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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 09.01.2025

Pronounced on : 28.01.2025

CORAM

THE HON'BLE Mr. JUSTICE **C.V.KARTHIKEYAN**

W.P.No.34456 of 2024
and
W.M.P.No.37339 of 2024

J.Samuvel

.. Petitioner

Vs.

1.The Deputy Registrar of Cooperative Societies,
Ranipet Circle,
Ranipet.

2.R.Swetha,
Deputy Registrar of Cooperative Societies,
Ranipet Circle,
Ranipet.

3.The Management of the
V.V.2760, Arcot Panchayat Union Teachers
Cooperative Thrift and Credit Society,
Rep. by its Administrator,
Arcot, Ranipet (Dt).

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the 1st respondent in Na.



Ka. No.1741 / 2024 Sa. Pa. Surcharge No. 01/ 2021- 2022 dated 13.08.2024 (received by the petitioner by post on 23.10.2024) under Section 87 of Tamil nadu Co-operative Societies Act , 1983 and quash the same in so far as the petitioner is concerned and consequently, remand back to the 1st respondent to hold fresh enquiry in accordance with law.

For Petitioner .. Mr.L.P.Shanmugasundaram

For Respondents .. Mr.S.Ravikumar, Spl. Govt. Pleader

ORDER

This Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records relating to an order passed by the 1st respondent, Deputy Registrar of Cooperative Society, Ranipet in Na.Ka.No.1741/2024 Sa.Pa.Surcharge No.01/2021-2022 dated 13.08.2024 passed under Section 87 of the Tamil Nadu Cooperative Societies Act, 1983 and to quash the same in so far as the petitioner is concerned and consequently remand the matter back to the 1st respondent to hold fresh enquiry in accordance with law.

2.In the affidavit filed in support of the writ petition, it had been



contended that the petitioner was the elected President of the 3rd respondent society, Arcot Panchayat Union Teachers Cooperative Thrift and Credit Society from 10.08.2018 to 26.03.2020. An enquiry was conducted under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 to examine the affairs of the society relating to excess pay paid to the employees and loans disbursed to the members of the society. On the basis of the report, dated 19.06.2021, surcharge proceeding were initiated and a show cause notice was issued under Section 87 of the Act on 21.06.2021. It had been contended that relevant documents had not been issued to the petitioner along with the show cause notice. It was also contended that the witnesses whose statement were relied upon were not examined in the presence of the petitioner and opportunity to cross-examine the witnesses was not granted.

3.The petitioner then filed C.M.A (Co-op) No.20 of 2022 before the Cooperative Tribunal / Principal District Court at Vellore, challenging the show cause notice dated 21.06.2021. The tribunal passed an order on 08.12.2023 allowing the appeal and setting aside the show cause notice dated 21.06.2021 and remanded the matter back to the surcharge officer to follow directions passed in an allied C.M.A.No.9 of 2021 filed by one



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4.It is stated that even though such directions were issued, the impugned order had been passed by the 1st respondent without following such directions. The petitioner was not allowed to cross-examine the witnesses. It was under those circumstances that this Writ Petition had been filed seeking interference with the impugned order, and seeking the matter to be remanded back to the authority for fresh consideration.

5.A counter affidavit had been filed by the 1st respondent, wherein, the allegations that copies were not provided was denied and it was contended that a copy of the report of the enquiry under Section 81 of the Act was communicated to the petitioner. It was also stated that copies of relevant records and depositions of witnesses were also provided to the petitioner. It had been stated that after the order passed in C.M.A.(Co-op) No.20 of 2022 a fresh surcharge notice dated 15.02.2024 was issued to the petitioner. The petitioner did not submit any explanation but sought copies of documents which had already been provided to him. It had been further stated that it was only on the hearing date 10.06.2024 that the petitioner had given a



letter seeking permission to cross-examine the witnesses and it was contended that such request was placed for the first time. It was contended that the impugned order had been passed after following due procedure as enunciated under law and therefore, the Writ Petition should be dismissed.

6. Heard arguments advanced by Mr.L.P.Shanmugasundaram, learned counsel for the petitioner and Mr.S.Ravikumar, learned Special Government Pleader for the respondents.

7. The writ petitioner was the President of 3rd respondent society, Arcot Panchayat Union Teachers Co-operative Thrift and Credit Society, Arcot in Ranipet District between 10.08.2018 to 26.03.2020. An enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 with respect to allegations of excess pay paid to the employees and with respect to the loans disbursed to the members of the society. A report dated 19.06.2021 was then filed. A show cause notice had been issued under Section 87 of the Act to the petitioner on 21.06.2021 seeking explanation.

8. The petitioner claimed that opportunity had not been granted to him



and copies of relevant documents were also not served. He filed C.M.A (Co-op) No.20 of 2022 before the Cooperative Tribunal / Principal District Court at Vellore, challenging the show cause notice dated 21.06.2021. By an order dated 08.12.2023, the Civil Miscellaneous Appeal was allowed and the matter was remanded back to the authority concerned to pass fresh orders in accordance with directions issued.

9.The directions issued were to adhere to the principles of natural justice by furnishing copies of documents and to permit cross-examination of the witnesses. It is contended on behalf of the petitioner that without adhering to such directions, the impugned notice came to be passed under Section 87 of the Act.

10.In the counter affidavit, it had been contended that a copy of the enquiry report had actually been furnished to the petitioner and statements of witnesses had also been furnished. It was also contended that it was at the last stage of the enquiry that a request was placed by the petitioner to cross-examine the witnesses.

11.A careful examination of the aforementioned facts would reveal

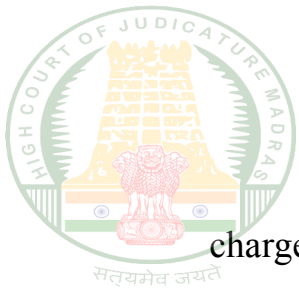


that the petitioner was not granted permission and had not cross-examined any of the witnesses. He had sought for permission but that was rejected.

The petitioner had also complained that the copy of the enquiry report had not been furnished to him though this fact had been denied by the respondents who stated that subsequently, the copy of the enquiry report had actually been furnished.

12.It is to be stated that the Registrar of Co-operative Society had issued a circular No.3 of 2018 dated 25.04.2018 giving guidelines / instructions to be followed while taking action under Sections 36 or 87 or 88 of the Act. Among other guidelines, it had been stated that opportunity should be granted to the person to defend himself. It was also stated that extension of time should normally be granted. It was also stated that witnesses should be examined only in the presence of the person concerned and opportunity should be granted to cross-examine the witnesses.

13.A perusal of the impugned order shows that these directions have not been followed by the respondents. It would only be appropriate that proper opportunity is granted to the petitioner, however, serious or grave the



charges are against him. Judicial Review would lie on the procedure adopted by a quasi-judicial authority. Among other procedures providing copies of all documents and granting permission to cross-examine the witnesses are sacrosanct.

14.It had been argued by the learned Special Government Pleader that the petitioner did not choose to cross-examine the witnesses at the earliest instance, but placed a request only towards the end of the enquiry. But still, even whether a request is placed or not, an obligation was on the respondents to seek whether the petitioner intends to cross-examine the witnesses and if a request is so made to bind witnesses over to be present for cross-examination. There cannot be any excuse for not following the principles of natural justice.

15.In view of these reasonings, I hold that the petitioner must be granted an opportunity to defend himself and denial of such opportunity had affected his right to be afforded fair opportunity to defend himself. The impugned order is therefore set aside and the matter is remitted back to the 1st respondent for fresh consideration. A direction is issued that necessary



opportunity to cross-examine the witnesses must be granted to the petitioner herein. The 1st respondent may issue notice to the petitioner, get a list of witnesses whom the petitioner proposes to cross-examine and fix a schedule for such cross-examination. The entire proceedings may be completed within a period of four months from the date of receipt of a copy of this order. The petitioner is directed to co-operate with the enquiry.

16. Accordingly, this Writ Petition stands allowed. No costs. Consequently, connected Writ Miscellaneous Petition is closed.

28.01.2025

Index: Yes/No
Internet: Yes/No
Speaking order / Non-speaking order
Neutral citation : Yes / No
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To



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1.The Deputy Registrar of Cooperative Societies,
Ranipet Circle,
Ranipet.

2.R.Swetha,
Deputy Registrar of Cooperative Societies,
Ranipet Circle,
Ranipet.

3.The Administrator,
Management of the V.V.2760, Arcot Panchayat Union Teachers
Cooperative Thrift and Credit Society,
Arcot, Ranipet (Dt).

C.V.KARTHIKEYAN,J.

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Pre-delivery order made in
W.P.No.34456 of 2024

28.01.2025