



W.P.No.30477 of 2018

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:30.06.2023

Delivered on: 21.07.2023

CORAM :

THE HONOURABLE MR.JUSTICE P.B.BALAJI

W.P.No.30477 of 2018

and

W.M.P.No.18236 of 2019

C.Palanisamy

... Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Erode District, Erode - 9.

2.The President,
No.A.A.226, Modakurichi Primary Agricultural
Co-operative Credit Society,
Modakkurichi Post,
Erode District - 638 104.

3.K.S.Kolandasamy
(3rd respondent impleaded
as per the order of this Court
dated 30.06.2021 made in
W.M.P.No.30477 of 2018)

4. C.Saravanan
(4th respondent impleaded
as per the order of this Court
dated 27.06.2023 made in
W.M.P.No.220 of 2022 in
W.P.No.30477 of 2018)

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India to



W.P.No.30477 of 2018

issue a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.No.4934/2016/Tho.Vae.Sa(1) date 04.10.2018 and quash the same.

For Petitioner : Mr.C.Prakasam

For R1 : Mr.T.Chezhian
Additional Government Pleader

For R2 : Mr.L.P.Shanmugasundaram

For R3 : Mr.N.Manoharan

ORDER

The petitioner has filed the present writ petition seeking issuance of a Writ of Certiorarified Mandamus, to quash the impugned order passed by the first respondent dated 04.10.2018.

2. The case of the petitioner is that he is the Secretary of the second respondent Society and in the ordinary course of business, members approached the second respondent Society and obtained agricultural loans. Subsequently, the agricultural loans were waived by the Government in G.O.Ms.No.50, Food and Co-operation Department dated 23.05.2016 and a Committee has been constituted by the Government pertaining to the cases of all agriculturalists, who had obtained loans at five different stages and after satisfying itself don't need for waiver of such loan, the first respondent allowed loan waiver to the members.



W.P.No.30477 of 2018

WEB COPY

3. The petitioner's grievance is that despite the loan being waived, the first respondent has passed the impugned order directing the second respondent to recover the amount alleged to have been waived by the Government on the allegation that the petitioner has granted loans to his close relatives.

4. Pending this writ petition, the third respondent has sought to implead himself and pursuant to the orders of this Court, the third respondent was also impleaded and he has filed a Counter Affidavit along with a typed set of papers.

5. Heard Mr.C.Prakasam, learned counsel for the petitioner, Mr.T.Chezhian, Additional Government Pleader for the 1st respondent, Mr.L.P.Shanmugasundaram, for the 2nd respondent and Mr.N.Manoharan, learned counsel for the 3rd respondent and also perused the records.

6. The first respondent has filed a Counter Affidavit stating that pending the writ petition, disciplinary proceedings were initiated against



W.P.No.30477 of 2018

the petitioner by issuing a Charge Memo dated 12.10.2018 and that after conducting a domestic enquiry, a final order was passed on 30.11.2018 and the petitioner has paid the fine amount of Rs.1,000/- on 15.10.2018. This cannot be true since when the order itself imposing fine has come to be passed only on 30.11.2018, there was no way the petitioner would have paid the fine on 15.10.2018.

7. However, be that as it may, the main contention of Mr.N.Manoharan, learned counsel for the impleaded third respondent is that the allegations are very grave and serious in nature and already there has been a recommendation to recover a sum of Rs.7,31,922/- from the petitioner. Moreover, it is the specific case that the petition itself is not maintainable for the simple reason that the impugned order is not served on the petitioner and it is only an interdepartmental communication that has been challenged. Therefore, according to him, the writ petition ought to be dismissed and not be entertained.

8. Per contra, Mr.C.Prakasam, learned counsel for the petitioner would contend that he has filed an application to dispense with the



W.P.No.30477 of 2018

production of the impugned order and moreover when the order has clearly affected him, he is entitled to challenge the same before this Court.

9. After hearing the counsel, this Court is of the view that the writ petition is premature. The learned counsel for the petitioner seeks to challenge the impugned order, which is admittedly not even served on the petitioner.

10. It is also seen from the impugned order that it is only an interdepartmental communication, copy of which is also not marked/served to the petitioner only a decision has been taken to fasten the liability on the petitioner and to recover the loss suffered by the Government to the tune of Rs.7,31,922/- from the petitioner in entirety.

11. The Tamil Nadu Cooperative Societies (TNCS) Act, 1983, contemplates the procedure in all such cases. Section 81 of the TNCS Act gives power to order an inquiry in respect of any alleged misappropriation, fraudulent retention of any money or property, breach



W.P.No.30477 of 2018

of trust, corrupt practice or mismanagement in relation to the Society or into any particular aspect of the working of the Society.

12. The decision of the first respondent therefore cannot be faulted only on the ground that it was not *suo motu* but on the complaint lodged by the impleaded respondent and several others.

13. Therefore, the procedure adopted by the first respondent cannot be faulted with on the ground that there is no jurisdiction to invoke Section 81 of the TNCS Act. However, the learned counsel for the petitioner placed reliance on Section 87 of the TNCS Act, which reads as under:-

"87. Surcharge - 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 wilful negligence or has made any payment which is not in accordance with this Act, the Rules or the Bylaws, the Registrar himself or any person specially authorised by him in this behalf, of his



W.P.No.30477 of 2018

WEB COPY

own motion or on the application of the Board, Liquidator or any creditor or contributor 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 the representative who inherits his estate, to answer the charges, make 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 of the misappropriation, misapplication of funds, fraudulent retainer, breach of trust or wilful negligence or payments which are not in accordance with this Act, the Rules or the Bylaws 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."

14. Thus, it is clear that a specific procedure is contemplated under Section 87 of the Act, when it is a fall out of the enquiry under Section 80 or 81 of the TNCS Act.

15. It requires a reasonable opportunity to the concerned affected person being given, to answer the charges and thereafter, make an order either requiring him to repay or restore the money or the property or any



W.P.No.30477 of 2018

WEB COPY

part thereof with interest, at such rate as the Registrar or the person authorized as aforesaid thinks just and proper.

16. Admittedly, the stage of resorting to Section 87 has not come as on date because, Section 81 enquiry alone appears to have been conducted. At the same time the stand of the first respondent that the writ petition has become infructuous may not be right too. The first respondent has stated that a sum of Rs.1,000/- has been levied as fine and since the same has been paid, nothing survives for consideration in this writ petition. This Court has already seen that the stand of the first respondent cannot be true.

17. However, at the same time, the petitioner, who is facing grave and serious charges of having caused loss to the tune of Rs.7,31,922/- to the Government, cannot be allowed to go scot-free. He has approached this Court without even being served with the impugned order, in anticipation of action being taken against him.

18. It is open to the first respondent to take such further steps



W.P.No.30477 of 2018

including Section 87 surcharge proceedings against the petitioner, in in pursuance of Sec.81 enquiry findings, after giving him a reasonable opportunity to defend himself or answer the charges against him and thereafter, pass final orders.

19. This Court heard the counsel for the petitioner and the counsel for the 3rd respondent with regard to the limited issue of whether the petitioner is entitled to refund of the amount deposited by him in pursuance of an interim condition order of stay granted by this Court on 28.01.2019 in W.M.P.No.35546 of 2018.

20. The counsel for the petitioner would contend that since the Writ Petition is disposed of the conditional order directing deposit of 25% of the amount sought to be recovered from the petitioner also merges with the final order, the amount has to be refunded to the petitioner. On the other hand learned counsel for the 3rd respondent would contend that the Writ Petition has been disposed of on the premise that it is a premature action and the impugned proceedings are still at large and considering the grave and serious allegations against the petitioner on the ground of



W.P.No.30477 of 2018

misappropriation of funds, the amount already deposited by the petitioner with the 1st respondent can be continued to be held by the 1st respondent till the Sec.87 proceedings are finally concluded.

21. This Court has considered the submissions made on either side. No doubt, at the time of granting an interim order in the above Writ Petition, a condition order came to be passed, directing the petitioner to deposit 25% of the amount sought to be recovered from him and the said order is also complied with by the petitioner and the Interim order has been in force till the disposal of the Writ Petition. However, it is to be seen that Sec.81 proceedings have already been concluded and without resorting to Sec.87 proceedings, the 1st respondent is not entitled to recover the amounts from the petitioner. However, at the same time the petitioner has not challenged any communication or order addressed to him personally. He has challenged only an inter department communication, a copy of which alone has come to his hands. Therefore, this Court has held that the Writ Petition is premature and infact given a direction above to the 1st respondent to proceed with Sec.87 surcharge proceedings, subject to giving the petitioner reasonable opportunity



W.P.No.30477 of 2018

before passing final orders. This Court has also directed that the said exercise shall be completed within a period of six weeks from the date of receipt of a copy of this order. Admittedly, this Court has not exonerated the Writ Petitioner or absolved him from any of the charges and only because the Writ Petition has been found to be premature, the Writ Petition has been disposed of. One another aspect is that the petitioner has been directed to deposit only 25% of the total amount sought to be recovered from him. The fate of the Sec.87 surcharge proceedings would be known in a matter of time viz., six weeks from the date of receipt of a copy of this order. Therefore, in the interests of the 2nd respondent society at large, especially its members, it would be just and proper to direct the 1st respondent to continue to hold the sum of Rs.1,82,000/- deposited by the petitioner, till such time final orders are passed by the 1st respondent in the Sec.87 surcharge proceedings. However, it is made clear that for any reason whatsoever, if the 1st respondent does not pass final orders within a period of six weeks from the date of receipt of a copy of this order, the petitioner would be entitled to refund of said sum of Rs.1,82,000/-. Equally, if the petitioner succeeds in the surcharge proceedings, the 1st respondent shall refund the said sum of Rs.1,82,000/-



W.P.No.30477 of 2018

to the petitioner. In the event of the petitioner not succeeding in the Sec.87 surcharge proceedings, the 1st respondent shall be at liberty to appropriate the said sum of Rs.1,82,000/- towards the amounts due and payable by the petitioner and proceed against the petitioner for the remaining sum, in accordance with law. The petitioner shall extend his full cooperation to the 1st respondent to ensure that Sec.87 surcharge proceedings are disposed of expeditiously and in any event not later than six weeks from the date of receipt of a copy of this order.

This Writ Petition is disposed of with the above directions. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

21.07.2023

Index : Yes / No
Internet : Yes / No
Speaking Order/Non-Speaking Order
Neutral Citation : Yes / No
arb/kpr

To

- 1.The Deputy Registrar of Co-operative Societies,
Erode District, Erode - 9.
- 2.The President,



W.P.No.30477 of 2018

WEB COPY

No.A.A.226, Modakurichi Primary Agricultural
Co-operative Credit Society,
Modakkurichi Post,
Erode District - 638 104.

P.B.BALAJI, J.

arb/kpr



WEB COPY



W.P.No.30477 of 2018

Pre-delivery judgment in
W.P.No.30477 of 2018

21.07.2023