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W.P.(MD)NO.2141 OF 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.2141 of 2019 and
W.M.P.(MD)No.1713 of 2019

D.Bose,
President,
M.D.Spl.45 T.Ramanathapuram Primary
Agricultural Co-operative Society,
T.Ramanathapuram Post,
Peraiyur Taluk,
Madurai District.

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Madurai Region,
Madurai District.
2. U/s.81 Enquiry Officer,
Co-operative Sub Registrar – Field Officer,
Sedapatti,
O/o.The Deputy Registrar of Co-operative Societies,
Usilampatti at Tirumangalam,
Thirumangalam Post,
Madurai District.

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings of the 1st respondent in Na.Ka.No.6927/2018 Sa.Pa. dated 10.12.2018 and quash the same as illegal.



For Petitioner : Mr.R.Saravanan

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For Respondents : Mr.A.Baskaran,
Additional Government Pleader.

* * *

ORDER

Heard the learned counsel on either side.

2. The writ petitioner challenges the notice issued under Section 36 of the Tamil Nadu Co-operative Societies Act 1983. The petitioner's counsel relies on an unreported order dated 04.12.2020 made in W.P.(MD)No.16701 of 2020. In paragraph No.14 of the said order, the learned Judge has relied on the decision reported in ***(2017) 1 CTC 258 (C.Sivashankar V. The Registrar of Co-operative Societies, Office of the Registrar of Co-operative Societies, Chennai-10 and others)***. It was held that an enquiry under Section 82 of the Act should be undertaken before initiating proceedings under Section 36 of the Act. Section 36 of the Act is as follows:-



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“36. Disqualification and removal. __

(1) 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 it appears that a person who is, or was, a member of a board has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or of gross or persistent negligence in connection with the conduct and management of, or of gross mismanagement of the affairs of the society, the Registrar may, without prejudice to any other action that may be taken against such member by order in writing, disqualify him permanently from holding in future any office in any registered society. The Registrar shall, if such person holds office of member of the board, also by the same order remove him from that office.

(2) No person shall be disqualified or



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removed, under sub-section (1) without being given an opportunity of making his representations. A copy of the order disqualifying or removing him shall be communicated to him.”

3. It can be seen that action under Section 36 of the Act can be initiated under any one of the circumstances mentioned above. It is not necessary that it should be necessarily preceded only by enquiry under Section 82 of the Act alone. Even if during the enquiry under Section 81 of the Act, certain irregularities come to light, the proceedings under Section 36 of the Act can be initiated.

4. Therefore, the aforesaid decision rendered in W.P. (MD)No.16701 of 2020 cannot be applied. I decline to quash the impugned order. The petitioner has come before this Court at the notice stage. He can very well submit his reply. The petitioner can very well point out the subsequent developments before the first respondent.



5. The petitioner's counsel would point out that though in the impugned notice it has been stated that the enquiry report has been furnished, actually it has not been furnished. I therefore direct the first respondent to furnish a copy of the enquiry report to the petitioner within a period of two weeks from the date of receipt of a copy of this order. The petitioner is given liberty to offer his explanation within a period of three weeks thereafter. It is for the first respondent to pass appropriate orders on merits and in accordance with law.

6. This writ petition stands disposed of with the aforesaid direction. No costs. Consequently, connected miscellaneous petition is closed.

19.01.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
PMU

To:

1. The Joint Registrar of Co-operative Societies,
Madurai Region, Madurai District.
2. U/s.81 Enquiry Officer,
Co-operative Sub Registrar – Field Officer,
Sedapatti,
O/o.The Deputy Registrar of Co-operative Societies,
Usilampatti at Tirumangalam,
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G.R.SWAMINATHAN,J.

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