



W.P.(MD)No.18125 of 2016

WEB COPY **BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

<i>Judgment Reserved On</i>	<i>Judgment Pronounced On</i>
17.04.2023	21.06.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.P.(MD)No.18125 of 2016

and

W.M.P(MD)Nos.13070 & 13701 of 2016

P.Lakshmanan

... Petitioner

Vs.

1.The Registrar (Housing),
Tamil Nadu Co-Operative Housing Society,
Tamil Nadu Housing Board Campus,
No.493, Anna Salai, Nandanam,
Chennai - 600 035.

2.The Deputy Registrar (Housing),
Tamil Nadu Co-Operative Housing Society,
Madurai Region,
K.K.Nagar I Street,
Madurai - 625 020.

3.The President,
Madurai South Taluk Co-Operative Housing Society Ltd.,
Chitrakala Studio Street,
Tirunagar,
Madurai - 625 006.

.... Respondents



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PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of *Writ of Certiorarified Mandamus* to call for the records pertaining to the impugned order Ref.Na.Ka.No.5247/2016 dated 02.09.2016 on the file of the Respondent No.1 and the consequential order Ref.Na.Ka.No. 715/2015/Thi.Pa. dated 06.09.2016 on the file of Respondent No.2 and the consequential order dated 07.09.2016 on the file of Respondent No.3 and quash the same as illegal and consequently to forbear the respondents from initiating disciplinary proceedings against the petitioner.

For Petitioner : Mr.G.Karthik
for M/s.Lajapathi Roy & Associates

For Respondents : Mr.R.Ragavendran, - for R1 & R2
Government Advocate

No Appearance - for R3

ORDER

This writ petition is filed to quash the impugned order, dated 02.09.2016 and consequential order, dated 06.09.2016 and 07.09.2016 with a consequential relief to forbear the respondents from initiating disciplinary proceedings.



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2. The petitioner joined the service of Madurai South Taluk Cooperative Housing Society, as Clerk on 19.12.1995. He has also functioning as General Secretary of the Tamil Nadu Taluk Co-operative Housing Societies Union with Registration No.1091/TUL, affiliated to the Tamil Nadu Government Employees Union, Madurai. As the General Secretary for the said Union, he would raise voice for cause of the employees.

3. A State level Central Committee Meeting of the Union was held at Madurai on 13.08.2016 and in the said meeting, various resolutions were passed highlighting the plights of employees and the arrears of salary to be paid to 4000 employees for the past 40 months. Besides, it was resolved to take steps to reviving the housing societies by infusing adequate credit support. In the said meeting, it was also resolved to intensify the agitation, if the problems are not adequately addressed in the ongoing State Legislative Assembly proceedings.

4. The contention of the petitioner is that it is a collective decision taken by the organization, after intensive deliberations. A press news, dated 28.02.2016 was published giving coverage to the decisions of the said meeting.



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In the news item it was put forth as if the same were conveyed by the petitioner in his individual capacity and he has given in the interview. But the fact remains it is the collective organizational demand which was conveyed to the media. The petitioner in the capacity of Office bearer of Union has endorsed the said demand and resolution. The copies of the resolution passed on the demands in the organizational meeting was circulated to the newspapers. The petitioner never gave any personal interview to the press, nor spoken anything as reported in the news item. When the news item was brought to the notice of the petitioner, he addressed a detailed communication, dated 29.08.2016 to the Editor of Dinakaran newspaper, denying such an interview, as made out by them was denied and also requested to publish the denial in the newspaper. The petitioner has also explained these facts to the 3rd respondent, who is the disciplinary authority, vide letter, dated 29.08.2016 and the authority was also convinced about the bonafide of the statements. However, to the shock of the petitioner, the respondents have issued the impugned order, dated 07.09.2016, citing the orders, dated 02.09.2016 of the 1st respondent and the order of the 2nd respondent, dated 06.09.2016 and called for explanation from the petitioner regarding the said news item. The respondents have sought clarifications about



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the derogatory comments. The respondents have also intimated that the orders of the higher authorities had directed to take disciplinary proceedings against the petitioner under Section 76 of the Tamil Nadu Co-operative Societies Act.

5. The contention of the petitioner is such an action is unsustainable. The 1st respondent impugned order, dated 02.09.2016 is illegal since the very content vitiates the entire process of initiation of disciplinary proceedings. The 3rd respondent, who is a disciplinary authority, vide letter, dated 29.08.2016 and 14.09.2016 brought to the notice of the 1st respondent about the explanation submitted by the petitioner and also intimated the facts that the demands were made to redress of the plights of the society employees and the same is only an organizational action and no adverse role was played by the petitioner as individual capacity. The 3rd respondent has also brought to the light to the other respondents, the positive role played by the petitioner in the past in support of the Hon'ble Chief Minister during crisis period. In spite of the same, through the impugned order, the respondents have initiated disciplinary proceedings. Since the petitioner has taken action in the organizational capacity, the impugned



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order demotivated the petitioner from discharging his role as the General Secretary of the Union. Therefore, the petitioner is before this Court.

6. The respondents on instructions submitted that the petitioner has addressed the press conference and has used derogatory words. If the petitioner is denying the same, the petitioner ought to have issued a denial statement and that same ought to have been published in the newspaper. Simply denying the same through a letter is not sufficient. The action of the petitioner has put the government in poor light among the general public and hence the impugned proceedings is legally valid. The petitioner himself has admitted that the news item contains the derogatory statement, that is why the petitioner has taken a plea before this Court that he addressed a letter to the Editor denying the same. If such statements are allowed, it will affect the functioning of the society. In short, it will affect the administration of the State Government. Therefore, the respondents thought it fit to initiate disciplinary proceedings. The writ petition is filed against the society. The society is not a Government, under article 12 of the Constitution of India and hence, the writ petition is not maintainable.



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7. Moreover, the proceedings challenged in this writ petition are only notice stage, hence writ petition cannot be maintained in notice stage since the very initiation of the disciplinary proceedings cannot be challenged. The petitioner ought to face the disciplinary proceedings. If any orders are passed the petitioner has liberty to challenge the same before the appropriate appellate or revision or review authorities. The petitioner has rushed to the Court, the disciplinary proceedings is only in preliminary stage. For all these reasons, the respondents have prayed to dismiss the writ petition. Moreover, it is only the internal communication that has been challenged in this writ petition.

8. Heard Mr.G.Karthik, for M/s.Lajapathi Roy & Associates, learned counsel appearing for the petitioner and Mr.R.Ragavendran, learned Government Advocate appearing for 1st and 2nd respondents. Perused the material documents available on record.

9. The contention of the respondent is that the writ petition is not maintainable, a society is not a State and writ petition cannot be filed under Article 226 of the Constitution of India. This contention of the respondent is



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refuted by the petitioner and submitted that this is a general statement. Under certain circumstances, a writ may be issued 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 petition would lie. In the present case, the petitioner being a General Secretary of the Union, the disciplinary proceedings sought to be initiated infringes the fundamental right guaranteed under 19(1)(c) and hence, the writ petition is maintainable.

10. But the respondents submitted that freedom of speech is always restricted and it is not a fundamental right without any restrictions. In the present case, the petitioner has abused the Hon'ble Minister of Tamil Nadu through his language. The respondents relied on the newspaper item, which is extracted hereunder:

□சம்பள பாக்கி இல்லை என்று பேசிய

அமைச்சரை கண்டித்து 31ம் தேதி

கூட்டுறவு சங்கம் மூடும் போராட்டம்□



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ஊழியர் சங்கம் அதிரடி முடிவு

.....

அதிகாரிகளின் தவறை மறைப்பதற்காக அப்பாவி ஊழியர்களுக்கு பல மாதங்களாக சம்பளம் நிலுவை வைத்துள்ளனர். வருடக்கணக்கில் காத்திருந்த பல ஊழியர்கள் வேறு வழியில்லாமல் வேலையை விட்டு ஓடிவிட்டனர். பலபேர் ஓட்டல்களில் கூலி வேலை செய்கின்றனர். தொழிற்சங்க மாநில செயலாளராகிய எனக்கே பல மாதமாக சம்பளம் கிடைக்கவில்லை.

நிலைமை இப்படி இருக்க, துறை அமைச்சரோ, ஊழியர்களுக்கு சம்பள பாக்கி எதுவும் இல்லை என்று சட்டசபையில் தெரிவித்துளார். இதை வண்மையாக கண்டிக்கிறோம். உண்மை தகவலை மறைத்துவிட்டு சட்டசபையில் அமைச்சர் தவறான தகவலை பதிவு செய்கிறார். அமைச்சரின் இந்த செயலை கண்டித்தும், உடனடியாக சம்பளம் வழங்க கோரியும் வரும் 31ம் தேதி அனைத்து சங்க அலுவலகங்களையும் இழுத்து மூடி சாவியை துணைபதிவாளரிடம் ஒப்படைக்கும் போராட்டத்தை நடத்த உள்ளோம் என்றார்□.

It is seen that the Hon'ble Minister has submitted before the Assembly that the employees of the Cooperative societies were paid salary and there is no balance payable. However, the fact was otherwise, as on the date of the statement of the



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Hon'ble Minister the petitioner and the other employees did not receive salary and there are arrears of salary for the past 40 months. The employees were agitated therefore, the Union has passed a resolution that the salary was not paid and demanded to pay salary. The said resolution was circulated to the newspaper and the petitioner being the Union leader his name was referred in the newspaper. As rightly pointed out by the petitioner, the said demand and resolution was passed in the Union meeting, which is reported in the newspaper. As submitted by the respondents even if it is taken that the petitioner has made such statement before the newspaper, this Court is of the considered opinion that the same is not derogatory. The petitioner had submitted the true and facts. The petitioner has stated, because the salary was not paid to the employees. Since salary was not paid, some of the employees had left the job and are doing Coolie jobs in some Hotels. Since the statement of the Hon'ble Minister is incorrect, the petitioner as a General Secretary of the Union has strongly objected to the statement of Hon'ble Minister. And further submitted that they will indulge in strike by closing the work place and it will be locked and the keys will be handed over to the Registrar. The respondents have taken this statement as offensive. In any democratic country, the employees have freedom to state the



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real facts in the public domain and the employees have right to go for agitation, the only condition under the Industrial Dispute Act is, they should issue proper notice to the employer. In the present case, the news item can be at the most an intimation to the employer that the Hon'ble Minister's statement is incorrect and if the issue is not addressed the employees were left with no other option than to go for agitation.

II. On the face of reading the news item, this Court is of the considered opinion that there is no offensive message against the Hon'ble Minister. The petitioner and the Union and the other employees belonging to the Union agitated that they did not receive any salary but, the statement of the Hon'ble Minister before the Assembly that they had paid the salary to such employees. As on date of statement, before the Assembly the salary was not received by the employees is also a fact. Therefore, for such statement, the respondents cannot take any action against the petitioner. As rightly pointed out by the petitioner, he has made the statement as a General Secretary of the union and it is not a personal statement. Moreover, the statement only says that they will go for a strike by locking the institutions and handing over the keys to the



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Registrar. Therefore, this Court is of the considered opinion that very initiation of the action itself is erroneous and unwarranted.

12. The next contention by the respondents is that the impugned orders are only an internal communication. The impugned order, dated 06.09.2016 directed the President of the Cooperative societies to take action against the petitioner. It is seen that the very initiation of the disciplinary proceedings itself is illegal. The respondents are recommending to take a severe action, would amount to pre concluding the issue. The direction of severe action itself would indicate that the respondents have predetermined the issue and are intending to take severe action against the petitioner and any explanation by the petitioner would not have any effect, the disciplinary proceeding would be an empty formality, which would affect the petitioner's right. The petitioner would be put to hardship, there will not be any natural justice, the respondents would instruct the enquiry officer to submit a report as if it is proved in order to take severe action. There will not be transparency. Therefore, this Court is of the considered opinion that the impugned disciplinary proceedings should not be proceeded with.



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13. On perusal of the order, dated 06.09.2016, it is seen that the respondents have directed the 3rd respondent to take severe action against the petitioner. The relevant portion is extracted hereunder:

□MDA/HSG 92 மதுரை தெற்கு வட்ட கூட்டுறவு வீட்டுவசதி சங்கப்பணியாளர் திரு.பெ.லெட்சுமணன் மாண்புமிகு வீட்டுவசதி துறை அமைச்சர் அவர்களை கண்டித்து நாளிதழில் செய்தி வெளியிட்டுள்ள காரணத்தால், பார்வையில் காணும் பதிவாளர் (வீட்டுவசதி) கடிதத்தில் திரு.பெ.லெட்சுமணன் மீது கடும் ஒழுங்கு நடவடிக்கை மேற்கொள்ளும்படி தெரிவிக்கப்பட்டுள்ளது. பார்வையில் காணும் பதிவாளர் (வீட்டுவசதி) கடித நகல் இத்துடன் இணைத்தனுப்பப்படுகிறது. அதில் தெரிவிக்கப்பட்டவாறு, தனியார் மீது கடும் ஒழுங்கு நடவடிக்கை மேற்கொண்டு இவ்வலுவலகத்திற்கு உடன் அறிக்கை சமர்ப்பிக்கும்படி கேட்டுக்கொள்கிறேன். □

14. On perusing the same, this Court is of the considered opinion that the respondents have predetermined the entire issue. Hence, there will not be any transparency in the enquiry proceedings and it will be violated the principles of natural justice. Therefore, this Court is inclined to quash the impugned notices, even though, it is termed as show cause notice and even though it is internal communication. The freedom of speech of the petitioner is



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15. For all these reasons, the impugned orders, dated 02.09.2016 and consequential order, dated 06.09.2016 and 07.09.2016 are hereby quashed. The respondents are restrained from taking disciplinary proceedings against the petitioner in so far as the news item is concerned.

16. With these observations and directions, this Writ Petition is allowed. No Costs. Consequently, connected miscellaneous petitions are closed.

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

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To

- 1.The Registrar (Housing),
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S.SRIMATHY, J

KSA

**Order made in
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