

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 12.2.2020
Pronounced on : 06.03.2020

C O R A M

THE HON'BLE MR.AMRESHWAR PRATAP SAHI, CHIEF JUSTICE
AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.28641 of 2019

and

Writ Appeal No.2253 of 2018

Writ Petition No.28641 of 2019

J.A.Murugan

...Petitioner

Vs

1. The Registrar of Co-operative societies,
No.170 Periyar EVR High Road,
Kilpauk, Chennai - 10.
2. The Inspector of Police,
Vigilance and Anti Corruption, Krishnagiri.

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of Certiorari, calling for the records of the circular No.12/2015 (RC35898/2015/SF3) dated 11.8.2015 on the file of the 1st respondent, quash the same.

Writ Appeal No.2253 of 2018

J.A.Murugan

...Appellant

Vs

1. The Director,
Vigilance and Anti Corruption,
No.293 MKN Road, Alandur,
Chennai - 16.
2. The Registrar of Co-operative societies,
No.170 Periyar EVR High Road,
Kilpauk, Chennai - 10.
3. The Joint Registrar of Co-operative Societies,
Krishnagiri Region, Krishnagiri.

4. The Deputy Registrar of Co-operative Societies,
Hosur Circle, Hosur,
Krishnagiri District.
5. T.K.122, Krishnagiri District National
Engineering employees Co-operative Thrift and
Credit Society,
Rep. by its President,
Hosur, Krishnagiri District.
6. The Inspector of Police,
Vigilance and Anti Corruption, Krishnagiri.

...Respondents

Prayer:- Appeal filed under Clause 15 of the Letters Patent against the order dated 02.02.2018 made in W.P.No.2228 of 2018.

W.P.No.2228 of 2018 & W.M.P. Nos. 2726 & 2727/2018:

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari to call for the records of the 1st respondent in his letter Rc.17/ 2017. Coop.KG dated 27.10.2017 the letter of the 2nd respondent in Rc. No.14430/ 2017/ BI1 dated 1.12.2017 the letter of the 3rd respondent in Na.Ka. No.6166/ 2017 Thava (2) dated 15.12.2017 and the order of the 4th respondent in Na.Ka.130/ 2017 Pu.Vee (1) dated 08.01.2018 quash the same.

For Appellant	...	Mr.S.Palaniswamy in W.P & W.A.
For Respondents	...	Mr.R.Balaramesh, Spl.Govt.Pleader W.P & W.A.

J U D G M E N T

SUBRAMONIUM PRASAD,J

The petitioner has challenged the judgment and order dated 02.02.2018, passed in WP.No.2228 of 2018 wherein, the learned Single Judge has dismissed the challenge raised by the petitioner to the proceedings dated 27.10.2017, seeking sanction for prosecuting the petitioner for offences punishable under Section 7 and 13(2) r/w 13(1)(d) of the Prevention of Corruption Act, 1988 and the letters dated 01.12.2017 and 15.12.2017 by which directions have been issued to initiate prosecution against the petitioner.

2. The petitioner was working as a Secretary of the Krishnagiri District National Engineering Employees Co-operative Thrift and Credit Society. The society is of the employees of a private Engineering company for their benefit. He was arrested by the Inspector of Police, Vigilance and Anti-Corruption,

Krishnagiri and a FIR was filed against him under Section 7 of the Prevention of Corruption Act, 1988. The Superintendent of Police, Vigilance and Anti-Corruption by letter dated 27.10.2017, issued a letter to the Registrar of Co-operative Societies for according sanction of prosecuting the petitioner. Accordingly, the Registrar of Co-operative Societies wrote a letter to the Joint Registrar of Co-operative Societies on 01.12.2017 to issue necessary instruction to initiate disciplinary proceedings and also for grant of sanction for proceeding under the Prevention of Corruption Act. Challenging the steps taken by the respondents to launch proceedings against the petitioner under the Prevention of Corruption Act, the petitioner filed Writ Petition No.2228 of 2018, contending that the petitioner does not fall within the definition of public servant under Section 2(c)(ix) and therefore, proceedings cannot be initiated against him under the Prevention of Corruption Act, 1988.

3. The petitioner also filed Writ Petition No.28461 of 2019 challenging a circular dated 11.08.2015, issued by the Registrar of Co-operative Societies, by which the Registrar has issued instructions making the Prevention of Corruption Act applicable to the employees of Co-operative Societies on the ground that they are public servants within the definition of Clause(c) of Section (2) of the Prevention of Corruption Act. The learned Single Judge by the impugned order dated 02.02.2018, has dismissed both the writ petitions. The instant appeal has been filed against the said judgment.

4. Heard learned counsel for the parties.

5. This Bench by its order dated 12.02.2020, while reserving judgment recorded the submissions made by the parties. The order reads as under:-

"A learned Single Judge dismissed the writ petition filed by the appellant where a challenge had been raised in respect of a communication seeking permission to prosecute the appellant/petitioner by invoking the provisions of the Prevention of Corruption Act, 1988. The learned Single Judge came to the conclusion that in view of the definition contained in Section 2(c)(ix), any person who is the President or Secretary or an Office Bearer of a Registered Co-operative Society of the nature defined therein, and the appellant petitioner being the Secretary of such a society, was amenable to the provisions of the Act. Hence, he could be prosecuted under the 1988 Act.

2. The question of the status of the Co-operative Society of which, the appellant petitioner was the Secretary was not gone into. We may, at this stage, record that the Co-operative Society of which the appellant petitioner is the Secretary, is an Employees Cooperative Thrift and Credit Society of the employees of an industrial concern. On such a foundation, the appellant who was the petitioner in the writ petition has come up contending that the conclusion drawn by the learned Single Judge is not correct inasmuch as without discussing the status of the society, the conclusion drawn that the petitioner/appellant was amenable to the provisions of a prosecution under the Corruption Act, 1988, is an erroneous approach inasmuch as neither the petitioner/appellant is a public servant nor was he performing a public duty and neither is the society involved in any such function so as to construe the same. It is also submitted that the Society is neither aided nor controlled in any way by the State for the purpose of bringing its Office Bearers or employees within the purview of the Prevention of Corruption Act, 1988.

3. The connected writ petition has been filed by the very same petitioner contending that the Registrar of Co-operative Societies has no authority in law to have issued the Circular dated 11.08.2015 whereby, he has brought all the employees of the Co-operative Societies within the definition of public servants as per Section 2(c) of the Prevention of Corruption Act, 1988. This circular has been challenged on the ground that an omnibus exercise by bringing the employees of the Cooperative Society within the purview of a penal Act can be done only through a legislation and not by an executive act of an Officer of the State inasmuch as the power to police and punish is of the State and unless such power is conferred on any authority by an appropriate legislative exercise, the Registrar could not have exercised any such authority in law. Thus, there was total lack of competence on the part of the Registrar to have issued such a Circular which otherwise cannot be exercised under any other provision of the Tamil Nadu Co-operative Act and the rules framed thereunder. It is urged that the applicability of a Central Act with penal consequences is solely within the competence of the Legislature that has the authority to legislate on

this subject and therefore, the Registrar has transgressed constitutional limits by virtually issuing a Circular that tends to legislate for which there is no power conferred on the said authority. It is therefore, liable to be struck down as being ultra vires inasmuch as it prejudices and impinges the fundamental right guaranteed to the petitioner under the Constitution and is also ultra vires of the provisions of the 1988 Act.

4. The matter has been debated before us on behalf of the respondents contending that in view of the provisions of the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder, there is a statutory control which is exercised over all Co-operative Societies which has been detailed in the typed set of papers reproducing the provisions of the Act and the Rules framed thereunder. The same was sought to be supplemented by the argument that the society is taking loans from the Central Co-operative Bank and in turn, the Central Co-operative Bank is aided by the State Government in its financial transactions, therefore, the society in question should also be treated to be a beneficiary of such aid and consequently, would be a society controlled and aided by the State Government. This extended argument is further sought to be substantiated with the aid of two Supreme Court judgments. One in the case of Govt. of Andhra Pradesh and others Vs. P.Venku Reddy reported in (2002) 7 SCC 631. In the said case, a Supervisor of a Co-operative Society was sought to be prosecuted under the 1988 Act and the Apex Court therein ruled that the employee therein was an employee of a Central Co-operative Bank involved in the sovereign function of banking and therefore, was an authority or a body controlled and aided by the Government. This was not even disputed in the said case.

5. The second judgment relied on by the learned counsel is in the case of Central Bureau of Investigation, State of Madhya Pradesh Vs. P.G.Jain reported in (2016) 12 Supreme Court Cases 360, where again the Assistant Manager of a National Co-operative Consumer Federation was sought to be prosecuted where also the Supreme Court applying the same law as in the case of Government of Andhra Pradesh (supra) came to the conclusion that in that case as well the Society was performing such functions and duties that it was amenable to the

provisions of the 1988 Act, inasmuch as the employee working under the said Co-operative Society was a public servant keeping in view the nature of his duties performed and then also came to the conclusion that the Federation was financially aided almost to the extent of 85% of the redemption of shares being guaranteed by the Central Government. It is, in this background, that both the said decisions were rendered and have been relied on by the learned counsel for the respondent State.

6. Learned counsel for the petitioner/appellant has urged that the aforesaid two judgments may not be attracted, keeping in view the facts of the present case where the society is not a Central Co-operative Bank or a Federation as in the case cited at the bar. They are societies only meant to cater to the shareholders who are workers of a particular industrial concern and consequently, the ratio of the aforesaid two judgments may not be attracted on the facts of the present case.

7. The central issue, therefore, is as to whether the petitioner/appellant who is the Secretary of a Society of the nature as pleaded herein, would be construed to be performing a public duty so as to construe him to be a public servant for the purpose of bringing him within the fold of Prevention of Corruption Act, 1988 and consequently, as to whether, the Registrar of Co-operative Societies, Tamil Nadu had the authority to issue the impugned Circular dated 11.08.2015, thereby, bringing all employees of every category of Co-operative Society within the fold of 1988 Act.

8. We have extensively heard the arguments of the learned counsel for the parties. Judgment reserved."

6. Section 2(c)(iii)(ix) of the Prevention of Corruption Act, reads as under:-

"public servant" means,-

(iii) any person in the service or pay of a corporation established by or under a Central, Provincial or State Act, or an authority or a body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(ix) any person who is the president, secretary or other office-bearer of a registered co-operative society engaged in agriculture, industry, trade or banking, receiving or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);"

7. Learned counsel for the appellant in Writ Appeal No.2253 of 2018 contends that the petitioner who is the Secretary of the Krishnagiri District National Engineering Employees Co-operative Thrift and Credit Society, Hosur, Krishnagiri District, will not come within the four corners of the definition of public servant. He would state that the Society has been formed only for the employees working in private companies in Hosur, Krishnagiri District. Only employees working in private companies are members of the Society. No one else can be a member of the Society. He would also contend that the Society is not in anyway controlled or financed by the Central Government or State Government. He would therefore state that in the absence of any control by the State Government or Central Government in the day to day working of the Society and in view of the fact, it is not aided by the State Government or Central Government, the employees, more particularly, President and or the Secretary of the Society cannot come under the definition of public servant.

8. Learned counsel for the appellant has placed reliance on a judgment of the Hon'ble Supreme Court in Thalappalam Service Cooperative Bank Ltd., Vs. State of Kerala & Ors., (2013) 7 MLJ 407, where the Hon'ble Supreme Court in paragraphs 15, 17 and 34 are held as under:-

"We can, therefore, draw a clear distinction between a body which is created by a statute and a body which, after having come into existence, is governed in accordance with the provisions of a statute. The Societies, with which we are concerned, fall under the latter category that is governed by the Societies Act and are not statutory bodies, but only body corporate within the meaning of Section 9 of the Kerala Cooperative Societies Act having perpetual succession and common seal and hence have the power to hold property, enter into contract, institute and defend suits and other legal proceedings and to do all things necessary for the purpose, for which it was constituted. Section 27 of the Societies Act categorically states that the final authority of a Society vests in the general body of its members and

every Society is managed by the managing committee constituted in terms of the bye-laws as provided under Section 28 of the Societies Act. Final authority so far as such types of societies are concerned, as the statute says, is the general body and not the Registrar of Cooperative Societies or State Government.

The societies are, of course, subject to the control of the statutory authorities like Registrar, Joint Registrar, the Government, etc. but it cannot be said that the State exercises any direct or indirect control over the affairs of the society which is deep and all pervasive. The supervisory or general regulation under the statute over the cooperative societies, which are body corporate does not render activities of the body so regulated as subject to such control of the State so as to bring it within the meaning of the "State" or instrumentality of the State. The above principle has been approved by this Court in S.S. Rana v. Registrar, Coop. Societies [(2006) 11 SCC 634] . In that case this Court was dealing with the maintainability of the writ petition against Kangra Central Cooperative Society Bank Ltd., a society registered under the provisions of the Himachal Pradesh Cooperative Societies Act, 1968. After examining various provisions of the H.P. Cooperative Societies Act this Court held as follows: (SCC pp. 641-42, paras 9-12)

"9. It is not in dispute that the Society has not been constituted under an Act. Its functions like any other cooperative society are mainly regulated in terms of the provisions of the Act, except as provided in the bye-laws of the Society. The State has no say in the functions of the Society. Membership, acquisition of shares and all other matters are governed by the bye-laws framed under the Act. The terms and conditions of an officer of the cooperative society, indisputably, are governed by the Rules. Rule 56, to which reference has been made by Mr Vijay Kumar, does not contain any provision in terms whereof any legal right as such is conferred upon an officer of the Society.

10. It has not been shown before us that the State exercises any direct or indirect control over the affairs of the Society for deep and pervasive control. The State furthermore is not the majority shareholder.

The State has the power only to nominate one Director. It cannot, thus, be said that the State exercises any functional control over the affairs of the Society in the sense that the majority Directors are nominated by the State. For arriving at the conclusion that the State has a deep and pervasive control over the Society, several other relevant questions are required to be considered, namely, (1) How was the Society created? (2) Whether it enjoys any monopoly character? (3) Do the functions of the Society partake to statutory functions or public functions? and (4) Can it be characterised as public authority?

11. Respondent 2, the Society does not answer any of the aforementioned tests. In the case of a non-statutory society, the control thereover would mean that the same satisfies the tests laid down by this Court in *Ajay Hasia v. Khalid Mujib Sehravardi* [(1981) 1 SCC 722 : 1981 SCC (L&S) 258] . [See *Zoroastrian Coop. Housing Society Ltd. v. Distt. Registrar, Coop. Societies (Urban)* [(2005) 5 SCC 632] .]

12. It is well settled that general regulations under an Act, like the Companies Act or the Cooperative Societies Act, would not render the activities of a company or a society as subject to control of the State. Such control in terms of the provisions of the Act are meant to ensure proper functioning of the society and the State or statutory authorities would have nothing to do with its day-to-day functions."

We are of the opinion that when we test the meaning of expression "controlled" which figures in between the words "body owned" and "substantially financed", the control by the appropriate Government must be a control of a substantial nature. The mere "supervision" or "regulation" as such by a statute or otherwise of a body would not make that body a "public authority" within the meaning of Section 2(h)(d)(i) of the RTI Act. In other words just like a body owned or body substantially financed by the appropriate Government, the control of the body by the appropriate Government would also be substantial and not merely supervisory or regulatory. The powers exercised by the Registrar of Cooperative Societies and others under the Cooperative Societies Act are only regulatory or

supervisory in nature, which will not amount to dominating or interfering with the management or affairs of the society so as to be controlled. The management and control are statutorily conferred on the Management Committee or the Board of Directors of the Society by the respective Cooperative Societies Act and not on the authorities under the Cooperative Societies Act."

9. He would therefore contend that just because the overall functioning of the Society comes under the control of the Registrar under the Co-operative Societies Act, it does not mean the State Government or Central Government has got any say in day to day functioning of the Society and in the absence of any control by the State Government or Central Government in day to day functioning of the Society, the employees of the Co-operative Society cannot come within the four corners of the definition of public servant and therefore, prosecution against them cannot be launched under the Prevention of Corruption Act.

10. On the other hand, the learned counsel appearing for the State Government would contend that, in view of the provisions of the Tamil Nadu Co-operative Societies Act and the rules framed herein, there is a statutory control which is exercised over the Co-operative Societies. It is submitted that the Society takes loan from the Central Co-operative Bank, which is aided by the State Government. The submission of the learned counsel for the State is that the Society in which the petitioner is working, is a beneficiary of the aid given by the State Government to the Central Cooperative Bank, from whom loans are taken and therefore there is State control and aid.

11. The learned counsel would argue that since the Society in which the petitioner was Secretary, took loans from the Central Cooperative Bank, which is controlled by the State Government, the employees of the Krishnagiri District National Engineering Employees Co-operative Thrift and Credit Society will be covered under the definition of public servant.

12. It is contended by the learned counsel for the appellant that there is total lack of competence on the part of the Registrar to have issued such the impugned circular dated 11.08.2015 and there is no provision under the Tamil Nadu Cooperative Societies Act giving power to the Registrar to bring out a circular which has penal consequences. Only the legislature can have authority to amend the Act or bring about a law in that regard. The circular is therefore liable to be struck down in as much as it will affect the fundamental rights of the employees and also is ultra vires to the provisions of the Prevention of Corruption Act.

13. The short issue which arises for consideration is whether the appellant who was the Secretary of Krishnagiri District National Engineering Employees Co-operative Thrift and Credit Society would come within the definition of public servant and can prosecution to be launched against him under the provisions of the 1988 Act by applying the impugned circular dated 11.08.2015.

14. Learned Counsel for the State Government would rely on two judgments of the Hon'ble Supreme Court being Government of Andhra Pradesh Vs. P.Venku Reddy, (2002) 7 SCC 631 and Central Bureau of Investigation, State of Madhya Pradesh Vs. P.G.Jain, (2016) 12 SCC 360. The respondent was working as a Supervisor in the District Central Cooperative Bank Ltd., which was aided by the Government and further the Central Cooperative Bank was discharging banking functions. The Hon'ble Supreme Court on the facts of that case held that the office bearer of the Society in question, which was aided by the Government, would be covered under definition of public servant. In Central Bureau of Investigation, State of Madhya Pradesh Vs. P.G.Jain (supra), the respondent was an Assistant Manager of the National Cooperative Consumers Federation of India Ltd., wherein 85 percent of the share capital was subscribed by the Central Government.

15. As said earlier, the Society in which the appellant is working is only for the employees working in private companies in Krishnagiri and is not open to public at large. The fact that the Co-operative Society takes loan from the Central Cooperative Bank and repays it back does not mean that the State Government grants any aid to the Society. There is no material to even remotely suggest that the society in question receives any aid financial or otherwise from the State or Central Government. The society therefore is neither controlled or aided so as to make its employees amenable to the 1988 Act. As stated earlier, the two judgments on which reliance has been placed by the counsel for the State Government are distinguishable on facts and therefore in our opinion, the said judgments do not lend any support to the submissions. Consequently no permission could be granted to sanction prosecution of the writ petitioner under the 1988 Act.

16. The Registrar of Co-operative Societies cannot expand the definition of a public servant under the impugned circular dated 11.08.2015. He does not have any authority to do so. The Registrar has relied on the judgment of the Hon'ble Supreme Court in Andhra Pradesh Vs. P.Venku Reddy, (2002) 7 SCC 631. The definition of public servant and more particularly, in Clause (3) and Clause (9) on which reliance is placed by the State Government would show that only a person in service of the

Corporation established by the Central Government or State Government Act, or any authority or body owned or controlled or aided by the Government or a government company will come under the definition of public servant under Clause (c)(iii) and a person who is Secretary, President or any other office bearer of the Cooperative Society engaged in agriculture, industry, trade or banking or having received any financial aid from the Central Government or a State Government or from any corporation established by or under a Central, Provincial or State Act, or any authority or body owned or controlled or aided by the Government or a government company will come within the definition of public servant.

17. The Registrar as stated earlier cannot expand the definition of public servant as a term defined under the Prevention of Corruption Act. It is completely in the domain of the legislature to define or lend a meaning to the terms in the Act. It is well settled that a definition in a statute with penal consequences must be construed strictly. The circular of the Registrar which states that all employees of all Co-operative Societies would be amenable to the prosecution under the Prevention and Corruption Act and they all are coming within the definition of public servant has no basis and is contrary to the statute and deserves to be struck down.

18. In view of the above, both the writ petitions are allowed. The circular dated 11.08.2015 is struck down as beyond the competence of the Registrar and ultra vires the Constitution as well as the provisions of Prevention and Corruption Act, 1988. The judgment and order of the learned Single Judge dated 27.10.2017, is set aside and the letters dated 01.12.2017 and 15.12.2017 are quashed. The appeal stands allowed accordingly. No Costs.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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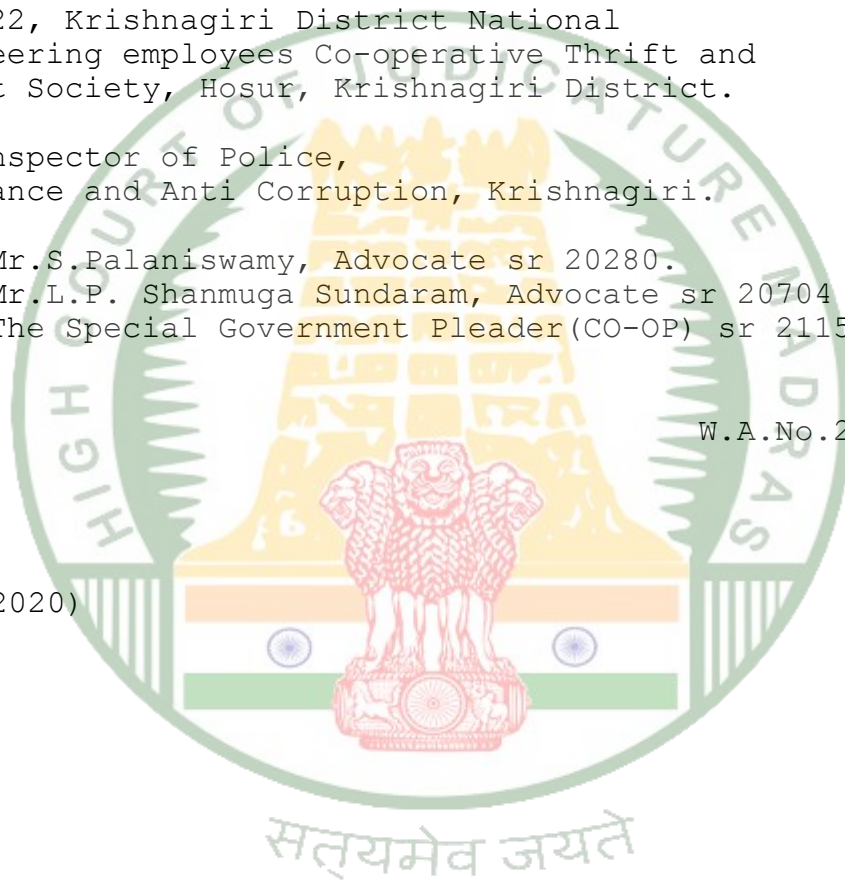
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- +1 CC to Mr.S.Palaniswamy, Advocate sr 20280.
+1 CC to Mr.L.P. Shanmuga Sundaram, Advocate sr 20704
+1 CC to The Special Government Pleader(CO-OP) sr 21152.

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VSNI (CO)
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