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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2022

C O R A M

THE HON'BLE MS.JUSTICE V.M.VELUMANI

W.P.No.6793 of 2022
and W.M.P.Nos.6870 & 6871 of 2022

T.Prakash

...Petitioner

Vs

The Joint Registrar of Cooperative Societies,
Thiruvarur Region, Thiruvarur,
Thiruvarur District.

... Respondent

Prayer Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorari, calling for the entire records relating to the impugned order passed by the respondent in his proceedings No.Na.Ka.No.3346/2021/Sa.Pa dated 24.01.2022 and quash the same.

For Petitioner : Mr.C.Prakasam

For Respondent : Mr.R.Kumaravel

Additional Government Pleader

ORDER

This Writ Petition is filed challenging the impugned order dated 24.01.2022 in proceedings No. Na.Ka.No.3346/2021/Sa.Pa passed by the respondent and to quash the same.

2.The petitioner is the elected President of the Pillur Primary Agricultural Cooperative Credit Society, Pillur, Nannilam Taluk, Thiruvarur District. The petitioner and other Board of Directors assumed charges in the year 2019. After taking charge, the petitioner found that, one R.Kathiravan, the then Secretary has committed various irregularities and misappropriated the funds of the Society. The petitioner gave complaint against the then Secretary to the Higher Officials and the respondent. Before taking any action against the then Secretary, he died. An enquiry under Section 81 of the Tamilnadu Co-operative Societies Act (hereinafter referred as 'the Act', in short), was ordered and Enquiry Officer filed a report stating that the Society has suffered loss to the tune of



Rs.48,68,005/-. Based on the said report, the impugned show cause notice was issued under Section 36(1) of the Act, as to why the petitioner should not be disqualified permanently. Challenging the same, the petitioner has come out with the present Writ Petition.

3.The learned counsel appearing for the petitioner contended that the impugned order was passed based on the enquiry report filed under Section 81 of the Act and the said enquiry report was not furnished to the petitioner inspite of his request dated 05.02.2022. He further contended that the alleged loss caused to the Society was from the year 2013 and the petitioner assumed charges as President only in the year 2019 and prayed for allowing the Writ Petition. In support of his contention, the learned counsel appearing for the petitioner relied on Paragraph No.11 of the judgment of the Hon'ble Division Bench of this Court in the case of R.Sambath Chandra vs. The Registrar of Cooperative Societies reported in 2016 (2) CWC 210:

"11. It is not in dispute that elaborate enquiry report is the basis for initiating proceedings, under Section 36(1) of the Act, and the show-cause notice issued to the appellant / writ petitioner specifically refers to the enquiry report. As a matter of fact, even in the show-cause notice, a finding is rendered by reproducing the contents of the report wherein, it was concluded that promotion to said Henry Thangam is an act of gross mismanagement. To this show-cause notice, the appellant has given a reply, dated 24.12.2005. This reply is not a statement of objection or explanation, but a request for furnishing some of the documents including the enquiry report, for giving his effective explanation to the show-cause notice. The appellant / writ petitioner has also requested further time of 15 days, after furnishing the copy of the documents. Despite a request made for furnishing the copy of the documents, the same were not furnished to the appellant and this fact is not in dispute. Though, the Joint Registrar, Co-operative Societies, Nagercoil, Kanyakumari District / 3rd respondent could not have proceeded



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further pursuant to the show-cause notice, dated 07.12.2005, in view of the stay granted by this Hon'ble Court, even after the disposal of the Writ Petition in W.P. (MD)No.226 of 2006, by an order dated 14.07.2011, dismissing the writ petition filed by the appellant / writ petitioner, challenging the show-cause notice, there was a delay of two years in passing the the impugned order. It is pertinent to mention that the appellant's request to furnish copy of the enquiry report is not even rejected by an order or communication. In these circumstances, we find that there is some force in the argument of the learned Senior Counsel for the appellant that the impugned order, dated 19.07.2007, is in violation of principles of natural justice."

4.Mr.R.Kumaravel, learned Additional Government Pleader appearing for the respondent submitted that the petitioner and others caused loss to the Society to the tune of Rs.48,68,005/- from the year 2013 to 2020. The petitioner and others assumed charges in the year 2019 itself. Considering the request of the petitioner, the respondent directed him to take notes of the contents of enquiry report from the Office of the Deputy Registrar of the Cooperative Societies, but, the petitioner has not utilised the same and hence, the impugned order is valid and legal and prayed for dismissal of the Writ Petition.

5.Heard the learned counsel appearing for the petitioner as well as Mr.R.Kumaravel, learned Additional Government Pleader appearing for the respondents and perused the materials available on record.

6.From the materials on record, it is seen that the impugned notice was issued under Section 36(1) of the Act based on the enquiry report filed under Section 81 of the Act. As per Section 36(1) of the Act, a person will be permanently disqualified from holding any post in the Cooperative Society. A person like petitioner suffers civil consequences based on the order passed under section 36 (1) of the Act. Therefore, the petitioner must be given an opportunity to putforth his defence and also personal hearing must be given, if he so desire to putforth his case. In the present case, the report of the enquiry conducted under Section 81 of the Act by the Enquiry



Officer is not furnished to the petitioner inspite of his request and the petitioner's opportunity was denied to put forth his defence as to how the enquiry report is not made available to him. The judgment relied on by the learned counsel appearing for the petitioner is squarely applicable to the facts of the present case. The principles of natural justice are violated and for the said reason the impugned order is set aside. It is open to the respondent to furnish the report of the Enquiry conducted under Section 81 of the Act and after giving opportunity to the petitioner to submit his explanation, the respondent shall take action under Section 36 (1) of the Act, if so desire or advised based on the explanation submitted by the petitioner.

7. With the above observations, the Writ Petition is allowed insofar as the petitioner is concerned. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To:

The Joint Registrar of Cooperative Societies,
Thiruvarur Region, Thiruvarur,
Thiruvarur District.

+1 CC to Mr.C.Prakasam, Advocate sr 21868
+1 CC to The Government Pleader sr 21386.

W.P.No.6793 of 2022

PMK(CO)
SP(18/04/2022)