



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.06.2021

CORAM :

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P. (MD) .No.10369 of 2021

and W.M.P. (MD) .No.8044 of 2021

1.T.Neethidevan
2.Dr.R.Malairasu
3.Gurumanickam
4.R.Vijayakumar
5.R.Parthiban
6.P.Gopinath
7.K.Hemamalini
8.K.Prabhakaran

... Petitioners

Vs.

1.The Regional Joint Registrar of Co-operatives Societies,
Office of the Joint Registrar of Co-operative Societies,
Collectorate Complex,
Ramnad District.

2.The Deputy Registrar of Co-operative Societies,
Office of the Circle Deputy Registrar of Co-operative Societies,
Ramnad, Ramnad District. ... Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the impugned show cause notice issued by the 1st respondent in his proceedings in Na.Ka.No.2513/2019/Sa Pa, dated 28.05.2021 and quash the same.

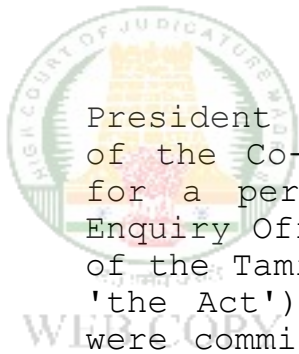
For Petitioner : Mr.B.Saravanan

For Respondents : Mr.M.Lingadurai
Government Advocate

ORDER

This writ petition has been filed challenging the impugned order passed by the first respondent through proceedings, dated 28.05.2021.

2.The case of the petitioners is that the first petitioner is the elected Vice President, the second petitioner is the elected



President and petitioners 3 to 8 are the elected Executive Members of the Co-operative Credit Society. The petitioners were elected for a period of five years from 09.04.2018 to 09.04.2023. An Enquiry Officer was appointed to conduct an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act (herein after called as 'the Act'), on the ground of certain malpractice / irregularities were committed by the office bearers of the Society. Based on the report submitted by the Enquiry Officer, surcharge proceedings were initiated under Section 87 of the Act and the same is pending. In the meantime, the first respondent initiated proceedings under Section 36 (1) of the Act for disqualification of the Board of Directors. Ultimately, the impugned order, dated 28.05.2021, came to be passed disqualifying the petitioners and declaring that the petitioners will not be entitled to participate in the Board of any Society in future. Aggrieved by the same, the present writ petition has been filed before this Court.

3.The first respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

3.At the outset it is submitted that if ever the petitioners had been aggrieved by the impugned disqualification order passed by the 1st respondent then they could have very well preferred a Appeal Petition before the Registrar of Co-operative Societies, Chennai under Section 152 (2) (V) (b) of the Tamil Nadu Co-operative Societies Act, 1983. While so, the petitioners without exhausting the remedies available for them under law had rushed to this Hon'ble Court directly and have filed this instant writ petition. Hence, this instant writ petition is liable to be dismissed on that ground alone in limine.

4.It is submitted that the petitioners were all Board of Directors of the R.R.1443 Ramanathapuram District Medical Employees Co-operative Credit Society, Ramanathapuram. Petitioner No.1 was Vice President of the society and Petitioner No.2 was the President of the Society. During the tenure of the Board, Several loans issued during the period from 01.04.2014 to 31.10.2018 had become over due, causing a huge financial loss to the society which warranted an Inquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983. So, the 2nd Respondent had ordered for an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, vide his proceedings Na.Ka.No.302/2019/Nu.thi. Dated 07.05.2019 to probe into the overdue loans



issued during the tenure of the Petitioners as Board of Directors.

5.It is further submitted that the Section 81 Enquiry Officer came out with his report, dated 14.02.2020, wherein, he had unearthed the following irregularities in the business management of the society during the period from 01.04.2014 to 31.10.2018.

i.Short collection of Interest in 70 Medium term loans to the tune of Rs.7,82,436/-.

ii.Inaction to recover the loan dues of the society from terminal benefits sanctioned to the retired members, causing a financial loss of Rs.11,37,127/-.

iii.Failure to recover the loan dues of the society from the terminal benefits sanctioned by the Government to 3 deceased members causing a financial loss of Rs.7,45,282/-.

iv.Financial loss due to the pre matured foreclosure of the loan of one Thiru A.Meharaj, causing a financial loss of Rs.37,882/- to the society.

v.Failure to initiate statutory action under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, against the 126 overdue loans causing a financial deficiency of Rs.26,64,845/- to the society.

All the above said irregularities were occurred during the tenure of the petitioners who were serving as the Board of Directors of the R.R.1443 Ramanathapuram District Central Co-operative Thrift and Credit Society causing a huge financial deficiency of Rs.53,67,573/- to the Society. Hence, the section 81 Enquiry Officer had recommended for surcharge proceedings against the petitioners under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, for the recovery of the financial deficiency of Rs.18,82,409/- caused by them under item no. ii and iii of the above said irregularities. Further the enquiry officer had recommended for the disqualification and removal proceedings against the petitioners under Section 36 of the Act, for their persistent negligence in connection with the conduct and management of the affairs of the society.

6.It is further submitted that in pursuance of the recommendations made by the Section 81 Enquiry Officer a show cause notice vide



Na.Ka.No.2513/2019/Sa.Pa, dated 02.02.2021 was issued to the petitioners by the 1st Respondent providing an opportunity for making their representations, regarding the proposed disqualification proceedings as contemplated under sub section (2) of Section 36 of the Tamil Nadu Co-operatives Societies Act, 1983. Though the petitioners were provided with 15 days of time for filing their explanation they didn't come forward with any of their explanations till 22.02.2021. However, after a lapse of nearly 20 days from the date of Show Cause notice, the petitioners 1 and 2 had made a request to furnish a copy of the Section 81 Disqualification Report to them so as to enable them to submit their explanations immediately after perusing the same. Their request was immediately entertained and a copy of the said report was communicated to them vide the letters of the 1st respondent, dated 05.03.2021, providing them another 7 days of time for submitting their explanations.

7.It is further submitted that not only the petitioners 1 and 2 who received the copies of the Enquiry report but all the other petitioners were also reluctant to submit any explanations for the show cause notice till 28.04.2021. So another notice, dated 29.04.2021 was also sent to all petitioners including the President and Vice President by the 1st respondent providing another 15 days of time for furnishing their explanations. In compliance of the notice, the 5th petitioner Thiru R.Parthiban, a Board of Director alone had sent a reply, relinquishing all his responsibilities. Whereas petitioners 1 and 2 even after availing nearly 100 days of time had requested for further time due to Covid - 19 pandemic. It is pertinent to note here that the impugned show cause notice was issued by the 1st respondent on 02.02.2021, whereas, the complete lock down due to Covid - 19 pandemic was announced by the State Government only on 10.05.2021. So, the petitioners 1 and 2 with the ulterior intention of delaying and defeating the Disqualification proceedings had requested for further time to furnish their reply. Hence, their request for further extension of time was not entertained. Whereas, all the other petitioners except petitioner No.5



had failed to furnish any reply. Hence, the 1st respondent was constrained to pass the impugned disqualification orders, on 28.05.2021 against all the petitioners.

8.It is submitted that according to Section 33(1) of the Tamil Nadu Co-operative Societies Act, 1983, the management of the society is vested with the Board constituted in accordance with the provisions of this Act, Rules and Bye laws which shall exercise such powers and perform such duties as may be conferred or imposed on it by this Act, Rules and the Byelaws. The primary object of the society is to disburse medium term loans to the members. The society derives its income only from the marginal interest that it earns during the course of the loan recovery proceedings. If the loan recovery proceedings are not effectively carried out then the loans become bad debts constituting non-performing assets of the society. This would damage the entire financial infrastructure of the society which causes the decline of its financial status. In the instant case the petitioners were highly reluctant and indifference in the loan recovery proceedings due to which the financial status of the society had sharp dip. Hence, the petitioners deserve disqualification under Section 36 of the Act for their gross and persistent negligence in connection with the conduct and management of the affairs of the society."

4.Heard Mr.B.Saravanan , learned counsel appearing for the petitioner and Mr.M.Lingadurai, learned Government Advocate, appearing for the respondents.

5.When the matter came up for hearing on 21.06.2021, this Court passed the following order.

"Mr.M.Lingadurai, learned Government Advocate takes notice for the respondents.

2. It is seen from records that an Enquiry Officer was appointed to conduct an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983, (hereinafter referred to as the "Act") on the ground that several irregularities were committed in the functioning of the Society. The Enquiry Officer also filed a report to the effect that the Society suffered a loss to the tune of Rs.18,82,409/- (Rupees



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Eighteen Lakhs Eighty Two Thousand Four Hundred and Nine only). Hence, the second respondent has initiated proceedings under Section 87 of the Act and notices have also been issued to the petitioners and the same is pending. In the meantime, the first respondent proceeded to issue a show cause notice, dated 02.02.2021 under Section 36(1) of the Act and called upon the petitioners to give their explanation as to why they should not be permanently disqualified. Ultimately, the impugned order has been passed by the first respondent through the proceedings dated 28.05.2021 mainly on the ground that the petitioners and others in spite of being given several opportunities, did not come up with their explanation and were dragging on the proceedings. By virtue of this order, the petitioners have been permanently disqualified and they will not be entitled to participate in the Board of any Society in future.

3. The impugned order that has been attacked mainly on the ground that surcharge proceedings initiated by the second respondent under Section 87 of the Act is still pending and that apart, it was only due to the pandemic situation, the petitioners were not able to effectively give their explanation and submit the documents.

4. This Court is inclined to remand the matter back to the file of the first respondent and fix the time limit enabling the petitioners to give their explanation and direct the first respondent to pass appropriate orders.

5. The Government Advocate appearing on behalf of the respondents shall take instructions and report before this Court.

6. Registry is directed to post this case under the caption "For Admission" on 28.06.2021.

6. On a careful perusal of the counter affidavit filed by the first respondent, it is seen that the petitioners were not sufficiently represented before the first respondent and they had not given their reply. The first respondent having waited for a long time, ultimately had chosen to pass the impugned order, on 28.05.2021. The first respondent has also taken a stand that the present writ petition is not maintainable, in view of the alternative remedy of appeal provided under Section 152 of the Act. That apart, the first respondent has also discussed in detail on the merits of the case in order to hold that the petitioners had caused huge loss to the Society due to their gross negligence and in recovering the loan and therefore, the petitioners



deserve a disqualification under Section 36 of the Act.

7.A careful reading of the affidavit filed in support of the writ petition shows that the petitioners want to put forth various facts in order to defend themselves and establish that they have not committed any irregularity or shown any indifference in recovering the loan amount. All these facts have been put forth before this Court and the first respondent never had a chance to meet these grounds raised by the petitioners.

8.Considering the seriousness of the consequences that will be faced by the petitioners by virtue of the order passed by the first respondent, wherein, the petitioners apart from losing their office are also disqualified permanently from holding in future any office in any registered Society, this Court deems it fit to provide one opportunity to the petitioners to put forth the defence before the first respondent and which could be considered by the first respondent and thereafter, orders can be passed. Even though the petitioners have an alternative remedy to file an appeal under Section 152 of the Act, this Court is interfering with the order of the first respondent more on the ground of providing an opportunity to the petitioners to put forth their defence. Therefore, the alternative remedy will not be a bar for this Court to remand the matter back to the file of the first respondent. In fact Section 36 (2) of the Act specifically provides for giving an opportunity before an order is passed under Section 36 (1). This is more so since the order under Section 36(1) has very serious consequences.

9.In view of the above discussion, the impugned order passed by the first respondent in proceedings Na.Ka.No.2513/2019/Sa Pa, dated 28.05.2021, is hereby quashed and the matter is remanded back to the file of the first respondent with the following directions.

- a) The petitioners shall submit their reply to the show cause notice issued by the first respondent, on 29.04.2021, within a period of four weeks from the date of receipt of a copy of this order.
- b) The first respondent immediately on receipt of the reply given by the petitioners, shall fix a date for enquiry and the petitioners shall be present on the date of enquiry without fail and they can put forward their defence along with all relevant documents.
- c) If the petitioners fail to give their reply within the time stipulated by this Court or fail to attend the enquiry, it is left open to the first respondent to proceed further and pass orders with the available materials and
- d) In any event, the first respondent shall pass final orders, within a period of ten (10) weeks from the date of receipt of a copy of this order.



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

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Sd/-

Assistant Registrar (CSII)

/ /2021

Sub Assistant Registrar(CS)

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NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Regional Joint Registrar of Co-operatives Societies,
Office of the Joint Registrar of Co-operative Societies,
Collectorate Complex,
Ramnad District.
 2. The Deputy Registrar of Co-operative Societies,
Office of the Circle Deputy Registrar of Co-operative Societies,
Ramnad, Ramnad District.
- +1 CC to M/s.B.SARAVANAN, Advocate (SR-20622[F] dated 30/06/2021)
- +1 CC to M/s.SPL GP (SR-20736[F] dated 30/06/2021)

W.P. (MD) .No.10369 of 2021
29.06.2021

NS (CO)
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