

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.07.2017

CORAM

THE HON'BLE MR. JUSTICE D. KRISHNAKUMAR

W.P.No.37895 of 2016 and
W.M.P.No.32471 of 2016

C.Sivaraman

..Petitioner

Vs.

1. The Joint Director (Handlooms),
Office of the Director of Handlooms and Textiles,
Kuralagam, II Floor,
Chennai - 108.
 2. The Assistant Director / District Election Officer,
Handlooms and Textiles Department,
Venkikal,
Tiruvannamalai - 606 601.
 3. The Co-operative Election Commissioner,
Tamilnadu State Co-operative
Societies Election Commission,
273, Kamadhenu Supermarket, 1st Floor,
Annasalai,
Chennai - 600 018.
- ...Respondents

PRAYER:

The Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus calling for the records relating to the notice dated 22.09.2016 issued by the 1st respondent in his office ref. Na.Ka.32863/2016 H1, quash the same and direct the 2nd respondent to fill-up the vacancies in the Board of Vedal Handloom Weavers Co-operative Production and Sales Society Limited, Vedal, Vandavasi Taluk, Tiruvannamalai District as per proviso to Section 33 (11) (c) (ii) by conducting re-election or by nomination.

For Petitioner : Mr.P.Mani

For Respondents : Mrs.T.Girija,
Government Advocate for R1 & 2

: Mr.M.S.Palaniswamy for R3

ORDER:

The learned counsel for the petitioner submitted that the petitioner is the elected president of Vedal Handloom Weavers Cooperative Production and Sales Society Limited and assumed office on 08.05.2013. In May 2013, an election was conducted and seven persons were elected as board of members. Since the society is running profit, the Government appointed Managing Director and the superior officers to supervise the profit of the said Society. Therefore, they induced four members of the said board, to resign, so as to supersede the Board and appoint Special Officer. While so, the Petitioner received the show cause notice dated 22.09.2016 issued by the first respondent based on the false information given by the second respondent, stating that since four out of the seven of the board of members have given resignation letters, the day to day activities of the society is affected and so calling upon the petitioner / president to show cause as to why the Board of the Society should not be superceded on the reason of 'no quorum' under Section 88 (i), (ii), (iii) & (iv) of the Tamil Nadu Cooperative Societies Act, 1983. The petitioner has submitted that to the effect, such vacancies have to be filled up by conducting re-election, as per the first proviso to Sub-Section 11 (c) (ii) of Section 33 of the Tamil Nadu Cooperative Societies Act, 1983 or by nomination out of the general members of the said society as per the second proviso to Sub-section 11 (c) (ii) of Section 33 of the Tamil Nadu Co-operative Societies Act, 1983. According to the petitioner, the said resignation letters have not been forwarded to the President / Chief Executive of the society so as to place the same before the Board, for deciding acceptance, as per Rule 60 of the Tamil Nadu Cooperative Societies Rules, 1988. On the above grounds, prayed to quash the impugned show cause notice.

2. The learned Government Advocate would submit that pursuant to the resignation letters given by the four Directors of the aforesaid Board namely, N.Shanmugam, M.Ramachandran, V.Shankar and V.Kasthuri to the Managing Director, who is the Chief Executive of the said society, a meeting was conducted on 03.09.2016 regarding the supersedence of the board, in which majority of the members had participated and asked to supersede the said board. Then, the second respondent in his letter dated 09.09.2016 had informed of the above meeting to the first respondent and based on that letter, the first respondent has issued the show cause notice to all the seven Board of Directors requesting them to submit their written explanation under Section 88 (i) (ii) (iii) & (iv) of the Tamil Nadu Cooperative Societies Act. It is also submitted by the learned Government Advocate that the second respondent has submitted in his counter affidavit that the recommendation to supersede the Board was

made due to 'want of quorum' of the Board of the Society and on considering the welfare of the Society and its members. On the above submissions, the writ petition is liable to be set aside.

3. In this writ petition, the petitioner is challenging the impugned notice dated 22.09.2016. According to the petitioner, the decision of the first respondent to supercede the board of the society for want of quorum is illegal, without taking steps to fill up the vacancies as per the Act, the issuance of the impugned notice is illegal and contrary to the provision of law. To substantiate this view, the learned counsel for the petitioner has relied upon the unreported decision of this Court dated 11.02.1999, in the case of R.Ramaraj Vs. Joint Registrar of Cooperative Societies, wherein this Court has held as follows.

- i) The Managing Director as well as the ex-officio Sub Registrar also will be considered as members as given in the definition for deciding quorum.
- ii) For managing the affairs of the society, they have got equal rights with the others members.
- iii) Instead of filling up the vacancies, initiating action under Section 89 of the Act is not proper.

4. Further, under Section 26 (1) of the Tamil Nadu Cooperative Societies Act, 1983, every above member will have one vote while dealing with the affairs of the society. It is clear from the above Judgment, adding the Managing Director of the Society, there would be a sufficient quorum. Therefore, reason of 'no quorum' as stated by the first respondent in the show cause notice is illegal and contrary to the provisions of the Act and the same deserves to be rejected.

5. As far as the other contention of the learned counsel for the petitioner is concerned, an enquiry was conducted under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983, further proceedings yet to be initiated. At this stage, the impugned show cause notice has been issued which is unsustainable under the law. On this issue, the learned counsel for the petitioner has placed the decision rendered by this Court in the case of M.Marimuthu Vs. The Regional Registrar of Cooperative Societies & Others reported in CDJ 2014 MHC p 2987, wherein this court has considered in Para No.66 which is extracted as follows.

"66. Primarily, on two grounds the society was sought to be superseded, firstly on the ground

that an enquiry under Section 81 of the Act was conducted and a report was submitted in which there is a prima facie finding of guilt recorded against the petitioner alleging temporary misappropriation of funds of the society. The petitioner took a stand that the report of Section 81 enquiry was not communicated to the society. In the counter affidavit, the Regional Joint Registrar of Cooperative Societies has taken a stand that there is no necessity to furnish the said report in terms of Rules 103 and 173 of the Rules. Both the rules referred in the counter affidavit may not be of any relevance. However, Rule 104 of the Rules may be the relevant Rule and there may be a typographical error in the counter affidavit and even the said Rule does not prohibit the furnishing of copy of such report. However, if the principles of natural justice are applied any adverse materials, affecting the interest of a person has to be furnished, unless it is a privileged document. However, at this stage of the matter, these aspects need not be gone into for the simple reason that though a report has been submitted under Section 81 of the Act, further proceedings are yet to be initiated even as per the counter affidavit. Therefore, to penalize the elected Board members, for the reasons assigned in the report under Section 81 of the Act, as one of the ground of supersession amounts to prejudging the issue. Therefore, reliance on the report under Section 81 of the Act in the notice issued under Section 88 of the Act is misconceived. In any event, this observation would have no bearing on the further proceedings contemplated by the respondents pursuant to such report under Section 81 while shall be dealt with independently."

Therefore, based on the above Judgment of this Court, the reasons stated in the show cause notice are liable to the quashed.

6. The learned Government Advocate submitted that in the Judgment cited by the petitioner's counsel, the board is pertaining to a Primary Cooperative Agricultural and Rural Development Bank which comes under the Schedule II Part -B 3. For such a scheduled society, the constitution of the board of

the society is to be constituted by the Rule 59 under Tamil Nadu Cooperative Societies Rules, 1988. In the said Schedule II Part-B 3 which reads as follows, the Board of Directors includes Managing Director.

3. Primary Cooperative Agriculture and Rural Development Banks:

(1)	Eleven elected members of whom:-	11
	(i) two members from among the Scheduled Castes and Scheduled Tribes members of the Bank elected by all the individual members of the Bank; (ii) three members from among the women members of the bank elected by all the individual members of Bank; and (iii) six members elected from among themselves by all the individual members of the bank.	
(2)	One co-opted member having experience in the field of Rural Development or Banking Management	1
(3)	(i) the representative of the Central Cooperative Bank concerned (ii) the Cooperative Sub Registrar (Field Officer) concerned of the Cooperative Sub Registrar in the Office of the Deputy Registrar of Cooperative Societies concerned dealing with the matters relating to Primary Cooperative Agriculture and Rural Development Banks, as the case may be; and (iii) the Managing Director of the Bank	
	Total	15

But, the petitioner society is a Primary Weavers Cooperative Society which is not a scheduled society. For such a Primary Society other than a Scheduled Cooperative Society, the members of the Board are elected as per Rule 51 under Tamil Nadu Cooperative Societies Rules, 1988, which provides as follows:

Election of members of the Board of a primary society other than a scheduled cooperative society - Notwithstanding anything contained in the by-laws of a primary society, other than a scheduled cooperative society, the election of the members of the board shall be by all the members of the society entitled to vote.

Provided that where there is provision in the by-laws of any society for the formation of constituencies, otherwise than on the basis of area, the election of a member or members of the board in respect of each such constituency shall be by all the members from among themselves of that constituency only.

According to the learned Government Advocate, Rule 51 of the Tamil Nadu Cooperative Societies Rules, 1988 only applies to the facts of the present case. Hence, Rule 59 of Tamil Nadu Cooperative Societies Rules 1988 is not applicable to the facts of the case.

7. From the aforesaid Rule, it is clear that the petitioner is a primary weavers cooperative society, which is other than a scheduled Cooperative Society. Therefore, contention of the petitioner is liable to be rejected.

8. The unreported Judgment relied upon by the petitioner in the case of R.Ramraj Vs. Joint Registrar of Cooperative Societies of this High Court will not apply to the present case. In the counter affidavit filed by the second respondent, it has been stated that the proceedings has been initiated only on the basis of "for want of quorum" in view of the resignation letter submitted by the four Directors. The other grounds raised by the writ petitioner at this stage is premature. Therefore, the contention of the petitioner is liable to be rejected.

9. The impugned show cause notice has been issued by the first respondent to submit the petitioner's explanation. In the light of the settled principles of law, as decided by the Hon'ble Supreme Court in the case of Union of India Vs. Kunisetty Satyanarayana reported in 2006 (12) SCC 28 wherein it has been held as follows.

"Writ jurisdiction being one of discretionary jurisdiction, which could be exercised only in exceptional cases, the show cause notice or charge sheet not being one of those exceptional cases, the same was liable to be dismissed. This Court further pointed out that unless there were merits to show that the show cause notice was wholly without jurisdiction, normally, this Court should not interfere with such show cause notices. Thus, following the dictum of the Apex Court, the Writ Petitions were dismissed. Aggrieved by this, the present Writ Appeals have been filed by the Writ Petitioners".

10. In view of the above fact, and the decision cited supra, this court is not inclined to interfere with the impugned notice issued by the respondent. Prima facie case is not made out to entertain the writ petitioner.

11. The writ petition is dismissed. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Joint Director (Handlooms)
Office of the Director of Handlooms and Textiles
Kuralagam, II Floor
Chennai -108.
2. The Assistant Director / District Election Officer
Handlooms and Textiles Department
Venkikal
Tiruvannamalaai - 600 601.

+1cc to Mr.P.Mani, Advocate SR.No.46419
+1cc to Mr.M.S.Palani Swamy, Advocate SR.No.47457
+1cc to Government Pleader SR.No.46854

W.P.No.37895 of 2016
and

सत्यमेव जयते

W.M.P.No.32471 of 2016

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