



W.A.(MD) No.138 of 2020 & W.P(MD)No.4089 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	17.12.2024
Pronounced on	31.01.2025

CORAM:

**THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN
and
THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR**

**W.A.(MD) No.138 of 2020 & W.P.(MD)No.4089 of 2020
and
C.M.P.(MD) Nos.1067 and 1800 of 2020
& W.M.P(MD)Nos.3454, 3455 and 9417 of 2020**

W.A(MD)No.138 of 2020

- 1.The Deputy Registrar of Co-operative Societies,
Office of the Deputy Registrar of Co-operative Societies,
Paramakudi-Madurai Main Road,
Paramakudi Post & Taluk,
Ramanathapuram District.
 - 2.The U/s 81 Enquiry Officer,
Field Officer, Kamuthi,
Office of the Deputy Registrar of Co-operative Societies,
Paramakudi, Ramnad District.
- ... Appellants/Respondents 1 & 3

-vs-

- 1.Y.Kannan
- ... Respondent/Writ Petitioner



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2.The Management/Administrator,
Q 1285 Kavadiatti Primary Agriculture,
Co-operative Societies,
Kavadiatti Post,
Kamuthi Taluk,
Ramnad District.

... 2nd Respondent/2nd Respondent

Prayer: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the common order passed by this Court in W.P.(MD) No.16303 of 2019, dated 19.11.2019.

For Appellants : Mrs.D.Farjana Ghousia
Special Government Pleader

For Respondents : Mr.V.Ragavachari,
Senior Counsel
for Mr.J.Anandkumar for R1

No Appearance for R2

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Y.Kannan

... Petitioner

-VS-

1.The Deputy Registrar of Co-operative Societies,
Office of the Deputy Registrar of Co-operative Societies,
Paramakudi-Madurai Main Road,
Paramakudi Post & Taluk,

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- Ramanathapuram District.
- 2.The U/s 81 Enquiry Officer,
Field Officer, Kamuthi,
Office of the Deputy Registrar of Co-operative Societies,
Paramakudi, Ramnad District.
- 3.The Management/Administrator,
Q 1285 Kavadiatti Primary Agriculture,
Co-operative Societies,
Kavadiatti Post,
Kamuthi Taluk,
Ramnad District.
- 4.Mr.Krishna Rao
Enquiry Officer U/s 81,
Field Officer, Kamuthi,
Office of the Deputy Registrar of Co-operative Societies,
Paramakudi, Ramnad District. ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records pertaining to the impugned enquiry report of the second respondent dated 08.08.2019 and quash the same as illegal.

For Petitioner : Mr.V.Ragavachari,
Senior Counsel
for Mr.J.Anandkumar

For Respondents : Mrs.D.Farjana Ghousia
Special Government Pleader for R1 to R3



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No Appearance for R4

COMMON JUDGMENT

[Judgment of the Court was made by RMT.TEEKAA RAMAN, J.]

W.A(MD)No.138 of 2020 is filed as against the order passed by this Court dated 19.11.2019 in W.P.(MD)No.16303 of 2019.

2.W.P.(MD)No.4089 of 2020 is filed to quash impugned enquiry report of the second respondent dated 08.08.2019.

3.For the sake of convenience, the parties are referred to as per the ranking in W.P.(MD)No.16303 of 2019.

4.The writ petitioner is an Ex-President of Q1285 Kavadiipatti Primary Agricultural Co-operative Credit Society, Kamuthi Taluk and his tenure was from 2013-2018. It is alleged by the petitioner that during his period of tenure, enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act (in short 'Act')



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was commenced based on four charges.

5. According to the petitioner, the main object of the society is that to sanction agricultural loan and jewel loan to their members and implement the Government Scheme. Pursuant to an audit conducted in the year 2015-2016, enquiry under Section 80 of the said Act was recommended. Without any investigation, the first respondent has issued order for conducting enquiry under Section 81 of the Tamil Nadu Co-operative Societies Act and appointed the third respondent/Enquiry Officer vide his impugned proceedings in Na.Ka.No. 1992/2018 Sa.Pa dated 01.11.2018. Hence, he filed the above writ petition in W.P(MD)No.16303 of 2019 alleging non-compliance of observance of principles of natural justice.

6. From the records, it reveals that the learned Special Government Pleader, before the learned Single Judge, has stated that the enquiry was completed. However, the report was not produced before the Court inspite of several adjournments and hence, the learned Single Judge has disbelieved the statement



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of the official respondents and passed the following order:

“...5. It is well settled that principles of natural justice shall be adhered before condemning a person. The conduct of the enquiry without giving ample opportunity is a farce and that enquiry should be conducted after giving full opportunity to the petitioner. Therefore, the third respondent is directed to conduct enquiry afresh and submit a report before this Court, within a period of Four weeks from today. It goes without saying that during the enquiry, the petitioner can file his objection in person and or adduce evidence by examining his witnesses and cross-examining all the respondents' side witnesses.”

7. Aggrieved against the said order, the Society has preferred the present writ appeal in W.A(MD)No.138 of 2020.

8(a) In the writ appeal, enquiry report dated 08.08.2019 was furnished, when the writ petitioner has moved for vacating the interim stay.

8(b) So, he has filed another writ petition in W.P(MD)No.4089 of 2020 to quash the enquiry report *inter alia* on multiple grounds as discussed *infra*. In W.P(MD)No.4089 of 2020, interim stay was granted. Since both cases are arising



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out of the same enquiry, the writ petition was heard together along with the writ appeal and a common order was passed.

9.Mrs.D.Farjana Ghousia, learned Special Government Pleader appearing for the official respondents would contend that the learned Single Judge is erroneous in passing the order and even before passing the order in W.P(MD)No.16303 of 2019 on 19.11.2018, the enquiry was completed and the report was issued on 08.08.2019 and hence, she seeks to set aside the order of the learned Single Judge ordering for conducting a fresh enquiry.

10(a) After hearing Mr.V.Ragavachari, learned Senior Counsel appearing for the writ petitioner, we find that had there been an enquiry report on 08.08.2019 as it has been now projected before this Court (in the writ appeal), this Court is at a loss to find itself as to why such an enquiry report was not furnished before the learned Single Judge, despite several adjournments being given during the months of September, October and November, 2019.



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10(b) It is seen from the adjudication papers that since the society has not produced the report under Section 81 of the Act, the learned Single Judge has passed the order on 19.11.2019. Hence, the plea raised by the learned Special Government Pleader that the time was extended for completion of enquiry appears to be only an afterthought and further appears to be a make-believe story.

11.The learned Senior Counsel appearing for the writ petitioner would contend that enquiry was commenced on 01.11.2018 and the enquiry report was issued on 08.08.2019. The said exercise of conducting enquiry is beyond the period prescribed under the Co-operative Societies Rule 10(4) and (5) r/w Section 81(4) of the Co-operative Societies Act and Rules, which contemplates an enquiry has to be conducted within a period of three months from the date of order and on such, further periods not exceeding six months in the aggregate. Therefore, admittedly, in the present case, enquiry was commenced on 01.11.2018, whereas enquiry report, though dated 08.08.2019, states that the said period is beyond the statutory period. Therefore, the enquiry is illegal and non-est in the eye of the law



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and prayed for allowing W.P.(MD)No.4089 of 2020.

12.We have given our anxious consideration to the rival submissions made by the learned counsel on either side.

13.The original writ petition in W.P.(MD)No.16303 of 2019 was filed primarily on the ground that there was a violation of principles of natural justice, since it was projected by the society that enquiry was completed. The learned Single Judge has asked whether an opportunity was given to the petitioner, who was faced the charges, to let in evidence, since nothing was forthcoming, he has passed an order to hold a fresh enquiry. Aggrieved against the said order, the present writ appeal has been filed. Interim stay was granted. When the vacate stay petition was filed by the writ petitioner, the society had come with new version, that they have completed the enquiry and filed a report as early as on 08.08.2019. Hence, liberty was given to the writ petitioner to challenge the enquiry report independently.



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14. Thus *supra*, the present writ petition came to be filed and heard together with the writ appeal. We also observed our observations and the attitude of the appellant Co-operative Society.

15(a) Now in the writ appeal, two grounds have been raised by the learned Senior Advocate appearing for the first respondent/writ petitioner. One is a violation of the principles of natural justice. The second point is that even accepting the case of the co-operative society that the enquiry was completed, for non-compliance of Rule 104(4) and (5) r/w Section 81(4) of the Co-operative Societies Act and the enquiry having alleged to have been completed beyond the period and hence, the same is liable to be set aside.

15(b) The summary of the dates, as could be seen from the enquiry report is as under:

“

<i>Sl.No.</i>	<i>Date</i>	<i>Enquiry Commenced on 10.11.2018</i>	<i>Date of Order</i>
<i>1.</i>	<i>19.01.2019</i>	<i>1st Order of extension was sought</i>	<i>01.02.2019</i>
<i>2.</i>	<i>19.02.2019</i>	<i>2nd order of extension was sought</i>	<i>27.02.2019</i>



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3.	18.03.2019	3 rd order of extension was sought	29.03.2019
4.	24.04.2019	4 th order of extension was sought	30.04.2019
5.	22.05.2019	5 th order of extension was sought	31.05.2019
6.	24.06.2019	6 th order of extension was sought	01.07.2019

”

As per the enquiry report, dated 08.08.2019, which is the subject matter of the challenge under the writ petition in W.P(MD)No.4089 of 2020. The time was extended upto 31.07.2019, but the order was passed on 08.08.2019.

16.At the risk of repetition, however for the sake of clarity, we are inclined to observe the following dates, namely, the enquiry under Section 81 of the said Act was commenced on 01.11.2018 and the total six months period in aggregate upto 31.05.2019. It is claimed that the time was extended. Even after 31.07.2019, there was no order of extension. But by the time, it is beyond the statutory period, the enquiry is said to have been conducted and concluded. Hence, viewing from any point of view either on six months or on the extended period, does not cross 30.05.2019. Admittedly, the enquiry report is 08.08.2019 and hence, we have no other option but to uphold the contention of the learned Senior Counsel for the writ petitioner that the enquiry is non-est in law.



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17(a) At this juncture, it remains to be stated that W.P.(MD)No.16303 of 2019 was disposed of on 19.11.2019. We are in the dark as to why the alleged enquiry, which is said to be completed as on 08.08.2019, was not brought before the Court. It also raises a sea of suspicion around the enquiry report, which is now challenged in the subsequent writ petition in W.P.(MD)No.4089 of 2020. We have perused the enquiry report.

17(b) A bare reading of the enquiry report will amply establish that statements were recorded from the erstwhile Secretary and the present secretary. However, no such copies were furnished to the petitioner. The conclusion of the enquiry officer was also based on the said statement. Therefore, the enquiry itself is based on the statement given by the erstwhile secretary and the present secretary. However, there is no independent application of mind and the petitioner has not been put on notice on those two documents. Therefore, there is a complete violation of principles of natural justice.



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18.Yet another point is that while the erstwhile Secretary, one Meenakshisundaram, was originally suspended by the petitioner for some malpractice. It is alleged that he had mooted one Samy Ayyavu to give a complaint in the month of March 2018. We are not expressing any opinion on the rivalry alleged to have been between the parties.

19.On perusal of the enquiry report, we find that the enquiry was contemplated on four counts, mainly on the ground that applications of 89 members for jewel loans were considered and for nine members, without getting any approval from the board, the jewel loans were sanctioned. However, the entire jewel loan given to all the members during the period 2017-2018 was duly repaid. The same was admitted in the statement of the secretary. So also, in respect of the second charge, the allegation was that for obtaining a jewel loan, bogus adangal extracts were given with regard to the same. Since the entire jewel loan has been repaid and there is no loss to the society, there cannot be any charge. Further, in respect of 3rd and 4th charges, the erstwhile secretary had withdrawn Rs.8,94,000/- and did not mention the same in the register for the



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society. However, the same was spent and with regard to the same, the said amount was admittedly withdrawn only for the disbursement of the jewel loan. When the jewel loan has been repaid in its entirety, the question of loss to the society does not arise.

20.It is admitted by both the parties that when there is no loss to the society, the question of taking penal action against the petitioner does not arise, and the entire enquiry report is based upon the statement of erstwhile secretary. No opportunity of being heard is given to the writ petitioner and even the alleged enquiry contemplated under Section 81 of the said Act has been completed beyond the statutory period. Hence viewing from any angle, the enquiry having been completed beyond the statutory period and the same is in gross violation of principles of natural justice, namely, without giving an opportunity of being heard to the petitioner, we find that the second writ petition filed by the very same petitioner in W.P(MD)No.4089 of 2020 is to be allowed. Accordingly, W.P. (MD)No.4089 of 2020 is allowed.



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21.For the above said reasons, the writ appeal is dismissed. No costs.

Consequently, connected miscellaneous petitions are closed.

[T.K.R., J.] [N.S., J.]
31.01.2025

NCC : Yes / No

Index : Yes / No

Internet : Yes / No

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To

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Ramnad District.

4.The Record Keeper,



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Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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RMT.TEEKAA RAMAN, J.
AND
N.SENTHILKUMAR, J.

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Pre-Delivery Judgment Made In
W.A.(MD) No.138 of 2020 &
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and
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