BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

**DATED: 25.01.2017**

CORAM

**THE HON'BLE Mr.JUSTICE R.SURESH KUMAR**

**W.P.(MD) No.17165 of 2013**
**and M.P.Nos.1 and 2 of 2013 and WMP No.17021/2016**

RD138 CECRI Employee's Cooperative thrift and Credit Society Ltd.,Karaikudi
Represented by its President
R.M.Sabarathinam ... Petitioner

-vs-

1.The Registrar of Cooperative Societies,
No.170 NV Natarajan Maaligai
Opp to Ega Cinema Hall
Poonamallee High Road,
Kilpauk, Chennai.

2.The Joint Registrar of Cooperative Societies
Sivagangai, Sivagangai District.

3.The Deputy Registrar of cooperative Societies
Karaikudi, Sivagangai District.

4.The Enquiry Officer/Managing Director,
Tirupathur Agricultural Producers
cooperative Marketing Society, Tirupathur,
Sivagangai District. ... Respondents

**Prayer:** Writ Petition filed under Article 226 of the Constitution of India for issuance of a writ of Certiorari to call for the records pertaining to the proceedings made in Na.Ka.No.822/2013/Ne.va.va. Dated 14.08.2013 issued by the 3rd respondent and quash the same.

For Petitioner : Mr.D.Sadiq Raja

For Respondents : Mr.V.Muruganantham
Addl. Govt. Pleader for R1 to R3
Mr.Gunaseelan Muthiah for R4
Government Advocate

**O R D E R**

The prayer in the writ petition is for a writ of Certiorari to call for the records pertaining to the proceedings made in Na.Ka.No.822/2013/Ne.va.va. Dated 14.08.2013 issued by the 3rd respondent and quash the same.

2.The petitioner is a Cooperative Thrift and Credit Society for the benefit and welfare of Employees working in Central Electro Chemical Research Institute (in short CECRI), Karaikudi. The main purpose of the petitioner is to provide loans to the employees of the CECRI. While so, during the year 2009, many members of the petitioner Society request for midterm loan from the petitioner and in order to fulfill their aspirations, the petitioner had requested the financing bank of the petitioner, namely, the District Central Cooperative Bank, Sivagangai for advancement of loan amount, which, in turn to be given to the members by way of midterm loan. The said request made by the petitioner was not honoured by the Financing Bank. Because of their financial conditions, the said obligation seeking advancement from the Financing Bank was kept pending for more than 9 months. With the result, most of the members had raised a serious issue with the petitioner Society that the petitioner Society itself was functioning only to the welfare of those members, when its members are not able to get loan for their sudden requirement from the petitioner, then the very functioning of the petitioner Society would be at stake. In this regard, instead of getting advancement from financing bank or from Government, the petitioner Society cannot get financial assistance by way of loan from any other sources and if at all the financial advancement has to be obtained from any other source, the necessary permission has to be obtained from the Government/Department and moreover, since the relevant bylaw governing the petitioner Society enables the petitioner Management to get advancement of the loan only from Government or financing Bank, unless there is a suitable amendment made to the bylaws, the said advancement of loan cannot be obtained from any other source other than the financing bank or Government. Therefore, the petitioner Society thought of amending its bylaws and after having passed a resolution unanimously, the Bylaw 18, which relates to borrowing has been amended. As per the amendment, Bylaw 18 states as follows:



| Existing By law | As Amended By law |
|---|---|

| Bye Law No.18 | Bye Law No.18 |
|---|---|
| Other Borrowings<br>It shall be competent to the Board of Directors to borrow funds otherwise than by way of Deposits either from Members or from the financing bank registered under the Cooperative Societies Act provided that the interest payable on the borrowed amount shall not in any case exceed the lending rate of the Central Cooperative Bank. No society shall borrow from any source other than the Government or the financing bank except with the prior approval of the Registrar and the subject to such limit and conditions as he may impose. | Other Borrowings<br>It shall be competent to the Board of Directors to borrow funds otherwise than by way of Deposits either from Members & non members or from the financing bank and any Cooperative Institution registered under the Cooperative Societies Act provided that the interest payable on the borrowed amount shall not in any case exceed the lending rate of the Central Cooperative Bank. |

3. Whenever amendment is made in the bylaw, the same has to be approved and registered by the Registrar of Cooperative Societies and such power is being exercised by Joint Registrar or Deputy Registrar concerned and here, in this case, the registration and approval of amendment of bylaws in respect of the petitioner Society has to be done by the third respondent. Therefore, a request was made to the third respondent to accept the amendment and to register the same. In turn, the third respondent, in exercise of his power under Sub Section 5 of Section 11 of the Tamil Nadu Cooperative Societies Act (hereinafter referred to as 'the Act') has approved and registered the amendment and a certificate to that effect has also been issued by him by proceedings in Rc.No.3835/2011/SF dated 13.02.2012.

4. In view of the said amendment having been approved and certified by the third respondent from that date, ie., from 13.02.2012, the amendment carried out in Bylaw 18 has come into force. Since the amended bylaw enabling the petitioner Society to borrow loan from any other Cooperative Institution registered under the Act, the petitioner has approched the thrift Cooperative Federation Limited, Chennai and from whom a sum of Rs.1,80 lakhs was received as advance (loan) and on receipt of the same, the amount has been disbursed by way of midterm loan to the needy members of the Society. Questioning this action on the part of the petitioner, the very same third respondent has issued a proceeding in Na.Ka.No.822/2013/eptt, wherein, the third respondent has initiated the proceeding for inspection under Section 82 of the Act. In the said proceeding, the third

respondent has stated that the petitioner Society on 15.06.2013, 18.06.2013 and 28.06.2013 has disbursed midterm loan to the members to the extent of Rs.1,80 lakhs and the said action on the part of the petitioner is as against the provisions of the Act as well as the Rules made therein and in order to ascertain the fact, inspection under Section 82 of the Act is ordered. Challenging the said order of the third respondent, dated 14.08.2013, the petitioner has come out with the present writ petition with the aforesaid prayer.

5. Heard both sides.

6. The learned counsel for the petitioner would straight away take the provisions in the Tamil Nadu Cooperative Societies Rules, 1988 (hereinafter referred to as 'the Rules') especially, Rule 77(2), which reads thus:

> "77. Restrictions on borrowings by societies:
>
> ... (2) No society shall borrow from any source other than the Government or the financing bank except with the prior approval of the Registrar and subject to such limits and conditions as he may impose."

No doubt, the said Rule 77(2) restrain the Society from borrowing any other source, other than the Government or Financing Bank without the prior approval of the Registrar. After having noted the said provision, the petitioner Society by unanimous resolution amended bylaw No.18, whereby amendment was carried out and the amended bylaw 18, as has been extracted above enabled the petitioner to borrow loan from any Cooperative Institution registered under the Act and the said amendment has also been duly informed to the third respondent for approval and registration and the third respondent also, in turn, having accepted the said amendment carried out in bylaw 18 of the petitioner's Society, has registered the same and issued a certificate to that effect under Sub Section 5 of Section 11 on 13.02.2012 and in view of the said registration having been made and a certificate to that effect issued by the third respondent, the petitioner become eligible to claim loan from other Cooperative Society or Institution.

7. The learned counsel for the petitioner would also submit that only pursuant to such enabling amended bylaw No.18, the petitioner had approached the Thrift Cooperative Federation Limited, Chennai, which is a cooperative Institution registered under the Multi State Cooperative Societies Act, 1984 from whom the petitioner was able to get an advancement to the extent of Rs.1,80 lakhs and in order to meet the requirement of its members, the entire amount has been disbursed by way of midterm loan. The learned counsel for the petitioner would also submit that the loan disbursed to its members are being recovered periodically and absolutely, there is no default from any of the members and there is no complaint whatsoever from any quarters about the

disbursement of the said midterm loan. The learned counsel for the petitioner would also submit that under Section 82 of the Act, which is the power for inspection and investigation, they can be interfere with only, where any alleged misappropriation fraudulently, retention of any money or property, breach of trust, corrupt practice or mismanagement in relation to that Society or into any particular aspect of the working of the said Society is noticed. Here in the case in hand, there is no allegation, such as misappropriation, fraudulent retention of money, breach of trust or corrupt practice. Assuming that if there is any notice of mismanagement in relation to that Society or into particular aspect of the working of that Society, because of the loan advancement obtained from the Thrift Cooperative Federation Limited other than the Government and the Financing bank within the meaning of Rule 77(2), the same can very much be investigated, provided, if the petitioner Society has not done the said act of getting advancement from that Federation without the authority of law.

8. In this regard, the learned counsel for the petitioner would submit that in view of the restriction made in Rule 77(2) of the Rules, the bylaw has got amended. The amendment has also been accepted and in fact registered under Section 11(5) of the Act and once, the amendment is accepted and registered by the third respondent, the petitioner Society is empowered to get advancement from any other Cooperative Institution and only in that context advancement was borrowed from the said Federation, which is a Multi State Cooperative Society under the Multi State Cooperative Societies Act 1984. Therefore, even assuming that the loan was borrowed from the said Federation, the same cannot be treated as mismanagement and therefore, absolutely there is no reason whatsoever to invoke Section 82 of the Act ordering inspection against the petitioner society. Therefore, the learned counsel for the petitioner would contend that the impugned order is nothing but a colourable exercise of power without any basis whatsoever, even to invoke section 82 of the Act and therefore, the same is liable to be interfered with and to be quashed.

9. Per contra, the learned Additional Government Pleader for the respondents would submit that no doubt the Management carried out by the petitioner Society making amendment in Bylaw 18 enabling the petitioner Society to borrow loan other than the Government and Financing Bank which has been approved and registered by the third respondent under Section 11(5) of the Act by the proceeding dated 13.02.2012. However, since the petitioner is a Cooperative Society registered under the Act and whatever the requirement to meet out the financial need of the Society, they should have either approached the Financing Bank or Government for borrowing loan and if the petitioner is not able to borrow amount from the financing bank, they can very well approach the authorities ie., the respondent herein for a prior approval under

Rule 77(2) of the Rule and without getting any such prior approval, the petitioner Society should not have approached the Federation, which is a cooperative Organisation registered under the Multi State Cooperative Societies Act.



10. In this regard, the learned Additional Government Pleader for the respondents would rely upon the submissions made by the counter affidavit filed on behalf of the respondents, especially, at paragraph No.3, which reads thus:

> 3. I Submit that the provisions of the bye law, the act and the rules are misconceived, misunderstood and wrongly interpreted by the petitioner. The petitioner has stated that on the strength of bye law no.18, they have borrowed a sum of Rs.1 Crore and 82 lakhs from the Thirft Co-operative Federation, Chennai.
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> a) Under bye law no.18 the board of directors are authorized to borrow from the financing bank and any Co-op institution registered under the Co operative Societies Act. Viz., the Tamilnadu Co-operative Societies Act 1983. Section 67 and rule 77 stipulated the terms and conditions for borrowing. As per rule 77 (2) 'No society shall borrow from any source than the Government or the financing bank except with the prior approval of the Registrar and subject to such limits and conditions as he may impose."
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> b) The Thrift Federation is not a Co-operative Institution registered under the Tamilnadu Co-operative Societies Act 1983. It is registered under the multi state Co-op societies Act 2002 by the Central Registrar and its area of operation exceeds one state whereas the area of operation of the Tamilnadu Co-operative Societies Act 1983 is limited to the State of Tamilnadu only.
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> c) Ultra viring the Jurisdiction of the TN CO-operative Societies Act 1983 and violating rule 77 of the Tamilnadu Co-operative Societies rule 1988, the board has made borrowing. If any dispute arises in future regarding this borrowing and repayment, section 84 of the multistate co-operative societies act 2002 will overlap with section 90 of the Tamilnadu Co-operative Societies 1983.
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> d) Moreover the petitioner has invested a sum of Rs.8,95,000/- in the share and Rs.13,50,000/- in the thrift deposit of the thrift federation, Chennai, against section 68 of the Tamilnadu Co-operative Societies Act 1983."



11. Therefore, the learned Additional Government Pleader for the respondents would submit that in order to ascertain the

fact as to whether the petitioner Society has acted upon strictly in consonance with the provisions of the Act as well as the Rules made thereunder and also as per the Bylaws in getting such huge advancement from other source other than one prescribed for them, ie., the Financing Bank or Government such an inspection and investigation has been ordered and if ultimately, the inspection report is submitted, based on which, further action can be decided by the respondents and before which, the very inspection ordered through the impugned order cannot be questioned. Therefore, the learned Additional Government Pleader for the respondents would submit that the impugned order requires no interference from this Court, as the same is fully justifiable and sustainable in law.

12. This Court has considered the rival submissions made by the learned counsel for the respective parties as well as the materials placed before this Court for perusal.

13. It is a restriction in fact under Rule 77(2)of the Rules that the petitioner Society without the prior approval cannot borrow loan from any other source other than the Government and the Financing Bank. Therefore, the petitioner had already approached the financing bank in the year 2009 in order to honour the requirement of its members to grant midterm loan, since after nine months, nothing has come from the financing bank, as the very financing bank itself was in financial trouble and therefore, the advancement as required by the petitioners Society was not honoured by them. The petitioner Society consist of members, who are workers of CECRI, which is a Central Institute and every member of the petitioner Society are employees therein and they are ensured with the decent and definite salary for every month.

14. Therefore, there is every possibility of getting the loan repaid from the members of the petitioner Society, if the loan advancement is given to them for their sudden financial need. Only for these purposes, these employees Cooperative Societies are established. If the employees cooperative Society is not in a position to fulfill the genuine financial need of its members, then the very purpose of functioning the cooperative societies, especially for the welfare of the employees would get defeated. Insofar as the legal impediment, as has been projected by the respondent side is concerned, it is an admitted fact that the bylaw, which was originally not enabled the petitioner Society to borrow loan from other sources, however, subsequent to the amendment made in bylaw No.18, it enables the petitioner to get advancement from any cooperative institution registered under the Cooperative Societies Act. Such an amendment as required under Section 11(3) of the Act has been accepted by the Registrar ie., the third respondent and in this regard Sections 11(3), 11(5) and 11(8) of the Act are very much relevant, which are reproduced hereunder:

"11.Amendment of the bylaws of registered Society:

(3) If the Registrar is satisfied that an amendment of the bylaws is not contrary to the provisions of this Act or the rules or to the cooperative principles or to any other law applicable to the society, he may within such time as may be prescribed register the amendment.

(5) When the Registrar registers an amendment of the bylaws, he shall issue to the registered society a copy of the amendment of the bylaws certified by him, which shall be conclusive evidence that the amendment has been duly registered.

(8) An amendment of the bylaws of a registered society shall take effect from the date, if any, specified in the amendment. Where no such date is specified, the amendment shall take effect from the date on which it is registered."

15. Section 11(3) of the Act says if the Registrar is satisfied with an amendment of the bylaws is not contrary to the provisions of the Act or Rules, which means that the amendment now carried out in bylaw 18 of the petitioner's Society is not in contrary to the provisions of the Act or Rules and to that effect, the Registrar concerned after having satisfied himself had issued a certificate of registration under sub section 5 of Section 11. As per sub section 8 of section 11, an amendment of the bylaws of the Registered society shall take effect from the date, if any, specified in the amendment, otherwise, the amendment shall take into effect from the date on which it is registered. Here, in the case in hand, there is no such date has been mentioned in the amendment. Therefore, the effective date of the amendment come into force is considered only as the date of registration ie., 13.02.2012, on that date, the necessary proceedings in sub section 5 of section 11 was issued by the third respondent, which reads thus:

"I hereby certify that under Sub - section (5) of Section 11 of the Tamil Nadu Cooperative Societies Act, 1983 (Tamil Nadu At 30 of 1983) the Amendment of byelaws of the R.D. 138 CECRI Employees Cooperative Thrift and Credit Society Ltd., Karaikudi are registered by me as shown below:

| Bye law No. | As Existing | As Amended |
|---|---|---|
| 16(A), 18 | | As per list enclosed. |

16. Therefore, once the amendment is carried out and it came into effect as per the bylaw 18, the petitioner can very well approach any cooperative Society other than the financing bank and the Government. Therefore, rightly, the petitioner had approached the Thrift Cooperative Federation Limited, Chennai, which is also a Cooperative Society registered under Multi State Cooperative Society Act, 1984 from whom, they borrowed a loan to the extent of Rs.1,80 lakhs and the entire amount has been disbursed to its

members by way of midterm loan.

17. As has been submitted by the learned counsel for the petitioner, the loan advanced to its members by way of midterm loan is being recovered periodically without any demur. There is no complaint whatsoever from any one as to whether the loan has not been recovered beyond the period and there is no complaint from anyone that ineligible people had been advanced loan. In the absence of any such complaint from any one including the members of the petitioner Society, the question of mismanagement, as has been contemplated under Section 82 of the Act does not arise in this case, especially, in the particular aspect of borrowing money from the Federation and disbursed it by way of midterm loan to its members. Therefore, none of the inference, as has been specifically given under Section 82 of the Act for the purpose of invoking the same, is available in the present issue. Therefore, this Court is of the view that absolutely there is no reason to invoke Section 82 against the petitioner at this juncture.

18. Moreover, in the impugned order dated 14.08.2013, it is stated that the disbursement of midterm loan to its members of the petitioner Society appears to be against the provisions of the Act and Rules. In order to substantiate the said contention, the respondents attempted to make some other averments in the counter, which has been extracted above, especially, in paragraph No.3, where they have stated that the petitioner has borrowed loan from Cooperative Federation, which is a Multi State Cooperative Society and it has the jurisdiction more than in one state.

19. The said reason is absolutely ridiculous because, whenever Multi State Cooperative Society is in function, certainly, it's service area would spread across more than one State ie., the reason why that kind of cooperative Institutions are regsitered under Multi State Cooperative Societies Act and that would no way affect the right of the petitioner to get advancement.

20. Yet another important aspect, which cannot be lost sight of in this case is that the petitioner as referred to above is functioning only for the welfare of its members, who are none other than the employees of CECRI. When financial need arises for its members, it is the duty of the petitioner to fulfill the same by giving advancement depending upon the eligibility and requirement of each and every member. For the said purpose, when the petitioner approached the financing bank, which is the Central Cooperative Bank of Sivagangai, they had not come forward to give the advancement of the petitioner Society. When that situation arises, the Management of the petitioner Society cannot be the mute spectator to state that the financing bank has not advanced loan and therefore, the petitioner is not able to fulfill the aspirations of its members. If such a position of the Management of the petitioner Society continued, it would have defeated the

very purpose of functioning of the Society itself. Therefore, the move taken by the petitioner Management in swiftly acting by making the amendment and of course, approached the third respondent in order to fulfill the legal requirement for registration of such amendment and the amendment having been regsitered on 13.02.2012 by the Registrar concerned within the meaning of Section 11(3) of the Act, the respondents cannot now show any finger against the petitioner Society and therefore, the reason cited in the counter affidavit filed by the third respondent is totally unacceptable and the same need not be given credence. For all these reasons stated above, this Court is of the firm view that the impugned order dated 14.08.2013 issued by the third respondent is totally unjustifiable and hence, it is liable to be interfered with and accordingly, the same is quashed.

21. Resultantly, the writ petition is allowed and the interim order granted by this Court in M.p.No.1 and 2 of 2013 dated 08.11.2013 is made absolute.

22. It is also informed that pursuant to the impugned order, the fourth respondent was appointed as Inspecting officer, who, in turn, had taken all the connected records from the petitioner Society and the same has been kept at the custody of the $4^{th}$ respondent. In view of the orders, now passed in this writ petition, the $4^{th}$ respondent is hereby directed to hand over the said records to the petitioner Society forthwith. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

RR
To
1.The Registrar of Cooperative Societies,
No.170 NV Natarajan Maaligai
Opp to Ega Cinema Hall
Poonamallee High Road,
Kilpauk, Chennai.

2.The Joint Registrar of Cooperative Societies
Sivagangai, Sivagangai District.

3.The Deputy Registrar of cooperative Societies
Karaikudi, Sivagangai District.



4.The Enquiry Officer/Managing Director,
Tirupathur Agricultural Producers

cooperative Marketing Society, Tirupathur, Sivagangai District.

+1CC to Mr.D.Sadiq Raja, Advocate Sr.No.4629
+1CC to Spl.Government Pleader Sr.No.4504
+1CC to Mr.J.Gunaseelan, Advocate Sr.No.4271



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**W.P.(MD)No.17165 of 2013**

**and M.P.Nos.1 and 2 of 2013 and WMP No.17021/2016**
**25.01.2017**