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W.P. No. 703 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2024

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 703 of 2024

and

W.M.P. No. 719 of 2024

V.Srinivasan

... Petitioner

-VS-

1. The Deputy Registrar of Cooperative Societies,
Collectorate Complex,
Villupuram.

2. The Enquiry Officer,
u/s. 82 of TNCS Act,
C.L. SPL 118 Kodur PACB,
Vanur Taluk,
Villupuram District.

3. The Administrator,
C.L. SPL 118 Kodur PACB,
Vanur Taluk,
Villupuram District.

4. Poongavanam

5. S.Gunaseelan

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India, 1950, praying to issue a Writ of Certiorari, to call for the records relating to Na.Ka. No. 3616 of 2023 Ku.Na dated 11.12.2023 on the file of the First Respondent herein and quash the same.



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For Petitioner : Mr. S.Sairaman
For Respondents : Mr. B.Vijay,
Additional Government Pleader (for R1)
Mr. G.Nanmaran (for R2 & R3)

ORDER

Heard Mr. S.Sairaman, Learned Counsel for the Petitioner and Mr. B.Vijay, Learned Additional Government Pleader appearing for the First Respondent and Mr. G.Nanmaran, Learned Counsel appearing for the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Writ Petition challenges the Proceedings in Na. Ka. No. 3616/2023/Ku.Na dated 11.02.2023 issued by the First Respondent, which is evidently a show cause notice calling upon the Petitioner to show cause as to why proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as 'the Act' for short) should not be initiated against him for causing financial loss to the Co-operative Society of the Third Respondent.



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3. Since Learned Counsel for the Petitioner raised a contention that the copy of the enquiry report dated 11.03.2023 mentioned as Reference No. 2 in the impugned order had not been furnished to the Petitioner, Learned Counsel for the Second and Third Respondents has produced the copy of the enquiry report dated 11.10.2023 and states that the enquiry report dated 11.10.2023 has been inadvertently typed as enquiry report dated 11.03.2023 in the impugned order, and he has made an endorsement to that effect in the court record. In such circumstances, Learned Counsel for the Petitioner submits that the Petitioner would submit his explanation to the impugned show cause notice.

4. The consistent legal position has been reiterated by the Hon'ble Supreme Court of India in ***Union of India -vs- Kunisetty Satyanarayana*** [(2006) 12 SCC 28] that a charge memo or show cause notice cannot be challenged before the completion of enquiry and the proceedings cannot be interdicted till it reaches its logical conclusion. It would be useful here to extract the relevant passages from the said decision which read as follows:-

*“13. It is well settled by a series of decisions of this Court that ordinarily no writ lies against a charge sheet or show-cause notice vide **Executive Engineer, Bihar State Housing Board -vs- Ramdesh Kumar Singh** [JT 1995 (8) SC 331], **Special Director***



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-vs- Mohd. Ghulam Ghouse (AIR 2004 SC 1467), Ulagappa -vs-

Divisional Commissioner, Mysore [2001(10) SCC 639], State of

U.P. -vs- Brahm Datt Sharma (AIR 1987 SC 943) etc.

14. *The reason why ordinarily a writ petition should not be entertained against a mere show-cause notice or charge-sheet is that at that stage the writ petition may be held to be premature. A mere charge-sheet or show-cause notice does not give rise to any cause of action, because it does not amount to an adverse order which affects the rights of any party unless the same has been issued by a person having no jurisdiction to do so. It is quite possible that after considering the reply to the show-cause notice or after holding an enquiry the authority concerned may drop the proceedings and/or hold that the charges are not established. It is well settled that a writ lies when some right of any party is infringed. A mere show-cause notice or charge-sheet does not infringe the right of any one. It is only when a final order imposing some punishment or otherwise adversely affecting a party is passed, that the said party can be said to have any grievance.*



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15. *Writ jurisdiction is discretionary jurisdiction and hence such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge sheet.*

16. *No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter.”*

Having due regard to the aforesaid legal position, as there is nothing which precludes the Petitioner from raising the contentions in this Writ Petition in the reply to be submitted to the First Respondent, who is bound to deal with the same before coming to any ultimate conclusion, there is no necessity for the Court to interfere at this pre-mature stage of the matter.

5. In such circumstances, this Court without expressing any view on the merits of the controversy involved in the matter, passes the following order:-

- (i) it shall be incumbent upon the Petitioner to submit his explanation to the show-cause notice, which is impugned in the Writ Petition, if not done already, to the concerned authority within 15 days from the date of receipt of copy of this order;



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- (ii) in the event of not being satisfied with the explanation submitted by the Petitioner, an enquiry shall be conducted following the prescribed procedure after affording full opportunity of personal hearing to the Petitioner to explain her position in that regard and a reasoned order shall be passed dealing with each of the contentions raised on merits and in accordance with law and the decision taken communicated under written acknowledgment; and
- (iii) if any adverse decision is taken, the Petitioner may pursue legal remedies in accordance with law.

In the result, the Writ Petition is disposed on the aforesaid terms. Consequently, the connected Miscellaneous Petition is closed. No costs.

24.01.2024

Index: Yes/No

NCC: Yes/No

Note: Issue order copy by 23.02.2024.

pal/vjt



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To

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P.D. AUDIKESAVALU, J.

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