

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 18.02.2019

CORAM

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

W.P.No.7189 of 2018

and

WMP.Nos.8925 & 8926 of 2018

G.Ramachandran

... Petitioner

...Vs...

1. The Joint Registrar of Cooperative Societies,
Krishnagiri Region, Cooperative Colony,
Krishnagiri - 635 001. Krishnagiri District.
2. The Deputy Registrar of Cooperative Societies,
Krishnagiri Circle, 4th Cross street,
Cooperative Colony, Krishnagiri-635 001.
3. The President,
S.5922, Maharajakadai Primary
Agricultural Cooperative Credit Society,
Maharajakadai Village & Post - 635 120.
Krishnagiri Taluk & District.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for entire records relating to the impugned order passed by the 3rd respondent in his proceedings No.Nil, dated 05.03.2018 received on 12.03.2018 and quash the same and consequently direct the respondents to reinstate the petitioner in to service along with backwages, attendant benefits and other monetary benefits to the petitioner.

For Petitioner : Mr.C.Prakasam
For Respondents : Mr.L.P.Shanmugasundaram
Special Govt Pleader (Co-Cop)

O R D E R

The order of suspension issued by the 3rd respondent / Agricultural Cooperative Credit Society is under challenge in the present writ petition.

2. The Cooperative Society registered under the Tamil Nadu Cooperative Societies Act is not a State within the meaning of Article 12 of the Constitution of India. The employees of the Cooperative Societies are bound to exhaust the remedies provided under the Tamil Nadu Cooperative Societies Act itself. The Hon'ble Supreme Court of India in the case of Gurcharan Singh Vs. The Registrar, Cooperative Societies, H.P & Others reported in (2005) 7 SCC 565 held that "The picture that ultimately emerges is that the tests formulated in Ajay Hasia case are not a rigid set of principles so that if a body falls within any one of them it must, ex hypothesi, be considered to be a State within the meaning of Article 12. The question in each case would be – whether in the light of the cumulative facts as established, the body is financially, functionally and administratively dominated by or under the control of the Government. Such control must be particular to the body in question and must be pervasive. If this is found then the body is a State within Article 12. On the other hand, when the control is merely regulatory whether under statute or otherwise, it would not serve to make the body a State."

3. The larger Bench of this Hon'ble Court in the case of K.Marappan Vs. Deputy Registrar of Cooperative Societies, Namakkal, reported in (2006) 4 CTC 689 laid down the principles in paragraph No. 21 of the judgment and the same are extracted hereunder:-

"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.

The Reference is answered accordingly. Registry is directed to place the paper before the appropriate Bench for its disposal."

4. Even as per the tests laid down in the case of Ajay Hasia and Others Vs. Khalid Mujib Sehravardi & Others reported in (1981) 1 SCC 722, a Cooperative Society cannot be termed as an Instrumentality within the meaning of Article 12 of the Constitution of India. However, if there is any statutory violation, then a writ petition can be entertained. But the main criteria is to scrutinize the facts and circumstances and find out whether a Cooperative Society is financially, functionally and administratively dominated by or under the control of the Government, then alone a Cooperative Society can be brought under the definition of a State within the meaning of Article 12 of the Constitution of India. In other circumstances, the employees are bound to exhaust the remedies available under the provisions of the Tamil Nadu Cooperative Societies Act.

5. In the present case on hand, admittedly, the finance as well as the Administrative control are not within the Government and therefore, the 3rd respondent is not a State within the meaning of Article 12 of the Constitution of India. Accordingly, the writ petitioner has to exhaust the remedies available for the purpose of the Act, more specifically, under Section 153 of the Tamil Nadu Cooperative Societies Act by filing Revision Petition before the Competent Authority.

6. The writ petitioner is at liberty to do so in the manner know to law. With these observations, the writ petition stands dismissed as not maintainable. No Costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

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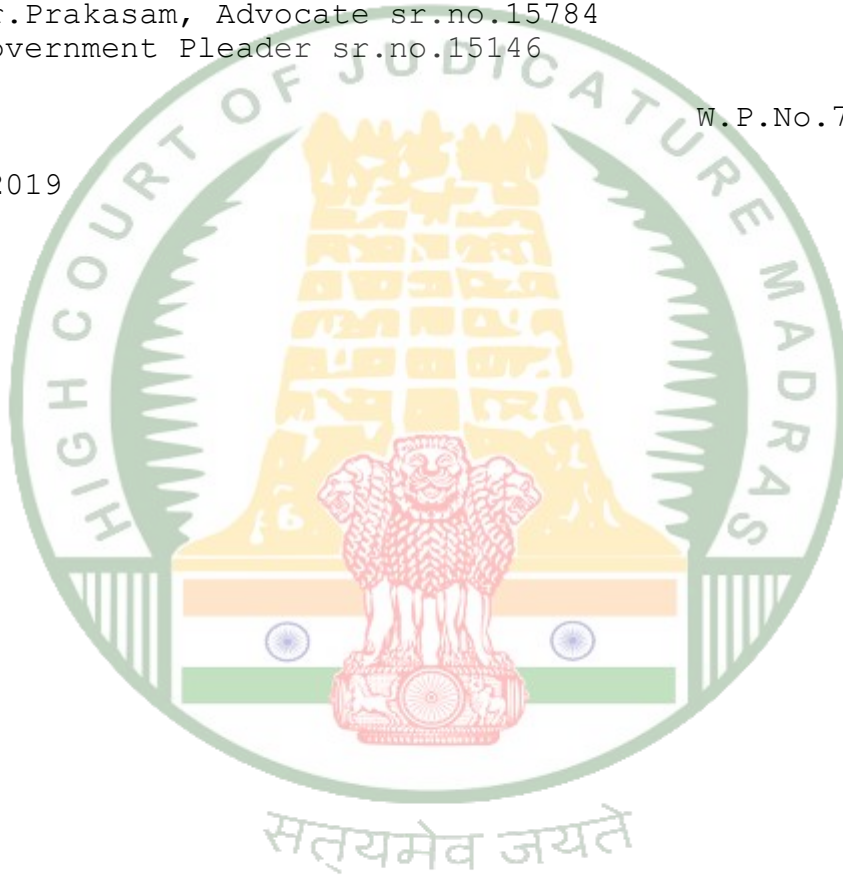
+2cc to Mr.L.P.Shanmugasundaram, Advocate sr.no.14528, 14879

+1cc to Mr.Prakasam, Advocate sr.no.15784

+1cc to Government Pleader sr.no.15146

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