



W.P.(MD)No.8636 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 18.06.2024

Pronounced on : 18.07.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.8636 of 2021

and

W.M.P.(MD)Nos.6504 and 13906 of 2021

H.Udaya Chandrika
Assistant Secretary cum Secretary in-charge
Y-25, Manakavilai Primary Agricultural
Co-operative Credit Society Ltd.,
Manakavilai, Manalikai Post,
Kanyakumari District – 629164.

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,
Nagercoil, Kanyakumari District.
2. The Deputy Registrar of Co-operative Societies,
Thuckalay, Kanyakumari District.
3. The Sub Registrar / Field Officer,
Y-25, Manakavilai Primary Agricultural
Co-operative Credit Society Ltd.,
Manakavilai, Manalikai Post,
Kanyakumari District – 629164.

... Respondents



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Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned notice issued by the second respondent in Na.Ka.No.2703/2020 Sa.Pa(1) dated 10.04.2021, quash the same.

For Petitioner : Mr.Ragadeesh Kumar
for M/s.Isaac Chambers

For Respondents : Mr.K.S.Selva Ganesan
Additional Government Pleader

ORDER

The Writ Petition is directed against the impugned notice dated 10.04.2021 issued by the second respondent, directing the writ petitioner to attend surcharge proceedings initiated under Section 87 of the Tamil Nadu Co-operative Societies Act.

2. It is not in dispute that the writ petitioner was initially appointed as Salesman in the third respondent Society, that she was promoted as Clerk and then as Senior Clerk and then as Assistant Secretary on 01.07.2020 and that since Mr.R.Justin Mahoharadhas, who served as a Secretary, got retired from service on 30.04.2018, the writ petitioner was placed in charge of the Secretary with effect from 01.05.2018.



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3. The writ petitioner's case is that prior to the retirement of the said Justin Manoharadhas, the Board has passed a resolution on 06.04.2018 for sanction and disbursement of produce pledge loan to the tune of Rs.5,00,000/- in favour of Mr.Johnson, who was the then President of the Society till 2018 and Rs.3,50,000/- in favour of Mr.Lala Lajapathi Roy, who was the then Vice President of the Society, that the entire loan sanctioned to the above two persons was processed and sanctioned by the then Secretary Justin Manoharadhas, that since he had some emergent work, he asked the writ petitioner to sign in the voucher of the loan sanctioned to the said Johnson, that since due date of repayment of the said two loans fall on 06.04.2019, the writ petitioner attempted to approach them and only at that time, she came to know that the said Lala Lajapathi Roy met with an accident and died on 21.11.2018, that the writ petitioner had then intimated his family members about the said loan and she has withheld the jewels deposited by him while taking jewel loan towards security for repayment of the jewel loan, that the writ petitioner had insisted the said Johnson for repayment of the said loan, that the writ petitioner had then intimated about the said loans to the third respondent vide letter dated 01.03.2019, who in turn intimated the same to the second



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respondent and that the second respondent has ordered for enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act (hereinafter called as 'the said Act').

4. It is the further case of the writ petitioner that the writ petitioner extended her fullest co-operation for the enquiry, that the writ petitioner came to know that the enquiry officer submitted his report dated 05.12.2019 to the second respondent holding that the writ petitioner was also involved in sanctioning of the said loan amount and found 12 persons including the writ petitioner herein as guilty for the loss of Rs.4,12,252/- and recommended for initiating surcharge proceedings under Section 87 of the said Act, that the third respondent has then issued charge memo dated 30.10.2020 for the very same subject matter for conducting disciplinary proceedings under Section 82 of the said Act, that the third respondent has appointed one Mr.Sasidharan, retired Deputy Registrar as enquiry officer and he conducted detailed enquiry, that the enquiry officer has submitted his report stating that the writ petitioner has no connection for the alleged loss of Rs.4,12,252/- to the Society, that the writ petitioner has submitted her explanation vide letter dated 26.01.2021 and requested the third respondent to drop all further proceedings as per the enquiry report under



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Section 82 of the said Act, but the third respondent has not passed any orders, that in the meanwhile, the second respondent has commenced surcharge proceedings and directed the writ petitioner to appear before him on 19.01.2021 at about 11.00 a.m. for perusing the documents relating to the surcharge proceedings, that the writ petitioner has complied with the said direction and went to the second respondent office and she was permitted to peruse certain documents but copies of the same were not furnished, that the writ petitioner has also submitted a reply to the second respondent on 01.02.2021 requesting him to conduct further enquiry after the receipt of the enquiry report, that the second respondent, without waiting for the enquiry report, directed the writ petitioner to attend for enquiry on 18.03.2021, that the writ petitioner appeared and submitted a letter dated 18.03.2021 requesting the second respondent to drop the surcharge proceedings, that the writ petitioner has again submitted a detailed reply dated 25.03.2021 enclosing the enquiry report dated 07.01.2021 stating that she was not found guilty for the loss incurred by the Society as per the enquiry report under Section 82 of the said Act and requested them to drop the proceedings, that the second respondent, without considering the writ petitioner's explanation, has again issued a



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notice directing the writ petitioner to appear for the enquiry scheduled on 27.04.2021 and that therefore the writ petitioner with no other option was constrained to approach this Court invoking Article 226 of the Constitution of India.

5. The respondents have filed a counter affidavit stating that one Society member Thiru.Jervin made complaints to the second respondent alleging that the then President and Vice President had taken produce pledge loans without actually pledging any produce in the Society, that the second respondent instructed the third respondent to enquire the matter and report the same, that the third respondent, after verification, found that on 06.04.2018 the then President and Vice President were issued Rs.5,00,000/- and Rs.3,50,000/- as produce pledge loans respectively without pledging any produce, that the second respondent has then ordered for an enquiry under Section 81 of the said Act vide his proceedings dated 03.09.2019, that the enquiry officer submitted his report dated 05.12.2019 recommending for surcharge and disciplinary action against the writ petitioner, that in pursuance of the enquiry report, disciplinary action was taken against the writ petitioner and a punishment



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of increment cut for 3 months without cumulative effect has been given to the writ petitioner by the third respondent vide order dated 05.05.2021, that the second respondent has initiated surcharge proceedings against the writ petitioner and 11 others by issuing surcharge notice dated 16.10.2020 under Section 87 of the said Act, that the writ petitioner by her letter dated 06.11.2020 requested the copy of Section 81 enquiry report, loan bonds and surety bonds, that the second respondent vide letter dated 07.12.2020 informed her to receive the copy of the report and to peruse the other documents on 23.12.2020, that the writ petitioner has not turned up on 23.12.2020 but visited the office of the second respondent on 19.01.2021 and perused the documents and noted down necessary points, that the writ petitioner has then submitted her explanation dated 01.02.2021 as preliminary explanation, wherein, she requested for the enquiry report and permission to engage a lawyer, that the writ petitioner was provided with enquiry report copy on 05.02.2021 and the second respondent vide letter dated 08.03.2021 permitted her to engage a lawyer and fixed the hearing date on 18.03.2021, that the writ petitioner attended the hearing on 18.03.2021 without his lawyer and at her request, next hearing was fixed on 26.03.2021, that the writ petitioner attended the hearing without lawyer



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and was not ready to cross-examine the Section 81 enquiry officer and that the second respondent, in order to give another opportunity, has sent the impugned notice dated 10.04.2021 to the writ petitioner along with 7 other persons to attend the hearing on 27.04.2021, that the other respondents in the surcharge proceedings have given their written explanation and attended the personal hearing and that the writ petitioner, without attending the hearing, has filed the present writ petition challenging the enquiry notice.

6. The main contention of the writ petitioner is that the writ petitioner was given clean sheet by the enquiry officer, who conducted disciplinary enquiry under Section 82 of the said Act and that though the writ petitioner has given her explanation along with the enquiry report under Section 82 of the said Act to the second respondent and requesting him to drop the proceedings, the second respondent, without considering the explanation and the findings in the Section 82 enquiry report, has proceeded with the surcharge proceedings.

7. As rightly contended by the learned Additional Government Pleader appearing for the respondents, the enquiry report submitted under



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Section 81 of the said Act has clearly revealed the involvement of the writ petitioner and recommended for surcharge and disciplinary action against the writ petitioner and that is why, the second respondent has ordered for disciplinary enquiry under Section 82 of the said Act and the second respondent has proceeded with the surcharge proceedings under Section 87 of the said Act.

8. No doubt, as rightly pointed out by the learned counsel appearing for the writ petitioner, the writ petitioner was given clean sheet in the enquiry report under Section 82 of the said Act, but the fact remains that the third respondent has imposed punishment of increment cut for 3 months without cumulative effect vide order dated 05.05.2021.

9. As rightly contended by the learned Additional Government Pleader appearing for the respondents, just because the writ petitioner was given a clean sheet in the enquiry report filed under Section 82 of the said Act, that by itself is not a reason or ground for dropping the surcharge proceedings, more importantly, when she was imposed with punishment and there was a recommendation for surcharge proceedings in the enquiry report filed under Section 81 of the said Act.



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10. The learned counsel appearing for the writ petitioner would submit that the then Secretary Justin Manoharadhas filed a writ petition before this Court in W.P.(MD)No.1495 of 2020 seeking directions to the respondents 1 to 4 therein to recover the agricultural produce pledge loan of Rs.3,50,000/- with accrued interest given to the former Vice President Lala Lajapathi Roy from his assets available with the bank in the form of gold jewels pledged by him under jewel loan account Nos.10719, 10220 and 11447 with reference to his representation dated 12.12.2019, that this Court has allowed the writ petition permitting the Society to initiate suitable proceedings to recover the dues from the jewel loan pledged by the deceased Lala Lajapathi Roy in the event it is proved that such loan was really obtained by him, that the Society in compliance of the order of this Court has initiated steps to recover the loan amount from his assets available with the bank, that since there was no response from the legal heirs of the deceased Lala Lajapathi Roy, the third respondent issued a paper publication regarding the auction sale of the gold jewels, which were pledged by the deceased Lala Lajapathi Roy and the same was scheduled on 06.07.2023, that when the auction was commenced on 06.07.2023, the wife of the said Lala Lajapathi Roy interrupted the auction



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sale and police intervened and thereafter, the auction sale was postponed as she had agreed to repay the debt, that the wife of the said Lala Lajapathi Roy has paid a sum of Rs.1,30,000/- on 12.03.2024 towards the repayment of the debt due and also promised to pay the remaining amount with accrued interest in due course of time and that the writ petitioner has also filed an additional affidavit in this regard.

11. Even according to the writ petitioner, a sum of Rs.1,30,000/- alone has been paid towards repayment of produce pledge loan of Rs. 3,50,000/- and accrued interest.

12. As already pointed out, surcharge proceedings came to be initiated by the second respondent not only against the writ petitioner but also against 11 other persons as per the recommendation made in the enquiry report under Section 81 of the said Act.

13. The learned Additional Government Pleader appearing for the respondents would mainly submit that the writ petitioner was in charge of the loan section at the relevant point of time, that the writ petitioner had taken charge of the Secretary post from 01.05.2018 but she had not taken



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any effective steps to realise the debt due from the then Vice President, that the said Vice President Lala Lajapathi Roy died on 21.11.2018 and though his house was very near to the Society, the writ petitioner had failed to inform the second respondent nor taken any steps to recover the same before his death and that therefore surcharge proceedings initiated against the writ petitioner cannot be dropped.

14. The writ petitioner has not specifically disputed the above factual aspects that she was in charge of the loan section at the relevant point of time and though she had taken charge of the Secretary post on 01.05.2018, she had not taken any effective steps either to inform the second respondent about the loan due by the then Vice President nor taken any steps to recover the same till his death on 21.11.2018.

15. As rightly contended by the learned Additional Government Pleader appearing for the respondents, if the writ petitioner is having valid defence, she can very well take the same before the second respondent in the surcharge proceedings, but after attending some hearings and after getting permission for engaging a lawyer, she has not turned up but filed the present writ petition.



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16. Considering the entire facts and circumstances of the case and also taking note of the enquiry reports filed under Sections 81 and 82 of the said Act and the fact that surcharge proceedings is pending, this Court is not inclined to quash the impugned notice which only directed the writ petitioner to appear for surcharge proceedings. Hence, this Court concludes that the writ petition is devoid of merit and the same is liable to be dismissed.

17. In the result, this Writ Petition is dismissed. The writ petitioner is directed to appear before the second respondent for surcharge proceedings and the second respondent is directed to complete the same and pass orders on merits and in accordance with law within a period of two months from the date of receipt of a copy of this order. The second respondent is further directed to consider the representation made by the writ petitioner and also to take note of the subsequent developments in the surcharge proceedings. Consequently, connected Miscellaneous Petitions are closed. No costs.

18.07.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
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K.MURALI SHANKAR,J.

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To

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2. The Deputy Registrar of Co-operative Societies,
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Kanyakumari District – 629164.

Pre-Delivery Order made in

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and

W.M.P.(MD)Nos.6504 and 13906 of 2021

Dated : 18.07.2024