

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 26.07.2017

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THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.4012 of 2015

and M.P.Nos.1 to 3 of 2015

C.Dhulasidharan

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Petitioner

Vs.

1. The Assistant Director,
Director of Fishery Department (Zone),
Cuddalore-3.

2. The Inspector,
Fishery Department,
Velichammandalam,
Cuddalore-3.

3. The Sub-Registrar,
Director of Frishery Department (Zone),
Cuddalore, N.T.

4. E-1965 Sonakkulam Fishery
Co-operative Society,
Cuddalore-3.

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Respondents

Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned resolution No.1 passed in the Special Board meeting of the 4th Respondent conducted under the chairmanship of the 3rd respondent on 13.01.2015 declaring no confidence against the petitioner and communicated to the petitioner by 1st respondent in his letter Na.Ka.No.1858/U/2014 Dated 21.01.2015 and quash the same and consequently direct the respondents 1 to 4 to allow the petitioner to continue as the President of 4th respondent.

For Petitioner

: G.Mutharasu

For Respondents 1 to 3

: Mr.V.Selvaraj

Additional Govt.Pleader

For 4th Respondent

: Mr.R.Balaramesh

O R D E R

The petitioner has filed the writ petition before this Court challenging against the impugned resolution no.1 passed in the Special Board Meeting of the 4th respondent conducted by the 3rd respondent on 13.01.2015.

2. According to the petitioner, the said notice is vitiated for the following legal infirmities:-

(i) The impugned resolution was passed without sending along with complaint filed against the petitioner. (ii) No member of the Board had approached the Board to convene a special meeting to pass the impugned no-confidence motion. (iii) The petitioner has not been served with the inspection report of the 2nd respondent before directing to convene the special meeting of the Society by the 3rd respondent. (iv) The representation given by the petitioner on 23.12.2014 has not been considered by the 1st respondent nor communicated to all the members of the Board before participating in the special meeting to pass the special resolution.

3. The learned counsel for the petitioner would submit that by relying upon the unreported decisions of this Court in W.P.No.21722 of 2008 dated 13.02.2012 in which paragraph No.23 reads as under:

'23. It is the cardinal principle as settled by the Supreme Court in the decision reported in 2009(7) SCC 248 (Ramanuj Pandey Vs. State of M.P.) that it is for the disciplinary authority or the administrative authority to decide the quantum of punishment in a case of misconduct and the role of the Court is only secondary. The Supreme Court in 2009(7) SCC 248 (cited supra) relied on its earlier decision reported in 2006(3) SCC 173 = 2006 SCC (L&S) 503 (Commr. Of Police Vs. Syed Hussain), in which it is laid down that it is one thing to say that the order passed by the statutory authority is wholly arbitrary and thus violative of Article 14 of the Constitution of India and thus liable to be set aside, but it is another thing to say that the discretionary jurisdiction exercised by such authority should not ordinarily be interfered with by a superior Court while exercising the power of judicial review unless one or the other ground upon which and on the basis whereof the power of judicial review can be exercised, exists.'

4. In another decision in W.P.No.15189 of 2013 dated 03.03.2015, in the case of T.Anandan vs. The State Election

Commissioner, wherein, this Court in paragraph No. 23, which reads as follows:-

''23. Considering the facts and circumstances of the case and arguments advanced by the learned counsel on all sides and on perusing the typed set of papers, this Court's views in (i) to (vii), listed above, the above writ petition is allowed. Consequently, the 1st respondent's entire records in so far relates to election nominations were filed for the electing Board of Directors for M.R.Krishnamoorthy, Co-operative Sugar Mills, Sethiathoppu, Chidambaram Taluk, Cuddalore District, Scrutinize the nomination papers and permit the qualified candidate to contest the above said election after appointing a retired judge as Commissioner for conducting elections for the Board of Directors for the Co-operative Sugar Mills Limited.''

5. Yet another Division Bench decision of this Court in W.A.Nos.1390 to 1393 of 2008 and 111, 112, 253 and 1228 of 2009, in paragraph No.43, in special circumstances warranting as under the proposition No.(vii) of the larger Bench judgment of this Court cited supra, the writ petition can be entertained.

6. The above said judgment relied upon by the petitioner that the writ petitioner before this Court challenging the decision of the resolution passed by the 4th respondent which is maintainable before this Court. Further, the learned counsel for the petitioner would submit that by not following the procedures under Rule 61 of the Tamil Nadu Co-operative Societies Act, the impugned order has been passed by the 4th respondent. Therefore, the impugned order is liable to be quashed.

7. Per contra, the learned Additional Government Pleader would submit that the writ petition challenging the said impugned order before this Court at the time of admission and there is no interim order granted by this Court. Pursuant to that, the election notification was issued by the respondent and election was conducted and one Mr.Ganesan has elected as President on 01.08.2015 for the 4th respondent Society.

8. The learned counsel for the 4th respondent would submit that there is an alternative remedy available under the provisions of the Act. Therefore, this writ petition is not maintainable.

9. Heard the learned counsel for the parties and perused the materials available on records.

10. The point for consideration, whether the writ petitioner challenging the resolution passed by the 4th respondent Society for declaration of no confidence motion against the petitioner is maintainable ?

11. As rightly pointed out by the learned Additional Government Pleader that the petitioner having alternative remedy under Section 153 of the Tamil Nadu Co-operative Societies Act, without availing the said remedy, the writ petition is not maintainable. Since there is no interim order granted by this Court, the respondent issued election notification and one Ganesan has been elected as President of the 4th respondent Society. Therefore, the decision relied by the petitioner would not apply to the facts of the case.

12. Considering the prayer in the writ petition and the subsequent election took place in the 4th respondent society and the petitioner has not impleaded the president of the society in the writ petition. Without impleading the President as necessary party in the writ petition, challenging the resolution passed by the 4th respondent, this writ petition cannot be entertained. But, however, the petitioner is having an efficacious alternative remedy to approach before the competent authority to raise all his grounds under the provisions of Tamil Nadu Co-operative Societies Act. Hence, this writ petition is dismissed with liberty to the petitioner to approach before the appropriate authority. No costs. Consequently, connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

ssn

To

1. The Assistant Director,
Director of Fishery Department (Zone),
Cuddalore-3.

2. The Inspector,
Fishery Department,
Velichammandalam,
Cuddalore-3.

3. The Sub-Registrar,
Director of Frishery Department (Zone),
Cuddalore, N.T.

4. E-1965 Sonakkulam Fishery Co-operative Society,
Cuddalore-3.

+1 C.C. to The Government Pleader, High Court, Madras-104
SR.NO.53484

+1 C.C. to MR.G.MUTHUARASU Advocate SR.NO..53525

W.P.No.4012 of 2015
and M.P.Nos.1 to 3 of 2015

SJ (CO)
VS 03.10.2017



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