

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.09.2019

PRONOUNCED ON : 10.09.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.26558 of 2019

P.Thanapal

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Petitioner

Vs

1.Union of India,
Represented by Home Secretary,
Ministry of Home Affairs,
North Block,
New Delhi - 110 001.

2.The Secretary to the Government of India,
Ministry of Agriculture and Farmer Welfare,
Krishi Bhawan,
Dr.Rajendraorasad Road,
New Delhi - 110 001.

3.The Joint Secretary (Co-op)/
The Central Registrar of Co-operative Societies,
Department of Agriculture and Co-operation,
Ministry of Agriculture, Krishi Bhawan,
Dr.Rajendraprasad Road,
New Delhi - 110 001.

4.The Repatriate Co-operative Finance and
Development Bank (REPCO Bank),
Rep. By its Managing Director,
No.33, North Usman Road,
T.Nagar, Chennai - 600 017.

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Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Mandamus directing the fourth respondent to conduct election to the Board of Directors of Repco Bank as directed by the third respondent in its letter dated 03.05.2019 addressed to the fourth respondent within stipulated time.

For Petitioner

: Mr.B.Ullasavelan

For Respondents 1 to 3 :Mr.Venkataswamy Babu,
Sr.P.C.,

For 4th Respondent :Mr.Om.Prakash,
Senior Counsel for
Mr.A.Ilangovan

ORDER

The petitioner herein is a former 'A' class Member of Repatriates Co-operative Finance & Development Bank Ltd., (hereinafter referred to as "the Repco Bank") which is registered under the Multi State Co-operative Societies Act, 2002 (hereinafter referred to as "the Act").

2. According to the petitioner, as per Section 48 of the Act, if the equity share capital held by the State or central Government is 51% and above, there can be maximum three nominated members in the Board and in any event, the number of nomination of members shall not exceed 1/3rd of the total members of the Board. However, so far as the Repco Bank is concerned, majority of the members are nominated members held by officials. Therefore, the petitioner made a representation to the Central Registrar of Co-operative Societies, Department of Agriculture and Co-operation, Ministry of Agriculture, New Delhi, to constitute the Board of Members of the Repco Bank in consonance with Section 48 of the Act.

3. The bye-law of the Bank is not in consonance with Section 48 of the Act, so, the Central Registrar, ought to have directed the fourth respondent to carryout necessary amendment in the bye-law, in tune Section 48 of the Act. Since, the Central Registrar failed to consider the representation, the petitioner earlier filed a writ petition before this Court in W.P.No.3125 of 2018 wherein, this Court directed the third respondent herein to consider the representation of the petitioner and pass orders within a period of four weeks from the date of receipt of a copy of that order.

4. The Central Registrar (third respondent) pursuant to the Court direction in W.P.No.3125 of 2018, informed the petitioner that the society has been directed vide this Department letter dated 03.05.2019 to amend the bye-laws to make them consistent with the provisions of the said Act in consultation with the Ministry of Home Affairs and the concerned State Governments, whoever holding the share capital of Repco Bank and thereafter, to conduct election, since the General Body Meeting of the Multi State Cooperative Society is supreme to amend their bye-laws. The copy of the instruction given by the Central Registrar

(third respondent) to the Managing Director, Repco Bank, also been enclosed. Thereafter, the petitioner has given representation on 16.07.2019, to the Secretary to Government, Ministry of Agriculture & Farmers Welfare, to appoint an Administrator to take over the management of the Repco Bank and to order election to the Board.

5. In the present writ petition, the petitioner seeks writ of mandamus to direct the fourth respondent to conduct election for the Board of Directors of the Repco Bank as directed by the third respondent vide his letter dated 03.05.2019, within a stipulated time.

6. The learned Senior Counsel appearing for the fourth respondent opposed the admission of the writ petition on the ground that the petitioner has no locus standi to interfere with the affairs of the registered society since, he is no more a member of the society. Alleging that the petitioner is an Intervenor filing petition in his name or other cronies, he is bent upon to tarnish the reputation of the Bank. The details of earlier writ petition filed by the petitioner herein and his associates were furnished by the learned counsel for the fourth respondent.

7. In fact, pursuant to the communication received from the Central Registrar vide a letter dated 03.05.2019, the fourth respondent has convened a special General Body Meeting scheduled on 12.09.2019, in which, the instruction of the Central Registrar regarding the amendment of the bye-law in consonance to the Act, is likely to be discussed.

8. The learned counsel for the petitioner would submit that, the petitioner who opposed the mis deeds and misappropriation of fund by the office bearers of the Society, was expelled from membership and allegations are made against him. Even after the direction from the third respondent, the Central Registrar, the fourth respondent is not inclined to amend the bye-law in tune with the Act. The agenda for the ensuing general body meeting does not indicate that they are going to consider bye-law in tune with the Act.

9. Heard the learned counsel appearing for both parties. It is useful to extract Section 48 of the Act:-

"48. Nominee of Central Government or State Government on board.-

(1) Where the Central Government or a State Government has subscribed to the share capital of a multi-State co-operative

society, the Central Government or the State Government, as the case may be, or any person authorised by the Central Government or the State Government shall have right to nominate on the board such number of persons as its members on the following basis, namely:-

(a) where the total amount of issued equity share capital held by the Central Government or the State Government is less than twenty six per cent. of the total issued equity share capital, one member of the board;

(b) where the total amount of issued equity share capital held by the Central Government or the State Government is twenty-six per cent. or more but less than fifty-one per cent. of the total issued equity share capital, two members of the board;

(c) where the total amount of issued equity share capital held by the Central Government or the State Government is fifty-one per cent. or more of the total issued share capital, three members of the board: Provided that the number of such nominated persons shall not exceed one third of the total number of members of the board:

Provided further that where the Central Government or a State Government has guaranteed the repayment of principal and payment of interest on debentures issued by a multi-State co-operative society or has guaranteed the repayment of principal and payment of interest on loans and advances to a multiState co-operative society or has given any assistance by way of grants or otherwise to a multi-State cooperative society, the Central Government or the State Government in this behalf, as the case may be, or any person authorised by the Central Government, shall have the right to nominate person on the board of such a society in the manner as may be prescribed.

(2) A person nominated under this section shall hold office during the pleasure of the Government by which he has been so nominated."

10. On the representation of the petitioner, the Central Registrar vide communication dated 03.05.2019, has informed that, as per the provisions of Section 123 of the Act, to supersede the Board of Directors of any multi-state cooperative society including Repco Bank requires not less than 51% of paid-up share capital or of total shares to be held by the Central Government and whereas, in this case, the share holding of the Ministry of Home Affairs, Government of India, at present in Repco Bank is less than 51%. Further, it informed that the society is asked to amend the bye-laws to make them consistent with the provisions of the Act in consultation with the Ministry of Home Affairs and the concerned State Governments, whoever holding the share capital of Repco Bank and thereafter, to conduct election, since General Body of a multi-state cooperative society is supreme to amend their bye-laws.

11. The fourth respondent has already given notice for the General Body Meeting and the Agenda is to discuss about the amendment of the bye-laws, hence, this Court finds that there is no necessity to entertain this writ petition which is filed by a non member of the society and whose locus standi to file this writ petition is questionable.

12. Since, the issue has already been taken cognizance by the third respondent and direction has been given to the fourth respondent to amend the bye-law in consonance to the provisions of the Act, it is suffice to direct the third respondent herein to monitor the affairs of the fourth respondent and ensure compliance of his direction dated 03.05.2019 at the earliest. Accordingly, the writ petition is disposed of. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Home Secretary,
Union of India,
Ministry of Home Affairs,
North Block,
New Delhi - 110 001.

2.The Secretary to the Government of India,
Ministry of Agriculture and Farmer Welfare,
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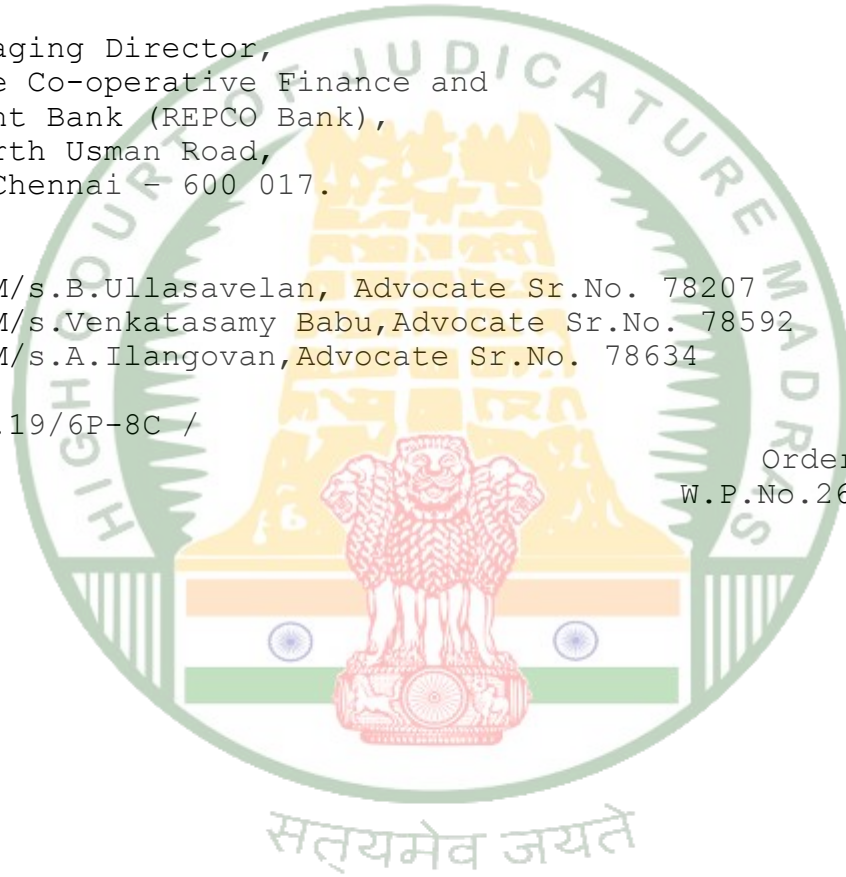
3.The Joint Secretary (Co-op)/
The Central Registrar of Co-operative Societies,
Department of Agriculture and Co-operation,
Ministry of Agriculture, Krishi Bhawan,
Dr.Rajendraprasad Road,
New Delhi - 110 001.

4.The Managing Director,
Repatriate Co-operative Finance and
Development Bank (REPCO Bank),
No.33, North Usman Road,
T.Nagar, Chennai - 600 017.

+1 cc to M/s.B.Ullasavelan, Advocate Sr.No. 78207
+1 cc to M/s.Venkatasamy Babu, Advocate Sr.No. 78592
+1 cc to M/s.A.Ilangovan, Advocate Sr.No. 78634

AKM/27.09.19/6P-8C /

Order made in
W.P.No.26558 of 2019



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