



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.26775 of 2021
and W.M.P.No.28207 of 2021

R.Arumugam

... Petitioner

-Vs-

1.The Deputy Registrar (Credit)
Co-operative Societies Deputy Registrar
Office, 2nd Floor, Kuralagam
Chennai 600 108.

2.The Managing Director
The Vellala Teynampet Co-operative Credit
Society Ltd., No.34/93, Elliamman Colony
First Street, Vellala Teynampet
Chennai 600 086.

... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 1st respondent in Na.Ka.No.1608/2021/Sa.Pa.1 dated 23.11.2021 and quash the same and consequently direct the 2nd respondent to revoke the order of suspension.

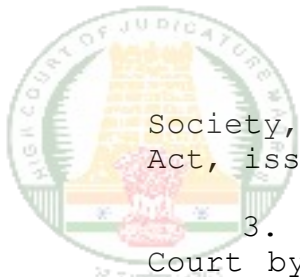
For Petitioner : Dr.S.S.Swaminathan

For Respondents : Mr.A.Selvendran
Special Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the 1st respondent in Na.Ka.No.1608/2021/Sa.Pa.1 dated 23.11.2021 and quash the same and consequently direct the 2nd respondent to revoke the order of suspension.

2. The petitioner is the Secretary of the Society and in view of Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 (In short 'the Act'), the petitioner has already been suspended. After Section 81 inquiry, since it was revealed in the said inquiry report that there has been mismanagement or breach of trust, which resulted in loss sustained by the



Society, the first respondent, invoking Section 87(1) of the Act, issued a show cause notice on 24.05.2021 and 14.06.2021.

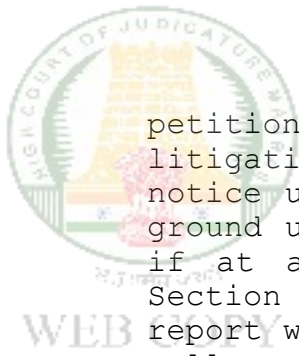
3. The said show cause notice was challenged before this Court by the petitioner in the earlier round of litigation in W.P.No.14780 of 2021, where the ground of attack primarily was that, if at all the Section 81 inquiry report was the basis for invoking Section 87 surcharge proceedings, a copy of the Section 81 inquiry report should have been furnished to the petitioner before issuing the show cause notice under Section 87(1) inviting reply or defence from the petitioner. Based on the said ground raised by the petitioner in the writ petition, a learned Judge of this Court, by order dated 26.07.2021 was pleased to quash the said Section 87(1) notice referred to above and further directed the second respondent herein, who was the respondent in that writ petition also, to furnish a copy of the documents sought for by the petitioner, mainly the inquiry report made under Section 81 of the Act.

4. Pursuant to the said order passed by this Court, the second respondent had furnished the copy of the inquiry report to the petitioner, who on receipt of the same, has given a defence or reply on 13.10.2021, where inter-alia he had stated that, the petitioner is not responsible for any of the alleged misappropriation or mismanagement of the Society resulting in the sustainment of loss by the Society during his tenure as Secretary before he was suspended.

5. Though the said reply or defence had been given on 13.10.2021, of course on the basis of the report of Section 81 inquiry, it was the expectation of the petitioner that, those defences would have been taken into account by the second respondent before proceeding in further invoking once again Section 87 of the Act.

6. However, contrary to the said expectation on the part of the petitioner, the second respondent has come forward to issue a show cause notice under Section 87(1) of the Act on 23.11.2021, wherein detailed reasons have been given as to how the second respondent Society sustained loss because of 48 jewel loan transactions and another set of 18 jewel loan transactions, thereby the Society sustained a loss of a sum of Rs.75,35,735/- and therefore, in order to seek defence or explanation from the petitioner before finalizing the proceedings under Section 87 of the Act ie., Surcharge proceedings, the impugned communication ie., show cause notice under Section 87(1) of the Act was issued on 23.11.2021. Felt aggrieved over the said show cause notice under Section 87(1) dated 23.11.2021, the petitioner has moved this writ petition with the aforesaid prayer.

7. Heard Dr.S.S.Swaminathan, learned counsel for the



petitioner, who would submit that, in the earlier round of litigation, the very same authority who issued the show cause notice under Section 87(1) of the Act was under challenge. The ground urged by the petitioner in that writ petition was that, if at all the second respondent initiated proceedings under Section 87(1) of the Act, for which the Section 81 inquiry report was the basis, the report under Section 81 of the Act as well as the connected documents if any should have been furnished to the petitioner, without which, seeking explanation from the petitioner for the show cause notice under Section 87(1) is absolutely unlawful, as the petitioner had no occasion whatsoever to deal with those issues since what has been stated in the Section 81 inquiry report is not known to the petitioner and that is the basis for Section 87(1) proceedings. Therefore, on that ground, the show cause notice dated 23.11.2021 under Section 87(1) of the Act is under challenge in this writ petition.

8. The learned counsel submitted that, having accepted the first plea raised by the petitioner in the earlier writ petition, the learned Judge has quashed the impugned orders therein and directed the first respondent to issue a copy of the Section 81 inquiry report and other connected documents if any. Pursuance to which, since documents were furnished to the petitioner, after having gone through the same, the petitioner has given a detailed reply for those documents, which includes Section 81 inquiry report, on 13.10.2021. In the said reply, for both counts ie., item No.1 as well as item No.2, detailed explanation has been given by the petitioner. Therefore, the same should have been considered before venturing into invoking once again Section 87(1) of the Act.

9. However, contrary to that procedure to be adopted, the first respondent has straight away issued once again a notice under Section 87(1) of the Act on 23.11.2021, wherein the petitioner's defence by way of explanation given already dated 13.10.2021 had not at all been considered and there has been no whisper available in the impugned communication dated 23.11.2021 to suggest that, the defence given by the petitioner dated 13.10.2021 was considered by the first respondent.

10. This omission on the part of the first respondent, according to the learned counsel for the petitioner, is unlawful and in this context, he vehemently contended that, once the Section 81 inquiry report is the basis for invoking Section 87 Surcharge proceedings and the earlier Section 87(1) show cause notice issued in this regard was quashed because the report of Section 81 inquiry report was not furnished to the petitioner and after having received such report, the petitioner has chosen to file a detailed reply, that should have been borne in mind by the first respondent before venturing into once again invoking Section 87(1) of the Act.



11. However the first respondent, as if that the petitioner had not given any reply or defence to the Section 81 inquiry report, had proceeded to issue the show cause notice invoking Section 87(1) of the Act. Therefore, that is infirm and liable to be interfered with, he contended.

12. I have considered the said submissions made by the learned counsel for the petitioner and have perused the materials placed before this Court.

13. No doubt, there was a Section 81 inquiry conducted in respect of the affairs of the second respondent Society and in this context, the petitioner has already been placed under suspension based on the Section 81 inquiry report, since it reveals certain mismanagement, misappropriation or breach of trust by which the Society sustained a loss to the extent of more than Rs.75 Lakhs, it became necessitated for the first respondent to invoke Section 87 of the Act, accordingly show cause notice under Section 87(1) of the Act was issued.

14. However, the same when it was challenged before this Court on the ground that the very basis of Section 87(1) proceedings initiated, is the Section 81 inquiry report and the same since has not been furnished to the petitioner, it may not be justifiable on the part of the authority to expect an explanation from the petitioner, as without a copy of the Section 81 inquiry report, he may not be in a position to give a suitable defence. Therefore, primarily on that ground, the earlier show cause notice issued under Section 87(1) was quashed and consequentially a direction was also given by the learned Judge to the authorities to furnish a copy of the report and other connected documents to the petitioner.

15. The said direction was complied with by the authorities, pursuant to which, the petitioner, having received the Section 81 inquiry report, has chosen to give a detailed reply-cum-defence on 13.10.2021.

16. Now, the point raised by the learned counsel for the petitioner is that, the said defence / reply given on 13.10.2021 as against the Section 81 inquiry report should have been taken into account before invoking Section 87(1) of the Act.

17. In this context, if we look at the language used in Section 87(1) of the Act, it makes it clear that, if in the course of audit under Section 80 or an enquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83 or the winding-up of a Society, it appears that any person who is or was entrusted with the organisation and management of the Society or any past



or present officer or servant of the Society has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust relation to the Society or has caused any deficiency in the assets of the society by breach of trust or wilful negligence or has made any payment is in accordance with this Act, the Rules or the bye-laws, the Registrar himself or any person specially authorised by him in this behalf, of his own motion or on the application of the board, liquidatory or any creditor or contributory, may frame charges against such person or officer or servant and after giving a reasonable opportunity to the person concerned, make an order requiring him to repay or restore the money or property etc.,

18. If we look at this language used in Section 87, the following words are more crucial. First is "it appears", that means, if it appears to the Registrar that any misappropriation has taken place or fraudulently retention of money or property or anyone was guilty of breach of trust or anyone was guilty of wilful negligence or has made any payment is not in accordance with this Act, the Rules or the bye-laws, the Registrar may initiate proceedings under Section 87(1) framing charges. However, before finalizing the charges framed against the staff, officer or servant of the Society, he must be given an opportunity and after giving a reasonable opportunity, the Registrar may decide the said charges and accordingly he may require the person against whom such charges are framed, to repay or restore the money or property of the Society.

19. In consonance with Section 87(1) of the Act, based on the Section 81 inquiry report, which has already been conducted, the Registrar on whose behalf the Deputy Registrar, who is the first respondent herein, since it appears to him that some misappropriation or fraudulent retention of money had taken place or somebody has been guilty of breach of trust or they have made payment which is not in accordance with the Act, Rules or Bye-laws, decided to initiate proceedings under Section 87(1) of the Act, wherein charges have been framed. However, before finalizing the charges against the person against whom it is framed, reasonable opportunity should be given, which has now been given through the impugned communication.

20. Therefore, on receipt of this impugned communication, it is open to the petitioner to give his defence or reply and after such defence or reply is given pursuant to the impugned notice, it shall be taken into account by the first respondent, who initiated the proceedings before finalizing the charges framed against the petitioner against whom it is framed and here it is the petitioner, and then only final order shall be passed under Section 87 requiring him to repay or restore money or property of the Society, in case the first respondent had



not been satisfied with the defence / reply to be made by the petitioner.

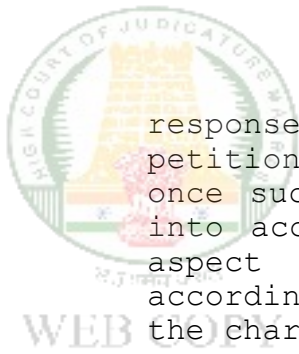
21. In this context, it was contended by the learned counsel for the petitioner that, based on the earlier reply or defence given, even the Section 87(1) show cause notice itself should not have been issued or before issuing the show cause notice, that defence / reply should have been taken into account and it should have been borne in mind by the first respondent before invoking Section 87(1).

22. The said proposition as projected by the learned counsel for the petitioner is far fetching and it is, in the considered opinion of this Court, is not in consonance with the language used in Section 87(1) of the Act.

23. Section 87(1) of the Act makes it clear that, if it appears in the mind of the Registrar or the person nominated by him that, something had happened in the Society, under which the Society sustained any loss for which the basis must be either the Section 81 inquiry report or Section 82 inspection / investigation or Section 83 inspection of books of accounts etc., based on which a show cause notice under Section 87(1) can be issued, ie., after framing the charges and before finalizing the charges, reasonable opportunity shall be given. Once such reasonable opportunity comes by way of a show cause notice under Section 87(1) of the Act, the person who receives such show cause notice must give reply or defence and once such reply / defence is given, that shall be taken into account before finalizing the Section 87 Surcharge Proceedings.

24. Here in the case in hand, it is the contention of the learned counsel for the petitioner that, even before issuing show cause notice under Section 87(1) of the Act, the earlier defence and reply given by the petitioner should have been taken into account. However, in the present case, even before issuing the Section 87(1) notice, there was no scope of giving any defence or reply and if at all any defence or reply was already given by the petitioner, even before issuing Section 87(1) notice and if at all that has to be considered, based on which the Section 87(1) proceedings should be dropped and if that is the proposition projected by the petitioner and if it is accepted, there could be no proceedings under Section 87 against the petitioner because, what has been contemplated under Section 87(1) is a different procedure, which cannot be stretched upon as proposed by the petitioner.

25. Therefore, this Court has no hesitation to hold that, there is absolutely no infirmity, illegality or unlawfulness attached with the impugned communication, which is nothing but a show cause notice under Section 87(1) of the Act before finalizing the charges against the petitioner. Therefore, in



response to the impugned notice, it is very well open to the petitioner to make his detailed defence by way of reply and once such reply or defence is given, the same shall be taken into account by the first respondent and each and every such aspect of the defence should be dealt with properly and accordingly further proceedings under Section 87 to finalize the charges framed against the petitioner can be decided.

26. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.

- (a) That the impugned communication is a show cause notice under Section 87(1) of the Act by way of giving a reasonable opportunity to the petitioner to put forth his defence before finalizing the charges, and the same need not be challenged, especially on the ground urged by the petitioner. Therefore, the impugned order is sustained.
- (b) However, it is open to the petitioner to make his defence by way of reply to the impugned show cause notice, for which, though seven days time has been given and the said time since has already lapsed, this Court extends the said time further for a period of one week from the date of receipt of a copy of this order, within which, it is open to the petitioner to make his reply / defence.
- (c) Once such reply or defence is given by the petitioner, on receipt of the same, the first respondent shall consider the same with regard to each and every defence made by the petitioner and after having considered the said reply and applying the mind, the first respondent can decide as to whether the Section 87 proceedings initiated through the impugned communication should be dropped or should be proceeded further and accordingly further decision can be taken in accordance with the provisions of Section 87 of the Act.

27. With the above observations and directions, 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 Deputy Registrar (Credit)
Co-operative Societies Deputy Registrar
Office, 2nd Floor, Kuralagam
Chennai 600 108.

2.The Managing Director
The Vellala Teynampet Co-operative Credit
Society Ltd., No.34/93, Elliamman Colony
First Street, Vellala Teynampet

+1cc to Mr.S.S.Swaminathan, Advocate, S.R.No.67644
+1cc to the Government Pleader, S.R.No.67903, 68311

W.P.No. 26775 of 2021

PL(CO)
SB(17/02/2022)