

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved: 10.04.2017 Orders Pronounced : 14.06.2017

CORAM :

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P. No. 2217 of 2016
and

W.M.P NO. 1906 of 2016

1. J. Ganesh
2. M. Panneerselvam
3. M. Senthamarai Kannan
4. A. Ramalingam
5. V. Sivalingam
6. K. Varadharajan
7. C. Reena
8. Kalaiselvi
9. Poovaraghavasamy
10. Palaniammal ... Petitioners

vs.

The Joint Registrar of
Co-operative Societies
Cuddalore Region
Cuddalore. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the respondent order in Na.Ka. No. 2553/2014 Thu.Va.Th.1 dated 27.11.2015 quash the same and pass further orders.

For Petitioners : Mr. M.S. Palaniswamy

For Respondent : Mrs. T. Girija (Govt. Advocate)

O R D E R

This writ petition has been filed seeking to quash the proceedings issued in Na.Ka. No. 2553/2014 Thu.Va.Th.1 dated 27.11.2015.

2. Brief facts of the case is as follows :-

The petitioners were elected as Board of Directors, in the election held on 30.04.2013, of Poovalai Primary Agricultural Co-operative Credit Society, Chidambaram Taluk and the petitioners assumed office on 15.05.2013. One M. Vijayakumar was elected as the President of the Society. The respondent herein, issued a show cause notice in Na.Ka. No. 2553/2014.Thu.Va.tha.1 dated 14.05.2014, under Section 88 of the Tamilnadu Co-operative Societies Act, stating as to why the Board of Society should not be superseded, for the reasons stated in the impugned show cause notice. In the aforesaid notice, it is informed by the respondent that an inspection under Section 82 of the Tamil Nadu Co-operative Societies Act was conducted, into the affairs of the society and an inspection report was received by the respondent. But the said report of the Inspection Officer was not served to the petitioners. Therefore, the petitioners could not submit their explanation to the impugned show cause notice, issued by the respondent. As found in the show cause notice, the misconduct has been committed by Mr. M.Vijayakumar, the President of the Society. Therefore, the petitioners are not liable or not responsible for the alleged misconduct committed by the said Mr. M.Vijayakumar. Without following the provisions as contemplated under Section 88 of the Tamil Nadu Cooperative Societies Act, the respondent issued the impugned show cause notice of supersession. Hence, the present writ petition has been filed challenging the impugned show cause notice issued by the respondent.

3. Learned counsel for the petitioners would submit that the respondent has no jurisdiction or power to pass the impugned order and the same is against the provision of law. Further, it is the contention of the petitioner that the aforesaid notice is liable to be quashed on the ground that the enquiry report has not been served on the petitioners, as contemplated under Section 88 of the Tamil Nadu Co-operative Societies Act, 1983. Learned counsel for the petitioners would submit that inspection was conducted, by the respondent, as per Section 82 of the Act. The said enquiry was completed and report was submitted to the respondent. Without following the provisions as contemplated under Section 82(5) of the Act, the respondent has passed the impugned show cause notice under Section 88 of the Tamil Nadu Co-operative Societies Act, 1983, which is illegal and contrary to the provisions of the Act. In this regard, learned counsel for the petitioners rely upon Section 82(5) of the Act, which reads as follows :-

"82(5) --Registrar may, by an order in writing, direct the registered society or any officer of the society to take such action as may

be specified in the order to remedy within such time as may be specified therein the defects, if any disclosed as a result of the inspection or investigation."

The aforesaid sub-section 5 of Section 82 of the Act, clearly states that the Registrar may, by an order in writing, direct the registered society concerned to rectify the defects within the specified time if any, on the basis of the report. Hence, without following the said procedure, passing of the order under Section 88 of the Act itself has vitiated the entire proceedings.

4. Learned counsel for the respondent would submit that the petitioners have not requested for a copy of the Inspection report from the respondent, at any point of time, during the supersession proceedings. The petitioners have not availed the opportunity to peruse the records, as per the communication of the Deputy Registrar, Chidambaram vide Lr. Rc. No. 903/2014 SF dated 10.06.2014. Therefore, the present averments of the petitioners are liable to be rejected. The notice issued under sub-rule (1) of Rule 88 of the Tamil Nadu Cooperative Societies Act, 1983, is in accordance with the provisions of the Rules. Hence, the contention of the petitioner that it is barred by limitation cannot be accepted. Therefore, the present writ petition is not maintainable before this Court.

5. Further, learned counsel for the petitioners would rely upon the decision of this Court in the case of N.R. Chandrasekaran & Others vs. Joint Registrar of Cooperative Society, Erode & Others, reported in (2017) 2 MLJ 338. The relevant paragraphs 17, 18, 19 & 20 are extracted below :

" 17. Besides, section 81 envisages holding of an enquiry. As per Section 81(3), if an enquiry is held, the Registrar shall, within such time as may be prescribed, communicate the result of the enquiry to the affected person. Section 81(3) reads as under:-

Section 81(3):-- When an inquiry is held under this section, the Registrar shall, within such time as may be prescribed, communicate the result of the enquiry ---

(i) in case the Government have subscribed directly to the Share Capital of the registered Society or in case any moneys are due from the registered society either to the Principal State Partnership Fund or to the subsidiary State Partnership Fund referred to in Chapter VI, to the Government

or to any officer appointed by the Government in this behalf;

(ii) to the Financing Bank, if any, to which the Society is affiliated; and

(iii) to the Society concerned."

From a careful reading of the above Section, it shows that the Registrar shall communicate the result of the enquiry to the Society concerned, but, in the instant case, the result of the enquiry was not communicated to the petitioners / members of the Society. Therefore, there is a clear breach of Section 81(3) of the Act.

18. In addition thereto, under Rule 104 (7) of the Rules, the Registrar is required to communicate the result of the inquiry or inspection or investigation, in brief, without going into details and without disclosing matters of confidential nature. Rule 104(7) is extracted below:-

"(7) The Registrar shall communicate the result of the inquiry or inspection or investigation, in brief, without going into details and without disclosing matters of confidential nature within a period of three months from the date of receipt of the report ---

(a) in the case of inquiry, to

(i) the Government or to any officer appointed by the Government, where the Government have subscribed to the Share Capital of the Society;

(ii) the Financing Bank to which the Society is affiliated;

(iii) to the Society concerned;

(iv) to the District Collector in case the inquiry is ordered at his request;

(v) to the Federal Society concerned;"

From a mere perusal of Section 88 and Section 81 (3) r/w Rule 104(7), it is clear that the Registrar has power to supersede the Board under Section 88(1) of the Act, however, at the same time, there is a duty cast on the Registrar to inform the affected person and also the Society about the result of the inquiry, with necessary details. If the authorities do not comply with the provisions of Section 81(3) and the Rules, they cannot initiate action under Section 88(1)

of the Act for supersession of Managing Body of a Co-operative Society.

19. This Court, in Vallipattu Primary Agricultural Coop. Bank v. Registrar of Coop. Societies, Chennai [1998 (2) CTC 351], by observing that the supersession of the elected board is a serious step, held thus at paragraph Nos.19 and 20:-

"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 of 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 step 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 require reconsideration."

If this Court follows the above stated legal principles, then, in my view, the impugned order of supersession is liable to be interfered with, for, the sum and substance of the above said judgment is that non-furnishing of the copy of the enquiry report on the basis of which the order of supersession under Section 88 had been issued would result in violation of the principles of natural justice. It is further held that opportunity of making a representation includes a reasonable opportunity before final orders are passed and it has been further made clear that 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 Elected Board. Therefore, in the case on hand, although the learned counsel for the respondents during the course of arguments admitted that an enquiry was held under Section 81 and thereby a report dated 15.06.2013 was also made ready, but that was not admittedly furnished to the petitioners as per Section 81(3) read with Rule 104(7), which show that he was not afforded with a reasonable opportunity of being heard as adumbrated in the provisions of the Act as well as the principles laid down by this Court in the above referred judgment. While dealing with a similar issue of supersession of the Elected Board of Society under Section 88 of the Act, I have set aside the order of supersession in W.P.Nos.7648, 16617 and 31309 of 2015, dated 06.01.2017 (C.Kamaraj and

another v. the Registrar of Cooperative Societies and others). "

20. Thus, in the light of the above, I am of the view that the first respondent, before passing of the orders of supersession and disqualification, has neither followed the principles set out in the above referred case nor Section 88 of the Act nor Section 81(3) read with Rule 104(7) of the Rules, that too without taking note of the fact that the passing of an order of winding up / supersession is analogous to the passing of capital sentence of an individual, therefore, the impugned proceedings are per-se illegal, hence, the same are liable to be set aside. "

6. Admittedly, the respondent has not placed any material or has stated in the counter affidavit that they have followed the procedures under Section 81 of the Act. Therefore, without following the provisions of law as contemplated under the Act and Rules and without affording any opportunity to the petitioners, the impugned order has been passed by the respondent. The aforesaid decision relied upon by the petitioners, squarely applies to the facts of this case. Hence, this Court has no hesitation to set aside the impugned order, passed by the respondent for the reasons stated above.

7. Considering the facts and circumstances of the case and in the light of the decision relied on by the petitioners, this Court is inclined to quash the impugned proceedings passed by the respondent in Na.Ka. No. 2553/2014 Thu.Va.Th.1 dated 27.11.2015.

8. Accordingly, the writ petition is allowed. Consequently, the connected M.P is closed. No order as to costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr

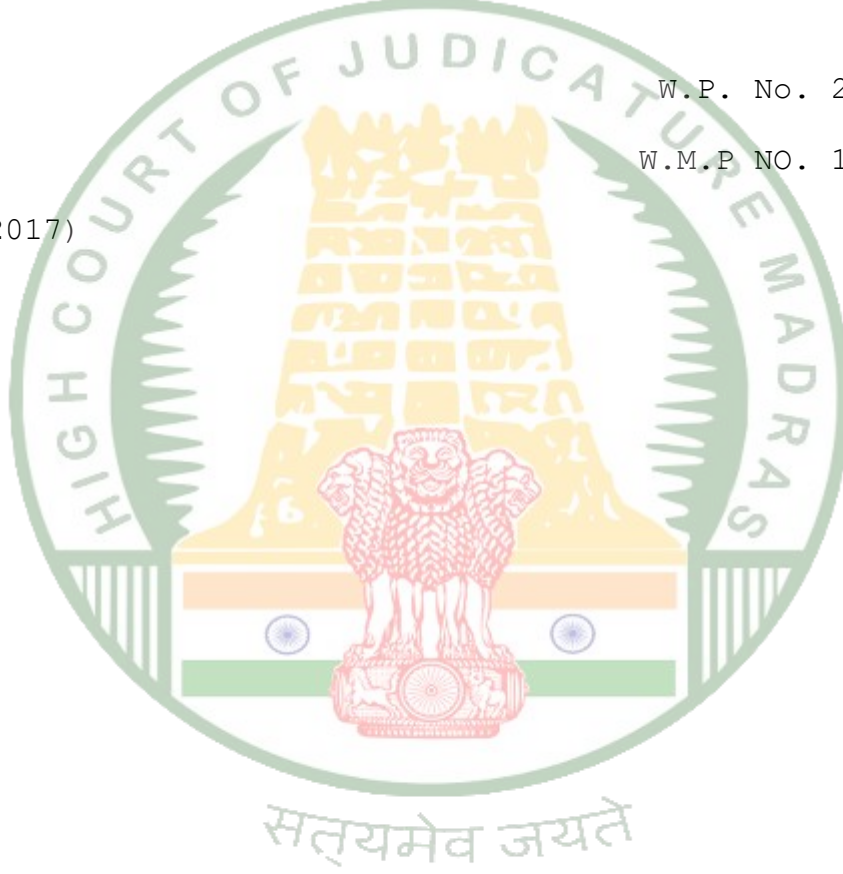
To

The Joint Registrar of
Co-operative Societies
Cuddalore Region
Cuddalore.

+lcc to Mr.M.S.Palanisamy, Advocate, S.R.No.42747

W.P. No. 2217 of 2016
and
W.M.P NO. 1906 of 2016

VGII (CO)
RS (27/06/2017)



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