

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2017

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No. 24607 Of 2016
and
W.M.P No.21022 of 2016

A. Vasanthi
President
The East Abiramapuram Women's
Consumer Co-operative Stores Ltd.,
No.49,3rd Street, East Abiramapuram, Mylapore
Chennai - 600 004. ... Petitioner

/Vs/

1. The State of Tamil Nadu
rep. By the Secretary to Govt.
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 (Non-credits)
Kuralagam, 2nd floor
Broadway, Chennai - 108.

4. The Sub Registrar
Co-operative Societies
O/o. The Deputy Registrar
(Non-credits), Kuralagam,
2nd floor, Broadway,
Chennai - 108.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India praying for issuance of a Writ of
Certiorarified Mandamus, to call for all relevant records
relating to the impugned order issued in Na.Ka. No.1750/2016/E2

dated 27.06.2016 on the file of the second respondent herein and quash the same and thereby directing the respondents to permit the petitioner to continue as the President of the East Abiramapuram Women's Co-operative Stores Limited, Mylapore, Chennai-4 till her tenure and to pass further orders.

For Petitioner : Mr. C.R. Dhasarathan

For Respondents : Mr.L.P.Shanmugasundaram
Spl Government Pleader

O R D E R

This Writ Petition has been filed seeking to quash the order issued in Na.Ka. No.1750/2016/E2 dated 27.06.2016 on the file of the second respondent and thereby directing the respondents to permit her to continue as the President of the East Abiramapuram Women's Co-operative Stores Limited, Mylapore, Chennai-4 till her tenure.

2. Learned counsel for the petitioner submitted that the petitioner is the elected President of the East Abiramapuram Women's Co-operative Stores Limited, Mylapore, Chennai-4, registered under the Tamil Nadu Co-operative Societies Act, 1983. The tenure of office is for five years from 16.04.2013. She had six ration shops under her control. Based on a dispute in the purchase of crackers from the unapproved suppliers of crackers, the 2nd respondent issued a show cause notice dated 29.03.2016 to the petitioner. According to the petitioner, without considering her detailed explanation, the 2nd respondent passed final orders on 27.06.2016, thereby disqualifying the petitioner permanently to be a member of any co-operative organisation and to remove the petitioner from the post of President of the East Abiramapuram Women's Co-operative Stores Limited. It is the contention of the learned counsel for the petitioner that without conducting any enquiry, merely, based on the inspection report, the 2nd respondent has initiated action against the petitioner, under Section 36(1) of the Act. Thus, the 2nd respondent has violated the principles of natural justice and therefore the impugned order is liable to be quashed.

3. Learned Special Government Pleader representing the respondents would submit on instructions, that enquiry report has not been furnished to the petitioner.

4. In the light of the orders passed by this Court in W.P. Nos.7648, 16617 & 31309 of 2015 dated 06.01.2017, in the case of C. Kamaraj vs. The Registrar of Cooperative Societies,

reported in 2017 (1) CTC 258, wherein paragraph 40, 41 & 42, it is held as follows :-

"40. Section 36 of the Act empowers the Registrar to take action against the delinquent to disqualify him permanently from holding in future any office in any registered Society, but, before taking such action, an enquiry under Section 81 or inspection under Section 82 should be undertaken to find out whether a member of a Board has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the Society. Admittedly, in the present case, enquiry was held by appointing one Mr.S.Murugesan, Cooperative Sub-Registrar, as Enquiry Officer, who, in turn, admittedly submitted his report on 28.04.2014 to the third respondent. But, unfortunately, a copy of the said report has not been furnished to the petitioner. Admitting non-furnishing of the report to the petitioner, learned counsel for the fourth respondent stated that there is no provision under the Act to furnish a copy of the report made under Section 81 of the Act. Such an contention of the learned counsel for the fourth respondent / approach of the second respondent in superseding the Board is erroneous, in the light of sub-section 2 of Section 36, which categorically says that no person shall be disqualified or removed under sub-section (1) of Section 36 without being given an opportunity of making his representation. For, while interpreting sub-section 2 of Section 36, this Court in Vallipattu's case (cited supra) has rightly held that the Registrar is duty bound to communicate necessary details available in the report of enquiry to the delinquent before taking action against the officer or servant. Therefore, when a copy of the report filed under Section 81 of the Act was admittedly not furnished to the petitioner, it is highly impossible for anyone to give explanation to the Registrar requesting not to take action under Section 36 (1) of the Act.

41. Therefore, for the reasons stated above, I am inclined to interfere with the impugned order of removal and accordingly, the same is quashed. However, liberty is given to the second respondent to proceed further in this

matter, after furnishing a copy of the enquiry report dated 28.04.2014 submitted by the Enquiry Officer to the petitioner, if they are so advised as per law, as it is a case of alleged misappropriation of public money and shareholders of the Society.

42. In fine, for the reasons stated above, W.P.No.7648 of 2015 filed by one Mr.C.Kamaraj is allowed to the extent mentioned above, by quashing the impugned order of removal."

5. As per the facts of the case, enquiry report has not been furnished to the petitioner under Section 81 of the Act. Therefore, I have no hesitation to interfere with the impugned order and accordingly the order passed by the 2nd respondent in Na.Ka. No.1750/2016/E2 dated 27.06.2016 is quashed and liberty is granted to the respondents, to proceed further after furnishing a copy of the enquiry report, if so advised, as per law.

6. The writ petition is allowed, with the above observation. Consequently, the connected Miscellaneous Petition is closed. No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

avr

To

1. The State of Tamil Nadu
rep. By the Secretary to Govt.
Co-operative Department
Fort St. George
Chennai - 600 009.

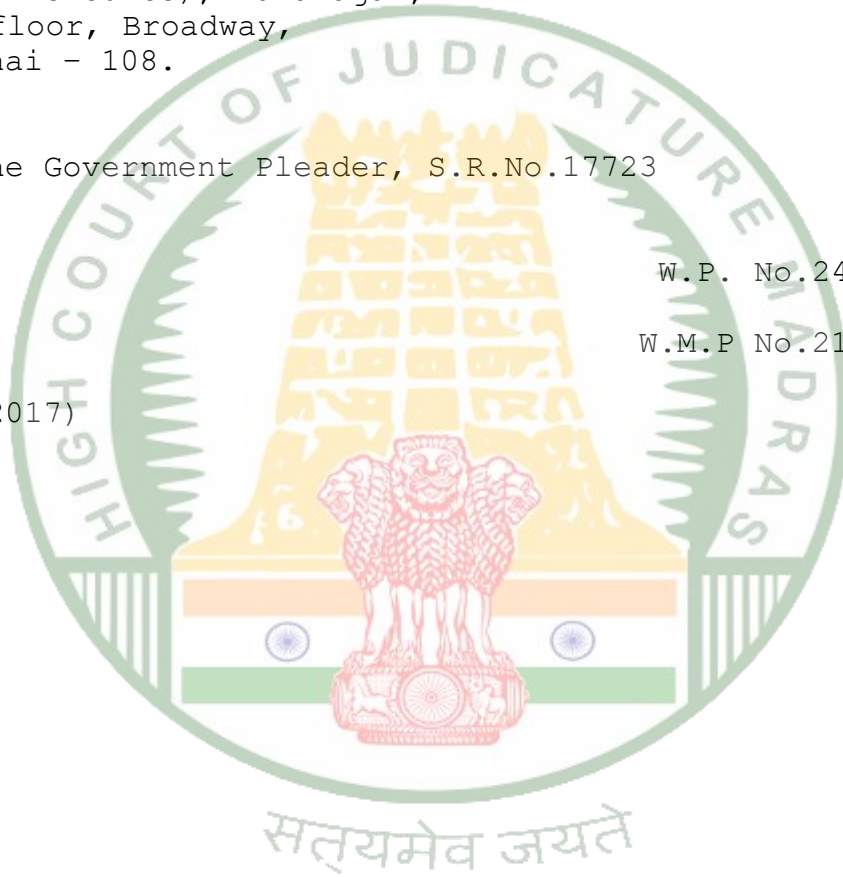
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+1cc to the Government Pleader, S.R.No.17723

W.P. No.24607 Of 2016
and
W.M.P No.21022 of 2016

AK(CO)
RS(19/06/2017)



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