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W.P.No.9282 of 2009

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 18.10.2023

C O R A M

**THE HONOURABLE Dr.JUSTICE D.NAGARJUN**

Writ Petition No.9282 of 2009

and

W.M.P.Nos.1 & 2 of 2009

A.Gnanasekaran

... Petitioner

Vs.

1. The Deputy Registrar Coop. Societies,  
Tindivanam Circle, Tindivanam,  
Villupuram District.

2. The Special Officer,  
Melolakkur Primary Agricultural Co-op Bank,  
Melolakkur, Gingee Taluk,  
villupuram District.

... Respondents

**Prayer:** Petition filed under Article 226 of the Constitution of India for the issuance of a writ of Certiorari for call for the entire records relating to the impugned order passed by the 1<sup>st</sup> respondent in his proceedings No.Na.Ka.No.3963/2003 Ku.Na, dated 25.08.2004 which was confirmed by the Coop. Tribunal in C.M.A.No.47/2003, dated 17.12.2008 on the file of the District and Sessions Judge, Villupuram and quash the same.

For petitioner

... M/s.A.Gnanasekaran



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For Respondents

... M/s.A.M.Ayyadurai,  
Government Advocate for R1  
: Mr.R.Neelakandan for R2

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## ORDER

The petitioner has filed the writ of certiorari challenging the order passed by the 1<sup>st</sup> respondent in his proceedings No.Na.Ka.No.3963/2003 Ku.Na, dated 25.08.2004 which was confirmed by the Cooperative Tribunal in C.M.A.No.47/2003, dated 17.12.2008 on the file of the District and Sessions Judge, Villupuram.

2. The facts, as per the affidavit enclosed to this writ petition are that the petitioner was working as a Clerk in the second respondent Bank. The first respondent herein without giving opportunity and without following procedure as laid down under Section 81(4) of Tamil Nadu Cooperative Societies Act as well as Rule 104 of Tamil Nadu Cooperative Societies Act, has submitted a report against the petitioner. After receipt of the report, the first respondent without furnishing the same to the petitioner and after a lapse of six months, initiated Surcharge Proceedings under Section 87 against the petitioner. The petitioner has filed Writ Petition in W.P.No.41290 of 2004, seeking to furnish the copy



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of the enquiry report and the same was disposed of by directing the first respondent to furnish the copy of the enquiry report to the petitioner.

3. Learned counsel for the petitioner has submitted that without furnishing the enquiry report under Section 81, the first respondent has passed surcharge proceedings under Section 87, vide Na.Ka.No.3963/2003 Ku.Na, dated 25.08.2004, by fixing liability on the petitioner to pay a sum of Rs.4.77 lakhs along with other employees. The petitioner has preferred Statutory Appeal under Section 152 of Tamil Nadu Cooperative Societies Act before the District and Sessions Judge, Villupuram in C.M.A.No.47 of 2003 and he had not preferred Statutory Appeal under Section 87. But the District Court/Cooperative Tribunal on 17.12.2008 passed the final order as if the petitioner has challenged the order passed by the first respondent under Section 87 surcharge proceedings and rejected the Appeal. Hence, the petitioner is before this Court by way of this Writ Petition.

4. Learned Counsel for the first respondent has filed counter affidavit and contended that the enquiry officer has observed the procedure as laid down under Section 81(4) of the Act and Rule 104(6)



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of the Tamil Nadu Cooperative Societies Act and submitted his report. It is also submitted that the enquiry officer has given sufficient opportunity to the petitioner and obtained statement prior to submissions of his report. The first respondent based the enquiry report has passed the surcharge order against the petitioner in 11 counts amounting to Rs.4.77 lakhs. It is further submitted that the petitioner had not approached the first respondent to furnish a copy of the enquiry report and straight away approached the High Court for furnishing a copy of the enquiry report and as per orders dated 24.11.2004, copy of the enquiry report was also furnished to the petitioner. Thereby, the contentions of the petitioner are not sustainable and also unacceptable.

5. Heard both sides and perused the documents on record.

6. During the course of the arguments, it is brought to the notice of this Court by the respondents that Full Bench this court consisting of five judges, in ***Writ Appeal No.1573 of 1998***, dated ***29.09.2006***, has ruled that the writ petition will not lie against the society it is an instrumentality of the State. The operative portion of the Full Bench Judgement sited supra reads as under:



21. From the above discussion, the following propositions emerge:-

“(i) If a particular co-operative society can be characterised as a State within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an authority within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition.

(ii) Applying the tests in *Ajay Hasia* it is held that the respondent society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution.

(iii) Even if a society cannot be characterised as a State within the meaning of Article 12 of the Constitution, even so a writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a person or an authority within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce



*such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.*

*(iv) A society, which is not a State would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.*

*(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a State a writ would lie when the case falls under Clauses (iii) and (iv) above.*

*(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a State, the service conditions of its employees governed by its bye-laws cannot be enforced through a writ petition.*



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(vii) *In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.*

(viii) *The decision in M.Thanikkachalam v. Madhuranthagam Agricultural Co-operative Society, 2000 (4) CTC 556 is no longer good law, in view of the decision of the seven-Judge Bench of the Supreme Court in Pradeep Kumar Biswas case and the other decisions referred to here before.*

*The reference is answered accordingly. Registry is directed to place the paper before the appropriate bench for its disposal.”*

7. The respondent society is not an instrumentality of the state within the meaning of Article 12 of the Constitution. Once the second respondent is not an instrumentality of the State, the writ petition will not lie against the society.

8. In view of the above the Registry is directed to convert the Writ Petition to Civil Revision Petition and place it before appropriate bench



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**Dr.D.NAGARJUN, J.**

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after obtaining the orders from My Lord The Hon'ble Chief Justice. No costs. Consequently, connected miscellaneous petitions are closed.

18.10.2023

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Index: Yes/No

Internet: Yes/No

Neutral Citation: Yes/No

To

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