



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.02.2022

CORAM:

THE HONOURABLE **MR.JUSTICE S.M.SUBRAMANIAM**

W.P(MD) .No.11190 of 2019

and

W.M.P(MD) Nos.8549, 8550, 23618 of 2019 and 2459 of 2020

WEB COPY

R.Kannappan

... Petitioner

Vs.

1.The Principal Secretary/
Industries Commissioner and
Director of Industries and Commerce/
Registrar of Industrial Cooperatives,
Guindy, Chennai-600 032.

2.Tamil Nadu Industrial Cooperative,
Bank Ltd., (TAICO)
Rep by its Managing Director,
Head Office,
No.36, South Canal Bank Road,
R.A.Puram, Mandavelipakkam,
Chennai-600 028.

3.P.Ponnappadass

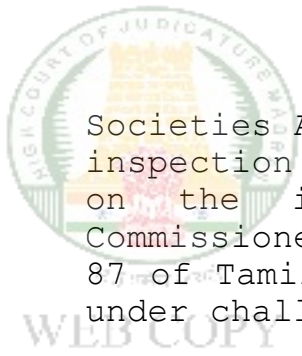
... Respondents

PRAYER: Writ Petition under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the 1st respondent in Proc.No.18085/ICE2/2018 dated 30.01.2019 initiating surcharge proceedings under Section 87 of Tamil Nadu Co-operative Societies Act and quash the same.

For Petitioners	: Mr.R.Subramanian
For R1	: Mr.M.Ramesh, Government Advocate
For R2	: Mr.T.Lajapathi Roy.
For R3	: No Appearance

ORDER

The petitioner was working as an Industrial Co-operative Officer and he was deputed to the second respondent, Tamil Nadu Industrial Co-operative Bank Ltd., for a period from 15.05.2002 to 12.03.2005 as a Branch Manager of TAICO Bank, Karaikudi. With reference to the period in which the petitioner was working in the Co-operative Bank, certain irregularities were noticed and an inspection was ordered under Section 82 of Tamil Nadu Co-operative



Societies Act (hereinafter referred to as the 'Act', in short). The inspection report was submitted by the competent authority and based on the inspection report, the first respondent, Industries Commissioner, instituted surcharge proceedings by invoking Section 87 of Tamil Nadu Cooperative Societies Act. The said proceedings is under challenge in the present writ petition.

2.The learned counsel appearing on behalf of the writ petitioner mainly contended that the petitioner is not responsible for the irregularities or the financial loss to the TAICO Bank, in which, he was working as a Branch Manager. Secondly, it is raised that the initiation of surcharge proceedings are untenable, as it was initiated beyond the period contemplated under the proviso to Section 87 of the Act. Thirdly, the petitioner is of the opinion that the Industries Commissioner, is not the competent authority to initiate the surcharge proceedings under Section 87 of the Act. Therefore, the proceedings are defective and to be set aside.

3.The learned counsel for the petitioner relied on the judgment of the Hon'ble Division Bench of this Court, in the case of **S.RAMADEVI -VS-SPECIAL OFFICER, AMBUR CO-OPERATIVE SUGAR MILLS, VADAPUDUPET, VELLORE DISTRICT AND OTHERS**, reported in **(2016) 6 MLJ 485**, wherein the Hon'ble Division Bench considered the scope of Section 87 of the Act.

4.To reiterate the ground that 7 years period is mandatory the learned counsel for the petitioner relied on the orders passed by the Learned Judge in W.P(MD)NO.4350 of 2010, dated 13.03.2019.

5.The issue to be considered is whether the surcharge proceedings initiated can be interfered with by this Court, if so, under what circumstances?

6.Section 81 of Tamil Nadu Co-operative Societies Act, 1983, provides inquiry. The Registrar may, of his own motion and shall, on the application of a majority of the board or of not less than one- third of the members or on the request of the financing bank or of the District Collector, hold an inquiry with reference to the allegations of misappropriation, fraudulent, retention of any money or property, breach of trust etc. Section 82 of the Act, empowers the authority to pass order for an inspection or investigation in respect of allegations of misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to the Cooperative Society, inspection and investigation shall be ordered under Section 81 of the Act. Once the report has been submitted by the enquiry officer either under Section 81 or under Section 82 of the Act and if the authority competent found that certain irregularities or illegalities are noticed, three fold actions are permissible under the Tamil Nadu Cooperative Societies Act.



7. Firstly, if an employee involved in the allegation of misappropriation and fraudulent etc., is the Co-operative Society employee or he is an employee deputed to the Society, departmental disciplinary proceedings may be initiated in accordance with the service rules in force. Secondly, a criminal case may be registered before the Commercial Crime Investigation Wing of the Police Department for proper prosecution. Thirdly, surcharge proceedings may be initiated for the purpose of recovering the financial loss or otherwise loss caused to the Co-operative Societies on account of such misappropriation, fraudulent etc.

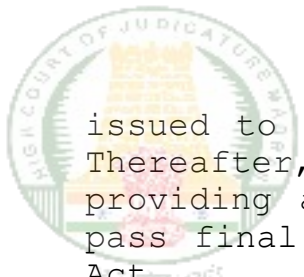
8. All the three fold actions contemplated under the provisions of Tamil Nadu Co-operative Societies Act may be instituted simultaneously and there is no bar for initiation of all the proceedings. All the three proceedings are independent, distinct and different and thus, the employee is bound to defend all such actions initiated by the competent authorities in the event of identification of misappropriation of funds, fraud etc.

9. In the present case, the learned counsel for the petitioner contended that the departmental proceedings initiated against the petitioner ended with a punishment of stoppage of increment. Therefore, there is no reason to initiate surcharge proceedings. The petitioner is not responsible for financial loss caused to the TAICO Bank and furthermore, the Industries Commissioner is not the competent authority.

10. As far as the Co-operative Societies registered in respect of certain activities involving the Industrial Department is concerned, the Industries Commissioner is the controller of such Societies and he is the functional Registrar notified by the Government under the provisions of the Act. The Commissioner of Industries being the functional Registrar, is empowered to exercise the powers of the Registrar under the Co-operative Societies Act and therefore, there is no bar for the Industries Commissioner to initiate the surcharge proceedings under Section 87 of the Act.

11. As far as Section 87 surcharge proceedings are concerned, the order impugned is only an initiation of surcharge proceedings and the Surcharge Officer was appointed, who in-turn, has to complete the surcharge proceedings within the statutory time limit, as stipulated in the Co-operative Societies Act.

12. Let us consider, the procedure to be followed on initiation of surcharge proceedings. As pointed out earlier, based on the enquiry, report under Section 81 or report under Section 82 or otherwise, surcharge proceedings were initiated under Section 87 of the Act. The Surcharge Officer was appointed to conduct an enquiry under sub-Section(1) of Section 87 of the Act and notice to be



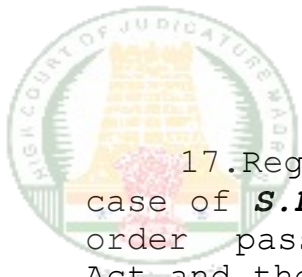
issued to the delinquent official enabling him to defend his case. Thereafter, the competent authority shall conduct an enquiry by providing an opportunity to the delinquent official and thereafter pass final orders in surcharge proceedings under Section 87 of the Act.

13. After passing of the final orders in surcharge proceedings under Section 87 of the Act, and if any amount is directed to be paid by the employees or other persons, then, such persons are at liberty to file an appeal contemplated under Section 152 of Tamil Nadu Co-operative Societies Act. Under Section 152 of the Act, Special Co-operative Tribunal has been constituted in every District and the Principal District Judges of the respective Districts are exercising the powers of the Special Co-operative Tribunal. Therefore, the remedy contemplated under Section 152 of the Act is undoubtedly efficacious and therefore, in the event of passing of final orders in the surcharge proceedings, a person aggrieved has to exhaust the appeal remedy provided under Section 152 of the Act.

14. The power of judicial review of the High Court under Article 226 of the Constitution of India is to scrutinize the process through which the decision is taken by the competent authority, but not the decision itself. Therefore, the aggrieved persons are bound to exhaust the statutory remedies, which are all more efficacious and only thereafter, a writ may lie, but not otherwise.

15. The question arises whether the legal grounds now taken can be considered by this Court. As far as the jurisdiction of the Industries Commissioner is concerned, he is well within the jurisdiction to pass an order in surcharge proceedings under Section 87 of the Act. The Industries Commissioner has been notified as functional Registrar by the Government under the provisions of the Act. Secondly, issue of surcharge proceedings being barred by limitation is concerned, it is not as if the date considered by the petitioner for the purpose of quashing the surcharge proceedings. The allegations, other facts, the date of cause and the initiation done are all to be verified with reference to the original documents and proper adjudication is required. Furthermore, even such limitation grounds may be taken by the aggrieved persons before the competent authority as well as before the Co-operative Tribunal in the event of filing any appeal under Section 152 of the Act. Contrarily, the writ Court cannot undertake an adjudication of such disputed facts.

16. What is under challenge in the present writ petition is only the initiation of proceedings, which cannot be interfered with and an enquiry is required in view of the fact that the initiation is done based on the reports submitted by the competent authority under Section 82 of the Tamil Co-operative Societies Act. Thus, the petitioner has to defend his case before the competent authority, while conducting an enquiry under Section 87 of the Act.



17.Regarding the judgment of the Hon'ble Division Bench in the case of **S.RAMADEVI**, cited supra, a writ appeal went, after the final order passed by the Co-operative Tribunal under Section 152 of the Act and therefore, there was a complete adjudication of the disputed facts and thus, the said judgment is of no avail to the petitioner. As far as the petitioner is concerned, the disputed facts are yet to be adjudicated. Accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

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/ /2022

Sub Assistant Registrar(CS)

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To

- 1.The Principal Secretary/
Industries Commissioner and
Director of Industries and Commerce/
Registrar of Industrial Cooperatives,
Guindy, Chennai-600 032.
- 2.The Managing Director,
Tamil Nadu Industrial Cooperative,
Bank Ltd., (TAICO)
Head Office,
No.36, South Canal Bank Road,
R.A.Puram, Mandavelipakkam,
Chennai-600 028.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-6353[F] dated 16/02/2022)

+1 CC to M/s.SPL GP (SR-6554[F] dated 16/02/2022)

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