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W.P. No.34352 of 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2023

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No.34352 of 2013

and

M.P. No. 2 of 2014

1. G.P.Meenakshi Sundaram
2. P.S.Viswanathan
3. P.Subramaniam
4. P.Sundareswaran

... Petitioners

-VS-

1. The Deputy Registrar of Co-operative Societies
Gobichettipalayam
Erode District.
2. The Deputy Registrar of Co-operative Societies
Erode Circle
Erode.
3. The Special Officer
K.544, Gobichettipalayam Agricultural
Producers Co-operative Marketing Society
Gobichettipalayam
Erode District.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Mandamus, directing the First Respondent to defer the enquiry initiated pursuant to his surcharge notice in Na.Ka.No.1979/2013.Sa.Pa. dated 08.08.2013 till the finalisation of the



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Arbitration Proceedings pending before the second respondent initiated under Section 90 of the Tamilnadu Co-operative Societies Act, 1983 in Suit Nos. 172 and 173 of 2004 now re-numbered as Suit Nos. 2 and 3 of 2006.

For Petitioners : Mr. S.Kamadevan

For Respondents : Mr. U.Baranidharan, AGP (RR1&2)
Mr. L.P.Shanmugasundaram (R3)

O R D E R

Heard Mr. S.Kamadevan, learned counsel for the Petitioners, Mr. U.Baranidharan, Learned Additional Government Pleader appearing for the First and Second Respondents and Mr. L.P.Shanmugasundaram, Learned Counsel for the Third Respondent and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioners in this Writ Petition had been employed in the Co-operative Society of the Third Respondent and they had been issued charge-memo for non-collection of dues from certain traders causing heavy loss, but the said traders had denied the purchase taking the plea that it was bogus sale by creation of false records. The First Respondent had initiated surcharge proceedings against the Petitioners under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as the TNCS



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Act' for short) and had sent notices in Na.Ka.No. 1979/2013 Sa.Pa. dated

08.08.2013 calling upon the Petitioners to show cause by submitting their explanation as to why accountability should not be fastened on them for the losses incurred by the Third Respondent.

3. The Petitioners had filed this Writ Petition initially raising the contention that proceedings under Section 90 of the TNCS Act were then pending against the said traders before the Second Respondent and as such, the First Respondent must be directed to defer the enquiry initiated in the surcharge proceedings pursuant to the notice sent in Na.Ka. No.1979/2013.Sa.Pa dated 08.08.2013 till the said proceedings between the Third Respondent and the traders before the Second Respondent under Section 90 of the TNCS Act attains finality. When the matter came up for admission on 18.12.2013, this Court granted an order of interim injunction restraining the First Respondent from conducting the surcharge proceedings, which continues to be in force till date.

4. Subsequently, this Court on the application in M.P. No. 1 of 2014 made in this Writ Petition by order dated 05.06.2014 has permitted the Petitioners to amend the relief sought in the Writ Petition by challenging the notice in Na.Ka.



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No.1979/2013.Sa.Pa dated 08.08.2013 in the surcharge proceedings. At this

junction, the consistent legal position highlighted by the Hon'ble Supreme Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12 SCC 28] must be recapitulated that a charge-memo or show cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which read as follows:-

*“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide **Executive Engineer, Bihar State Housing Board -vs- Ramdesh Kumar Singh** [JT 1995 (8) SC 331], **Special Director -vs- Mohd. Ghulam Ghouse** (AIR 2004 SC 1467), **Ulagappa -vs- Divisional Commissioner, Mysore** [2001(10) SCC 639], **State of U.P. -vs- Brahm Datt Sharma** (AIR 1987 SC 943) etc.*

14. The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been



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issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.

15. Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioners from raising the contentions in this Writ Petition in the



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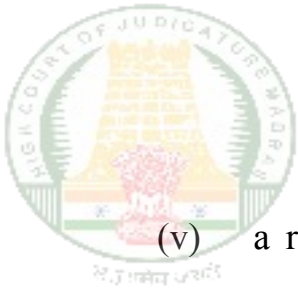
explanation to be submitted to the First Respondent, who is bound to deal with

the same before coming to any ultimate conclusion, there is no necessity for the

Court to intervene at this pre-mature stage of the matter.

5. In such circumstances, this Court without expressing any view on the merits of the controversy involved in the matter, passes the following order:-

- (i) the Petitioners shall submit their explanation to the impugned order raising all contentions before the First Respondent, if not already made, within 15 days from the date of receipt of copy of this order;
- (ii) it shall be incumbent upon the First Respondent to immediately examine the explanation submitted by the respective Petitioners;
- (iii) if it is found that any other details or supporting documents is necessary, the First Respondent shall inform in writing the deficiencies in that regard to the respective Petitioners or any other person concerned requiring the same to be furnished within a time frame of not less than 15 days for the same;
- (iv) in the event of not being satisfied with the requirements even thereafter, an enquiry shall be conducted affording full opportunity of personal hearing to the Petitioners and all other persons concerned following the prescribed procedure in consonance with the principles of natural justice;



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(v) a reasoned order shall be passed dealing with each of the contentions

raised on merits and in accordance with law and the decision taken

communicated under written acknowledgment; and

(vi) if any adverse decision is taken, the Petitioners may pursue legal remedies before the proper forum in the manner recognized by law.

In the result, the Writ Petition is disposed on the aforesaid terms.

Consequently, the connected Miscellaneous Petition is closed. No costs.

03.10.2023

NCS :Yes/No

Index : Yes/No

Note: Issue order copy by 17.04.2024.

Maya

To

1. The Deputy Registrar of Co-operative Societies
Gobichettipalayam
Erode District.

2. The Deputy Registrar of Co-operative Societies
Erode Circle
Erode.

3. The Special Officer
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P.D. AUDIKESAVALU, J.

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