



W.P(MD)Nos.23097 & 23098 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.01.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.23097 & 23098 of 2022

and

W.M.P(MD)Nos.17196, 17198, 17200,
17203, 17204 & 17205 of 2022

W.P(MD)No.23097 of 2022:

1.T.R(H).85 Cholan Silk Handloom Weavers
Co-operative Society Limited,
Represented by its President,
S.Selvaraj, 8/4, Viralimalai Lane,
Tiruppuvanam – 612 103,
Thiruvudaimarudur Taluk,
Thanjavur District.

2.S.Selvaraj
3.S.Vairavel
4.M.P.Atmaraman
5.T.Muthumakshmi
6.R.Anandan
7.K.P.Rajam
8.S.Kamala

... Petitioners

Vs.

1.The State represented by the Secretary,
Department of Co-operative and Handlooms,
Fort St.George, Chennai.



W.P(MD)Nos.23097 & 23098 of 2022

2.The Joint Director of Handlooms,
Office of the Director of Handloom and Textiles,
Chennai – 600 018.

3.The Assistant Director of Handlooms,
Office of Handloom Assistant Director,
HB 7 SIDCO Factory,
Thiruppuvanam, Kumbakonam,
Thanjavur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the entire records pertaining to the impugned proceedings issued by the second respondent by his proceeding in Na.Ka.No.34350/2021/H1(3) dated 05.09.2022, quash the same.

For Petitioners : Mr.K.P.S.Palanivelrajan
Senior Counsel
for Mr.Jameel Arasu

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
Assisted by Mr.A.Baskaran
Additional Government Pleader

W.P(MD)No.23098 of 2022:

1.T.R(H).85 Cholan Silk Handloom Weavers
Co-operative Society Limited,
Represented by its President,
S.Selvaraj, 8/4, Viralimalai Lane,
Tiruppuvanam – 612 103,
Thiruvudaimarudur Taluk,
Thanjavur District.

2.S.Selvaraj



W.P(MD)Nos.23097 & 23098 of 2022

3.S.Vairavel
4.M.P.Atmaraman
5.T.Muthumakshmi
6.R.Anandan
7.K.P.Rajam
8.S.Kamala
9.V.Mahalingam

... Petitioners

Vs

- 1.The State represented by
The Secretary, Department of Co-operative
and Handlooms,
Fort St.George, Chennai.
- 2.The Joint Director of Handlooms,
Office of the Director of Handloom snf Textiles,
Chennai – 600 018.
- 3.The Assistant Director of Handlooms,
Office of Handloom Assistant Director,
HB 7 SIDCO Factory,
Thiruppuvanam, Kumbakonam,
Thanjavur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the entire records pertaining to the impugned proceedings issued by the second respondent by his proceeding in Na.Ka.No.34350/2021/H1(4) dated 05.09.2022, quash the same.

For Petitioners : Mr.K.P.S.Palanivelrajan, Senior Counsel
for Mr.Jameel Arasu

For Respondents : Mr.Veera Kathiravan
Additional Advocate General
Assisted by Mr.A.Baskaran
Additional Government Pleader



W.P(MD)Nos.23097 & 23098 of 2022

COMMON ORDER

WEB COPY

Heard the learned Senior Counsel appearing for the writ petitioners and the learned Additional Advocate General assisted by the learned Additional Government Pleader appearing for the respondents.

2.In these writ petitions, notices issued under Sections 36 and 88 of the Tamil Nadu Co-operative Societies Act, 1983 are under challenge. The learned Senior Counsel took me through the averments set out in the affidavits filed in support of the writ petitions and contended that when the report filed under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 is fundamentally defective, initiation of consequential action under Sections 36 and 88 of the Tamil Nadu Co-operative Societies Act, 1983 is bad. He pointed out that under Section 81 of the said Act, enquiry can be ordered only at the instance of the four entities mentioned therein. In this case, action was initiated under Section 81 of the said Act on the complaint of one Pandian, a member of the Society. Therefore, the very initiation of enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 was without jurisdiction and therefore, consequential actions should also be interfered with at this stage itself. He took me through the statutory scheme set out in the Act and the Rules framed thereunder. He also pointed out that even without serving a copy of the



W.P(MD)Nos.23097 & 23098 of 2022

enquiry report, action has been taken. His grievance is that if only the petitioners had been properly associated with the enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 and served with a copy of the report, they could have placed their case and the impugned actions could have as well been avoided. According to him, there is a clear violation of the principles of natural justice.

3.At the very outset, the learned Additional Advocate General appearing for the official respondents drew my attention to the decision of the Hon'ble Apex Court reported in (2016) 12 SCC 28 and (2014) 9 SCC 105 and contended that the scope of writ Court to interfere at the show cause notice stage is limited and the circumstances which would justify such interference are absent in the present case. The learned Additional Advocate General also submitted that the writ petitions have been prematurely filed. Relying on the order dated 06.07.2020 made in W.P.No.8849 of 2020, he contended that the writ petitioners can very well move this Court if the final order is adverse to them. He pointed out that the writ petitioners have given their explanation and appropriate order on merits and in accordance with law will be passed thereon. He called upon this Court to dismiss the writ petitions.



4.I carefully considered the rival contentions and materials on record.

Section 81(1) of the Tamil Nadu Co-operative Societies Act, 1983 reads 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 constitution, working and financial condition of a 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 or into any particular aspect of the working of that society.”

5.The Registrar is authorized to initiate enquiry under Section 81 of the Act not only on the application of majority of the Board or of not less than 1/3 of the members or on the request of the financing Bank or of the District Collector but also on his own motion. In this case, one Pandian, member of the Society has lodged a complaint and brought certain facts to the notice of the Registrar. The Registrar felt that this was the case in which *suo motu* action was required. The contention of the learned Senior Counsel appearing for the petitioners is that the Registrar cannot act *suo motu*. Accepting the said



W.P(MD)Nos.23097 & 23098 of 2022

contention as such would run counter to the express language set out in the Act.

I therefore hold that initiation of the enquiry under Section 81 of the Act was well founded. I however endorse the contention of the learned Senior Counsel that before taking action under Sections 36 and 88 of the Act, copy of the enquiry report ought to be furnished. I only hope that the authority will bear in mind this aspect in future. However, on this ground I do not want to interfere with the consequential action taken.

6.As rightly pointed out by the learned Additional Advocate General, the writ petitioners have come before this Court questioning the notices issued by the authority. The writ petitioners can very well place their defense before the authority concerned. I make it clear that the authority will not treat the findings set out in the report under Section 81 of the Act as conclusive or binding. Enquiry report under Section 81 of the Act can only serve as a starting point and nothing beyond. The authority will have to satisfy the parameters set out in Sections 36 and 88 of the Act before passing final orders thereunder. In other words, the circumstances under which orders under these two provisions can be passed will have to be independently established. The noticees shall be given the fullest opportunity before final order is passed. An order of disqualification as well as an order of supersession have serious civil consequences. The



W.P(MD)Nos.23097 & 23098 of 2022

authority cannot dispense with the requirements of holding an enquiry. I am constrained to clarify this position because I have come across cases where the authority after receiving explanation from the noticees straightaway proceeded to pass final order. Such an approach cannot be adopted. An enquiry in consonance with the principles of natural justice will have to be conducted before final order is passed. All the contentions of the writ petitioners are left open.

7.Cautioning the authority not to treat the findings of the report under Section 81 of the Act as final or conclusive or even binding, these writ petitions are disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

24.01.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
MGA

To

1.The Secretary,
Department of Co-operative and Handlooms,
Fort St.George, Chennai.

2.The Joint Director of Handlooms,
Office of the Director of Handloom snf Textiles,
Chennai – 600 018.



W.P(MD)Nos.23097 & 23098 of 2022

3. The Assistant Director of Handlooms,
Office of Handloom Assistant Director,
HB 7 SIDCO Factory, Thiruppuvanam,
Kumbakonam, Thanjavur District.



WEB COPY



W.P(MD)Nos.23097 & 23098 of 2022

G.R.SWAMINATHAN, J.

MGA

W.P(MD)Nos.23097 & 23098 of 2022
and
W.M.P(MD)Nos.17196, 17198, 17200,
17203, 17204 & 17205 of 2022

24.01.2023