S.Pushpakaran, Advocate, S.R.No.60839

+1cc to the Government Pleader, S.R.No.60699

W.P.No.24957 of 2021

PCH (CO)
RLP (09/02/2022)