

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.02.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.18785 of 2016

C.Sivashankar .. Petitioner

-vs-

1. The Registrar of Co-operative Societies
Office of the Registrar of Co-operative Societies
Chennai-10
2. The Additional Registrar of Co-operative Societies
(Sales, Planning & Development)
Office of the Registrar of Co-operative Societies
Chennai-10
3. The Joint Registrar of Co-operative Societies
Villupuram Region, Villupuram
Villupuram District .. Respondents

Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order having reference Na.Ka.27238/2016/SP.3 dated 06.05.2016 on the file of the second respondent and quash the same and consequently direct the first, second and third respondents to permit the petitioner to continue as President of V.Brammadesam Primary Agricultural Co-operative Credit Society, Villupuram District.

For Petitioner :: Mrs.T.P.Savitha
For Respondents:: Mr.L.P.Shanmughasundaram
Special Government Pleader

ORDER

The elected President of V.Brammadesam Primary Agricultural Co-operative Credit Society, Villupuram District has brought this writ petition challenging the correctness of the impugned order dated 6.5.2016 passed by the Additional Registrar of Co-operative Societies, (Sales, Planning & Development), Chennai, the second respondent herein/appellate authority under Section 152(2), confirming the order of disqualification and removal of the petitioner from the post of President, exercising the power conferred under Section 36 of the Tamil Nadu Co-operative Societies Act, dated 1.3.2016.

2. Learned counsel for the petitioner submitted that the petitioner took charge as President of V.Brammadesam Primary Agricultural Cooperative Credit Society, Villupuram in May, 2013. After being elected to the post of President, he noticed that the Tamil Nadu Co-operative Marketing Federation Limited (TANFED) was not supplying fertilizers to the society. Therefore he visited the TANFED office and received information that the society was having dues of Rs.34,75,908/- payable to TANFED as on 9.5.2013. Only due to the said non-payment of dues, he has come to the conclusion that the TANFED was not sending fertilizers to the society. Subsequently, on further enquiry, the petitioner came to know that one Mr.Vaidyanathan, who was working as Secretary, although collected the dues from the public, had not settled the same to the TANFED. Hence he apprised the Deputy Registrar of Cooperative Societies, Villupuram circle and also the Joint Registrar of Co-operative Societies, Villupuram region about the irregularities committed by the said Secretary. As an outcome of the continuous effort taken by the petitioner, the Deputy Registrar, Villupuram circle, by proceedings dated 10.12.2014, ordered for an enquiry to be conducted under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983. Finally one Mr.Rammoorthy was appointed as the enquiry officer. But without even asking the Secretary to produce the relevant documents, the enquiry officer completed the enquiry and submitted his report on 19.6.2015. As the said report failed to speak about the malpractices of the Secretary, a second enquiry was ordered under Section 81 of the Act by the Deputy Registrar, Villupuram circle. Accordingly, the enquiry report dated 5.10.2015 was submitted by the same officer. When both the enquiry reports clearly spelt out that the malpractices were done by the Secretary of V.Brammadesam Primary Agricultural Cooperative Credit Society, who was having possession of the records and account books of the society, ignoring the fact that the petitioner is having only supervisory power over the society, the Joint Registrar, Villupuram region wrongly passed an order under Section 36 of the Act against the petitioner disqualifying him from holding the post of President of the elected board, when there is no allegation of misappropriation attributed against the petitioner, which has been again wrongly confirmed by the appellate authority. Adding further, she submitted that before passing the order of disqualification and removal under Section 36(1), the mandatory conditions mentioned under sub-section (2) of Section 36 to give an opportunity of personal hearing should be complied with. Taking support from the ratio laid down in Arignar Anna Weavers Coop.Society Ltd., v. State of Tamil Nadu, AIR 1999 Madras 254 as well 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 and another order passed by me,

following the aforesaid two decisions, 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 before passing an order under Section 36(1), the mandatory conditions contemplated under sub-section (2) of Section 36 giving an opportunity of personal hearing should be followed, otherwise it would amount to violation of the principles of natural justice, accordingly, she prayed for allowing the writ petition by setting aside the impugned order.

3. Heard the learned Special Government Pleader for the respondents.

4. This Court has settled the legal position that before passing orders of disqualification and removal of an elected member of the board under Section 36(1) of the Act, a reasonable opportunity of hearing should be given to the affected party, as per Section 36(2) of the Tamil Nadu Cooperative Societies Act. In this context, 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."

5. The above provision empowers the Registrar to disqualify a member permanently from holding office in any registered

society and also for removing him from the society, if he holds such an office. But before resorting to the disqualification and removal, two indispensable conditions are to be necessarily followed. Firstly, an inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83 should have been conducted. Only after obtaining a report under Section 81 proving the gross or persistent negligence in connection with the conduct or management of the society or gross mis-management of the affairs of the society or misappropriation of any money or other property of the society by a member, further steps towards the disqualification can be proceeded with. Secondly, after getting a report under Section 81 or an investigation report under Section 82, the delinquent member should be issued with a show cause notice to explain on the alleged charges and thereafter, on a proper explanation being given, if the Registrar is not satisfied, an opportunity of personal hearing should be given, as per sub-section (2) of Section 36. This has been settled in a famous decision 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, wherein this Court has observed as follows:-

"19. If the dispute of facts cannot be considered by this Court under Article 226 of the Constitution of India, then what is the remedy? Section 88(1) of Act says that the power or registration of society should be given an opportunity of making a representation. What is the scope of an opportunity of making a representation? Will it be sufficient by sending a show cause notice and getting an explanation. I do not think that alone will be sufficient. Under Co-operative Societies Act and the Rules, it is clear that in a democratic set up unless grounds are made out, the management must be within the elected members. Supersession of the election Board is a serious stop (sic) and the authorities are not expected to interfere with the management of the society. If that is the intention, I feel that the opportunity of making a representation includes a reasonable opportunity before final orders are passed. When there are disputed questions of fact, a duty is cast on the authorities to verify whether the facts stated by it alone are sufficient to supersede an Election Board.

20. A reading of the entire provisions of the

Act makes it clear that the Registrar and the authorities under the Act have to act very cautiously. It is also clear that it is an extra-ordinary power which could be resorted to unless there is extra-ordinary situation. If an elected body feels certain acts taken are in the best interests of Society, that is the matter the authority will have to consider very seriously. They are not expected to stick on to their views, all that the society has done is against the provisions of the Act or Rules. Only after reasonable opportunity is given to the Board, the satisfaction has to be entered that supersession is necessary and if the authorities feel that the grounds have been made out for supersession, it shall not look back, except to supersede. May be the satisfaction is subjective, but it cannot be exercised arbitrarily. The principle of natural justice has to be fully applied in such cases. Even though the court cannot act as an appellate authority, when from the file it is clear that there was no real consideration of the explanation and when reasonable opportunity is also not given to the Board, I feel that the action of the respondent requires reconsideration.

21. In a decision of Kerala High Court in The President of the Common Wealth Co-operative Society Ltd., Ernakulam v. The Joint Registrar (General) of Co-operative Societies, Trivandrum and another, AIR 1971 Ker.34 His Lordship K.K.Mathew, J., (as he then was) held that even when there is no provision in the statute for a prior notice, the principle of natural justice will have to be followed...."

The above principle and the observation would clearly show that giving an opportunity of making a representation includes giving an opportunity of personal hearing before passing the order. As this has not been done, the impugned order is liable to be set aside.

6. But in the present case, although no reasonable opportunity of personal hearing was given to the petitioner, even on merits, there is no direct allegation of malpractice or misappropriation levelled against the petitioner, being the President of the society, and the reports submitted by the enquiry officer dated 19.6.2015 and 5.10.2015 also would show

that the petitioner was having only supervisory role over the Secretary. When there is no direct allegation of embezzlement or misappropriation of the fund of the society by the petitioner, on the allegation of not supervising the Secretary, the elected President cannot be removed. Therefore, the impugned order disqualifying and removing the elected President of V.Brammadesam Primary Agricultural Cooperative Credit Society, in my considered opinion, cannot be sustained. Accordingly, the impugned order is set aside and the writ petition stands allowed. As I find no allegation of malpractice or misappropriation levelled against the petitioner, the respondents shall reinstate the petitioner to complete his term, within a period of two weeks from the date of receipt of a copy of this order. Consequently, W.M.P.No.16394 of 2016 is closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ss
To

1. The Registrar of Co-operative Societies
Office of the Registrar of Co-operative Societies
Chennai 600 010
2. The Additional Registrar of Co-operative Societies
(Sales, Planning & Development)
Office of the Registrar of Co-operative Societies
Chennai 600 010
3. The Joint Registrar of Co-operative Societies
Villupuram Region, Villupuram
Villupuram District सत्यमेव जयते

+1cc to Mr.L.P. Shanmugasundaram, Advocate, S.R.No.13105
+1cc to the Government Pleader, S.R.No.13579

ca (CO)
md(15/03/2017)

W.P.No.18785 of 2016