



W.A.No.2217 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on	Orders Pronounced on
28.8.2023	01.11.2023

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.A.No.2217 of 2018
and C.M.P.No.17419 of 2018

M.Perumal ... Appellant/Petitioner

Vs.

1. The Deputy Registrar of Co-operation Societies, Dharmapuri Circle, Dharmapuri District.
2. The Co-op. Sub Registrar/Field Officer (Pennagaram),
Section 81 Enquiry Officer,
S.6756 Ernahalli Primary Agricultural Co-op. Credit Society, Ernahalli, Palacode Taluk, Dharmapuri District.
3. The President,
S.6756 Ernahalli Primary Agricultural Co-op. Credit Society, Ernahalli Post, Palacode Taluk, Dharmapuri District. ... Respondents/Respondents

Appeal filed under Clause 15 of Letters Patent to set aside the order dated 13.08.2018 passed in W.P.No.3402 of 2017.



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For Appellants : Mr.M.Vijay Anand
For Respondents 1 & 2 : Mr.U.M.Ravichandran, Spl. G.P.
For Respondent No.3 : L.P.Shanmugasundaram

JUDGMENT

D.KRISHNAKUMAR, J.

The appellant was working as Secretary in the S.6756 Ernahalli Primary Agricultural Co-op. Credit Society for the past 23 years. The first respondent by proceedings in Na.Ka.3617/2010/E-1 dated 15.6.2010 ordered enquiry under Sec.81 of the Tamil Nadu Co-operative Societies Act. Accordingly, enquiry was conducted and enquiry report was also filed. Based on the enquiry officer findings, the appellant was suspended from service on 7.8.2014. Again, the first respondent by his proceedings in Na.Ka.No.3729/2015/Tho.sa-1 dated 7.10.2015 has ordered Section 81 enquiry to be conducted on the allegations of mismanagement and misuse of the bank account for the very same period from 1.4.2014. Challenging the said proceedings of the first respondent dated 7.10.2015, the appellant has filed the instant writ petition before this Court.

2. The Writ Court while dismissing the writ petition, has held that after passing the final orders under Sec.87 of the Act, the person aggrieved has to approach the designated Cooperative Tribunal constituted under Sec.152 of the Tamil Nadu Cooperative Societies Act. Aggrieved by the said order, the appellant has filed the instant appeal before this Court.



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3 The appellant raised several grounds in the appeal by stating that the learned Single Judge failed to note that the appellant already suffered punishments for the earlier enquiry conducted by the first respondent for the very same proceedings. Whereas the first respondent's impugned enquiry proceedings in Na.Ka.No.3729/2015/Tho.Sa.1 dated 7.10.2015 and its supplement proceedings dated 18.11.2015 is also based on the very same charges for which the appellant has already suffered punishment. The appellant also raised a ground that the learned Single Judge failed to take note of the subsequent events that took place between the appellant and the respondents, such as previous enquiry conducted by the second respondent in compliance with the order of the first respondent did not find any irregularity or misappropriation as against the appellant. It is further contended by the appellant that all the jewel loans were repaid by the members even before the commencement of the first respondent's impugned enquiry proceedings in Na.Ka.No.3729/2015/Tho.Sa.1 dated 7.10.2015 and its supplement proceedings dated 18.11.2015. Therefore, the order passed by the learned Single Judge dated 13.08.2018 passed in W.P.No.3402 of 2017 is liable to be set aside.

4. Heard the learned counsel appearing for the appellant, learned Special Government Pleader appearing for the respondents 1 and 2, learned counsel appearing for the third respondent Society and perused the materials available on record.



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5 Sec.81 of the Tamil Nadu Co-operative Societies Act, 1983

empowered the first respondent to hold enquiry on the working and financial conditions of a registered Society or any alleged misappropriation, fraudulent retention of any money or property or mis-management in relation to that Society. It would be relevant to extract the provisions under Sec.81 of the said Act.

"81.Inquiry. __ (1) 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, or direct some person authorised by him by order in writing in this behalf to hold an inquiry in to the constitution, working and financial condition of a registered society or any alleged 54 misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to that society or into any particular aspect of the working of that society.

(2) The Registrar or the person authorised by him under sub-section (1) shall have the following powers, namely: __

(a) He shall at all reasonable times have free access to the books, accounts, documents, securities, cash and other properties belonging to, or in the custody of, the society and may summon any person in possession of, or responsible for the custody of, any such books, accounts, documents, securities, cash or other properties to produce the same at any place at the headquarters of the society or any branch thereof.



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(b) Where any person summoned under clause (a) fails or refuses to produce any record or property of the registered society as specified in the summons, any Metropolitan Magistrate or any Judicial Magistrate of the first class in whose jurisdiction the office of such society or the records and properties of such society is or are situated , shall on application by the Registrar or the person authorised by him under sub-section (1), direct the delivery to the Registrar or such person of the possession of the records and properties of such society : Provided that no such application shall be made by the person authorised under sub - section (1) without the previous sanction of the Registrar.

(c) He may seize the books, accounts or documents of the society, if he considers that such seizure is necessary to ensure the safety of such books, accounts or documents or to facilitate his inquiry, and shall give the person from whose custody the books, accounts or documents have been seized a receipt for the same: Provided that the books, accounts or documents seized shall be retained by him only for so long as may be necessary for their examination and for the purpose of inquiry: Provided further that the books, accounts or documents shall not be retained for more than three months at a time except with the permission of the next higher authority.

(d) He may summon any person who, he has reason to believe, has knowledge of any of the affairs of the society and may examine such person on oath and may summon any person to produce any books, accounts or documents belonging to him or in his custody if the Registrar , or the person authorised as afore said has reason to believe that such books, accounts or



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documents contain any entry relating to transactions of the society.

(e) (i) He may, notwithstanding any rule or by – law specifying the period of notice for a general meeting of the society or for a meeting of the board, require any officer or officers of the society to call a general meeting or a meeting of the board at such time and place at the headquarters of the society or any branch thereof to consider such matters as may be specified by him and the provisions 55 of sub - clauses (i) and (ii) of clause (b) of sub-section (4) of section 32 shall apply to any meeting called under this sub-clause as if it were a meeting called in pursuance of a requisition under clause (a) of sub-section (3) of that section.

(ii) If the officer or officers of the society refuses or refuse or fails to call such meeting or if in the opinion of the Registrar there is no board or officer or officers competent under this Act, the rules or the by-laws to call such meeting, or if there be an order of the Registrar or of the Civil Court restraining the board to function, the Registrar or the person authorised by him under sub-section (1) shall have power to call the meeting himself and the provisions of clause (b) of sub-section (4) of section 32 and sub- section (5) of that section shall apply to such meeting as if it were a meeting called under clause (a) of the said sub- section (4).

(3) When an inquiry is held under this section, the Registrar shall within such time as may be prescribed communicate the result of the inquiry __

(i) in case the Government have subscribed directly to the share capital of the registered society or in case any



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moneys are due from the registered society either to the Principal State Partnership Fund or to the Subsidiary State Partnership Fund referred to in chapter VI, to the Government or to any officer appointed by the Government in this behalf;

(ii) to the financing bank, if any, to which the society is affiliated; and

(iii) to the society concerned.

(4) The inquiry shall be completed within a period of three months from the date of ordering the inquiry or such further period or periods not exceeding three months at a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate.

(5) It shall be competent for the Registrar to withdraw any inquiry from the person authorised by him under sub-section (1) and to hold the inquiry himself or entrust it to any other person as he deems fit.

(6) The Registrar may, by order in writing, direct the registered society or any officer of the society or its financing bank to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed as a result of the inquiry."

6. Section 81 of the Tamil Nadu Cooperative Societies Act enables a Registrar of the Cooperative Society to know the working of a particular society and he can invoke the power either on his own or on the application of the majority members of the Board of Directors or one third members of the Society or at the instance of the financing bank or at the



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instance of the District Collector and hold an enquiry either by himself or by any authorised person to conduct enquiry into the financial condition of the registered society or any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to that society in particular in the aspect of the working of that society. Section 81(2) provides the procedure for conducting such enquiry. Section 81(3) mentions about the officer in-charge submitting his report to the Registrar. Section 81(4) prescribes a time limit for conducting the inquiry. As and when such report was submitted, as to what should be done by the Registrar is set out in Section 81(6). 81(6) The Registrar may, be order in writing, direct the registered society or any officer of the society or its financing bank to take such action as may be specified in the order to remedy, within such time as may be specified therein, the defects, if any, disclosed as a result of the inquiry."

7 The Enquiry officer appointed under Section 81 of the Tamil Nadu Co-operative Societies Act, is a competent authority to initiate threefold actions against the employee who has committed irregularities, illegalities, misappropriations or financial loss to the society and based on the report, under Sec.87 of the Tamil Nadu Cooperative Societies Act, the competent authority shall initiate surcharge proceedings as against the concerned



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employee. The enquiry should be conducted by the officer appointed, by following the procedure contemplated under the Rules. If any violation in conducting enquiry proceedings, it is for the employee concerned, to seek legal remedy before the appropriate forum.

8. Now, in the instant case, the appellant has raised a ground that for the very same charges and for the very same period, the enquiry was already conducted and the appellant was inflicted with punishment. The learned counsel appearing for the respondent submits that the allegations made by the appellant that for the very same charges, the proceedings was issued for enquiry under Sec.81 of the said Act is per se illegal. In the counter affidavit filed by the first respondent, it is stated that the present inquiry is a third enquiry as mentioned in the tabular col. Sl.No.3 in addition to that certain other issues are also ordered to be inquired in the same third inquiry. Subsequently, surcharge proceedings was also initiated by the respondent. Insofar as the misappropriation of Rs.1,20,000/- as shown in Sl.No.3 of the inquiry is concerned, show cause notice was issued on 27.10.2016, the same was received by the appellant and the entire amount was paid by the appellant. However, the appellant did not disclose the said fact in the affidavit.



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9. This Court in an identical issue in ***A.Prabakaran Vs. The Deputy Registrar of Co-operative Societies, (Housing) Chengelpet Circle, Varadhanar Street, Chengelpet, Kancheepuram District and another [W.P.No.28027 of 2018 and W.M.P.No.32616 of 2018 dated 19.03.2019]*** has elaborately discussed the scope of Section 81 of Tamil Nadu Cooperative Societies Act wherein it is held as under:

“3. This Court is of the considered opinion that the enquiry under Section 81 is a statutory enquiry and the Registrar is empowered to order for an enquiry into the affairs of the Co-operative Societies. In other words, to identify the irregularities, illegalities, misappropriations or financial loss, the Registrar is empowered to order for an enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act. The Enquiry Officer appointed under Section 81 of the Act is competent to summon the employees of the Cooperative Societies officials, served in the Co-operative societies and other persons who all are connected with the affairs of the Co-operative societies by recording the statements and by collecting the evidences from various sources. The Enquiry Officer appointed under Section 81 of the Tamil Nadu Co-operative Societies Act, should submit a report. Based on the report, the Competent Authorities are entitled to initiate threefold actions against all the persons concerned. If any irregularities, illegalities, misappropriations or financial loss is identified then a surcharge proceedings under Section 81 of the Act, can be initiated against the persons who all are responsible for the financial loss.”



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10. A perusal of records reveals the fact that after ordering inquiry under Sec.81 of the Act, the procedures contemplated under the Rules were followed by the respondent. However, the appellant evaded the enquiry by refusing to receive the summons sent by the enquiry officer on 23.5.2016 and 17.6.2016. Therefore, there is no violation of principles of natural justice. The appellant has not produced any material to establish a case of malafides on the part of the respondents.

11. This Court after careful examination of the records, come to the conclusion that there is no cause of action arose to file the present writ petition. The ground raised by the appellant that Section 81 inquiry was already conducted in the year 2010 and the Section 81 inquiry ordered by the first respondent in 2015 does not amount to a colourable exercise of power since there is no bar under Sec.81 of the Act prescribing any intervening time limit between two enquiries.

12. In view of the above, the writ appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed. No cost.

(D.K.K.J.) (P.B.B.J.)
01.11.2023

Speaking/Non Speaking order
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**D.KRISHNAKUMAR, J.
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To

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Dharmapuri District.
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**Pre-Delivery Judgment in
W.A.No.2217 of 2018
and C.M.P.No.17419 of 2018**

Dated: 01.11.2023