

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.2228 of 2018
and
WMP.Nos.2726 and 2727 of 2018

.. Petitioner

J.A.Murugan

Vs

1. The Director,
Vigilance and Anti Corruption,
No.293 MKN Road, Alandur,
Chennai-16.
 2. The Registrar of Co-operative Societies,
No.170, Periyar EVR High Road,
Kilpauk, Chennai-10.
 3. The Joint Registrar of Co-operative Societies,
Krishnagiri Region, Krishnagiri.
 4. The Deputy Registrar of Co-operative Societies,
Hosur Circle, Hosur,
Krishnagiri District.
 - 5.T.K.122, Krishnagiri District National
Engineering employees Co-operative
Thrift and Credit Society,
Rep by its President,
Hosur, Krishnagiri District.
 - 6.The Inspector of Police,
Vigilance and Anti Corruption,
Krishnagiri
- .. Respondents

Writ 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 in his letter Rc.17/2017, Coop.KG dated 27.10.2017, the letter of the 2nd respondent in Rc.No.14430/2017/B11 dated 1.12.2017, the letter of the 3rd respondent in Na.Ka.No.6166/2017Thava(2), dated 15.12.2017 and

the order of the 4th respondent in Na.Ka.130/2017Pu.Vee(1) dated 08.01.2018 quash the same.

For Petitioner : Mr.M.S.Palaniswamy
For Respondents: Mr.V.Jayaprakash Narayanan
(R1 and R6) Special Government Pleader
(R2 to R5) Ms.T.Girija (R2 to R5)
Government Advocate

O R D E R

This Writ Petition has been filed challenging the proceedings of the first respondent dated 27.10.2017, the proceedings of the second respondent dated 1.12.2017 and the proceedings of the third respondent dated 15.12.2017 and also the order of the fourth respondent dated 08.01.2018 and to quash the same.

2. The case of the petitioner is that when the petitioner was working as a Secretary in the fifth respondent Society, he was arrested by the sixth respondent police and an FIR was filed against him under Section 7 of the Prevention of Corruption Act, 1988 and the learned Judicial Magistrate-I, granted bail to the petitioner. Thereafter, the fifth respondent by its resolution dated 30.06.2017 revoked the suspension of the petitioner dated 24.01.2017 and reinstated him in service and the petitioner joined the duty on 30.06.2017 and he was working as a Secretary in the fifth respondent society.

3. Mr.S.Palaniswamy, the learned counsel for the petitioner by assailing the impugned orders submitted that when the petitioner is a Secretary of the fifth respondent Society viz. Krishnagiri District National Engineering Employees Co-operative Thrift and Credit Society, he cannot be construed as a public servant. Therefore, the first respondent cannot request the second respondent to obtain sanction from the fifth respondent to prosecute the petitioner under Section 19(1)(c) of the Prevention of Corruption Act, 1988. Adding further, he has stated that the provisions of the Prevention of Corruption Act 1988 is meant for prosecuting only the public servants but not the employees of the Co-operative Society. Since Article 12 of constitution of India is not applicable to the co-operative society and the Co-operative Society is not a 'State' within the meaning of Article 12 of constitution of India, Prevention of Corruption Act cannot be invoked on the employees of the Co-operative Societies. Moreover, Tamil Nadu Co-operative Societies is a self contained Act and any prosecution of offences under the said Act can be investigated and prosecuted by a separate wing established by the state of Tamil Nadu i.e. Commercial Crime Investigation wing (CCIW). Whereas, Anti corruption wing of the Central Government has jurisdiction to

enquire into the alleged offence. As the petitioner is not a public servant, no sanction for prosecution can be accorded. Therefore, the said impugned proceedings is a misdirected procedure.

4. Mr. Palaniswamy, the learned counsel for the petitioner referring to clause 2(C)(i) of the Act, contended that word "public servant" is defined as any person in the service or pay of the Government or remunerated by the Government by fees or commission for performance of any public duty, which clearly shows that the fifth respondent society should be paid by the Government or employees working therein including the petitioner should be remunerated by the Government by fees or commission. First of all, they are not discharging the public duty and they are not paid by the Government. Again, referring to clause 2(c)(ix), he contended that public servant means, any person, who is the President, Secretary or the other office bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, again shows that only in a case where society is getting financial aid either from the State Government or from Central Government or from any Corporation established by or under a Central, provincial or State Act, it can be brought under the provisions of the Prevention of Corruption Act. The Co-operative Societies is not getting any financial aid from any of the State and Central Government or public sector undertakings and therefore the request made by the Superintendent of Police to the first respondent to sanction for prosecuting the petitioner is only misconceived.

5. Objecting the above, the Special Government Pleader who accepts notice for the respondents 1 and 6 submitted that the petitioner while serving as a Secretary in the fifth respondent Society was suspended from service for having involved in unwanted activities and thereby causing damage to the fifth respondent Society. Therefore, he was placed under suspension for long time. However, his request for regularization was considered and he has been reinstated in services. Taking note of the serious allegation put against the petitioner, the Superintendent of police in letter dated 27.10.2017 has sought permission to prosecute the petitioner. Besides, the investigation report of the Directorate of Vigilance and Anti-Corruption, in the trap case registered against the petitioner and Tmt. Shanthi Clerk, Krishnagiri District, National Engineering Employees Thrift and Credit Society, Hosur disclosed that the petitioner and Tmt. Shanthi had committed offence under Sections 7 and 13 (2) r/w 13 (1)(d) of the Prevention of Corruption Act, 1988 and it was proposed to prosecute them before the Court of competent jurisdiction, which

could be launched only with the sanction of the authority competent to remove them from service. Therefore, the sanctioning authority being President of Thrift and Credit Society Krishnagiri a request was made to sanction permission to prosecute the petitioner, hence, he pleaded, the claim of the petitioner cannot be entertained.

6. The same cannot be objected by counsel appearing for the petitioner.

7. Again, responding to the second contention that the Society is not amenable to Article 12 of the constitution of India, referring to Article 243 of constitution of India submitted that the aforesaid Article has been amended in the year 2012 bringing the Co-operative Societies to the constitution position and this has been subsequently affirmed by Apex Court in a reported Judgment which also had been followed by this Court. Therefore, the contention of the learned counsel for the petitioner that petitioner Corporation cannot be brought under Article 12 of constitution of India and the first respondent has no authority, is hereby repelled.

8. Under clause 2 (c) (ix) of the prevention of Corruption Act, that public servant means any person who is a President or Secretary or office bearer of a registered co-operative Society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or State Government or from any corporation established by or under a Central, Provincial or State Act. Thus, from said clause it is clear that the petitioner being a Secretary working under the fifth respondent Society is amenable to the provisions of the Prevention of Corruption Act and therefore I am not inclined to entertain the Writ Petition.

9. Lastly the proceedings dated 08.01.2018 issued by the Deputy Registrar of Co-operative Societies stating that the petitioner will be dismissed from service is clarified to the effect that the petitioner shall be suspended by the disciplinary authority by following the disciplinary proceedings, by issuing notice and by appointing the enquiry officer if so called.

10. The learned counsel appearing for the respondents submitted the respondents shall conduct the proper enquiry and if they deems fit to prosecute the petitioner, a cause notice will be issued after following the service rules and he would be dealt with accordingly .

11. Recording the said submission, this Writ Petition fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

arr

To

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Vigilance and Anti Corruption,
Krishnagiri

+ 1 cc to Mr.M.S.Palaniswamy Advocate, SR.7880
+ 1 cc to Ms.T.Girija Advocate, SR.8030
+ 1 cc to The Govt.Pleader, SR.8468

W.P.No.2228 of 2018

nr 19/03/2018