



W.P(MD)No.13639 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.04.2024

Delivered on : 30.04.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.13639 of 2021

and

W.M.P(MD)No.10571 of 2021

N.Subramanian

... Petitioner

Vs.

1.The Joint Registrar of Co-operative Societies,
Dindigul Region, Dindigul District.

2.The Deputy Registrar of Co-operative Societies,
Palani Range, Dindigul District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in Na.Ka.No.3411/2019 Sa.pa, dated 12.07.2021 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.S.Kumar

For Respondents : Mr.A.K.Manikkam,
Government Advocate



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ORDER

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The Writ Petition is directed against the order passed by the first respondent, dated 12.07.2021, permanently disqualifying the petitioner from participating in the board of any society in future.

2. The petitioner has been elected as President of D.D.496, K.C. Patty Primary Agricultural Co-operative Credit Society Limited and serving as President from 06.08.2018 onwards.

3. The petitioner's case is that on 06.11.2020, the first respondent issued a notice under Section 36(1) of Tamil Nadu Co-operative Societies Act calling explanation from the petitioner as to why he should not be disqualified from the post of President; that the second respondent vide his proceedings, dated 13.08.2019 ordered for Section 81 enquiry to enquire the affairs of the said credit society; that the enquiry officer has submitted his report on 19.02.2020, stating that one Saravanan, Secretary of the said society has misappropriated the society funds to the tune of Rs.6,30,703/-; that since the petitioner has been vested with power of management under Section 33(1) of Tamil Nadu Co-operative Societies Act, it was alleged that the petitioner had failed to supervise and prevent



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the illegal activities of the said Saravanan and thereby, the petitioner has abetted to the illegal activities of the Secretary of the society and that the first respondent, without giving any reasonable opportunity of being heard, has passed the impugned order, dated 12.07.2021, permanently disqualifying the petitioner from the post and also held that the petitioner will not be entitled to participate in the board of any society in future. Aggrieved by the said impugned order, the present writ petition came to be filed.

4. The learned counsel for the writ petitioner would submit that the first respondent ought to have supplied the copy of Section 81 enquiry report; that the petitioner ought to have provided reasonable opportunity as provided under Section 36(2) of Tamil Nadu Co-operative Societies Act; that the first respondent has not conducted any personal enquiry, though the petitioner wishes to have enquiry; that the impugned order has been passed in total violation of principle of natural justice; that the first respondent ought not to have initiated disqualification proceedings unless there is an extraordinary situation exists and that therefore, the petitioner was constrained to move this Court challenging the impugned order.



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5. The defence of the respondents 1 and 2 is that the enquiry report received by the second respondent under Section 81 of Tamil Nadu Cooperative Societies Act, had revealed various serious irregularities and misappropriation committed by the Secretary of the society; that the Secretary had misappropriated a sum of Rs.5,43,973/- being the crop loan amount repaid by borrowers on various dates and also the amount paid by the saving bank account holders of the society; that the Secretary had also misappropriated the sale proceeds of Rs.16,160/- remitted by the salesman of fair price shops functioning under the control of the society; that the irregularities committed by the Secretary had caused a huge damage to the good will of the society and the members/borrowers had lost their faith and that the petitioner by his persistent willful negligence remained as a silent spectator.

6. The first respondent has also taken a stand that though the petitioner was not provided with a copy of Section 81 enquiry report, he had not insisted for the supply of said report at any point of time during the disqualification proceedings; that even before the commencement of the disqualification proceedings, surcharge proceedings under Section 87



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of the Act, for recovery of Rs.5,60,133/- from the petitioner and the Secretary of society, was initiated by the second respondent; that the petitioner had become aware of the enquiry proceedings, even during the course of Section 81 enquiry; that the petitioner was well aware of the irregularities committed by the Secretary; that the petitioner has not refuted any of the irregularities unearthed by Section 81 enquiry officer; that he had admitted all the irregularities committed by the Secretary; that the petitioner in his explanation, dated 29.06.2021 has indirectly admitted that he had failed to supervise the work of the Secretary and had promised to focus his entire attention on the business affairs of the society in future; that the said admission of the petitioner itself is enough to disqualify the petitioner under Section 36 of the Act and that the impugned disqualification order passed against the petitioner is just and valid and as such, the petition is liable to be dismissed.

7. Before entering into further discussion, it is necessary to refer the decision relied on by the learned counsel for the petitioner, in the case of ***C.Kamaraj Vs. Registrar of Cooperative Societies*** reported in ***(2017) 1 CTC 258*** and the relevant passages are extracted hereunder :



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“ 37. Turning to W.P.No.7648 of 2015 filed by one Mr.C.Kamaraj challenging the order of removal, it is seen that the petitioner had joined as a Member in the Society on 12.09.2012 and thereafter, he was elected as a Board of Director on 16.04.2013 and further, he was elected as President on 06.05.2013. He had opened a Savings Bank Account bearing A/c.No.10671 with a deposit of Rs.50,500/-. While he was functioning as a President of the Society, proceedings under Section 81 of the Act were initiated against him by the third respondent for alleged transaction effected in the Savings Bank Accounts of the Members between 01.04.2013 and 31.12.2013. Thereafter, the third respondent appointed one Mr.S.Murugesan, Cooperative Sub-Registrar as Enquiry officer, who, in turn, submitted his report on 28.04.2014. It is stated in the report that out of 3070 Savings Bank Accounts, misappropriations had taken place in 33 Savings Bank Accounts, which were done by the petitioner in colluding with one Mr.T.Rajavannian, General Manager (in-charge). It is further stated that they have made wrong entries in those 33 Savings Bank Accounts as if the account holder have deposited money with the Bank and permitted to withdraw the money. It is further stated that the petitioner had withdrawn a sum of Rs.3 lakhs on 17.08.2013 without putting his signature on the withdrawal slip, though he had only Rs.500/- in his account.



38. *The Enquiry Officer had also filed a separate report recommending the respondents to take action against the petitioner for misappropriating the funds belonging to the Society. Thereafter, the second respondent issued a show cause notice dated 29.01.2015 under Section 36 of the Act asking him to show cause why he should not be removed. Subsequently, the petitioner had also submitted his explanation dated 02.03.2015 denying the charges levelled against him.*

39. *Therefore, the contention of the learned counsel for the petitioner is that he was not afforded with reasonable opportunity of being heard before passing the impugned order of removal nor produced a copy of the enquiry report dated 28.04.2014. This contention carries much force in his favour, inasmuch as from the show cause notice dated 29.01.2015, it could be seen that a reference was made to a Report dated 28.04.2014 submitted by the Enquiry Officer, which is the basis for issuing show cause notice, however, at the same time, based on such report, the second respondent passed an impugned order of removal, without giving a copy of the report to the affected person. Such an approach of the second respondent is against the provisions of Section 81(3) r/w Rule 104(7). Dealing with a similar issue in W.P.No. 16617 of 2015 relating to supersession, I have also held that non-furnishing of enquiry report before removing the petitioner under Section 36 of the Act is fatal.*



40. Section 36 of the Act empowers the Registrar to take action against the delinquent to disqualify him permanently from holding in future any office in any registered Society, but, before taking such action, an enquiry under Section 81 or inspection under Section 82 should be undertaken to find out whether a member of a Board has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the Society. Admittedly, in the present case, enquiry was held by appointing one Mr.S.Murugesan, Cooperative Sub-Registrar, as Enquiry Officer; who, in turn, admittedly submitted his report on 28.04.2014 to the third respondent. But, unfortunately, a copy of the said report has not been furnished to the petitioner. Admitting non-furnishing of the report to the petitioner, learned counsel for the fourth respondent stated that there is no provision under the Act to furnish a copy of the report made under Section 81 of the Act. Such an contention of the learned counsel for the fourth respondent / approach of the second respondent in superseding the Board is erroneous, in the light of sub-section 2 of Section 36, which categorically says that no person shall be disqualified or removed under sub-section (1) of Section 36 without being given an opportunity of making his representation. For, while interpreting sub-section 2 of Section 36, this Court in Vallipattu's case (cited supra) has rightly held that the Registrar is duty bound to communicate



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necessary details available in the report of enquiry to the delinquent before taking action against the officer or servant. Therefore, when a copy of the report filed under Section 81 of the Act was admittedly not furnished to the petitioner, it is highly impossible for anyone to give explanation to the Registrar requesting not to take action under Section 36 (1) of the Act.”

8. In the present case, it is the specific contention of the petitioner that he has sent a representation to the Joint Registrar requesting him to furnish Section 81 enquiry report. But even according to the respondents, copy of the Section 81 enquiry report was not furnished to the petitioner.

9. It is pertinent to note that the respondents 1 and 2 in their counter statement have specifically admitted the non furnishing of copy of Section 81 report. But according to them, since the petitioner had not insisted for the supply of the said report at any point of time, the same was not given. Such a reply, as rightly contended by the learned counsel for the petitioner cannot be countenanced. Since the entire action came to be initiated only on the basis of the Section 81 enquiry report, the respondents are duty bound to serve a copy of the report before ever conducting enquiry and passing the impugned order.



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10. The next contention of the petitioner is that he was not given reasonable opportunity of being heard.

11. It is pertinent to note that the first respondent has not only disqualified from the said society, but also passed serious order of permanently disqualifying him from participating in the board of any society in future. Before ever passing such a very serious order, the authority, who conducted enquiry and passed the impugned order, should have given sufficient opportunity to take part in the enquiry proceedings.

12. The respondents in their counter affidavit have not specifically stated that the petitioner was provided with an opportunity of personal hearing, but on the other hand, they have taken a stand that the petitioner has not refuted any of the irregularities unearthed by Section 81 enquiry officer and that the petitioner had admitted all the irregularities committed by the Secretary of society.

13. It is not in dispute that the petitioner, after coming to know about the same, has placed the Secretary under suspension on 20.01.2020



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and taken steps to recover the entire amount due to the society and that the loss alleged to have caused by the Secretary has been recovered and credited into the account of the society. The respondents have not disputed the said factum.

14. As rightly contended by the learned counsel for the petitioner, the respondents have not produced any iota of materials to show that the petitioner was given sufficient opportunity to take part in the enquiry proceedings and reasonable opportunity of being heard was given to him. As already pointed out, the first respondent before passing the impugned order having serious civil consequences by taking away the petitioner's right to participate in the society election till the end of his life, should have given reasonable opportunity of being heard.

15. Considering the above and also taking note of the fact that the petitioner was not furnished with the copy of Section 81 enquiry report, despite his specific request, this Court has no hesitation to hold that the impugned order came to be passed in total violation of principles of natural justice.



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16. Considering the above, this Court has no other option, but to hold that the impugned order cannot be legally sustained and as such the same is liable to be set aside.

17. In the result, the Writ Petition is allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

30.04.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To

- 1.The Joint Registrar of Co-operative Societies,
Dindigul Region, Dindigul District.
- 2.The Deputy Registrar of Co-operative Societies,
Palani Range, Dindigul District.



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K.MURALI SHANKAR, J

DAS

Order made in
W.P(MD)No.13639 of 2021
and
W.M.P(MD)No.10571 of 2021

Dated : 30.04.2024