



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 15.11.2016

Orders Pronounced on : 02.12.2016

CORAM:

THE HON'BLE DR. JUSTICE S.VIMALA

W.P. (MD) Nos.20431 to 20434 of 2016

& W.M.P. (MD) Nos.14610 to 14613 of 2016

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Venkidusamy	... Petitioner in W.P.(MD) No.20431 / 2016
Panchavarnam	... Petitioner in W.P.(MD) No.20432 / 2016
Packiyam	... Petitioner in W.P.(MD) No.20433 / 2016
Annadurai	... Petitioner in W.P.(MD) No.20434 / 2016

vs.

1. The Joint Registrar of Co-operative Societies,
Trichirappalli Region, Trichirappalli
 2. The Deputy Registrar of Cooperative Societies,
Trichirappalli Circle,
Trichirappalli
- ... Respondents in all W.Ps.

Petitions filed under Article 226 of the Constitution of India, praying for the issuance of Writs of Certiorari to call for the records of the impugned orders of the second respondent, dated 07.10.2016, vide his proceedings Na.Ka.No.1452/2016/sa.pa., and quash the same as illegal.

For Petitioner in all W.Ps. : Mr. S.Muthukrishnan, for,
Mr. T.Vadivelan

For Respondents in all W.Ps. : Mr. A.Muthukaruppan, AGP.,

C O M M O N O R D E R

These writ petitions have been filed by the petitioners seeking to quash the impugned orders passed by the second respondent, dated 07.10.2016, vide his proceedings in Na.Ka.No.1452/2016/sa.pa, by which, each of the petitioner was disqualified from being the Executive Committee Member / Board of Director.

2.Since the issues involved in these writ petitions are common, the writ petitions are heard together and a common order is passed.

3. The petitioner in W.P.(MD) No.20431 of 2016 is the elected Board of Director to MM348 Primary Agriculture Cooperative Credit Society Limited, at Goundanpatty. This petitioner had obtained a loan in KCC Loan No.2540, on 04.05.2015, for a sum of Rs.91,170/-

for the purpose of paddy cultivation. **The due date for repayment is 03.01.2016.**

3.1. The petitioner in W.P.(MD) No.20432 of 2016 is the elected Board of Director to MM348 Primary Agriculture Cooperative Credit Society Limited, at Goundanpatty. This petitioner had obtained a loan in KCC SF Loan No.2625, on 01.06.2015, for a sum of Rs.91,600/- for the purpose of paddy cultivation. **The due date for repayment is 31.01.2016.**

3.2. The petitioner in W.P.(MD) No.20433 of 2016 is the elected Board of Director to MM348 Primary Agriculture Cooperative Credit Society Limited, at Goundanpatty. This petitioner had obtained a loan in MT Loan No.557, on 28.02.2014, for a sum of Rs.75,000/- for the purpose of laying pipeline. **The due date for repayment is 28.02.2016.**

3.3. The petitioner in W.P.(MD) No.20434 of 2016 is the elected Board of Director to MM348 Primary Agriculture Cooperative Credit Society Limited, at Goundanpatty. This petitioner had obtained a loan in MT Loan No.598, on 28.02.2014, for a sum of Rs.42,500/- for the purpose of purchasing milky cows. **The due date for repayment is 28.02.2016.**

4. The second respondent has issued show cause notices on 18.05.2016, stating that the petitioners in each of the case has suffered disqualification to be the Executive Committee Members / Board of Directors of the society on account of non-payment of loans on the due date, as contemplated under Section 34(1)(b)(i) of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter will be referred to as "the Act"), and therefore, why they should not be removed from the said post.

4.1. The notices were received by the petitioners on 23.05.2016, and on the same day, the Government issued G.O.Ms.No.50, Cooperative, Food and Consumer Protection (CC1) Department, dated 23.05.2016, by which, it was declared that all the agricultural loan of small and middle farmers are waived by the Government as on 31.03.2016. The petitioners issued replies stating that, because of the order of waiver passed by the Government, the loans obtained stand waived and therefore, the petitioners are not guilty of default in payment. The petitioners expressed their readiness to pay the amounts, if the society comes to the conclusion that the Government Order waiving loan is not applicable to the petitioners.

4.2. Without considering the replies submitted by the petitioners, the second respondent passed the orders, dated 07.10.2016, disqualifying the petitioners. Thus, the impugned orders, dated 07.10.2016, are under challenge, in these writ petitions.

5. The main contention of the learned counsel for the petitioners is that, the petitioners do not suffer from any disqualification as there is no default in payment of loan /



willful default in payment of loan, as contended by the respondents. But the contention of the learned counsel for the respondents is that the petitioners are guilty of delay in repaying the loan amounts and therefore, they are disqualified as per Section 34(1)(b)(i) of the Act.

5.1. In order to appreciate the contentions raised by the petitioners, it is necessary to look into the provisions of Section 34 of the Act, which reads thus:-

"34. Disqualifications for membership of board.- (1)

No person shall be eligible for being elected or nominated as a member of a board of any registered society if he-

(a) is such near relation, as may be prescribed, of a paid employee of such registered society; or

(b) (i) is in default to such registered society or any other registered society, in respect of any loan or advance taken by him or dues under credit purchases made by him for a period exceeding three months: or

(ii) is a representative of a registered society which is in default to the financing bank or to any other registered society, in respect of any sum due by the registered society, for a continuous period of one year:

Provided that the disqualification in sub-clause

(iii) shall operate only when default of the registered society exceeds thirty per cent of the sum due by that registered society; or

(iii) is a person against whom any decree, decision, award, order or certificate referred to in section 143 has been obtained; or a representative of the registered society against which such decree, decision, award, order or certificate has been obtained; or

(iv) is a person against whom proceedings have been initiated under sections 118, 119, 120, or 144 for the recovery of any debt; or

(c) (i) is employed as legal practitioner on behalf of the registered society or against it or on behalf of or against any other registered society which is a member of the first-mentioned registered society; or

(ii) was employed in any co-operative society or was working as Government servant engaged in administration or audit of co-operative societies and a period of two years has not elapsed from the date of his ceasing to be such employee or Government servant; or

(d) is an associate member; or

(e) is a minor or of unsound mind; or

(f) (i) has been sentenced for any offence under this Act other than an offence under section 162 such sentence not having been annulled and a period of three years has not elapsed from the date of the expiration of the sentence; or



(ii) has been sentenced for any offence involving moral turpitude punishable under any law with imprisonment for one year and upwards, such sentence not having been annulled and a period of five years has not elapsed from the date of the expiration of the sentence; or

(g) has been sentenced for an offence under section 162, such sentence not having been annulled; or

(h) has been removed or disqualified from holding the office of the member of the board of the registered society or of any other registered society under section 36; or

(i) does not know to read and write Tamil or English or such other language as the Government may notify in this behalf in relation to any particular area.

(2) A member of the board shall cease to hold his office as such if he-

(a) becomes subject to any of the disqualifications mentioned in sub-section (1);

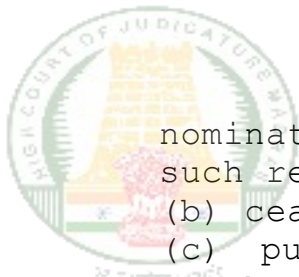
Provided that a member of the board who ceases to hold office by reason of his having incurred the disqualification mentioned in,- (i) sub-clause (i) of clause (b) of sub-section (1), shall not be eligible for re-election or re-nomination as a member of the board of the registered society of which he was member or for election or nomination to the board of any other registered society;

(ii) sub-clause (iii) or (iv) of the said clause (b), shall not be eligible for re-election or re-nomination as a member of that board or for election or nomination to the board of any other registered society, for a period of three years which shall be reckoned,-

(A) in the case of the disqualification mentioned in sub-clause (i) of the said clause (b), from the date on which the dues referred to therein have been fully cleared; and

(B) in the case of disqualification mentioned in sub-clause (iii) or (iv) of the said clause (b), from the date on which the dues involved in such decree, decision, award, order certificate or application in respect of which proceedings have been initiated, have been fully discharged:

Provided further that where a member of the board ceases to hold his office as such by reason of his having been sentenced for any offence under this Act, and the sentence is annulled on appeal or revision he shall be restored to office for such portion of the period for which he was elected or nominated as may remain unexpired at the date of such restoration and any person elected or



nominated to fill the vacancy in the interim shall, on such restoration, vacate office; or

(b) ceases to be a member of the registered society; or

(c) purchases directly or indirectly any property of another member of the registered society brought to sale for recovery of any money due from such other member to the registered society; or

(d) absents himself from four consecutive meetings of the board or from all meetings of the board for a continuous period of three months, whichever is longer.

Provided that the member ceasing to hold office under this clause may be restored in accordance with the procedure prescribed if such member makes an application for condonation of the absence.

(3) The board of a registered society may suo motu, and shall on an application made by any person, consider whether any member of the board was or has become disqualified to hold office as such under this section and take a decision. Such a decision shall be communicated to the member and the applicant concerned, if any:

Provided that no decision shall be taken unless the member of the board is given an opportunity of making his representation:

Provided further that pending such decision, the member of the board shall be entitled to continue as such as if he is qualified or is not disqualified.

(4) (a) No person shall, at the same time, be a member of the boards of more than three registered societies.

(b) subject to the provisions of clause (a), no person shall, at the same time, be a member of a board of more than one apex society or more than one central society.

(c) If any person is, on the date of his election or nomination as a member of the board already-

(i) a member of the board of three registered societies; or

(ii) a member of the board of an apex society or a central society and the board to which he is elected or nominated on that date is the board of an apex society, or, as the case may be, a central society, then, his election or nomination on the aforesaid shall be void.

(d) (i) If any person is, on the date of the commencement of this Act, member of the boards of more than three registered societies, then, at the expiration of the period of ninety days from such date of commencement he shall cease to be member of the boards of



all such registered societies, unless he has previously resigned his membership of the boards, of all but three of these registered societies.

(ii) If any person, is on the date of commencement of this Act, member of the boards of more than one apex society or central society, then, at the expiration of the period specified in sub-clause (i) he shall cease to be member of the boards of such apex societies or, as the case may be central societies, unless he has previously resigned his membership of the boards of all but one of such apex societies or, as the case may be, central societies:

Provided that nothing contained in this sub-section shall be construed as preventing any member of the board of an apex society or a central society from being a nominee of the board of that society in the board of any other apex society or central society or any society specified in sub-section (4) of section 33:

Provided further that no member shall be a nominee of the board of that society in more that one such board at the same time:

Provided also that a nominee of the board of an apex or a central society in the board of any other apex society or central society or a society specified in sub-section (4) of section 33 shall not be eligible to contest for any election or be entitled to vote at elections in the board of the other society.

(5) (a) No member of a board which has been superseded under section 88 and no person who was a member of such superseded board on the date of issue of notice of supersession shall be eligible for election or nomination to any board for a period of three years from the date of expiry of the period of supersession.

(b) No member of aboard in respect of whom proceeding under section 87 is pending and no member of a board in respect of which proceeding under section 88 is pending, shall be eligible for election or nomination to the board till the termination of such proceeding.

(6) Whenever the Registrar has come to know that any member of the board of any registered society has become disqualified under this section to hold office as such and that the board of the registered society either suo motu or on application made by any person, has failed to give a decision under sub-section (3) within one month from the date of incurring the disqualification the Registrar may, at any time, by an order in writing decide the question and direct the removal of such member from the membership of the board, if he is found disqualified:

Provided that no member of the board shall be



2. The funds are not utilized for the specific purpose for which finance was availed but have been diverted for other purposes.

3. When the funds have been siphoned off and not been utilized for the purpose for which it was availed. Further, no assets are available which justify the usage of funds.

4. When the asset bought by the lenders' funds have been sold off without the knowledge of the bank/lender.

7.1. It is not the case of the second respondent that the conduct of the petitioners would be covered under any one of the four circumstances, as stated above.

7.2. Further, in cases where letter of guarantees furnished by group companies of willfully defaulting units are not honoured when they are invoked by the lender, then such group companies are also considered to be willful defaulters.

Waiver:

7.2. The definition of a waiver is the act of voluntarily giving up rights or privileges and not to demand something in respect of which, you have a right to demand.

Intentional relinquishment of a right, claim, or privilege:

7.3. A voluntary relinquishing of a right or privilege. Although a waiver may result from an explicit surrender or by circumstances, courts frown on accepting waivers of constitutional rights. The party waiving a right must have knowledge of that right and the informed intention of surrendering it.

7.4. Regulatory agencies or governments may issue waivers to exempt companies from certain regulations.

7.5. When the waiver of the loan amounts to relinquishment of the claim, there is no question of any payment and therefore, there is no question of default. Therefore, the question of default in making payment of loan amount does not arise, in the light of relinquishment (waiver) made.

8. Even assuming that there was a default on the due date and when such a default was associated with civil consequences, then, it must be interpreted as willful default.

8.1. The agricultural loan stands on a different footing, than other loans and the Government having realized the problems of the agriculturist have chosen to waive the agricultural loan.

Agricultural problems faced by the farmers of India

8.3. Agriculture, especially in the context of India, constitutes the back bone of the whole economic system. It provides employment opportunities to millions of Indians in addition to providing necessary inputs for high industrial growth. It also supplies fodder for India's huge livestock and has become a major way to earn foreign currency. Therefore, required attention in the form of realistic policy measures such as timely availability of formal credit and other inputs to the farmers,



creating the awareness about policies and programs of the Government meant for educating the farmers through different media platforms is the need of hour on the part of the Indian government. Agricultural growth can be seen as an enabler of the overall economic growth of India.

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8.4. Agriculture is one of the most important pillars of the Indian economy. The contribution of agriculture and its allied sectors to India's GDP stood at 13.9% during 2013-14 (Agriculture 2013). More than half of the Indian population is dependent on agriculture for its subsistence. Since the beginning years of economic development, it has been one of the main drivers of growth of the economy as it supplies, was a major source of raw materials to most of the manufacturers.

8.5. In spite of its great significance to the Indian economy, the share of agriculture and its allied activities in India's GDP is continuously declining over the years.

Scarcity of water is a major problem faced by the farmers.

8.6. India is home to 16% of the world's population and it is endowed with only 4% of the total available fresh water (Division 2007). In addition to the growing pressure over the water resources within the country, there is a high regional disparity in the availability of water resources and which is further accentuated by the growing demand for drinking water and other necessities accompanied by the rapid pace of industrialization and urbanization.

Infertile land and lack of infrastructure in the agriculture sector.

8.7. Another major problem responsible for low agricultural productivity is that the soil is contaminated by the increasing level of river and canal pollution which is caused by high industrial effluents and toxic metals day by day (Division 2007). Furthermore, soil erosion which is one of the significant causes for land degradation is also taking place at rapid pace by ravine and gully formation, water logging, and shifting cultivation. Inappropriate use of fertilizers and pesticides also causes lack of nutrients in the soil that are necessary for healthy agricultural productivity.



8.8. India lacks modernized infrastructure for promoting the agriculture sector. Rudimentary policies and old fashioned equipment's and practices used by farmers in India are not sustainable, resulting in low yield for many agricultural commodities (Dwivedy 2011). Low level investment coupled with the use of obsolete technologies results in declined production, inefficiency and higher costs that in turn becomes one of the causes for food inflation (Dwivedy 2011).

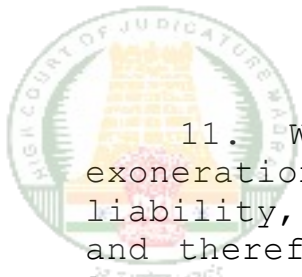
Illiteracy and inequality and lack of finances.

8.9. Illiteracy, lack of awareness about recent developments in the field of agriculture, and poor socio-economic background of the farmers are some of the fundamental reasons for continuously decreasing agricultural productivity. In addition to this, high level of income gap between rich and poor farmers, agricultural and non agricultural employees are responsible for non-fulfillment of even the basic necessities of Indian farmers (Dwivedi 2011, Division 2007).

8.10. Inadequate finance, untimely finance and inconsistent or contradictory policies of Government have aggravated farmers' problems severely (Dwivedy 2011). Timely and sufficient availability of credit on regular basis is one of the enabling factors that are responsible for high agricultural output. Availability of formal credit influences the output in many dimensions; for instance, it can be used to purchase good quality seeds during the seeding season that enables a farmer to maximize the yield over the cultivated area or it can also be used to replace the informal credit which is more often than not accompanied by high rate of interest (Narayanan 2015).

9. Considering the innumerable problems, the Government of Tamil Nadu has chosen to waive the agricultural loan. The reasons for non-production / under production are beyond the control of the farmers / loan availers. Under the stated circumstances, if, for non payment of the loan, if the petitioners are disqualified from being the Executive Committee Members / Board of Directors of Co-operative societies, the very purpose of granting waiver of loan is lost. The waiver was given only to save the people from the adverse consequences of problems faced in agriculture.

10. When each of the petitioners responded to the show cause notices, by invoking the benefits of G.O.Ms.No.50, dated 23.05.2016, the second respondent did not address the defence raised, but instead, has passed a non-speaking order, saying that the default is confirmed. The orders passed, without giving reasons, are non-est in the eye of law, as reason is the soul of the judgment.



11. Waiver of the loan amount has the implication of exoneration from liability. When there is exoneration from liability, there is no question of any due from the petitioners and therefore, there is no question of default in payment, much less any willful default. Hence, the impugned orders are liable to be set-aside.

12. As the impugned orders did not specifically state that the petitioners are not entitled to the benefit of the said Government Order, if, for any reason, the second respondent come to the conclusion that the petitioners are liable to repay the loan amount(s), the petitioners shall pay the amount without any delay and in any event, within one month from the date of receipt of a copy of this order.

13. In the result, the impugned orders are set-aside and the writ petitions are allowed, with the observations. No costs. Consequently, the connected WMPs are closed.

Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar

To

1.The Joint Registrar of Co-operative Societies,
Trichirappalli Region, Trichirappalli.

2.The Deputy Registrar of Co-operative Societies,
Trichirappalli Circle, Trichirappalli.

+1 cc to MR.T.Vadivelan, ADVOCATE, SR NO: 78761

+1 CC to M/S.SPL.GOV.T.PLEADER, SR NO: 69303

MS-JM-SAR 1/21.2.2017/11P-5C

**Pre-Delivery Order in
W.P. (MD) Nos.20431 to 20434 of 2016
& W.M.P. (MD) Nos.14610 to 14613 of 2016
02.12.2016**