THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.04.2019
CORAM:
THE HONOURABLE MR.JUSTICE **G.R.SWAMINATHAN**

W.P.(MD)No.21544 of 2018
and
W.M.P.(MD)No.19430 of 2018

The President
MM 334, Pudukkottai Electricity Distribution Circle Employees Co-Operative Thrift and credit society Ltd.,
TNEB Campus,
Near Old Busstand,
Pudukkottai. ... Petitioner

Vs

The Deputy Registrar of Co-operative Society,
Pudukkottai. ... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari thereby call for the records of the respondent in Na.Ka.No.192/2017, Thittam dated 19.09.2018 and the quash the same as illegal and arbitrary.

For Petitioner : Mr.P.Ganapathi Subramanian
For Respondent : Mr.M.Karuppasamy,
Government Advocate

ORDER

The writ petitioner is a society registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983. The petitioner wanted to borrow loan from Thrift Co-operative Federation Limited, Chennai. It is a Multi State Co-operative Society. The respondent issued the impugned communication restraining the writ petitioner from borrowing from the said Multi State Co-operative Society. Aggrieved by the restraint order passed by the respondent, this writ petition came to be filed.

2.The respondent has filed a detailed counter affidavit. The learned Government Advocate reiterated the contentions set out therein. The primary argument of the learned Government Advocate is that the impugned communication is very much in consonance with Rule 77 of the Tamil Nadu Co-operative Societies Rules, 1988. The said Rule reads as under:

"77.*Restrictions of borrowing by societies:*

(1)The borrowing of a society shall not exceed the maximum borrowing limit fixed in its by-laws or the limit,

if any, fixed by the Registrar in respect of that society or any class or category of societies to which that society belongs, whichever is less.

(2)No society shall borrow from any source other than the Government or the financing bank except with the prior approval of the Registrar and subject to such limits and conditions as he may impose.”

3.The said Rule is in two parts. A co-operative society can borrow either from the Government or from the financing bank without getting the prior approval of the Registrar or the respondent. If the petitioner wants to borrow from any other source then the prior permission of the Registrar or the respondent will have to be obtained.

4.The term “financing bank” has been defined in Section 2(14) of the Act as “*meaning a registered society which has as its principal object the lending of money to other registered societies*”. The expression “registered society” means a Co-operative Society registered or deemed to be registered under this Tamil Nadu Co-operative Societies Act, 1983. Obviously the Multi State Co-operative Society from which the petitioner wants to borrow funds is not a society registered under the provisions of Tamil Nadu Co-operative Societies Act, 1983.

5.No doubt, the argument of the learned Government Advocate looks formidable. But then, as rightly contended by the learned counsel for the writ petitioner, Section 67 of the Tamil Nadu Co-operative Societies Act will come to the petitioner's rescue. Section 67 reads as under:

“67.Restrictions on borrowings - A registered society shall receive deposits and loans only to such extent and subject to such conditions as may be prescribed or specified in the by-laws.”

6.As rightly pointed out by the learned counsel for the petitioner if there is any contradiction or repugnancy between the provision in the parent statute and the Rules made thereunder, it is the Act provision that will prevail over the Rule. Therefore, I have no difficulty in coming to the conclusion that Section 67 of the parent Act will prevail over Rule 77(2) of the Tamil Nadu Co-operative Societies Rules, 1988.

7.The learned counsel for the petitioner drew my attention to the relevant clause in by-laws. He also pointed out that the bye-laws have been duly approved by the respondent himself. Bye-law No.16 states that *“it shall be competent to the Board of Directors to borrow funds otherwise than by way of deposits either from other Co-operative Institutions or Government or Both”* .

8.The Thrift Co-operative Federation, Chennai may not be a society registered under the provisions of the Tamil Nadu Co-operative Societies Act, 1983. But it is beyond doubt a co-operative institution. Therefore, the petitioner is very much at liberty to avail loan from the said Federation.

9.In this view of the matter, the communication impugned in the writ petition stands quashed and this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

/ True Copy /

Sub Assistant Registrar(CS)

pnn

To

The Deputy Registrar of Co-operative Society,
Pudukkottai.

+1 CC to M/s.P.GANAPATHI SUBRAMANIAN, Advocate
(SR-59729[F] dated 08/04/2019)

+1 CC to M/s.SPL GP (SR-59886[F] dated 09/04/2019)

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ES/SP/29.04.2019/3P/4C