

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2017

CORAM

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No.520 of 2015
and
M.P.Nos.1 & 2 of 2015

1.A.K.Kumar
2.A.Thiruselvam
3.J.Dhanalakshmi
4.M.Chamundeswari
5.K.Thathan
6.N.Harigopal
7.A.Durai
8.J.Duraikannu
9.K.Chandra
10.M.Sundaramurthy
S/o.Munusamy

Board of Director,
NC-999, Tiruvannamalai Co-operative
Primary Agricultural and Rural
Development Bank Ltd.,
Tiruvannamalai,
Tiruvannamalai District.

.... Petitioners

- Vs -

The Deputy Registrar of Co-operative Societies,
Tiruvannamalai Circle,
Tiruvannamalai.

... Respondent

Prayer : Writ Petition filed under Article 226 of the
Constitution of India praying to issue a Writ of Certiorari,
calling for the records of the respondent in Tha.Thee.No.5/2014-
2015, Na.Ka.4586/2014 sa.pa dated 27.11.2014, quash the same.

For Petitioners : Mr.C.K.Chandrasekhar

For Respondent : Mr.V.Selvaraj,
Additional Government Pleader

O R D E R

Challenging the impugned show cause notice, the petitioners
have filed the present writ petition before this Court.

2. According to the petitioners, the respondent herein in his proceedings Na.Ka.No.4252/13/Ve.Sa dated 03.12.2013 directed the petitioners to recover the already paid Dearness Allowance from the employees of the bank. Since the respondent has stated in his notice that the Dearness Allowance was paid against the circular issued by the Registrar of Co-operative Societies in Na.Ka.No.15851/2011ARDB dated 21.02.2011. In view of the said direction by the respondent, recovery notice dated 09.07.2014 issued to the employees of the bank to remit the dearness allowance already paid to them within three days from the date of notice. The employees of the bank filed W.P.Nos.18736 of 2014, 18737 of 2014 and 18738 of 2014 before this Court.

3. In the aforesaid writ petitions, interim stay of recovery alone has been passed by this Court. According to the petitioners when there is an interim order granted in the above said writ petitions, filed by the employees of the society, issuing present show cause notice would amount to contempt of court. Therefore, they filed the present writ petition before this Court.

4. The learned Additional Government Pleader would submit that the show cause notice has been issued by the Deputy Registrar of Co-operative Societies, under Section 87 of the Tamil Nadu Co-operative Societies Act, asked the petitioners to submit their explanation for payment of Dearness Allowance, fixation of scale and the other benefits are contrary to the circular issued by the Registrar. In the aforesaid show cause notice, the petitioners can submit their explanations before the authority. Hence the contentions of the writ petitioners have no substance to challenge the show cause notice. Therefore, the show cause notice is not maintainable at the premature stage.

5. The petitioner's society has illegally settled the aforesaid allowances and benefits to the employees of the Society thereby the proceedings initiated are in violation of circular issued by the Registrar of Cooperative Societies. The said action taken under Section 87 of the Cooperative Societies Act is against the Society. Therefore, as against the recovery proceedings, filing the writ petition and obtained interim order is not a ground to stay the entire proceedings till the disposal of the aforesaid writ petition.

6. It is seen that the petitioners have approached this Court challenging the impugned show cause notice mainly on the ground that pursuant to the communication received from the respondent dated 03.12.2013, wherein, the respondent has directed to recover the already paid Dearness Allowance from the employees of the Board pursuant to the said letter, the petitioners' Board initiated and communicated to the employees

of the Bank by issuing recovery notice on 09.07.2014 to remit the Dearness Allowance already paid to them, within three days from the said notice. The recovery notice has been challenged by the employees of the Bank in W.P.Nos.18736, 18737 and 18740 of 2014, dated 14.10.2014 and got interim order and the writ petitions are pending before this Court.

7. In the present proceedings initiated under Section 87 of the Tamil Nadu Co-operative Societies Act is perse illegal and without jurisdiction which is liable to be rejected. The recovery proceedings initiated against the employees of the Society, pursuant to the circular, has got interim order before this Court, in the aforesaid writ petitions filed by the employees. Now, the respondent initiated action and issued show cause notice under Section 87 of the Tamil Nadu Co-operative Societies Act, against the Board of Directors for payment of Dearness Allowance and other fixation of pay scale and other benefits to the employees are contrary to the circular issued by the Registrar. Therefore, the petitioners cannot take advantage of the interim order granted in the writ petition filed by the employees of the society to stall the proceedings against the Board of Directors, under Section 87 of the Act.

8. In the following decisions, the Hon'ble Supreme Court has laid down the principles of law as under:-

(i) In State of U.P. v. Brahm Datt Sharma reported in 1987 (2) SCC 179, at Paragraph 9, held as follows:-

"When a show cause notice is issued to a government servant under a statutory provision calling upon him to show cause, ordinarily the government servant must place his case before the authority concerned by showing cause and the courts should be reluctant to interfere with the notice at that stage unless the notice is shown to have been issued palpably without any authority of law. The purpose of issuing show cause notice is to afford opportunity of hearing to the government servant and once cause is shown it is open to the Government to consider the matter in the light of the facts and submissions placed by the government servant and only thereafter a final decision in the matter could be taken. Interference by the court before that stage would be premature, the High Court in our opinion ought not have interfered with the show cause notice.

(ii) In Whirpool Corporation v. Registrar of Trade Marks reported in 1998 (8) SCC 1, the Supreme Court, held that,

"14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.

20. Much water has since flown under the bridge, but there has been no corrosive effect on these decisions which, though old, continue to hold the field with the result that law as to the jurisdiction of the High Court in entertaining a writ petition under Article 226 of the Constitution, in spite of the alternative statutory remedies, is not affected, specially in a case where the authority against whom the writ is filed is shown to have had no jurisdiction or had purported to usurp jurisdiction without any legal foundation.

21. That being so, the High Court was not justified in dismissing the writ petition at the initial stage without examining the contention that the show-cause notice issued to the appellant was wholly without jurisdiction and that the Registrar, in the circumstances of the case, was not justified in acting as the "Tribunal".

(iii) The Supreme Court in *Special Director v. Mohd. Ghulam Ghouse* reported in 2004 (3) SCC 440, at paragraph 5, held as follows:

"This Court in a large number of cases has deprecated the practice of the High Courts entertaining writ petitions questioning legality of the show-cause notices stalling enquiries as proposed and retarding investigative process to find actual facts with the participation and in the presence of the parties. Unless the High Court is satisfied that the show-cause notice was totally non est in the eye of the law for absolute want of jurisdiction of the authority to even investigate into facts, writ petitions should not be entertained for the mere asking and as a matter of routine, and the writ petitioner should invariably be directed to respond to the show-cause notice and take all stands highlighted in the writ petition. Whether the show-cause notice was founded on any legal premises, is a jurisdictional issue which can even be urged by the recipient of the notice and such issues also can be adjudicated by the authority issuing the very notice initially, before the aggrieved could approach the court. Further, when the court passes an interim order it should be careful to see that the statutory functionaries specially and specifically constituted for the purpose are not denuded of powers and authority to initially decide the matter and ensure that ultimate relief which may or may not be finally granted in the writ petition is not accorded to the writ petitioner even at the threshold by the interim protection granted."

(iv) In *Union of India v. Kunisetty Satyanarayana*, reported in 2006 (12) SCC 28, the Supreme Court, held that,

"15. Writ jurisdiction is discretionary jurisdiction and hence, such discretion under Article 226 should not ordinarily be exercised by quashing a show-cause notice or charge-sheet.

16. No doubt, in some very rare and exceptional cases the High Court can quash a charge-sheet or show-cause notice if it is found to be wholly without jurisdiction or for some other reason if it is wholly illegal. However, ordinarily the High Court should not interfere in such a matter."

9. In the light of the above decisions, Writ Petition challenging the show cause notice should not be entertained for merely submitting the reasons stated in the present writ petition. The issue raised in the show cause notice can be

agitated before the concerned authority by submitting their explanation.

10. Therefore, the light of the legal principles laid down by the Hon'ble Supreme Court as well as by the High Court in various decisions, the writ petition challenging the show cause notice is not maintainable. Therefore, this court is not inclined to entertain the writ petition at the premature stage, without examining the contentions of the show cause notice issued to the petitioners.

Hence, the writ petition fails and accordingly writ petition stands dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssn

To

The Deputy Registrar of Co-operative Societies,
Tiruvannamalai Circle,
Tiruvannamalai.

+lcc to Mr.C.K.ChandraSekar, Advocate, S.R.No.57709
+lcc to the Government Pleader, S.R.No.57918

सत्यमेव जयते

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and
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SJ(CO)
GN(27/09/2017)

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