



W.P(MD)No.28353 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.28353 of 2022

and

W.M.P.(MD)No.22401 of 2022

and

W.M.P.(MD)No.737 of 2023

1.V.Ebinezar

2.M.P.Ganesan

... Petitioners

Vs.

1.The Joint Registrar,
Office of the Joint Registrar of Cooperative Societies,
District Collector Office,
Theni PO, Theni District.

2.The Deputy Registrar,
Office of the Deputy Registrar of Cooperative Societies,
Uthamapalayam PO, Theni District.

3.C.Elangovan

4.M.P. 12 Highwayvy's Group Employees Cooperative Stores,
By its President, Manalar Post,
Chinnamanoor Via,
Theni District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India,
praying this Court to issue a Writ of Certiorarified Mandamus, to call for the



W.P(MD)No.28353 of 2022

records from the 3rd respondent pertaining the impugned under Section 81 Enquiry Report dated 22.12.2021 by the 3rd respondent and quash the same as illegal and directing the 2nd respondent for order of fresh enquiry under Sec 81 of TNCS Act in the 4th respondent stores on the representation of the petitioners dated 11.10.2022.

For Petitioners : Mr.R.Saravanan

For Respondents : Mr.S.RA.Ramachandran,
Addl. Government Pleader for R1 & R2..
No appearance for R3.

ORDER

Heard the learned counsel on either side.

2.The writ petitioners are employees of the fourth respondent society. Enquiry under Section 81 of the Tamilnadu Cooperative Societies Act was ordered. The report was also submitted. The petitioners herein challenge the said report and want this Court to direct the second respondent to order fresh enquiry.

3.The request of the petitioners cannot be accepted in the light of facts and circumstances obtaining in this case. It is seen from the records that



W.P(MD)No.28353 of 2022

surcharge proceedings were initiated on 11.08.2022. The writ petitioners participated in the said enquiry. They had also cross examined the office bearers of the society. Even though the officials of the department were present, they were not cross examined. Order is about to be passed in the surcharge proceedings. It is at this stage, the petitioners have filed this writ petition.

4.The learned Additional Government Pleader for the respondents 1 and 2 draws my attention of the decision of the Hon'ble First Bench made in W.A.No.949 of 2008, dated 29.08.2008 (S.V.K.Sahasramam Vs. The Deputy Registrar of Cooperative Societies and Others). Paragraph Nos.9 and 13 of the said decision read as follows:-

“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 co-operative 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



W.P(MD)No.28353 of 2022

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.

13. Therefore, if such enquiry is continued beyond the time limit mentioned in the relevant statute, the said time cannot be held to be mandatory in view of the principles laid down in Montreal Street Railway Company (supra), which has been affirmed by the Supreme Court.”

5. In view of the decision of the Hon'ble Division Bench, I have to necessarily hold that the findings set out in the enquiry report under Section 81 of the Act are not binding on the petitioners. The petitioners can very well challenge the findings in Section 81 enquiry report. The report under Section 81 of the Act can only be taken as a starting point for triggering further action. Therefore, the case against the petitioners will have to be independently dealt with in the proceedings under Section 87 of the Act. The enquiry officer cannot mechanically or blindly go by the findings in Section 81 enquiry report. Since the rights of the petitioners are more than protected, they need not feel that their defences are foreclosed by Section 81 enquiry report.



W.P(MD)No.28353 of 2022

6.The learned counsel for the petitioners states that since the petitioners intended to challenge the enquiry report under Section 87 of the Act, they did not cross examine some of the witnesses. If the petitioners want to cross examine the witnesses, the enquiry officer shall permit the petitioners to recall the said witnesses and cross examine them also. However, the petitioners will not plead limitation as a point later. The enquiry officer may also permit any additional witnesses to be summoned at the instance of the petitioners. The surcharge enquiry will have to be conducted in full compliance with the principles of natural justice. The findings set out in the enquiry report may furnish basis for initiating consequential action but will not be treated conclusive or binding.

7.With this observation and liberty to the petitioners to cross examine witnesses in the surcharge enquiry, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

11.01.2023

NCS : Yes/No
Index : Yes / No
Internet : Yes/ No
ias



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W.P(MD)No.28353 of 2022

G.R.SWAMINATHAN, J.

ias

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W.P(MD)No.28353 of 2022

11.01.2023
(2/2)