

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 18.11.2019

PRONOUNCED ON : 28.11.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.28667 of 2019 and
W.M.P.Nos.28431 & 28432 of 2019

1.A.Mani
2.S.Sudhakar

Petitioners

Vs

1.The Registrar cum Director,
Milk Production and Dairy Development
Department,
Madhavaram Milk Colony,
Chennai - 600 005.

2.The Election Commissioner,
Tamil Nadu Co-operative Societies
Election Commission,
273, Kamathenu Super Market Building,
Teynampet,
Chennai - 600 018.

3.The Deputy Registrar (Dairying),
Tiruvannamalai District
Co-operative Milk Producers,
Tiruvannamalai.

4.TSD 108, Elathur,
Primary Milk Producers Cooperative Society,
Elathur Village,
Kalasapakkam,
Thiruvannamalai - 606 906.

5.Agri S.S.Krishnamoorthy

Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of Certiorari calling for the records pertaining to the proceedings in RC No.2196/2019/D(2) on the file of the third respondent dated 28.08.2019 in so far as appointment of 5th respondent as the President of TSD 550

Tiruvannamalai District Co-operative Milk Producers' Union Limited and quash the same as illegal, incompetent and ultravirous.

For Petitioners :Mr.R.Jayaprakash

For Respondents 1, 3 & 4 :Mr.S.Rajagopal,
Additional Advocate General
Assisted by Mr.L.P.Shanmugasundaram,
Special Government Pleader

For 2nd Respondent : Mr.M.S.Palaniswamy, Standing Counsel

For 5th Respondent : Mr.A.L.Somayajee, Senior Counsel
for Mr.V.Perumal

ORDER

The appointment of fifth respondent as one of the interim Board of Directors to the newly formed Tiruvannamalai District Co-operative Milk Producers Union Limited vide proceedings dated 28.08.2019 issued by the Deputy Registrar (Diary) Tiruvannamalai (third respondent) is under challenge in this writ petition.

2.In the impugned proceedings, along with the fifth respondent, 17 others of various Milk Production Co-operative Societies within the Tiruvannamalai District were appointed as the Interim Board of Directors and the fifth respondent has been designated as President and one Paribabu has been designated as Vice President. In the impugned order, the period of interim Board of Directors is specified as six months from 28.08.2018 or till the formation of new Board of Directors, through the election, whichever is earlier.

3.The petitioners who are the member and Vice President of TPD 84- Vanapuram Milk Producers Co-operative Sangam, challenge the appointment of the fifth respondent as Member and President in the interim Board of Directors of the Tiruvannamalai District Co-operative Milk Producers Union Limited, on the ground that the fifth respondent is not eligible to hold the said post since, till recently, the milk production co-operative society to which he is a member was not a functional society. It was a defunct society for several years and the fifth respondent did not supply milk to the society at any point of time.

4.Under Section 33 (1)(a) of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as "the Act"), the management of every registered society shall vest in a board

constituted in accordance with the provisions of this Act, the rules and the by-laws, which shall exercise such powers and perform such duties as may be conferred or imposed on it by this Act, the rules and the by-laws. The Tiruvannamalai District Co-operative Milk Producers Union was created on 22.08.2018 vide G.O.Ms.No.(2D) No.19 dated 22.08.2019 bifurcating Vellore - Tiruvannamalai District Co-operative Milk Producers Union.

5.Exercising power under Sections 13 and 170 of the Act, a new Union came to be established. To administer the Union, the interim Board of Directors was constituted by the Deputy Registrar (Dairying) Tiruvannamalai (third respondent) exercise of power under Section 33(1) of the Act. While exercising the said power, the petitioners allege that the fifth respondent claiming to be the member of the TSD 108 Elathur Primary Milk Producers Co-operative Society has been appointed as a Director of the Interim Board as well as nominated to officiate as President of the society.

6.The specific case of the petitioners is that, the Society in which the fifth respondent claims to be the member was a defunct society. On 10.05.2019 the members of the defunct Elathur Primary Milk Producers Co-operative Society gave a representation to the Joint Registrar (Diary) Tiruvannamalai to revive the defunct society stating that around 300 liters of milk produced in the said village and the members are forced to sell the milk to private dairies since, the society has become defunct.

7.Again on 24.07.2019, a similar request was made. Consequently, on 03.08.2019, in the presence of Co-operative Sub Registrar / Liquidating Officer, resolution was passed to revive the Society and elected the fifth respondent as President and constituted Interim Board. While so, after reviving a defunct society, using his influence, the fifth respondent immediately been nominated as President in the interim Board of Directors of the newly constituted Tiruvannamalai Co-operative Milk Producers Union.

8.It is contended by the learned counsel for the petitioners that under Section 33(1) of the Act, the interim Board of Directors should be constituted by its members eligible as per the Act, Rule and by-laws. The by-law of the Tiruvannamalai District Co-operative Milk Producers Union states that, no representative of a member and society shall be eligible for election unless the society represents is a member of the union for a period not less than 2 years and is holding shares not less than 10 on presiding 31st March and has not remained closed

or dormant for more than 90 days during the previous co-operative year except due to natural calamities and no representative of a member society shall be eligible for election unless he supplied milk for the society. Hence, if not qualified to represent the society, the appointment of the fifth respondent as a Board of Director and President of a newly formed Tiruvannamalai District Co-operative Milk Producers Union is bad in law.

9. The third respondent who has issued the impugned proceedings has filed a counter affidavit wherein, he has stated that:-

(i) Proposal was sent to the first respondent who is the functional Registrar of all types of milk co-operative societies in the State to create a new Milk Producers Union, bifurcating the existing Vellore - Tiruvannamalai Co-operative Milk Producers Union. Accordingly, on 27.08.2019 with registration No.TSD 550 the Tiruvannamalai District Co-operative Milk Producers Union was registered. Being the District level officer and also the District Election Officer in respect of the Co-operative Societies in Tiruvannamalai, some powers of Registrars is delegated to him.

(ii) The fourth respondent society is functioning under his control and the fifth respondent is the nominated President of the interim Board of Directors of the fourth respondent society and he was also nominated as the President of the interim board of the newly registered TSD 550 Tiruvannamalai District Co-operative Milk Producers Union. The petitioners are member and elected Vice President respectively of a different Co-operative Society Milk Producers Society at Vanapuram in Tiruvannamalai District.

(iii) The Government has decided to bifurcate the Vellore and Tiruvannamalai District Milk Federation Union and Government Order to that effect was passed on 22.08.2019. To facilitate the early function of Milk Producers Union Board, Section 170 of the Act, was invoked granting exemption from the formalities specified in Section 13 of the Act.

(iv) Based on the said Government Order, the proposals received from the third respondent was considered by the first respondent and permitted the third respondent to register the new Tiruvannamalai District Milk Cooperative Producers Union under Section 9 of the Act. Till the election of the Board of Directors is conducted, the Registrar has empowered to nominate an interim Board to look after the day-to-day affairs of the society which could hold the Board or till assumes charge.

Accordingly, the proceedings was issued on 28.08.2018 under the power delegated in Section 33 (1)(a) of the Act.

(v)The fifth respondent was nominated as President of the Interim Board of Directors. Regarding the plea of disqualification against the fifth respondent, the third respondent has stated that the Elathur Milk Producers Co-operative Society (fourth respondent) was originally registered under the Tamil Nadu Co-operative Societies Act on 14.11.1996 and started functioning with effect from 13.12.1996 later, it became defunct. However, before the final closure, the members producers came forward to restore the said society and also passed a resolution to that effect on 03.08.2019. The said resolution was considered and society was restored. An interim Board of Directors was constituted and the fifth respondent as its President.

(vi)As per the by-laws of the District Milk Producers Union, all registered Milk Producers Co-operative Societies within the jurisdiction of the District Milk Producers Union are the members. Elathur Milk producers Co-operative Society is one of the society functioning in Tiruvannamalai District. Hence, it is entitled to be a member in the District Milk Producers Cooperative Union. Thus, the fifth respondent being a member of the member society of the union is fully eligible to hold the post of the interim Board of Director as President.

10.The contention of the learned counsel for the petitioners is refuted by the third respondent stating that the appointment of the fifth respondent as President of interim Board of Directors is in accordance with law and consonance to Section 170 r/w 13 and 33 (1) of the Act. Regarding the Elathur Milk Producers Co-operative Society, the final order of liquidation was never passed and it was reviewed based on the representation of its members. Hence, the fifth respondent being member of the Elathur Milk Producers Co-operative Society is fully qualified to hold the post of President.

11.The other contention of the petitioners regarding the non supply of required milk for required number of days, it is stated by the third respondent that the contention of pouring 300 litres of milk in 100 days is applicable only if the individuals are members and it is not applicable to the Society where Societies are members.

12.As far as the fourth respondent is concerned, its members have poured 1395 litres during the last 15 days in August 2019 after the society started functioning after revival.

13.The learned Additional Advocate General appearing for the respondents 1, 3 & 4 would submit that the petitioners herein have not challenge the power of the third respondent constituting the interim Board of Directors. They have not questioned the eligibility of the other members of the interim Board of Directors. They have challenged only the appointment of the fifth respondent. As far as the society which the fifth respondent represents is not a defunct society but revived and records will show that the petitioner has supplied sufficient quantity of milk. Even otherwise, the question of supplying minimum quantity of milk had already been tested by a Division Bench of this Court in S.Rathnakumar and others v. The Government of Tamil Nadu and others (1997 (1) MLJ 464) wherein, the Division Bench has held that by-law which insist that member should have supplied milk not less than 300 litres per day or supplied milk for less than 120 days in the preceding co-operative year, will not be entitled to any right other than the pecuniary right such as bonus, dividend etc., cannot be held to be in conformity with the provisions of the Act and the Rules. Therefore, even assuming if the fifth respondent has not supplied the required quantity of milk, it is not a bar for him to hold the post as President in the interim Board of Directors.

14.The learned Senior Counsel appearing for the fifth respondent would state that the Elathur Milk Producers Cooperative Society (fourth respondent) state that the fifth respondent is the member of the fourth respondent society which started functioning from 13.12.1996. The membership serial number of the fifth respondent is 33. Since, the society was dormant, more than 100 members of the society along with general public requested the revival of the society and accordingly, based on the resolution passed in the general body meeting, held on 03.08.2018 in the presence of Cooperative Registrar/Liquidation Officer resolution for revival was passed and the society was revived. The petitioner was nominated as the President of the revived Elathur (fourth respondent) society. The then Chief Minister announced the federation formation of Tiruvannamalai union during the independence day speech. The same was given effect through G.O.Ms.No.(2D) No.19 dated 22.08.2019. The Tiruvannamalai District Milk Producers Cooperative Union was formed. Invoking power under Section 170 of the Act, the formalities specified in Section 13 of the Act were exempted.

15.on 28.08.2019 the third respondent issued an order appointing interim Board of Directors for a period of six months from 28.08.2019 or till the formation of new Board of Directors

through election whichever is earlier. The third respondent who is delegated with the power of the Registrar has got ample power to constitute interim Board of Directors to manage the affairs of the Union till the new board is constituted. The official respondents have followed the procedure under the Act regarding the appointment of interim Board of Directors.

16. So far as the first ground of attack about his ineligibility as contended by the petitioners, the fifth respondent has submitted that the Society in which he is member was revived on 03.08.2019. The fifth respondent has further stated that from 17.08.2019 to 21.08.2019, he has supplied 402.60 litres of milk to the fourth respondent society. Thereafter, from 22.08.2019 to 31.08.2019, he has supplied 992.90 litres of milk to the fourth respondent society. Further, the condition of pouring 300 litres of milk or 120 days is applicable only when the individuals are members and is not applicable to the society, where the societies are members. As far as the fifth respondent is concerned, as he has poured 1395 liters between 17.08.2019 and 31.08.2019, he is fully satisfied the requirement.

17. The fifth respondent had supplied milk to the Vellore Tiruvannamalai District Milk Producers Co-operative Union through Melvanniyanoor Bulk Cooling Centre. Therefore, neither the decision of the Government to bifurcate the existing Vellore - Tiruvannamalai Cooperative Milk Producers Union nor the decision of the third respondent to appoint the fifth respondent as the President of the interim Board of Directors is illegal as characterized by the petitioners.

18. It is emphasised by the learned Senior Counsel appearing for the fifth respondent that the Elathur Milk Cooperative Society never been a defunct society and the fifth respondent has been supplying required quantity of milk to the society. Even otherwise by virtue of the Division Bench judgment in Rathinakumar case (cited supra), the quantum of milk supplies is immaterial to decide the eligibility of the member to contest the election or hold the post in the interim Board of Directors.

19. Heard the learned counsel for both parties and documents perused.

20. Under the Tamil Nadu Cooperative Societies Act, existing registered society can be divided or two or more societies can be amalgamated by following the procedures contemplated under Section 13 of the Act. Section 170 of the Act gives power to the Government to exempt any society from the application of the

provisions of the act except sections 88(1) and 89(1) of the Act and this shall be without prejudice to the power conferred by Section 169 of the Act.

21. In this case, by invoking the power under Section 170 of the Act, the Government has decided to bifurcate the existing Vellore Tiruvannamalai Cooperative Milk Producers Union. By exercising power under Section 170 of the Act, the procedures contemplated under Section 13 of the Act has been exempted and by invoking the power under Section 33 (1)(a) of the Act, interim Board of Directors has been constituted vide proceedings of the third respondent dated 28.08.2019. Section 33 of the Act is extracted below:-

"33. Constitution and meetings of the board. (1) (a) The management of every registered society shall vest in a board constituted in accordance with the provisions of this Act, the rules and the by-laws, which shall exercise such powers and perform such duties as may be conferred or imposed on it by this Act, the rules and the by-laws: Provided that of the members to be elected to the board of every registered society, there shall be thirty per cent reservation for women and eighteen per cent reservation for Scheduled Castes and Scheduled Tribes: Provided further that the members of the board may co-opt not exceeding two persons having experience in the field of banking, management, finance or specialisation in agriculture, sericulture, dairy, marketing, small or cottage industry or in any other field relating to the objects and activities undertaken by the registered society, as members of the board of the registered society: Provided also that the board may also consist of such number of functional directors, not exceeding nine, as may be prescribed in the rules or in the by-laws of the registered society:

Explanation I

Explanation II. For the purpose of subsection (1) and (2), while calculating the eighteen per cent or thirty per cent of

reservation, the fraction, if any, shall be ignored if it is less than half, or rounded off to the nearest whole number if it equal to or more than half.: Provided also that nothing contained in the first proviso shall be deemed to prevent any women or the members of the Scheduled Castes and Scheduled Tribes for whom 25 representations have been made thereunder in the board of any registered society from being elected to any of the seats in the board of such registered society: Provided also that, in the case of a society registered after the commencement of this Act, the persons who have signed the application to register that society may constitute an interim board to conduct the affairs of that society for a period of three months from the date of registration or for such further period or periods not exceeding six months in the aggregate from the date of registration as the Registrar may consider necessary; but the interim board constituted under this proviso shall cease to function as soon as a board has been constituted in accordance with the provisions of this Act, the rules and the by-laws."

(Emphasis added)

22.The order of the third respondent dated 28.08.2018 which alleged to have been issued under Section 33 (1) of the Act, is tested with the said provision, this Court finds that the third respondent has appointed 17 persons as Directors of the interim Board for a period of six months from 28.08.2019 or till the formation of new board. Among those 17 members, the fifth respondent has been nominated as the President of the interim Board of Directors.

23.Section 33 (1) (a) of the act mandates that the management of every registered society was vest with the Board and the Board shall perform the duties as per the Act, Rules and bylaws. The proviso to section 2 of the Act enables the Registrar of the society to constitute an interim Board to conduct the day-to-day affairs of the society for a period of three months to be extended for a further period of three months. The period shall not exceeding six months.

24.The impugned order has appointed interim Board consisting of 17 members as the Board of Directors for a period of six months from 28.08.2019 which by itself is contrary to the provision.

25.The learned Senior Counsel appearing for the fifth respondent would submit that Section 33 (1) (a) of the act mandates that the management must be in accordance with the by-law, act and rules. Clauses 29(iv) and (v) of the by law of TSD 550 Tiruvannamalai District Co-operative Milk Producers Union reads as below:-

"29.(iv) Is a member of the union for a period of not less than two years and is holding shares not less than ten on preceding 31st March

(v) Has not remained closed or dormant for more than 90 days during the previous cooperative year except due to natural calamities."

26.Tested with the records and the admission made by the respondents it is obviously clear that the Elathur Milk Cooperative Society had remained closed till 03.08.2019, it was a dormant society though not liquidated officially. In the counter of the third respondent, it is candidly admitted that the Elathur Cooperative Society became defunct accordingly, was ordered liquidated. Precisely that is the reason why when the members sought for revival of the society the meeting was convened on 03.08.2019 presided over by the Liquidating Officer and the resolution was passed to revive the society. Interestingly, on 03.08.2019, itself in the minutes book, reflecting the agenda and resolution for the meeting held on 03.08.2019, the fifth respondent has signed and affixed seal as President of Elathur Primary Milk Producers Society.

27.In fact, only on 05.08.2019, the Joint Registrar (diary) Tiruvannamalai vide its proceedings in Na.Ka.No.2708/19 has nominated the fifth respondent and others as interim Board of Directors of Elathur Primary Milk Producers Cooperative Society (fourth respondent). So, from the records, it is clear as crystal that to accommodate the fifth respondent, in the interim Board of Directors of the Union and to appoint him as its President, without following due election process, a dormant society has been revived and records have been created as if the fifth respondent been appointed as the president of the interim Board of Directors of the fourth respondent and in turn, after

creation of Tiruvannamalai District Milk Producers Union, he has been included in the interim Board of Directors and empowered with power of officiating President. The said order of the third respondent is violative of Section 33 (1) (a) of the Act and explanation given there under. Further, it also violates clause 29 of the Union by-law. Hence, this Court has no hesitation to hold that the impugned order is bad in law.

28.To sum up, the impugned order of the 3rd respondent dated 28.08.2019, bristle with legal infirmity and illegality, for the following reasons:-

(i)While, 2nd proviso to explanation II of Section 33 (1) (a) of the Act, empowers to constitute an interim Board to conduct affairs of the new Society for a period of three months from the date of registration or for such further period, for period not exceeding six months in aggregate, the impugned order has constituted the interim Board for a period of six months at a stretch contrary to the above said provisions;

(ii)By-law of TSD 550 Tiruvannamalai District Co-operative Milk Producers' Union Limited, prescribes the qualification of Board of Directors. Clause 29 (v) of by-law categorically states that, no representative of a member society shall be eligible for election as Director, unless the Society representative is functional and not remained closed or dormant for more than 90 days during the previous cooperative year except due to natural calamities;

(iii)In this case, the 5th respondent is a member of the Society which was dormant and remained closed for years together till it was revived on 05.08.2019 after the resolution passed by the Society on 03.08.2019, whereas, the impugned order appointing him as President of the Union has been passed within 23 days of its revival.

29.Therefore, though this Writ Petition is filed only against the 5th respondent, on perusal of the records and Rules, this Court finds that the appointment of interim Board for a period of six months at a stretch consisting of 5th respondent, who is not eligible to be the member and to hold the post of President is illegal in entirety.

30.Hence, the impugned order passed by the 3rd respondent, dated 28.08.2019, constituting interim Board for the period of six months by including the 5th respondent as one of the Board of Directors and appointing him as President is quashed. The 1st respondent shall take appropriate steps to constitute proper interim Board to manage the affairs of the Union.

31.With the above observations, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Registrar cum Director,
Milk Production and Dairy Development
Department,
Madhavaram Milk Colony,
Chennai - 600 005.

2.The Election Commissioner,
Tamil Nadu Co-operative Societies
Election Commission,
273, Kamathenu Super Market Building,
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4.TSD 108, Elathur,
Primary Milk Producers Cooperative Society,
Elathur Village,
Kalasapakkam,
Thiruvannamalai - 606 906.

+1 cc to M/s.R.Jayaprakash,Advocate Sr.No. 99772
+1 cc to M/s.L.P.Shanmugasundaram, Advocate Sr.No.99907
+1 cc to M/s.V.Perumal,Advocate Sr.No. 99705
+1 cc to The Government Pleader Sr.No. 99927

AKM/03.12.19/12P- 9C /

Order made in
W.P.No.28667 of 2019

12/12