

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.08.2017

CORAM

THE HON'BLE Mr. JUSTICE M. DHANDAPANI

W.P.No.34856 of 2003

P.Kudalingam

... Petitioner

v

1. The Special Officer,
D.D. 158 Bodinaickanur
Farmers Services Co-operative
Society Limited,
Bodinaickanur, Theni District.
Pin-625 513.

2. The Deputy Registrar,
Uthamapalayam,
Uthamapalayam Post, Theni District.

... Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a writ of Certiorari, to call for the records of the 1st respondent made in his proceedings No. Nil dated 30.10.2003 and the consequential order of the 1st respondent made in his proceedings No. Nil dated 30.10.2003 and quash the same.

For Petitioner : Mr.N.Umapathy

For Respondents: No Appearance (for R1)

: Mr.L.P.Shanmugasundaram
Spl. Govt. Pleader (Co-op) (for R2)

सत्यमेव जयते
O R D E R

This writ petition has been filed challenging the notice of the first respondent-special officer dated 30.10.2003, wherein the first respondent directed the petitioner to repay the balance of the loan amount.

2. Heard both sides.

3. A Larger Bench of this Court in its decision reported in 2006 (4) CTC 689 (K.Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal), has decided whether writ will lie against a Co-operative Society and has held as follows:

"21. From the above discussion, the following propositions emerge:-

(i) If a particular co-operative society can be characterised as a 'State' within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be 'an authority' within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition;

(ii) Applying the tests in *Ajay Hasia* it is held that a co-operative society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution;

(iii) Even if a society cannot be characterised as a 'State' within the meaning of Article 12 of the Constitution, a Writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a 'person' or 'an authority' within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a 'State' would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a 'State' a writ would lie when the case falls under Clauses (iii) and (iv) above.

(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a 'State', the service conditions of its employees governed by its bye-laws cannot be enforced through a writ petition.

(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.

(viii) The decision in M.Thanikkachalam v. Madhuranthagam Agricultural Co-operative Society, 2000 (4) CTC 556 is no longer good law, in view of the decision of the seven-Judge Bench of the Supreme Court in Pradeep Kumar Biswas case and the other decisions referred to here before."

4.As per the decision of the Larger Bench of this Court reported in the decision cited supra, writ petition is not maintainable against the Special Officer by the Societies. Hence, this writ petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

sji/arr
To

1. The Special Officer,
D.D. 158 Bodinaickanur
Farmers Services Co-operative Society Limited,
Bodinaickanur, Theni District.
Pin-625 513.
 2. The Deputy Registrar,
Uthamapalayam,
Uthamapalayam Post, Theni District.
- + 1 cc to Mr. N. Umapathy, Advocate sr.58925
+ 1 cc to Government Pleader Sr.59482

W.P.No.34856 of 2003

CS-V

EU 14.09.17

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