

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 06.01.2020

Pronounced on: 09.01.2020

Coram::

The Honourable Dr.Justice G.Jayachandran

Contempt Petition No.1622 of 2019

C.Selvarathinam,
No.4/431, Muthamil Street,
83, Thandalam,
Chennai - 600 128.

... Petitioner

/versus/

1. P.Senthilkumar, I.A.S.,
The Principal Secretary to Government,
Public and Rehabilitation Department,
Government of Tamil Nadu,
and Chairman, Repco Bank,
Fort St. George,
Chennai - 600 001.

2. R.S.Isabella Managing Director,
The Repatriate Co-operative Finance and
Development Bank Ltd., (REPCO Bank),
Head Office at No.33, North Usman Road,
T.Nagar, Chennai - 600 017.

... Respondents

Prayer: Contempt Petition is filed under Section 11 of Contempt of Court Act, to punish both the respondents for wilful disobedience of the order of this Hon'ble Court made in W.P.No.17576 of 2019, dated 21.06.2019.

For Petitioner : Mr.B.Ullasavelan

For R1 & R2 : Mr.E.Om Prakash, Senior Counsel
for Mr.A.Ilangovan,

ORDER

Heard the Learned Counsel for the Petitioner and the Learned Senior Counsel for the Respondents 1 & 2.

2. The Repatriate Co-operative Finance and Development Bank Ltd., (REPCO Bank) is a Society registered under the Multi State Co-operative Societies Act. The petitioner herein being a repatriate 'A' class member of the Society and Delegate Member of the General Body of REPCO Bank, elected from T.Nagar Constituency on 14.07.2014 for a period of five year. He was served with show cause notice on 13.06.2019 by the Managing Director of the REPCO Bank for alleged acts against the interest of the Society. The said show cause notice was challenged by the petitioner in W.P.No.17576 of 2019 on the ground that, as per Bye-laws of the Society, the Managing Director of the REPCO Bank has no authority to remove a member. This Court, after hearing the submissions of the petitioner and the respondents passed order on 21.06.2019 as under:-

"The present writ petition is filed by the member of the respondent society, challenging the Show Cause Notice on the ground that the Managing Director of the Repco Bank has no power to remove a member as per bye-law.

2. However, on reading the impugned order of the respondent, it is only a Show Cause Notice and it is not an order for removal of member. It is also brought to the notice of this court by the learned counsel appearing for the petitioner as well as the learned counsel for the respondents that pursuant to the Show Cause Notice, the petitioner has given his explanation dated 17.06.2019 and his explanation will be considered in accordance with law and no order will be passed without affording opportunity to the petitioner to justify his explanation.

3. Recording the same, the Writ Petition is disposed of with the direction to the respondent herein to act on the explanation given by the petitioner in accordance with law and pass appropriate order. No costs. Consequently, the connected Miscellaneous petition is closed."

3. In this contempt petition, the petitioner states that, even before the receipt of the order copy, the respondents herein have meticulously planned and removed him from the 'A' class membership and Delegate Member, without giving opportunity to explain his case. According to the petitioner, on receipt of the show cause notice dated

through letters dated 18.06.2019 and 19.06.2019 wrote to the 2nd defendant to furnish the copy of the documents referred in the show cause notice. Meanwhile, apprehending removal from membership, he filed the Writ Petition and the same was disposed on 21.06.2019 with direction. While so, in the Representative General Body (hereinafter referred as "RGB") meeting held on 22.06.2019, the 1st respondent ignoring the Court order announced the petitioner's removal from 'A' class membership and Delegate Member. This amounts to Contempt of the Court order passed in W.P.No.17576 of 2019 since in that order, the Court has directed the respondents to give opportunity to the petitioner and the order copy itself was hosted in the website only on 27.06.2019.

4. In the affidavits filed in response to the contempt petition, the 1st and 2nd respondents would state that all the allegations and averments made in the contempt petition are denied and the contempt petition is not maintainable. It has to be dismissed on the ground of suppression of fact.

5. According to the respondents, in the RGB meeting held on 22.06.2019 at Hotel Savera, Chennai, out of 128 delegates present, 123 delegates submitted a memorandum duly signed, seeking removal of the petitioner from 'A' class membership for his anti-bank activities, which were detrimental to the interest of the Bank. The said agenda

was taken up for discussion in the RGB.

6. The petitioner, who was present in the RGB meeting was given opportunity to explain. The petitioner made oral representation, reiterating his wild allegations against the Bank and the Board of Directors. After hearing his oral representation, the RGB unanimously passed a resolution terminating the petitioner from the post of delegate and also expelled the petitioner from the primary A-class membership.

7. The respondents specifically states that, the petitioner was not removed from the membership by them. He was removed by a resolution passed in the RGB meeting which is the Supreme body of the Society, as per the procedure under Section 30 of the Multi State Co-operative Societies Act, 2002 and Rule 12 of the Bye-law of the Bank. The explanation of the petitioner was considered. While doing so, in terms of the order passed by this Court in W.P.No.17576 of 2019. The petitioner has participated when the resolution was taken up for consideration by the RGB. It is incorrect to state that, the petitioner was not provided with the documents referred in the show cause notice and copy sought. In fact, the petitioner sought for documents through letter dated 17.06.2019. He was provided with all the documents, except the complaints from the

delegates since, they were confidential in nature. The documents were forwarded to the petitioner through Registered Post and e-mail. Further, in the letter dated 21.06.2019, sent through special messenger, the petitioner was informed that, if he wish to make any further representation either in writing or orally on the show cause notice, he may do so in the RGB meeting to be held on 22.06.2019. The petitioner refused to receive the letter. Hence, the Contempt Petition filed with malice by suppressing material facts has to be dismissed with exemplary cost.

8. The petitioner when served with show cause notice dated 13.06.2019 came to this Court with the allegation and averment that, the 2nd respondent/Managing Director of REPCO Bank, intend to remove him from membership and to prevent him from attending the RGB meeting has caused the notice without furnishing documents referred. In the said context, this Court passed the order in W.P.No.17576/2019 on 21.06.2019.

9. From the records produced, this Court finds that, except the complaint copy of the members, rest of the documents were forwarded to the petitioner through e-mail on 21.06.2019. The petitioner has participated in the RGB meeting held on 22.06.2019. The petitioner has been removed

from membership on the resolution passed in the RGB, which is the Supreme body of the REPCO BANK. Obviously, the removal of the petitioner from the membership is pursuant to the resolution of the RGB participated by 128 delegates.

10. As per the provisions of the Muti State Co-operative Societies Act, the power to remove members shall be vest with the General Body of the Society. If, the strength of the Society General Body is huge, the powers can be delegated to small body provided the bye-laws of the respective membership permits a smaller body.

11. Sections 3(1) and 38 of the Muti State Co-operative Societies Act read as follows:-

"Section 3(1) "general body", in relation to a multi-State co-operative society, means all the members of that society and in relation to a national co-operative society or a federal co-operative means all the delegates of member co-operative societies or delegates of multistate co-operative societies and includes a body constituted under the first proviso to sub-section (1) of section 38;

.....

Section 38. Constitution, powers and functions of general body.-(1) The general body of a multi-State co-operative society

shall consist of all the members of such society: Provided that where the bye-laws of a multi-State co-operative society provide for the constitution of a smaller body consisting of delegates of members of the society elected or selected in accordance with such bye-laws, that smaller body shall exercise such powers of the general body as may be prescribed or as may be specified in the bye-laws of the society.

.....

12. It is useful to extract Rule 13 of the Muti State Co-operative Societies Rules:-

"13. Annual General Meeting (1) Every multi-state cooperative society shall hold the annual general meeting of its members not later than a period of six months after the close of cooperative year. All the general meetings shall be called at the principal place of the society. (2) Without prejudice to the provisions sub-section (3) of section 38 of the Act, a multi-state cooperative society with a membership exceeding one thousand may provide in its bye-laws for the constitution of a smaller body. The small body so constituted shall exercise all such powers of the general body as may be specified in the bye-laws."

13.The bye-law 2(g) of REPCO Bank defines General

Body as follows:-

<https://hcservices.ecourts.gov.in/hcservices/>

"g) "General Body" means a meeting of general body consisting of delegates, members of Board of Directors and others, as prescribed, which is otherwise called Representative General Body;"

14. From the reading of the Bye-law of the REPCO Bank, this Court finds that, under bye-law 25(1), the power of Expulsion of a member is vest with the Representative General Body which consist of elected delegate as defined under bye-law 2(f). Neither the 1st respondent who is the Chairman nor the 2nd respondent, who is the Managing Director has power to remove a member. Their powers are defined under bye-laws 38 and 41 respectively. In this case, the petitioner was not removed by the respondents but by the RGB consists of the duly elected delegates, which is the small body to discharge the functions of the General Body and the ultimate authority of the Bank.

15. This Court finds that the petitioner has been removed from membership by a resolution passed in the RGB held on 22.06.2019. The removal of the petitioner appears to be based on the representation given by 123 delegates and the resolution passed in the RGB participated by 128 delegates including the petitioner. Before passing this resolution, the petitioner has been given opportunity to make his submissions and apparently the petitioner has availed this opportunity. 'Whether his removal was in accordance to law and procedure', cannot be tested in the

Contempt Petition. As per the order of this Court, the respondents were directed to give the petitioner an opportunity to explain his conduct before taking action on the show cause notice dated 13.06.2019. Whereas, his removal is based on the agenda moved by the members in RGB. Therefore, this Court holds that the respondents cannot be held guilty of Contempt of Court. As a result, the **Contempt Petition is dismissed.**

SD/-

ASSISTANT REGISTRAR (COMM.CASES)

BSM/JBM

//Certified to be true copy//

Dated at Madras this the day of 2020.

COURT OFFICER (O.S.)

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