IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 29.08.2017

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

W.P.No.36081 of 2004
and W.P.M.P.No.43407 of 2004

J.Baskaran ... Petitioner

Vs.

1.The Joint Registrar of
Co-operative Societies,
Thiruvarur,
Thiruvarur District.

2.The Special Officer,
Paravakkottai Primary
Agricultural Co-operative Bank Ltd.,
T.1453, Paravakottai, Mannarkudi Taluk,
Thiruvarur District. ... Respondent

Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari calling for the records pertaining to the impugned order issued by the 2nd respondent in his proceedings No.1 dated 29.10.2004, quash the same.

For Petitioner : Mr.N.Manokaran
For Respondent : Mr.V.Selvaraj, Addl. Govt. Pleader

O R D E R

The petitioner has filed this writ petition challenging the notice issued by the 2nd respondent under Section 81 of the Tamil Nadu Co-operative Societies Act, 1983.

2. The 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 held that writ will not lie against the Special Officer of the Co-operative Society, which reads 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

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

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

WEB COPY

https://hcservices.ecourts.gov.in/hcservices/

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 Vs. 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."

3. As per the decision of the Larger Bench of this Court reported in the decision cited supra, writ petition is not maintainable against the Societies. Hence, this writ petition is dismissed with liberty to the petitioner to workout his remedy in the manner known to law. No costs. Consequently, connected miscellaneous petition is also closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

gya

To
1.The Joint Registrar of Co-operative Societies,
Thiruvarur,
Thiruvarur District.

2.The Special Officer,
Paravakkottai Primary Agricultural Co-operative Bank Ltd.,
T.1453, Paravakottai, Mannarkudi Taluk,
Thiruvarur District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.62340
+1cc to the Government Pleader, S.R.No.62586

W.P.No.36081 of 2004
and
W.P.M.P.No.43407 of 2004

GP(CO)
GN(03/10/2017)

WEB COPY
https://hcservices.ecourts.gov.in/hcservices/