



W.P.(MD)No.15774 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.03.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.15774 of 2014
and M.P(MD)No.2 of 2014

N.N.602 Perattu Kottai,
Primary Agricultural Co-operative Credit
Society, Shanmuganathapuram,
Devakottai Taluk – 630 314
Sivagangai District
represented by its Secretary
K.Bose

... Petitioner

Vs.

1. M.Raveendran
2.N.Vasantha

3. The District Judge/Tribunal,
Sivagangai District,
Sivagangai

4. The Deputy Registrar of
Co-operative Societies,
Karaikudi,
Sivagangai District

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorari to call for the



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records of the impugned order passed by the third respondent in C.M.A.(CS)No.1 of 2001 dated 31.10.2013 and quash the same as illegal.

For Petitioner : Mr.L.George Paul Anto
For R1 : Mr.P.R.Prithivi Raj
For R2 & R3 : No appearance
For R4 : Mr.J.K.Jayaseelan
Government Advocate

ORDER

This Writ Petition has been filed for issuance of writ of Certiorari by the Primary Agricultural Co-operative Credit Society, Shanmuganathapuram, Sivagangai District, through its Secretary to quash the impugned order passed by the third respondent in C.M.A.(CS)No.1 of 2001 dated 31.10.2013.

2. The respondent No.1 has preferred an appeal in C.M.A.(CS)No.1 of 2001 before the Co-operative Tribunal under Section 152 of the Tamil Nadu Co-operative Societies Act,1983, (hereinafter referred to as 'the Act') in C.M.A.(CS)No.1 of 2001 as against the surcharge order passed under Section 87 of the Act by the fourth respondent in S.C.No.06 of 1999 dated 22.11.2000. The Tribunal vide its order, dated 31.10.2013 allowed



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C.M.A(CS) No.1 of 2001 on the grounds that (a) the enquiry report filed under Section 81 of the Act was not furnished to the appellant therein/1st respondent herein to defend his case; (b) the enquiry under Section 81 of the Act was not completed within the time prescribed under the Act, as the enquiry proceedings has to be completed within a time of 1 year; and (c) in this case, the Joint Registrar of the Co-operative Societies has already issued a direction to complete the enquiry within 20.11.2000, however, the orders have been passed only on 22.11.2000. The Tribunal has set out another reason that the first respondent herein may be negligent in his duty for which a departmental action alone can be initiated and mere negligence is not enough to fix liability on the first respondent. As against the said order, the Society has preferred this Writ Petition in the year 2014.

3. This Writ Petition was admitted by this Court on 22.09.2014 and pending for the past 9 years.

4. When this Writ Petition is taken up for hearing, the learned counsel for the first respondent has raised a preliminary objection as to the



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maintainability of the Writ Petition as against the orders of the Tribunal in C.M.A(CS)No.1 of 2001. He further submitted that subsequent to the orders of this Court in C.R.P(MD)No.609 of 2017 dated 11.10.2018 that all the Writ Petitions preferred as against the orders in C.M.A(CS) should have been entertained only as revision petitions and prior to that, the Writ Petitions filed and entertained by this Court as against the orders of the Tribunal passed in the C.M.A(CS) have been directed to be converted as Civil Revision Petitions. This Writ Petition was admitted by this Court in the year 2014 and, therefore, this Court is not inclined to reject this Writ Petition on this ground alone after a lapse of 9 years and hence, this Court is proceedings further on the merits of the case.

5. The first respondent was working as the Special Officer of the petitioner Society during the period from 29.07.1991 to 13.09.1993 and from 14.09.1993 to 15.05.1995. During the relevant period, elections for the Co-operative Societies were not conducted and therefore, there were no elected Board of Directors and the administration of the Societies were managed by the Special Officers and the Secretary of the Societies. While



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so, an enquiry into the affairs of the petitioner Society was ordered under Section 81 of the Act on 19.02.1998. The enquiry officer has also submitted his report on 15.11.1998 and based on the enquiry report, subsequent action has been taken by the fourth respondent, the Deputy Registrar, under Section 87 of the Act issued notice on 23.11.1999 and the final order has been passed on 22.11.2000. This order under Section 87 of the Act was challenged before the Tribunal in C.M.A(CS)No.1 of 2001 and the Tribunal has allowed the appeal on the grounds, as stated supra.

6. The learned counsel for the petitioner submits that the enquiry conducted under Section 81(4) of the Act was completed within the stipulated time as contemplated under Section 81(4) of the Act, as enquiry was commenced on 19.02.1998 and completed on 15.11.1998 i.e well within 9 months and the relevant period stipulated under Section 81(4) of the Act is 9 months at the relevant point of time.

7. The learned counsel for the petitioner would also submit that the first respondent has not sought for enquiry report during the proceedings



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under Section 87 of the Act or during the proceedings before the Tribunal.

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8. The learned counsel for the petitioner also referred several judgments of this Court that the time limit prescribed under Section is only directory and not mandatory. He also referred the judgment of this Court reported in ***S.V.K.Saharsramam Vs. Deputy Registrar of Co-op. Societies, Tiruvannamalai Circle, Tiruvannamalai and others*** [2008 (8) MLJ 231] and submits that it is only a directory and not mandatory.

9. With regard to other grounds pointed out by the Tribunal, the learned counsel submits that notice of enquiry under Section 87 of the Act was served on the first respondent on 23.11.1999 and enquiry was completed and final report was passed on 22.11.2000 i.e well within the period of limitation and there is no violation in this regard also. Surcharge proceedings was also initiated well within 7 years as per Section 87(1) of the Act. However, the Tribunal, without appreciating the materials placed on record, has erroneously allowed the appeal preferred by the first respondent.



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10. In addition to that, the learned counsel for the petitioner also submitted that the first respondent along with second respondent has swindled the amount to the tune of Rs.5,01,717/- and the same has to be recovered by invoking provision under Section 87 of the Act and there is no violation of any procedures as contemplated under the Act. He also pointed out that the appeal was preferred without even adding the Society concerned as party to the proceedings and orders have been obtained behind its back.

11. The learned counsel for the first respondent submits that the first respondent was only a Special Officer during the relevant point of time and he was in-charge of several societies and therefore, it would be difficult for him to monitor the entire day to day activities and if at all there was any commission of mistake on the part of the first respondent, it can be termed as negligence not as willful negligence. He also submits that surcharge proceedings was initiated based on the enquiry conducted under Section 81 of the Act. However, the enquiry report has not been furnished to the first respondent and it violates the principles of natural justice and therefore, the Tribunal has rightly set aside the surcharge proceedings.



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12. He also relied on the judgments quoted by the Tribunal in its order that non production of the report under Section 81 of the Act is a ground for setting aside the proceedings. In addition to that, the learned counsel for the first respondent submits that apart from the proceedings, a criminal case was also registered as against the petitioner and then Secretary in Crime No.1 of 2002 on the file of CCIW Police Station for the offence under Sections 408, 477 r/w 120(B) IPC and after completion of investigation, final report has also been filed as against the petitioner and then Secretary before the learned Judicial Magistrate No.2, Sivagangai in C.C.No.33 of 2004 and after a full-fledged trial, the learned Judicial Magistrate No.2, Sivagangai, by order dated 30.04.1990 acquitted all the accused in C.C.No.33 of 2004 and therefore, there is no basis for enquiry under Section 81 of the Act and the consequential proceedings under Section 87 of the Act.

13. The second respondent is represented by Mr.Mathiyazhagan, learned counsel. However, today there was no representation for the second respondent for the past 3 hearings. It appears that the second respondent has



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not preferred any appeal as against the surcharge order before the Co-operative Tribunal and therefore, there is no necessity for hearing him further as this Writ Petition is pending for the past 9 years.

14. The learned Government Advocate submits that he adopts the argument of the petitioner Society.

15. I have given my anxious consideration to the submissions made on either side and carefully perused the materials placed on record.

16. The Society has preferred this Writ Petition as against the orders passed by the Tribunal in C.M.A(CS) No.1 of 2001. The Tribunal has set aside the orders passed by the fourth respondent in the surcharge proceedings holding that the copy of the report of the enquiry conducted under Section 81 of the Act was not furnished to the first respondent. There is no provision either under the Act or the Rules mandating that copy of the enquiry report is to be submitted to the delinquent employee. The Registrar may on his own motion or on the request of the majority of the Board hold



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an inquiry into the constitution, working and financial condition of a registered society or any allegation of misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practise or mismanagement in relation to that society or into any particular aspect of the working of the society under Section 81 of the Act. If in the course of enquiry under Section 81 of the Act the Deputy Registrar had a reason to believe that the person who was entrusted with the organization or management of the society has misappropriated or fraudulently retained any money or other property or been guilty of particular breach of trust in relation to the society or has caused any deficiency in the assets of the society by breach of trust or willful negligence, the Registrar on the application of the Board, Liquidator or any creditor may frame charges against such person and direct the concerned person to answer the charges and also can make an order requiring him to repay or restore money or property with interest under Section 87 of the Act and such action has to be taken within a period of 7 years from the date of any act or omission. The Registrar, who is acting under Section 87 of the Act, has all the powers of a civil court while trying a suit under the Code of Civil Procedure in respect



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of the following matters namely:-

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- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of any documents;
- (c) reception of evidence on affidavits;
- (d) requisitioning any public record from any court or office,
- (e) issuing commission for examining of witnesses.

17. A Division Bench of this Court in ***S.V.K.Saharsramam Vs. Deputy Registrar of Co-op. Societies, Tiruvannamalai Circle, Tiruvannamalai and others*** [2008 (8) MLJ 231] held that an enquiry under Section 81 of the Act is an enquiry in public interest and in order to find out whether the affairs of a co-operative society are conducted legally and whether there are financial improprieties in the matter of conduct of affairs. Such an enquiry cannot be compared to an enquiry against an individual. Therefore, submission of enquiry report beyond the time limit prescribed cannot be said as unsustainable.



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18. The petitioner has not requested for the enquiry report either during the proceedings under Section 87 of the Act or during the appeal before the Tribunal. In the absence of any specific provision mandating the petitioner Society for furnishing the copies under Section 81 of the Act, the orders of the Tribunal cannot be sustained. As stated by the Division Bench, there is no time limit prescribed for furnishing this report also. The enquiry, which is contemplated, is an enquiry in public interest and in order to find out whether the affairs of the co-operative society are conducted legally. The notice issued under Section 87 of the Act discloses the imputations made as against this petitioner. The enquiry under Sections 81 and 87 are also conducted within the stipulated time as prescribed under the Act and therefore, the order of the Tribunal needs interference. In view of the above facts and submissions and the judgment referred to above, this Court is of the view that the order passed by the Tribunal cannot be sustainable in law. Accordingly, the impugned order passed by the third respondent in C.M.A.(CS)No.1 of 2001 dated 31.10.2013 is set aside. The matter is remitted back for fresh consideration by the Tribunal in accordance with law. This Court is of the view that the notice issued under surcharge



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contains the necessary imputations made as against this petitioner. If the petitioner is very particular about the enquiry report under Section 81 of the Act, he can very well seek for a copy of the same with the respondents and the respondents shall furnish the same within a period of three weeks from the date of such request. Considering the period of delay, the Tribunal is also directed to conclude the proceedings as expeditiously as possible preferably within a period of 6 months from the date of receipt of a copy of this order. The parties are also expected to co-operate for the earlier conclusion of the proceedings before the Tribunal.

19. In fine, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

15.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

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Sivagangai District,
Sivagangai

2. The Deputy Registrar of
Co-operative Societies,
Karaikudi,
Sivagangai District



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B.PUGALENDHI, J.

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