BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6365 of 2018 and
W.M.P.(MD)Nos.6216, 6217 & 11130 of 2018

District Club,
(Reg.No.3 of 1934),
Rep. by its Secretary,
Palayamkottai,
Tirunelveli - 627 002. ... Petitioner

Vs.

1. The Government of Tamil Nadu,
Rep. by its Principal Secretary,
Commercial Taxes and Registration Department,
Fort St. George, Chennai - 600 009.

2. The Inspector General of Registration,
Santhome High Court,
Chennai - 600 004.

3. The District Registrar(Administration),
Palayamkottai,
Tirunelveli. ... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned Gazette Notification issued by the third respondent in Na.Ka.No.3470/Aa2/2014, dated 10.01.2018 and quash the same.

For Petitioner : Mr.M.Saravanan
For Respondents : Mrs.J.Padmavathi Devi,
Special Government Pleader.

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O R D E R

The Writ petitioner is a society registered under the provisions of the Tamil Nadu Societies Registration Act 1975. Since the annual returns were not filed, a notice was published under Section 44(3)(b) of the Act. It was made clear in the said notice that if no cause is shown within three months therefrom, the society will be declared as defunct. By the impugned notification dated 10.01.2018, the Writ petitioner society was declared as defunct and it was struck off. In the impugned notification, it has been mentioned that the petitioner has not shown cause against the earlier notice published under Section 44 (3)(b) of the Act.

2. This impugned notification is questioned principally on the ground that the Writ petitioner had actually shown cause and that it was not considered. The learned counsel appearing for the petitioner stated that after coming to know about the paper publication on 25.05.2015, a detailed representation was made to the third respondent. It is true that the Writ petitioner did not respond within three months of the notice. But then, the Writ petitioner had given an explanation on 25.05.2015. But there is no proof enclosed in the typed set of papers indicating the said submission of reply or explanation. In paragraph No.5 of the affidavit filed in support of this Writ petition, a definite assertion had been made by the Writ petitioner. This Court wanted to know if this claim has been controverted in the counter affidavit filed by the third respondent. In the counter affidavit filed by the third respondent, it was stated that there was only a response to the subsequent notice issued by the third respondent on 13.11.2017. The averments set out in paragraph No.5 of the Writ petitioner's affidavit have not been controverted. The only defence of the authority is that even though the Gazette publication was made on 03.12.2014, the Writ petitioner had not responded within three months.

3. Even though the Writ petitioner failed to respond within three months, it is not as if the impugned order was passed immediately after the expiry of three months of the notice. Even though the gazette notification was made as early as on 03.12.2014, the impugned order was passed only on 10.01.2018. Therefore, the third respondent cannot derive any capital on the delay in submission of the reply by the Writ petitioner.

4. I am satisfied with the averments made in the affidavit filed in support of this Writ petition that a detailed reply was given on 25.05.2015. The said claim has not been specifically denied. Therefore, the impugned order is liable to be set aside on the ground that the explanation given by the Writ petitioner was not considered.

5. There is yet another consideration which impels me to allow this Writ petition. The very purpose of holding the enquiry under Section 44 of the Act is to find out if the society is still functioning or not. From the materials enclosed in the typed set of papers, it is seen that following the complaint given by a member, the third respondent had issued notice dated 13.11.2017 proposing to inspect the records of the Writ petitioner society. The Writ petitioner had given a reply on 20.11.2017 and also appeared in the enquiry. These facts clearly indicate that the Writ petitioner society is very much functioning and is a live

society. The petitioner's counsel also pointed out that the petitioner is paying a substantial sum towards consumption of electricity charges which by itself indicates that the Writ petitioner society is very much active. When the society is very much active, it would be atrocious to declare it as defunct.

6. In this view of the matter, the impugned notification is quashed. The Writ petition stands allowed, accordingly. The Writ petitioner is permitted to submit a petition before the Government for condoning the delay in filing the annual returns.

7. The learned counsel appearing for the Writ petitioner states that within a period of two weeks, such an application would be filed. Thereafter, the first respondent is directed to condone the delay in lodging the returns and direct the authorities to accept the same. No costs. Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)

To

1. The Principal Secretary,
   Commercial Taxes and Registration Department,
   Fort St. George, Chennai - 600 009.

2. The Inspector General of Registration,
   Santhome High Court,
   Chennai - 600 004.

3. The District Registrar(Administration),
   Palayamkottai,
   Tirunelveli.

+2 CC to M/s.M.SARAVANAN, Advocate (SR-59156[F] dated 05/04/2019)

+1 CC to M/s.SPL GP (SR-59659[F] dated 08/04/2019)

PMU

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W.M.P.(MD)Nos.6216, 6217 & 11130 of 2018
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