

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.4034 of 2017

K.S.Asiam

President

The Transport Employees Co-operative

Thrift and Credit Society

No.10, Rathina Nagar

Teynampet, Chennai 600 018

.. Petitioner

-vs-

1. The State of Tamil Nadu
rep.by the Secretary to Government
Co-operative Department
Fort St.George
Chennai 600 009
2. The Additional Registrar
Chennai Region
Tamil Nadu State Co-operative Societies
Teynampet
Chennai 600 018
3. The Deputy Registrar
Co-operative Societies (Loan)
Kuralagam, Chennai 600 108
4. The Managing Director
Chennai Central Co-operative Bank Ltd.,
2/5, Broadway
Chennai 600 108
- 5.. The Co-operative Sub Registrar
The Transport Employees Co-operative
Thrift and Credit Society
Rathina Nagar, Teynampet
Chennai 600 018

.. Respondents

Petition under Article 226 of the Constitution of India,
praying for the issue of a Writ of Certiorarified Mandamus, to
call for all relevant records relating to the impugned orders
issued in Na.Ka.No.1402/2016/E2 dated 07.02.2017 in respect of
removing the petitioner from the member of Administrative

Board/President of the State Transport Employees Co-operative Thrift and Credit Society, No.10, Rathina Nagar, Teynampet, Chennai 600 018 alone and the consequential impugned order in Na.Ka.No.5722/2015/E2 dated 07.02.2017 in respect of disqualifying the petitioner permanently from holding any office in future in any registered societies and removing from the member of Administrative Board/President of the State Transport Employees Co-operative Thrift and Credit Society, No.10, Rathina Nagar, Teynampet, Chennai 600 018 alone, issued by the second respondent herein and quash the same as arbitrary, unreasonable, improper, illegal, against the Rules and Regulations of the respondents and violation to the principles of natural justice and fundamental rights granted under the Constitution of India and thereby directing the respondents to permit the petitioner to continue as the member of the Administrative Board of the said society permanently in future/President of the State Transport Employees Co-operative Thrift and Credit Society, Teynampet, Chennai 600 018 without disturbances with full fledged powers till his tenure.

For Petitioner :: Mr.C.Selvaraju
Senior Counsel for
Mr.C.R.Dhasarathan

For Respondents :: Mr.L.P.Shanmughasundaram
Special Government Pleader
for R1 & 4
Mr.V.Selvaraj
Additional Government Pleader
for R2 & 3
Mr.M.S.Palaniswamy for R5

ORDER

The elected President of the Transport Employees Co-operative Thrift and Credit Society, Teynampet, Chennai has brought this writ petition challenging the correctness of the impugned order dated 7.2.2017 passed by the Additional Registrar of Co-operative Societies, Chennai Region, the second respondent herein, in and by which, exercising the power under Section 36 of the Tamil Nadu Co-operative Societies Act, the petitioner has been disqualified and removed from the post.

2. Learned senior counsel for the petitioner, assailing the impugned order, submitted that the petitioner became the President of the Transport Employees Co-operative Thrift and Credit Society and assumed office on 9.5.2015, which is for a period of five years. However, during the year 2013-14, an audit was conducted in the fifth respondent society and consequently a report was also submitted on 24.4.2015 by the Deputy Registrar of Co-operative Societies (Loan) Chennai. On the basis of the

audit report, finding some irregularities, an enquiry was conducted under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983 on the allegation of sustained loss for conducting the meeting as well for payment to the directors of administrative committee towards sitting fees and also towards fuel expenses etc. Thereafter the surcharge proceedings initiated under Section 87 were also concluded and the orders for recovery of the amount caused to the society were also passed on 23.2.2016. As against the said order, the petitioner preferred C.M.A.No.46 of 2016 on the file of the Co-operative Tribunal and an order of stay was also granted on 29.5.2016. Now the appeal is pending for final disposal. While so, for the very same set of charges, a show cause notice was issued on 15.3.2016 calling upon the petitioner to submit his explanation for proceeding further under Section 88(1) of the Act for supersession of the elected board of directors. On receipt of the same, an explanation was also given on 19.4.2016 denying the charges. But all of a sudden, an order was passed on 12.5.2016 superseding the board of the society.

3. Continuing his arguments, the learned senior counsel submitted that although a report was filed under Section 81 of the Act, when the surcharge proceedings initiated under Section 87 of the Act against the petitioner was stayed by the Co-operative Tribunal in C.M.A.No.46 of 2016 on 29.5.2016, the question of loss, if any, caused to the society has not attained finality. Hence the invocation of power under Section 36 of the Act by the respondents for disqualifying and removing the elected President of the society is not only unnecessary, but also premature, because if for any reason the Co-operative Tribunal, which is seized of the appeal in C.M.A.No.46 of 2016 against the surcharge proceedings, comes to the rescue of the petitioner, setting aside the surcharge proceedings, on the ground that no case is made out, the question of disqualification does not arise. Therefore, during the pendency of the surcharge proceedings before the Co-operative Tribunal by granting stay, the order passed under Section 88(1) of the Act superseding the entire board is wholly unwarranted and unlawful. Adding further, it was contended that when Section 36(1) of the Act contemplates the disqualification and removal of the elected board of the society for the acts of misconduct as enumerated thereunder, a duty is cast on the Registrar of the co-operative society to satisfy two important conditions. Firstly he has to get a preliminary report under Section 81 of the Act basically showing the guilt of the person for invoking the provision of disqualification and removal. Secondly, if the report filed under Section 81 confirms the guilt of the elected board members, the Registrar is bound to give an opportunity of hearing to the elected board members of the fifth respondent society. In the present case, although there was a report under Section 81 and the consequential initiation of the surcharge

proceedings under Section 87, which have been admittedly stayed by the Co-operative Tribunal in C.M.A.No.46 of 2016, the mandatory conditions adumbrated under sub-section (2) of Section 36 of the Act have not been complied with. Therefore, the impugned order of disqualification and removal is liable to be set aside. Taking support from an order passed by me in W.P.Nos.7648, 16617 and 31309 of 2015 dated 6.1.2017 (C.Kamaraj and another v. The Registrar of Cooperative Societies, Chennai and others) holding that opportunity of making a representation includes a reasonable opportunity before final orders are passed, it has been further submitted that before passing an order under Section 36(1) disqualifying and removing the elected board members, a reasonable opportunity of personal hearing should have been given. In the present case, admittedly there is no such opportunity of personal hearing given to the petitioner. This Court has followed this proposition only from the ratio laid down in Arignar Anna Weavers Coop.Society Ltd., v. State of Tamil Nadu, AIR 1999 Madras 254. Moreover, in Vallipattu Primary Agricultural Co-operative Bank C.1056 rep.by its Vice President v. The Registrar of Co-op.Societies, Chennai and another, 1998 (II) CTC 351, this Court has also made it candidly clear that when the allegations of misappropriation are all disputed questions of fact, the authority cannot pass any order without affording a reasonable opportunity to the elected board members of the society to make their representation. Therefore, the opportunity of making representation contemplated under Section 36(2) includes a reasonable opportunity before final orders are passed. While that being the settled legal position, the present impugned order of disqualification and removal passed under Section 36(1) of the Act cannot be allowed to be sustained, without complying with the mandatory conditions enumerated under sub-section (2) of Section 36. On this basis, he prayed for allowing the writ petition by setting aside the impugned order. Concluding his arguments, it was also heavily contended that when the elected board members are given a specific tenure of five years, disqualifying such elected board members without holding any enquiry on mere surmises and conjectures shall be discouraged.

4. Per contra, Mr.V.Selvaraj, learned Additional Government Pleader for the respondents 2 & 3, Mr.L.P.Shanmughasundaram, learned Special Government Pleader for the respondents 1 & 4 and Mr.M.S.Palaniswamy, learned counsel for the fifth respondent society, although attempted to justify the impugned order, during the course of arguments submitted that no personal hearing was given to the petitioner before passing the impugned order of disqualification and removal.

5. Heard the learned counsel for the parties.

6. Since the issue lies on a narrow compass, it is necessary

to extract Section 36 of the Tamil Nadu Co-operative Societies Act, which reads thus:-

"36.Disqualification and removal.--(1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 it appears that a person who is, or was, a member of a board has mis-appropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or of gross or persistent negligence in connection with the conduct and management of, or of gross mis-management of the affairs of the society, the Registrar may, without prejudice to any other action that may be taken against such member by order in writing, disqualify him permanently from holding in future any office in any registered society. The Registrar shall, if such person holds office of member of the board, also by the same order remove him from that office.

(2) No person shall be disqualified or removed under sub-section (1) without being given an opportunity of making his representations. A copy of the order disqualifying or removing him shall be communicated to him."

7. A perusal of the above provision clearly shows that the elected board members are liable to be disqualified and consequently be removed if they are found to be working against the object and interest of the cooperative society. Although Section 36(1) gives enormous power to the Registrar to disqualify and pass the further removal order, sub-section (2) of Section 36 contemplates that a reasonable opportunity of hearing should be given to the affected party. In the present case, no such compliance has been made. Therefore, as per the ratio laid down by this Court in Vallipattu Primary Agricultural Co-operative Bank C.1056 rep.by its Vice President v. The Registrar of Co-op.Societies, Chennai and another, 1998 (II) CTC 351, which has been followed by me in W.P.Nos.7648, 16617 and 31309 of 2015 dated 6.1.2017 (C.Kamaraj and another v. The Registrar of Cooperative Societies, Chennai and others) holding that opportunity of making a representation includes a reasonable opportunity before passing final orders and when there are disputed questions of fact, a duty is cast on the authority to satisfy himself before passing an order of supersession of the elected board, this Court is able to see that the petitioner was not afforded with an opportunity of

personal hearing as per sub-section (2) of Section 36 of the Act. Since the impugned order is in total violation of the principles of natural justice, the same is liable to be set aside. Besides, the petitioner, challenging the proceedings initiated under Section 87, which culminated in an order of recovery dated 23.02.2016, preferred C.M.A.No.46 of 2016, on the file of the Cooperative Tribunal (Chief Court of Small Causes, Chennai) and also obtained an order of stay on 29.05.2016, which is admittedly pending for final disposal. While so, the second respondent issued a show cause notice almost on the same set of charges calling for an explanation to proceed further under Section 88(1) of the Act for supersession of the elected Board of Directors, that too without waiting for the final outcome of the C.M.A. Therefore, as I mentioned earlier, if for any reason the Cooperative Tribunal comes to the conclusion that the surcharge proceedings and the consequential order of recovery are untenable, the question of disqualification will become otiose. This vital aspect has been overlooked, therefore, the impugned order passed hastily has to be held as a premature one. Accordingly, the impugned order is set aside and the matter is remanded back to the second respondent-Additional Registrar of Cooperative Societies, Chennai Region to work out the ways on the basis of the observation mentioned hereinabove and it is open to the parties to raise all their contentions before the second respondent. With this observation, the writ petition stands allowed. Consequently, W.M.P.Nos.4133 & 4134 of 2017 are closed. No costs.

-s/d-

Assistant Registrar (CS-VIII)

True Copy

Sub-Assistant Registrar

To

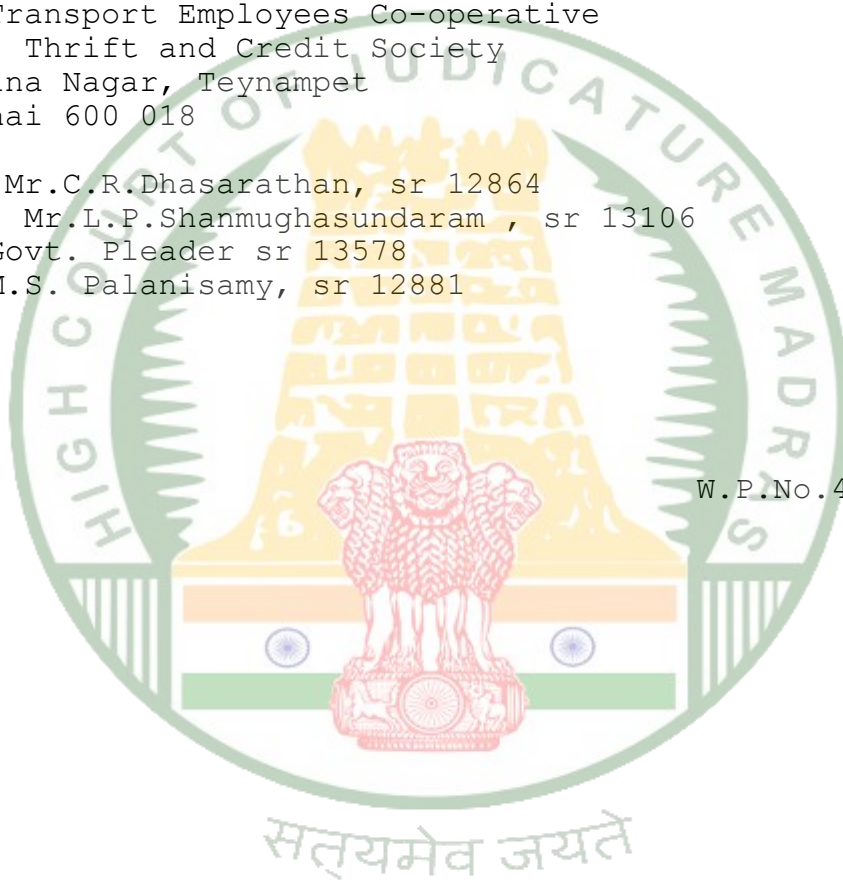
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+1 CC to Mr.C.R.Dhasarathan, sr 12864
+1 Cc to Mr.L.P.Shanmughasundaram , sr 13106
+1 CC to Govt. Pleader sr 13578
+1 CC to M.S. Palanisamy, sr 12881

AD(CO)
sp/13/4

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