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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 16.02.2022**

**CORAM**

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

W.P.(MD) No.24272 of 2019 and
W.M.P.(MD).Nos.20879 of 2019 & 959 of 2020

A.C.Thirumurthy ... Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
Karur District,
Karur.

2.The Deputy Registrar of Co-operative Societies,
Karur Circle,
Karur District.

3.The Co-operative Sub-Registrar/Inquiry Officer,
O/o.The Deputy Registrar of Co-operative Societies,
Aravakurichi Circle,
Karur District,
Karur. ... Respondents

Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records pertaining to the impugned surcharge notice made in Na.Ka.No.2599/2018/Sa.Pa dated 30.10.2019 issued by the second respondent and quash the same.

For Petitioner : Mr.M.Ajmal Khan
Senior Counsel
for M/s.Ajmal Associates

For Respondent : Mr.P.Thilak Kumar,
Government Pleader
assisted by
Mr.M.Ramesh,
Government Advocate

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ORDER

The show cause notice issued under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983, asking the petitioner to submit his explanation/objection regarding initiation of surcharge proceedings is under challenge in the present Writ Petition.

2. The petitioner was appointed as Assistant in Tiruchirappalli District Central Co-operative Bank through employment exchange. Thereafter, he was working as Circle Supervisor in Chinnatharapuram Circle. During the relevant point of time, when an enquiry was conducted, the second respondent/Deputy Registrar of Co-operative Societies ordered for statutory inquiry under Section 81 of the Tamil Nadu Co-operative Societies Act to conduct an inquiry, with reference to the functioning of Andipatti Primary Agricultural Co-operative Credit Society. An Enquiry Officer was appointed, who in turn conducted an inquiry with reference to the functioning of the Society and submitted his inquiry report. Based on the inquiry report submitted under Section 81 of the Act, the Competent Authority has initiated surcharge proceedings under Section 87 of the Act. A notice required under Section 87 of the Act was issued to the petitioner and the said notice is under challenge in the present writ petition.

3. The procedures contemplated, as per the provisions of the Tamil Nadu Co-operative Societies Act, for brief understanding of the Statute, are that a statutory inquiry may be ordered under Section 81 of the Act and an inspection may be ordered under Section 82 of the Act. On submission of inquiry report, if any irregularities are noticed, then three fold actions are permissible. Firstly, the Departmental disciplinary proceedings may be initiated. Secondly, a criminal case can be registered under Criminal Law. Thirdly, the surcharge proceedings shall be initiated to recover the financial loss occurred to the Society. Three fold actions shall be initiated even simultaneously and there is no bar.

4. With reference to the above provisions, facts are to be considered.

5. The learned Senior Counsel appearing for the petitioner mainly contended that the petitioner is an employee of Tiruchirappalli District Central Co-operative Bank and the statutory inquiry was conducted in Andipatti Primary Agricultural Co-operative Credit Society. Therefore, he is not directly connected with the Society. The petitioner, in his capacity as a Supervisor, supervised the functioning of the Primary Society in accordance with the Act and Rules and as per the guidelines issued by the Department. Therefore, even in case of any allegation, a separate 81 inquiry is to be ordered against the petitioner and based on the

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statutory inquiry report submitted under Section 81 of the Act with reference to the functioning of Andipatti Primary Agricultural Co-operative Credit Society, no action can be taken. In this regard, the learned Senior Counsel relied on a circular issued by the Registrar in Circular No.36 of 2010 dated 20.12.2010. Relying on the said Circular, it is contended that "the Enquiry Officer should note that Surcharge action under Section 87 shall not lie against the Officer or Employee of the financing bank or federal Society though he has hand in glove with the officer or servant of the Society in which the misappropriation or forgery or criminal breach of trust took place and though he has been included as one of the delinquents in the criminal case. In such cases, the Enquiry Officer should recommend for a separate inquiry under Section 81 or Inspection or Investigation under Section 82 into this particular aspect in the concerned financing bank or the federal Society, as the case may be, in which the Officer or employee is or was employed, in respect of the same matter/aspect for taking surcharge action under Section 87 against such officer or employee of the financing bank or federal society".

6. The subsequent circular issued by the Registrar of Co-operative Societies on 06.04.2009 is also relied upon by the learned Senior Counsel to substantiate that a separate 81 inquiry needs to be conducted, even in case of allegation raised against the petitioner as he is employed in Tiruchirappalli District Central Co-operative Bank. The learned Senior Counsel placed reliance regarding the orders passed by this Court in W.P.No.7826 of 2018 dated 10.09.2018, wherein, based on the circular, this Court passed an order setting aside the order impugned in the said writ petition.

7. It is relevant to consider the scope of Section 87 of the Tamil Nadu Co-operative Societies Act which deals with surcharge. Section 87(1) enumerates that "where in the course of an audit under section 80 or an inquiry 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 or 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 in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence or has made any payment which is not in accordance with this Act, the rules or the by - 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, Liquidator 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 and in the case of a deceased person, to his representative who inherits his estate, to answer the charges, make

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an order requiring him to repay or restore the money or property or any part thereof with interest at such rate as the Registrar or the person authorised as aforesaid thinks just or to contribute such sum to the assets of the society by way of compensation in respect to the assets of the society by way of compensation in respect of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or willful negligence or payments which are not in accordance with this Act, the rules or the by-laws as the Registrar or the person authorised as aforesaid thinks just: Provided that no action shall be commenced under this sub section after the expiry of seven years from the date of any act or omission referred to in this sub section : Provided further that the action commenced under this sub section shall be completed within a period of six months from the date of such commencement or such further period or periods as the next higher authority may permit but such extended period or periods shall not exceed six months in the aggregate".

8. A reading of the provision in the Act would reveal that "any person who is or was entrusted with the organization or management of the Society". The Act generally contemplates "any person who is or was entrusted with the organization or management of the Society or any past or present officer or servant of the Society has involved any misappropriation, fraud etc"., Therefore, the language employed in the Act is "any person".

9. The word "any person" contemplated in the Act widely covers the person involved in the Organization or Management. The circulars are issued by the Registrar under Section 181 of the Act to elaborate the procedures to be followed by the Sub-ordinate Authorities, while conducting inquiry proceedings. It is needless to state that the Act will prevail over the Rules and the circulars. The circulars are to be read in consonance with the provisions of the Act and Rules. Circulars cannot travel beyond the scope of the Act.

10. Let us now consider whether the Circular is in consonance with the provisions of the Act or it is to be construed as in connection with the facts and circumstances of the case. The Circular dated 20.12.2010 mainly relied upon by the learned Senior Counsel for the petitioner is about the inquiry ordered under Section 81 of the Act. The circular is relating to the conduct of inquiry by the Enquiry Officer under Section 81 of the Act and it is not relating to the procedures to be followed for initiation of surcharge proceedings under Section 87 of the Act. The Circular dated 20.12.2010 states that " the Enquiry Officer should note that Surcharge action under Section 87 shall not lie against the Officer or Employee of the financing bank". It is the guiding instructions for the Enquiry Officer that the surcharge action under Section 87 shall not lie against the Officer of Employee of the Financing Bank,

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in view of certain specific circumstances where the employees of the Financing Bank are not connected with misappropriation or funds etc., Once the Enquiry Officer found that the employee of the Financing Bank namely Central Government Co-operative Bank is personally involved in any of the misappropriation or fraud etc., and a specific findings are made in that regard, then he is also to be prosecuted along with other persons, who have involved in the misappropriation or fraud etc.,

11. Act or circular can never intend to provide two separate inquiries, for the purpose of conducting inquiry in respect of a single allegation occurred in one Co-operative Society. In the event of conducting preliminary proceedings for one set of employees and another proceedings for the employees of the Financing Bank, the same will not serve the purpose and it will defeat the purpose of surcharge proceedings under Section 87 of the Act. While interpreting the Circulars, the purpose and object is to be taken into consideration by the Courts. Circular cannot be read in isolation to the provisions of the Act, which will prevail over. Therefore, the instructions issued to the Enquiry Officer is to be followed based on certain facts and circumstances, while conducting inquiry. Once such an inquiry is conducted and report is filed, such report is to be acted upon and in the present case, surcharge proceedings were also initiated.

12. Presuming that a separate inquiry is to be conducted against the allegation committed by the petitioner, again it is relating to Andipatti Primary Agricultural Co-operative Credit Society, and the allegations are no way connected with Tiruchirappalli District Central Co-operative Bank. When the allegations are relating to Andipatti Primary Agricultural Co-operative Credit Society, the persons who have involved in the allegations are to be tried together and there need not be a separate inquiry, which is not otherwise contemplated either under the Act or in the Circulars, which are issued providing certain instructions to the Enquiry Officer and such instructions are to be followed only based on certain facts and circumstances. Therefore, the circular dated 20.12.2010 issued to the Enquiry Officer to conduct 81 inquiry is of no avail to the petitioner.

13. The another circular issued by the Registrar of Co-operative Society on 06.04.2009, is relating to the surcharge under Section 87 of the Co-operative Societies Act. The said Circular clarifies as follows:

> "*3. Hence whenever the officer holding inquiry under Section 81 or inspection or investigation under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 relating to a Primary Agricultural Co-operative Societies or any other indebted to a Central Co-operative Bank concluded in*

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*his report that staff of a Central Co-operative Bank are also responsible for the alleged irregularities in the sanction and disbursement of loans in the Primary Agricultural Co-operative Societies or in other indebted society from the funds borrowed or reimbursed from the Central Co-operative Bank, the Deputy Registrar/Joint Registrar shall order a separate inquiry under Section 81 or inspection or investigation under Section 82 for the Central Co-operative Bank also and shall take surcharge actions under Section 87 against the staff of the Central Co-operative Bank based on the findings of the Enquiry Officer or inspection or investigation Officer for consequent deficiencies caused to the assets of the Central Co-operative Bank by way of breach trust and willful negligence."*

14. The above circular dated 06.04.2009 unambiguously stipulates that "the Deputy Registrar/Joint Registrar shall order a separate inquiry under Section 81 or inspection or investigation under Section 82 for the Central Co-operative Bank also and shall take surcharge actions under Section 87 against the staff of the Central Co-operative Bank based on the findings of the Enquiry Officer or inspection or investigation Officer for consequent deficiencies caused to the assets of the Central Co-operative Bank by way of breach trust and willful negligence". The very purpose and intent of the Circular is to ensure that if any irregularities or illegalities are noticed in respect of affairs of the Central Co-operative Bank, then a separate 81 inquiry shall be ordered against the Central Co-operative Bank.

15. The statutory inquiry under Section 81 need not be applied only to the Primary Agricultural Co-operative Society. If the Enquiry Officer found that some illegality is travelling beyond the Primary Agricultural Co-operative Society and it reaches the Financing Society [Central Co-operative Bank] affecting the affairs of the Co-operative Bank, then a separate inquiry may be ordered under Section 81 of the Act to conduct an inquiry in the Central Co-operative Bank also. Therefore, the Circular clarifies that Section 81 inquiry may be ordered with reference to irregularities and illegalities, if it travels beyond the Primary Agricultural Co-operative Society affecting the functions of the Central Co-operative Bank, or caused financial loss.

16. Such a circular is issued in order to clarify the duties of the officers that there cannot be any separate 81 inquiry into the affairs of the Central Co-operative Bank unless warranted. Thus, the circular has a definite intention that Section 81 inquiry may be ordered in respect of the illegalities with another Bank or

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Financing Bank namely Central Co-operative Bank. However, the said Circular cannot be construed as if in respect of Central Co-operative Bank employees, a separate 81 inquiry has to be conducted. There cannot be any separate statutory inquiry under Section 81 which needs to be conducted, if the employees of the Central Co-operative Bank are involved in any illegality in the primary society. Therefore, the provisions of the Act and circulars are to be interpreted cogently so as to understand the purpose and object of the provisions in the Act. Circulars cannot over ride the provisions of the Act. Circulars cannot provide different interpretations which is otherwise not contemplated under the Provisions of the Act. Therefore, any circular must be read in consonance with the provisions of the Act. When the Act, more so, specifically, Section 87, contemplates an inquiry against "any person", which includes all the persons, who are involved in the affairs of the particular Co-operative Society, in which, statutory inquiry under Section 81 is ordered, if the financial irregularities goes beyond the Primary Society and it affects the Financing Bank, then a separate inquiry is to be ordered under Section 81 of the Act to conduct an inquiry into the affairs of the Financing Bank namely Central Co-operative Bank. Therefore, interpretation of the circular is to be made in a pragmatic manner so as to ensure that the provisions of the Act will prevail over and purpose and object sought to be achieved is met with.

17. No writ against show cause notice needs to be entertained. In the present case, a notice under Section 87(1) of the Co-operative Societies Act was issued. The petitioner has to submit his explanation and thereafter an enquiry is to be conducted by the Competent Authority. During enquiry, the petitioner is at liberty to raise all the grounds including the legal grounds as the inquiry under Section 81 is a statutory inquiry and the Authorities are exercising the quasi-judicial power. Therefore, the petitioner is at liberty to establish his innocence or otherwise.

18. The learned Senior Counsel appearing for the petitioner raised a ground that though the impugned show cause notice states that the copy of Section 87 inquiry has been enclosed, the same has not been served to the petitioner. It is to be verified by the respondents. If at all the inquiry report has not been served to the petitioner, before commencement of the inquiry under Section 87, the copy of the inquiry report should be served to the petitioner enabling him to defend his case in the manner known to law. Right of defence at no circumstances be denied to the petitioner. Any violation denying the right is to be construed as violation of the principles of natural justice. Therefore, the copy of the inquiry report is to be furnished to the writ petitioner enabling him to defend his case. Therefore, the respondents shall conduct an inquiry on merits and by affording opportunity to the petitioner and pass final orders under Section 87 of the Act.

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19. Even after passing of a final order under Section 87 of the Act, a statutory appeal is contemplated under Section 152 of the Act. Under Section 152 of the Act, the Principal District Judge has been designated as Co-operative Tribunal and is empowered to conduct an adjudication of disputed facts between the parties, with reference to the documents and evidence. High Court cannot conduct a roving inquiry with reference to the disputed facts in a writ proceedings as it requires scrutinization of original documents and evidence. Therefore, exhausting statutory remedy, which is more efficacious, is of paramount importance for exercising the power of judicial review under Article 226 of the Constitution of India.

20. This being the factum established, the order relied on by the petitioner passed in W.P(MD).No.7826 of 2018 dated 10.09.2018 is of no avail, in view of the fact that merely based on the circular, order was passed and the relief was granted. However, in the present case, the learned Senior Counsel is fair in submitting all the legal points, which are to be considered by this Court for the purpose of deciding the issues, which may be followed by the Competent Authorities. The provisions of the Act, scope of Section 87 of the Tamil Nadu Co-operative Societies Act, the purpose and object of the Circulars were not dealt with in the said writ petition. Therefore, the reliance placed deserves no merit consideration, as far as the case of the writ petitioner is concerned.

21. Therefore, it is crystal and clear that Section 81 inquiry may be ordered multiple times, whenever and wherever required. There is no limitation for ordering an inquiry under Section 81 of the Act. The spirit of Section 81 of the Act is to ensure an effective control over the administration of the Co-operative Societies. Section 81(1) of the Act itself states that "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". Therefore, a *suo motu* inquiry is provided under Section 81 of the Act. There is no restriction for exercise of the power conferred under Section 81 of the Act.

22. This being the scope of Section 81 of the Act, the Registrar/Competent Authority may order for an enquiry under Section 81 in respect of Co-operative Societies and any person, who is involved in such illegality or fraud etc., is liable to be prosecuted under Section 87 of the Act and if the allegations are travelling beyond the Primary Society and affecting the Financing Bank or functioning of the Central Co-operative Bank, then a separate inquiry may be ordered under Section 81 of the Act. Contemplation of Section 81 inquiry is not based on the employees

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working in a particular Society. It is based on the institution and not based on the employees, who are involved in fraud, misappropriation etc.,

23. This being the scope of Section 81, 82 and 87 of the Tamil Nadu Co-operative Societies Act, the petitioner is at liberty to submit his defence/objection along with document, if any and participate in the process of inquiry, in order to establish his case. The respondents are directed to furnish the copy of inquiry report to the petitioner, before commencement of adjudication under Section 87 of the Act enabling him to defend his case in the manner known to law. The respondents shall proceed and conclude the proceedings as expeditiously as possible.

24. With these directions, the Writ Petition stands disposed of.

Sd/-

Assistant Registrar (CS I)

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Sub Assistant Registrar(CS)

ssb

To

1.The Joint Registrar of Co-operative Societies,
Karur District, Karur.

2.The Deputy Registrar of Co-operative Societies,
Karur Circle,Karur District.

3.The Co-operative Sub-Registrar/Inquiry Officer,
O/o.The Deputy Registrar of Co-operative Societies,
Aravakurichi Circle,
Karur District,Karur.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate ( SR-6674[F] dated 17/02/2022 )
+1 CC to M/s.SPL GP ( SR-6852[F] dated 17/02/2022 )

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