

(2006) 09 MAD CK 0054

Madras High Court

Case No: Writ Petition No. 25357 of 2006 and M.P. No. 1 of 2006

L. Ranganathan

APPELLANT

Vs

The Deputy Registrar of
Co-operative Societies

RESPONDENT

Date of Decision: Sept. 5, 2006

Acts Referred:

- Tamil Nadu Co-operative Societies Act, 1961 - Section 65, 71, 71(1), 81, 87

Citation: (2007) WritLR 502

Hon'ble Judges: P. Jyothimani, J

Bench: Single Bench

Advocate: K. Raja, for the Appellant; A. Edwin Prabhakar, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

P. Jyothimani, J.

This writ petition is filed challenging the order of the respondent dated 28.02.2006 under which the respondent by

invoking the powers u/s 87 of the Tamil Nadu Cooperative Societies Act has issued a show cause notice to the petitioner initiating surcharge

proceedings based on the report of the enquiry u/s 81 of the Tamil Nadu Cooperative Societies Act.

2. The writ petition is filed mainly on the ground that a copy of the enquiry report prepared by the Enquiry Officer based on the enquiry conducted

on 07.11.2005, has not been served on the petitioner.

3. When the matter came up for admission this Court has directed Mr. A. Edwin Prabakar, learned Government Advocate to take notice on behalf of the respondent and also directed not pass any final order based on the impugned showcause notice. Today Mr. Shankaran, learned Special Government Pleader, takes notice on behalf of the respondent would submit that factually it is true that the copy of the enquiry report has not been furnished on the petitioner. He would also admit the legal position in this regard that when the enquiry conducted u/s 81 of the Tamil Nadu Cooperative Societies Act, a copy the report has not served to the petitioner, the surcharge proceedings initiated u/s 87 of the said Act are not valid in law. A reliance is placed by the learned Counsel for the petitioner of this Court reported in M. Sambandam Vs. The Deputy Registrar (Credit) Co-operative Societies and Others, .

4. While referring to the provisions of Tamil Nadu Cooperative Societies Act, 1961 (Previous Act) this Court has held that in the absence of serving the copy of the enquiry report, the surcharge proceedings initiated u/s 71 of the earlier Act is not sustainable and it is violation of the principle of statutory provisions and also natural justice.

5. While dealing with the said legal position this Court has directed the same in paragraph 9 which reads as follows:

9. Coming to the next aspect, it is stated that except the show-cause notice the petitioner was not provided with the claim made by the first

respondent and the report of the enquiry officer. In this regard, it is relevant to mentioned that if any surcharge proceeding is initiated u/s 71 of the

Act the same has to be done in accordance with the said provision. The second proviso of Section 71(1) makes it clear that,

No order shall be passed against any person referred to in this sub-section unless the person concerned has been given an opportunity of making his representations.

The said provision makes it clear that if any proceeding is initiated u/s 71, before passing final order, the person concerned must be given an

opportunity to put forth his claim. In our case, even though an enquiry was conducted u/s 65 of the Act, at the instance of the Registrar of Co-

operative Societies the copy of the said enquiry report has not been furnished to the petitioner. The said position is clear even from the order of the

third respondent. In the light of second proviso to Section 71(1) in the absence of proof for furnishing copy of the enquiry report further action

taken by the first respondent, in pursuance of the enquiry report cannot be sustained on the principles of violation of statutory provision as well as

natural justice. Accordingly, I sustain the contention made by the learned Counsel appearing for the petitioner.

6. The said legal position reveals that without serving copy of the enquiry report, the surcharge proceedings cannot be initiated. It is also admitted

by the learned Special Government Pleader appearing for the respondent.

7. In the present case, admittedly the copy of the enquiry report has not been served on the petitioner before initiating the impugned surcharge

proceedings u/s 87 of the said Act.

8. In view of the same, the writ petition stands allowed the impugned showcause notice issued by the respondent dated 28.02.2006 is quashed,

however, giving liberty to the respondent to furnish the copy of the enquiry report to the petitioner and then proceed in accordance with law.

The writ petition stands allowed with the above terms. No Costs. Consequently, connected W.P.M.P. is closed.