



W.A(MD)No.159 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On: 22.02.2023

Delivered On: 20.03.2023

CORAM:

**THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR
AND
THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI**

W.A(MD)No.159 of 2023

and

C.M.P(MD)No.2114 of 2023

N.Govindaraj

... Appellant

Vs.

- 1.The Joint Registrar Cooperative Societies,
Ramanathapuram District.
Ramanathapuram.
- 2.The Deputy Registrar Cooperative Societies,
Paramakudi Circle, Paramakudi,
Ramanathapuram.
- 3.S.Ravichandran,
Cooperative Sub Registrar / Field Officer
Nainarkoil Circle,
The Q 1245, Vallam Primary
Agricultural Co-operative Credit Society,
Vallam, Paramakudi Taluk,
Ramanathapuram District.



W.A(MD)No.159 of 2023

4.The Enquiry / Co-operative Sub Registrar
Field Officer, Muthukulathur Circle,
The Q 1245, Vallam Primary
Agricultural Co-operative Credit Society,
Vallam, Paramakudi Taluk,
Ramanathapuram District.

... Respondents

PRAYER : Writ Appeal is filed under Clause 15 of the Letters Patent, to allow the writ appeal by setting aside the order dated 05.01.2023 passed in W.P(MD)No.13112 of 2020 on the file of this Court and allow the writ petition and pass such other order or orders as this Court.

For Appellant : Mr.Raja Karthikeyan

For Respondents : Mr.A.Baskaran
Additional Government Pleader

JUDGMENT

[Judgment of the Court was delivered by **L.VICTORIA GOWRI, J.**]

This Writ Appeal is filed by the appellant to set aside the order passed by the learned Single Judge in W.P(MD)No.13112 of 2020 on the file of this Court.



W.A(MD)No.159 of 2023

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2. The appellant is the writ petitioner before the learned Single Judge. The writ petition was filed by way of a Writ of Mandamus. The writ petitioner sought the respondents to conduct free, fair, fresh and proper enquiry or re-enquiry in connection with 81 enquiry ordered by the second respondent vide Na.Ka.No.824/2019/PACCS dated 29.10.2019 under Section 81 of the Tamil Nadu Co-operative Societies Act in Q 1245, Vallam Primary Agricultural Co-operative Credit Society, Vallam, Nainarkoil Circle, Paramakudi Taluk.

3. However, the learned Single Judge accepting the submission of the Additional Government Pleader appearing for the respondents 1, 2 and 4 that already 81 inquiry was concluded on 04.08.2022 and the report was also filed before the second respondent for appropriate action, observed that no further order is necessary in the writ petition and dismissed the same as infructuous. Challenging the same, the Writ Petitioner / Appellant is before this Court.



W.A(MD)No.159 of 2023

WEB COPY

4. The learned Counsel for the appellant submitted that the respondents have violated the order of this Court in W.P(MD)No.3485 of 2020 dated 26.02.2020 and also interim order of this Court in W.M.P(MD)No.11016 of 2020 in W.P(MD)No.13112 of 2020 dated 30.09.2020.

5. He further submitted that the writ petitioner was employed as the Secretary of Q 1245, Vallam Primary Agricultural Co-operative Credit Society, Vallam, Nainarkoil Circle, Paramakudi Taluk and he attained superannuation from service on 31.01.2018. On the date of his superannuation, he was placed under suspension by the President of the Society. As a consequence of which, the second respondent ordered 81 inquiry four times on the transactions of the Society for the years 2015-2016, 2016-2017, 2017-2018 and 2018-2019. In the inquiry for the years 2015-2016 and 2016-2017, the enquiry officers had submitted a report, pointing out some violations without recommending any major penalty against the petitioner. Thereafter, the third respondent was also appointed as one of the enquiry officers for the 81 inquiry for the year 4/18



W.A(MD)No.159 of 2023

2017-2018. Challenging the same, the petitioner filed W.P(MD)No. 13119 of 2019, in which this Court granted an interim order.

6. He further submitted that the fourth respondent was appointed as enquiry officer on 29.10.2019 to conduct inquiry against the petitioner under Section 81 of the Tamil Nadu Co-operative Societies Act. The enquiry officer has to complete the inquiry within the statutory period of nine months as per Section 81(4) of the Tamil Nadu Co-operative Societies Act, 1983. Pursuant to the same, the fourth respondent called the petitioner for inquiry and sought for documents from him. But the petitioner submitted that since he was placed under suspension on 31.01.2018, on the date of his suspension he had handed over the charges of the Society. As a result of which, he did not have the custody of any of the documents of the Society. In addition to the same, the petitioner also gave a representation dated 27.01.2020 seeking to furnish him with the documents relating to the inquiry. Since the same was not considered, the appellant filed W.P(MD)No.3485 of 2020, in which this Court passed an order to consider the petitioner's representation dated 27.01.2020 on its

5/18



W.A(MD)No.159 of 2023

WEB COPY

own merits. Without providing proper opportunity and without conducting enquiry with necessary parties, the inquiry was completed on 28.07.2020. Challenging the same, the writ petitioner filed the writ petition in W.P(MD)No.13112 of 2020, in which this Court on observing the submission of the Additional Government Pleader passed an interim order dated 30.09.2020 not to pass final order in Section 81 inquiry if the enquiry is completed. Thereafter when the writ petition came up for final hearing, the impugned order of dismissal came to be passed recording the fact that the inquiry is already concluded and report was also filed before the second respondent for appropriate action, without considering the interim order dated 30.09.2020 passed in the same writ petition directing the respondents not to pass any final order.

7. Per contra, the learned Additional Government Pleader appearing for the respondents submits that the conduct of fresh or re-enquiry in Section 81 inquiry is un-warranted and un-heard and the inquiry which is conducted under Section 81 of the Act is only a fact finding inquiry which is an exercise undertaken within the department to



W.A(MD)No.159 of 2023

assert the irregularities, illegalities, corrupt practices, breach of trust or mismanagement in the administration into the Constitution, working and financial condition of a registered Society. He further submitted that even in this case, it is only an inquiry which was conducted against the appellant / writ petitioner and despite filing of the inquiry report, the final outcome is yet to be known and he insisted for the dismissal of the writ appeal.

8. Heard the rival contentions of both the parties carefully and perused the materials available on record.

9. The petitioner being the Secretary of Q 1245, Vallam Primary Agricultural Co-operative Credit Society, Nainarkoil Circle, Paramakudi Taluk was holding the key post of that particular Society managing the Constitution, working and financial condition of the said Society. In the capacity of the Secretary of that Society, he is fully answerable for any kind of illegalities or irregularities committed in the aforesaid Society. The disputed Section 81 inquiry under the Act was initiated against the

7/18



W.A(MD)No.159 of 2023

Appellant / Writ Petitioner for various irregularities in the Agricultural Jewel Loan Scheme of the Society. The agony of the appellant / writ petitioner is that the inquiry initiated under Section 81 of the Act was concluded by the submission of the inquiry report by the fourth respondent without providing proper opportunity to the writ petitioner and without conducting enquiry with the necessary parties and the inquiry was completed on 28.07.2020, pointing out the statutory period of Section 81 in a hasty manner. However, the crux of the issue which is popping up in this case is not a new one and the same has been decided by various High Courts and the Hon'ble Supreme Court in several cases. Section 81(1) of the Tamil Nadu Co-operative Societies Act, 1983 is as follows:

“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



WEB COPY



W.A(MD)No.159 of 2023

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.”

10. The factual matrix of this case is related to the inquiry under Section 81 of the Act. The issue which has to be examined is that whether it is mandatory to give an opportunity to the delinquent even in the stage of conduct of inquiry under Section 81 of the Act. There is no whisper in the entire provision of Section 81 to give such opportunity to the delinquent. On the other hand, the inquiry under Section 81 of the Act is a disciplinary proceeding commenced within the Department against the employee for any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to the Society or into any particular aspect of the working of that Society. The enquiry officer appointed under Section 81 of the Act may summon any person whom, he has reason to believe, has knowledge of any of the affairs of the Society and may examine such



W.A(MD)No.159 of 2023

person including the delinquent to appear before him or to produce any books, accounts or documents belonging to him or in his custody. Even in this case, the fourth respondent / enquiry officer issued summons on the appellant / writ petitioner on 17.03.2020 and 28.04.2020 calling him for an inquiry and directed him to hand over the documents and ledgers of the Vallam Primary Agricultural Co-operative Credit Society. In paragraph No.7 of the affidavit of the Appellant / Writ Petitioner in W.P(MD)No.13112 of 2020, it is seen that the Appellant / Writ Petitioner has even submitted his reply dated 23.03.2020. Therefore it cannot be correct to conclude that the appellant / writ petitioner was not at all given an opportunity by the enquiry officer, even though it is not mandated by the relevant provisions of law.

11. The relevant paragraphs of the Hon'ble Division Bench judgment of this Court in the case of ***S.V.K.Sahasramam Vs. Deputy Registrar of Co-operative Societies, Thiruvannamalai Circle, Thiruvannamalai and Others reported in 2008 (8) MLJ 231***, are extracted as follows:

10/18



W.A(MD)No.159 of 2023

WEB COPY

9. *It is nobody's case that in the instant case, the proceeding under Section 81 of the said Act amounts to an enquiry which can be called a departmental or disciplinary enquiry. It cannot be disputed that an enquiry under Section 81 of the said Act is an enquiry in public interest in order to find out whether the affairs of a cooperative Society are conducted legally and whether there are financial improprieties in the matter of conduct of its affairs. Such an enquiry cannot be prima facie compared to an enquiry against any individual employee. It is obviously true that as a follow up action on such enquiry under Section 81, various other steps may be taken, viz, surcharge proceedings can be initiated under Section 87 and steps can be also taken for initiating criminal proceedings. In the instant case, both these steps have been taken.*

12. From the above preposition, it is palpable that the inquiry under Section 81 of the Act is exclusive for the purpose of regulating the business of the Co-operative Society concerned on the basis of which a surcharge proceeding under Section 87 of the Act would be initiated as



W.A(MD)No.159 of 2023

against the delinquent. Thus the surcharge under Section 87 of the Act emanates only from the inquiry under Section 81 whenever irregularity occurs in the affairs of the Society.

13. This being the limited scope of the provision of Section 81 of the Act where the enquiry officer is appointed to hold an inquiry in terms of the said provision and submit an enquiry report for further action before the higher authorities. As such we are of the considered opinion that the issuance of summons by the fourth respondent to the Appellant / Writ Petitioner on 17.03.2010 and 28.04.2020 and his subsequent enquiry report based on the second respondent's proceeding dated 29.10.2019 would not vitiate the enquiry report for the sole ground that the appellant / writ petitioner was not provided with proper opportunity. In furtherance to the same, we further quote the judgment of the Hon'ble Supreme Court of India reported in ***AIR 1957 SC 912 in the State of Uttar Pradesh Vs. Manbodan Lal Srivastava***, the relevant portion of which is extracted as follows:



W.A(MD)No.159 of 2023

WEB COPY

“12. We have already indicated that Article 320(3)(c) of the Constitution does not confer any rights on a public servant so that the absence of consultation or any irregularity in consultation, should not afford him a cause of action in a court of law, or entitle him to relief under the special powers of a High Court under Article 226 of the Constitution or of this Court under Article 32. It is not a right which could be recognized and enforced by a writ.”

14. Further the Hon'ble Supreme Court in a judgment reported in ***AIR 1961 SC 751 in the State of Uttar Pradesh and Others Vs. Babu Ram Upadhyia*** in paragraph No.50 has held as follows:

“50. It appears to us that the object of Rule 486 is that the authority concerned should first make a preliminary inquiry to find out if there is a case against the officer complained against either to proceed in a court or to take departmental action. The investigation prescribed by Rule 486 is only for this purpose. Incidentally it may be that after such an investigation, the authority concerned may come to



WEB COPY



W.A(MD)No.159 of 2023

the conclusion that there in no case either to send the case to court or to hold a departmental inquiry. But that in our opinion is what would happen in any case of complaint against a public servant in any department of Government. No authority entitled to take action against a public servant would straightaway proceed to put the case in court or to hold a departmental inquiry. It seems to us axiomatic if a complaint is received against any public servant of any department, that the authority concerned would first always make some kind of a preliminary inquiry to satisfy itself whether there is any case for taking action at all; but that is in our opinion for the satisfaction of the authority and has nothing to do with the protection afforded to a public servant under Article 311. Rule 486 of the Police Regulations also in our opinion is meant for this purpose only and not meant to carry out the object contained in Article 311(2). The opportunity envisaged by Article 311 (2) will be given to the public servant after the authority has satisfied itself by preliminary inquiry that there is a case for taking action.”



W.A(MD)No.159 of 2023

WEB COPY

16. With the above said observations, the writ appeal stands dismissed. The impugned order passed by the learned Single Judge need not be interfered. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions stand closed.

(D.K.K.J.,)

(L.V.G.J.,)

20.03.2023

NCC : Yes
Index : Yes
Internet : Yes
BTR

To

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Ramanathapuram.

2.The Deputy Registrar Cooperative Societies,
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Ramanathapuram.

16/18



W.A(MD)No.159 of 2023

WEB COPY

3.The Cooperative Sub Registrar / Field Officer
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WEB COPY



W.A(MD)No.159 of 2023

D.KRISHNAKUMAR, J.
and
L.VICTORIA GOWRI, J.

BTR

Judgment made in

W.A(MD)No.159 of 2023
and
C.M.P(MD)Nos.2207 & 1437 of 2023

20.03.2023