



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.01.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P (MD) No.1630 of 2018

and

WMP (MD) No.1723 of 2018

T.Ramu

... Petitioner

Vs.

The Deputy Registrar,
Co-Operative Societies,
Thiruchirappalli Division,
Thiruchirappalli.

... Respondent

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorari calling for all records relating to the impugned show cause notice issued by the Respondent in Na.Ka.No.299/2018/SA.PA dated 18.01.2018 and quash the same as illegal.

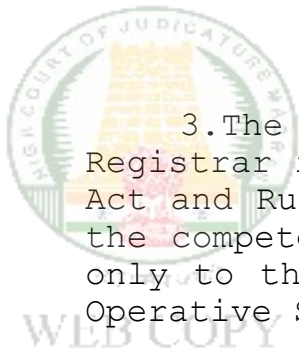
For Petitioner
For Respondent

: Mr.C.M.Arumugam
: Mr.Aiyram K.Selvakumar,
Additional Government Pleader

ORDER

The relief sought for in this writ petition is to call for the records relating to the impugned show cause notice issued by the respondent in proceedings dated 18.01.2018 and to quash the same.

2.The grievances of the writ petitioner is that the Deputy Registrar of Co-operative Societies has issued notice in proceedings dated 18.01.2018, seeking explanation from the writ petitioner, in respect of the no confidence motion letter submitted by the sixteen elected members of the Board. In other words, in order to proceed with the application submitted by the sixteen elected members of the Board, an explanation is sought for from the writ petitioner, which is required under the provisions of the Tamil Nadu Co-operative Societies Act and Rules. On receipt of any such application to move no confidence motion, the competent authority has to obtain the objection, if any, from the person against whom such a no confidence motion is moved.



3.The learned counsel for the petitioner states that the Deputy Registrar is not the competent authority under the provisions of the Act and Rules to issue any such notice. The Joint Registrar, who is the competent authority and the power of the Registrar is delegated only to the Joint Registrar and not to the Deputy Registrar of Co-Operative Societies.

4.However, the Additional Government Pleader appearing for the respondents submitted a copy of the order passed by the Joint Registrar of Co-operative Societies, Tiruchirappalli, in Na.Ka.290/2018/Sa.Pa dated 17.01.2018, directing the Deputy Registrar of Co-operative Societies, Tiruchirappalli to issue such notice for the purpose of seeking a report by conducting an enquiry. In other words, the Joint Registrar of Co-operative Societies directed the Deputy Registrar of Co-operative Societies, to issue notice, conduct enquiry and submit report in this regard, so as to proceed with the application submitted for moving no confidence motion.

5.This Court is of an opinion that no writ can be entertained against a show cause notice in a routine manner. Judicial review in respect of show cause notice is certainly limited and the writ petition can be entertained only on exceptional circumstances, if the show cause notice is issued by the incompetent authority, having no jurisdiction or if allegations of mala fide are raised or if the same is in violation of the statutory Rules in force. Even in case of raising allegation of mala fide the authority against whom such an allegation is made, has to be impleaded as party respondent in his personal capacity. In the absence of anyone of these legal grounds, no writ petition can be entertained against a show cause notice. It is left open to the writ petitioner to submit his explanation/objection to the show cause notice and defend his case in accordance with Rules and by availing opportunity provided under the Rules. Thus, the legal principles settled is to be followed, while dealing with the writ petitions challenging the show cause notices. Therefore, the present writ petition is devoid of merits.

6.No doubt that the show cause notice dated 18.01.2018 has emanated from the direction issued by the Joint Registrar of Co-Operative Societies in proceedings dated 17.01.2018. Thus, the authorities competent have to take decision under the provisions of the Act and Rules. However, this Court is of an opinion that the Deputy Registrar of Co-operative societies, Tiruchirappalli has not referred the directions issued by the Joint Registrar of Co-Operative Society in his order dated 17.01.2018.

7.The Administrative discipline requires that whenever the higher officers issue, the orders or directions, while implementing the orders such circulars/orders/instructions are to be cited as reference, in the implementation orders. In other words, the orders passed by the higher officials, in a particular subject has to be



cited as reference while passing consequential orders by the subordinate officials. By not citing the reference of the higher officials, many times confusion arises in respect of jurisdiction and in respect of subject dealt with by the subordinate officials. Clarity is required in administrative orders and the orders of the higher authorities are to be implemented by referring the same in the consequential orders. The Registrar of Co-operative Societies has to ensure that the subordinate officials follow the said procedures which is available in the Rules of office administration and the said rules contemplates that the circulars, orders or instructions of the higher authorities are to be cited as reference in the consequential orders passed by the subordinate officials. Thus, the Registrar of Co-operative Societies, has to issue necessary circulars or instruction to the subordinate officials, to follow such procedures which all are vital and helpful to avoid such confusions while dealing with the matter of this nature.

8. In view of the fact that the writ petition is filed against the show cause notice, this Court is of an opinion that the writ petitioner is at liberty to submit his explanation/objections, if any, by availing the opportunity provided under the Act and the competent authority in this regard is bound to consider the explanation, if any submitted by the writ petitioner, take decision and thereafter pass appropriate order on merits and in accordance with law.

9. The learned counsel for the petitioner fairly made submissions that the time granted was 7 days in the impugned show cause notice to submit explanation and in view of the filing of the writ petition the explanation has not been submitted. Accordingly, the writ petitioner is permitted to submit his explanation/objection, if any, within a period of one week from the date of receipt of a copy of this order and the respondent is at liberty to take decision and pass appropriate orders thereafter.

10. With the above observations and directions, the writ petition stands dismissed. However, there shall be no orders as to costs. Consequently, WMP(MD)No.1723 of 2018 is closed.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub-Assistant Registrar

To

1. The Deputy Registrar, Co-Operative Societies,
Thiruchirappalli Division, Thiruchirappalli.

2. The Registrar of Co-Operative Societies, Chennai.

+One cc to The Special Government Pleader, SR.No.44776

+One cc to Mr.C.M.Arumugam, Advocate, SR.No.44710

dsk

RL/5C/3P/SKN/RSK/SAR4/13/2/2018

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ORDER MADE IN

W.P (MD) No.1630 of 2018

29.01.2018