

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 11.09.2017

CORAM
THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P. No.16573 of 2015

M.Nehru

... Petitioner

Vs.

1. The Deputy Registrar of Co-operative Societies
(Full Additional Charge) Dharmapuri region,
Dharmapuri.

2. The Secretary to Government,
Co-operative Food and Consumer
Protection Department,
Fort St.George,
Chennai.

(R2 Suo Motu impleaded
vide order of Court dated 21.08.2017
by DKKJ in W.P.No.16573 of 2015)

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India,
praying for the issuance of a Writ of Certiorari or direction in the nature of
writ calling for the records of the respondent in Na.Ka.No.1670/2015/sapa 2
dated 27.05.2015 and quash the same.

For Petitioner :Mr. M.S.Palaniswamy

For Respondents :Mr. L.P.Shanmuga Sundaram,
Special Government Pleader

ORDER

The prayer in the writ petition is for the issuance of a Writ of Certiorari, calling for the records of the respondent in Na.Ka.No.1670/2015/sapa 2 dated 27.05.2015 and quash the same.

2. According to the learned counsel for the petitioner, the respondents have issued a Show Cause Notice to disqualify him under Section 34(2)(a) of the Tamil Nadu Co-operative Societies Act for non payment of the loan dues to the respondent - Society. The petitioner had challenged the said Show Cause Notice before this Court. The learned counsel for the petitioner submitted that the issue has been squarely covered by various orders of this Court, wherein this Court has considered, the similar issue involved in the present case and quashed the proceedings under Section 34(2) (a) of the Tamil Nadu Co-operative Societies Act and the said order has been reported in **1999 Writ L.R.474 in W.P.No.13023 of 1998 in the case of P.S.Mani and 2 others Vs. The Joint Registrar of Co-op. Societies, Erode** wherein in paragraph No.4 it has been extracted as follows:-

Section 34 of the Tamil Nadu Co-operative Societies Act 1983 is similar to Section 28 of the Tamil Nadu Co-operative Societies Act, 1961. Relevant portion of Section 28(1) of Act of 1961 reads thus:-

“28 (1) No person shall be eligible for being elected or appointed as a member of a committee if he-

(b) (i) is in default to the Society or to any other registered Society in respect of any loan or loans taken by him for such period as is prescribed in the bye-laws of the Society concerned or in any case for a period exceeding three months”.

That Section of the earlier Act has got relevance, because, under similar circumstances, this Court has interpreted that Section and has held as to what is meant by the expression “is in default to the Society”. In Sec.34(1) (b) also, the words used are “is in default to the registered Society”. Nainar Sundaram, J., as he then was, in the decision reported in 99 L.W. Page 400 (Sivashanmugham, T.T. v. The Registrar of Co-operative Societies), after extracting the above Section has held thus:-

“The rule invoked by the second respondent to exercise the power of removal is Rs.40 of the Rules framed under the Act. The show cause notice was issued on 8th April 1985. The default relates to February, 1980. Admittedly, the dues have been collected in December, 1980. Hence, either on the date of the show cause or on the date of the passing of the order by the second respondent, the petitioner could not be held to be in default to the Society in question within the meaning of the said provision. The set of expressions used in the provision extracted above is “is in default to the society” S.28 (2)(a) merely says that a member of the committee shall cease to hold office, if he

becomes subject to any of the disqualifications mentioned in Sub-S(1). If a member of the committee "is in default to the society" within the meaning of S.8(1)(b)(i) of the Act on the date of the initiation of the action under R.40 the exercise of the power of removal may be held to be competent. We can take it that if on the date of the show cause namely on 8th April 1985, the petitioner was in default within the meaning of S.28 (1)(b)(i) and if there was a clearance of the dues only after the show cause and before the passing of the order that may not bring him any amelioration with regard to the default. Such view has been expressed by Kailasam, J., (as he then was) in Ramakrishna Reddiar V. The Deputy Registrar (1970-1-M.L.J. 197) But here, long before the date of the show cause namely 8th April, 1985 the petitioner had cleared the dues and he could not be held to have had been in default to the Society in question on the date of initiation of action. Hence, it is not possible to bring the matter within the ambit of Ss.28(1)(b)(i) and 28(2)(a) of the Act".

As could be seen from the above extract, learned Judge has also taken into consideration the decision of Kailasam, J. (as he then was), reported in 1970-1- M.L.J. Page 197. In this case, petitioners 1 and 2 have discharged the loan on 09.01.1998 and 27.12.1997 respectively. The show cause notice is dated 26.02.1998. So, on the date when the show cause notices were issued, they were not in

default to the society. Following the decision referred to supra, the writ petition as against petitioners 1 and 2 has to be allowed.

Therefore, the impugned notice issued by the respondent is liable to be quashed.

3. The learned Special Government Pleader for the respondents submitted that pursuant to the judgment passed by this Court, the Government has issued G.O.Ms.No.155 Co-operation, Food and Consumer Protection Department, dated 01.10.2009. In the light of the aforesaid Judgment passed by this Hon'ble Court.

4. After considering the decisions of this Court in W.P.No.9942 of 1998, W.P.No.7381 of 1995, W.P.No.7387 of 1999, W.P.No.7415 of 1999, W.P.No.7445 of 1999 and W.P.No.9518 of 1998 and in W.A.No.2699 of 1999, the Government passed G.O.No.155, Cooperation, Food and Consumer Protection Department dated 01.10.2009, have ordered the Registrar of Cooperative Societies to issue instructions to Circle Deputy Registrars to initiate action to disqualify a member of the board of a Cooperative Society who has incurred the disqualification specified in Section 34(1) (b)(i) of the Tamil Nadu Co-operative Societies Act, 1983, as if that member has cleared

the default amount before the receipt of the notice of disqualification, the Circle Deputy Registrar shall drop further action in the matter. Pursuant to this Government order, this Court has come across in several writ petitions challenging the show cause notice issued to the defaulters wherein the authority has initiated action after several years, by relying upon Section 34 of the Tamil Nadu Cooperative Societies Act. In some cases, without considering the earlier decision of the Court as well as the Government Order in GO.Ms.No.155 dated 01.10.2009, has been rejected the nomination submitted by the member to contest the election by relying Section 34 of the Act. There is no time limit and uniformity to initiate action under Section 34 of the Act against the concerned defaulters. At this stage, this Court had directed the Registrar of Co-operative Societies to frame the guidelines by fixing time limit to initiate action against the defaulters. Today, the Registrar of Co-operative Societies had placed GO.Ms.No.132 Cooperation, Food and Consumer Protection (CJ2) Department dated 05.09.2017, wherein the Government has considered the proposal of the Registrar of Cooperative Societies and issued necessary instructions by fixing a time for taking action for disqualification under Section 34(3) and 34(6) of Tamil Nadu Cooperative Societies Act, 1983. The aforesaid Government order were passed at the efforts taken by the Registrar of Cooperative Society. The said GO.Ms.No.132 Cooperation, Food and Consumer Protection Department dated 05.09.2017 shall form part of this

order.

5. Accordingly, in view of the earlier decision of this Court and the G.O.MS.No.155 Food Co-operative Societies Department dated 01.10.2009, the impugned notice passed by the first respondent is quashed and the writ petition stands allowed. No costs.

11.09.2017

Internet:Yes/No

dpq

1. The Deputy Registrar of Co-operative Societies
(Full Additional Charge) Dharmapuri region,
Dharmapuri.

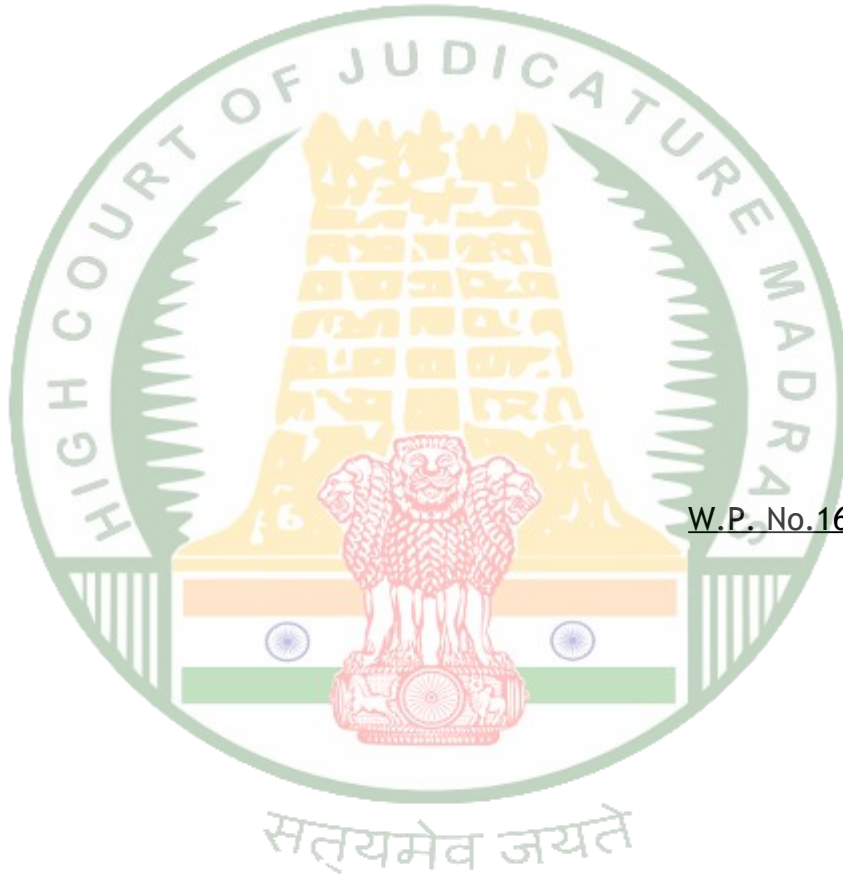
2. The Secretary to Government,
Co-operative Food and Consumer
Protection Department,
Fort St.George, Chennai.

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D.KRISHNAKUMAR, J

dpq



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