



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2020

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THE HON'BLE MR.JUSTICE R.SURESH KUMAR

W.P. (MD) No.7764 of 2020

and

WMP (MD) No.7249 of 2020

(Through Video conferencing)

- 1.L.R.Jeyasekar
- 2.C.Regumathi
- 3.F.Rani Jeyasheela
- 4.P.K.Shajila Prabhu
- 5.M.Velayutham
- 6.V.Veslin Alexander,
- 7.S.Christhudhas
- 8.G.Satheesh

...Petitioners

-Vs-

- 1.The Joint Registrar of Co-op Societies,
Collector Office New Building,
2nd Floor, Nagercoil,
Kanyakumari District.

- 2.The Co-operative Sub Registrar/Field Officer,
Palace Road, Thuckalay,
Kanyakumari District.

...Respondents

Prayer: Writ Petition - filed under Article 226 of Constitution of India, to issue a writ of Certiorari, calling for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.907/2017/Sa Pa dated 10.01.2020 and quash the same as illegal.

For Petitioners : Mr.M.Jerin Mathew

For Respondents : Mr.J.Padmavathi Devi, Spl. G.P.

ORDER

The prayer sought for herein is for a writ of Certiorari, calling for the records relating to the impugned notice issued by the 1st respondent in Na.Ka.907/2017/Sa Pa dated 10.01.2020 and quash the same.

2.Heard Mr.M.Jerin Mathew, learned counsel appearing for the petitioners and Mr.J.Padmavathi Devi, Spl. G.P. appearing for the respondents.



3.The petitioners are the members of the Primary Agricultural Co-operative Credit Society, Reethapuram, against whom, it seems that, investigation under Section 82 of Tamil Nadu Co-operative Societies Act, (hereinafter referred to as Act, for the sake of brevity), was made, pursuant to which, a report seems to have been filed by the investigation team.

4.On consideration of the said investigation report, the 1st respondent invoking the power under Section 36 of the Act, issued a show cause notice under Na.Ka.907/2017/Sa Pa dated 10.01.2020, where, after enumerating the alleged violation taken place at the Society, where the petitioners involved, sought for explanation from the petitioners within 15 days as to why proceedings should not be initiated against these petitioners for disqualifying them from being members of the Society and any other Society as has been contemplated under Section 36 of the Act. The said show cause notice dated 10.01.2020 issued by the 1st respondent is under challenge in this writ petition.

5.Heard the learned counsel appearing for the petitioner, who would submit that, normally, show cause notice would not be put under challenge. However, in this case, show cause notice since has been challenged, the reason being that, the impugned show cause notice has been issued without jurisdiction, by the 1st respondent. In this regard, the learned counsel appearing for the petitioner has taken this Court to Section 36 of the Act to state that, under Section 36 of the Act, only the Registrar of Co-operative Societies is empowered to invoke Section 36 of the Act towards disqualification of the members and in the case in hand, only the Joint Registrar has issued the show cause notice. Therefore, his first ground is that the impugned show cause notice is without jurisdiction.

6.The learned counsel appearing for the petitioner would further submit that, under Section 36(1) of the Act, where, in the course of an audit under Section 80 or an inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83, it appears that a person of the board has mis-appropriated or fraudulently retained any money or other property or been guilty of breach of trust, then only, such course of action towards disqualifying his membership from being a member of any Society can be initiated. Here, according to the learned counsel, no such occasion has come as the report allegedly submitted under Section 82 has not been served on the petitioner and without having served the said report and without getting explanation from the petitioner, such invocation under Section 36 cannot be made by the respondents, especially, the 1st respondent and therefore, on this ground also, the impugned show cause notice is challenged.

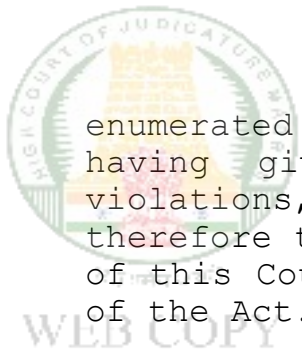


7.However, Mrs.J.Padmavathi Devi, learned Special Government Pleader appearing for the respondents has submitted that, insofar as the 1st ground raised by the learned counsel that the 1st respondent does not have the power to issue show cause notice under Section 36 of the Act as he is only Joint Registrar is concerned, she relied upon G.O.(2D) No.108, Co-operation, Food and Consumer Protection Department, dated 31.08.2005 and G.O.(2D) No.109, Co-operation, Food and Consumer Protection Department, dated 31.08.2005, whereunder, various powers vest with the Registrar of Co-operative Societies, as enumerated in various provisions of the Act, have been delegated to the officers like, Additional Registrar of Co-operative Societies, Joint Registrar of Co-operative Societies, Deputy Registrars of Co-operative Societies and Co-operative Sub Registrar. Therefore, the learned Special Government Pleader by relying upon these two Government Orders, which were issued sometime in the year 2005 itself, submits that, those powers vest with the Registrar under various provisions of the Act including the power under Section 36 can very well be invoked and exercised by the lower level officers like Joint Registrar i.e., the 1st respondent and other officials and therefore, the 1st ground raised by the petitioners cannot be countenanced.

8.Insofar as the second submission made on behalf of the petitioners, the learned Special Government Pleader submits that, Section 36 proceedings has been initiated through the show cause notice, which is impugned herein, only pursuant to the inspection or investigation report submitted under Section 82 of the Act. Therefore, it is one of the ingredient where Section 36 can be very well invoked as the very language used in Section 36 also contemplated so. Therefore, the second ground raised by the learned counsel for the petitioners also cannot be countenanced, the learned Special Government Pleader contended.

9.I have heard the learned counsel appearing for the petitioners as well as the learned Special Government Pleader appearing for the respondents.

10.As has been rightly pointed out by the learned Special Government Pleader appearing for the respondents, both the grounds raised by the petitioners through the learned counsel for the petitioners will not stand in the legal scrutiny as the powers vest with the Registrar to initiate proceedings under Section 36 of the Act can very well be invoked and initiated proceedings under the said Section by delegating to the officer, who is none other than the 1st respondent. Moreover, in this case, in the very impugned show cause notice in 1st para itself, it has been specified that, inspection was conducted under Section 82 of the Act and inspection officers have submitted a report and according to the report, governing body members of the Society, when they were in office, allegedly had involved in financial irregularities and this has been



enumerated in the very impugned show cause notice itself and after having given the list of such financial irregularities and violations, explanation has been called for within 15 days time and therefore this impugned show cause notice, in the considered opinion of this Court is strictly in consonance with Section 36 (1) and (2) of the Act.

11. In this context, in order to have a better appreciation, Section 36 of the Act is extracted hereunder:

"36. Disqualification and removal. - (1) Where in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82 or inspection of books under section 83 it appears that a person who is, or was, a member of a board has mis-appropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or of gross or persistent negligence in connection with the conduct and management of, or of gross mis-management of the affairs of the society, the Registrar may, without prejudice to any other action that may be taken against such member by order in writing, disqualify him permanently from holding in future any office in any registered society. The Registrar shall, if such person holds office of member of the board, also by the same order remove him from that office.

(2) No person shall be disqualified or removed under sub-section (1) without being given an opportunity of making his representations. A copy of the order disqualifying or removing him shall be communicated to him."

12. Though the language is that the Registrar may disqualify him permanently from holding in future any office in any registered society, such power vest with the Registrar under the provision of the Act, has been delegated under the Government Orders referred to above i.e., G.O.(2D) No.108 and 109, Co-operation, Food and Consumer Protection Department, dated 31.08.2005.

13. Moreover, under Sub Section (2) of Section 36, it has been mandated that, no person shall be disqualified or removed under sub-section (1) without being given an opportunity of making his representations. Therefore, what has been mandated under sub section (2) of Section 36 is, only to give an opportunity to make a representation. Only that opportunity now has been given through the impugned show cause notice calling explanation from the petitioners. Therefore, in all fairness, the said show cause notice, which is impugned herein, cannot be said to be in violation of Section 36 of the Act and therefore, the petitioners cannot



successfully challenge the show cause notice on any of the grounds raised by them in this writ petition.

14. Moreover, it is a settled proposition of law that the principle of *audi alteram partem* is the foundation of justice dispensation system, without which, justice cannot be rendered to any litigant. Herein the case in hand, as has been contemplated under Section 36 of the Act, a right approach has been taken by the respondents by giving a show cause notice to the petitioners to seek explanation within a time frame.

15. Though the show cause notice was issued sometime in January 2020, now, after six months, the petitioners chosen to file this writ petition challenging the show cause notice without even replying to the said show cause notice. This attitude of the petitioners cannot be appreciated, but, to be deprecated. If an opportunity is given by the authorities before taking any decision either adversary or otherwise against a person, who, instead of using the said opportunity, cannot rush to the Court of law and challenge the very opportunity given by the authorities itself, as that will set a wrong precedent, as any such kind of opportunity given by the authorities would be construed as liable to be challenged in a Court of law. This kind of practice cannot be encouraged. Therefore, this Court strongly feels that the approach of the petitioners in challenging the very show cause notice before this Court without any valid reason or ground shall not be approved and accepted and therefore, this Court feel that this writ petition is liable to be dismissed.

16. In view of the above, this writ petition is dismissed. It is made clear that the dismissal of this writ petition shall not stand in the way for the petitioners to give explanation to the impugned show cause notice, within two weeks period from the date of receipt of a copy of this order and on receipt of such explanation, it is open to the 1st respondent to proceed in accordance with law and pass final orders, within a period of 8 weeks thereafter. No costs. Consequently, connected miscellaneous petition is also dismissed.

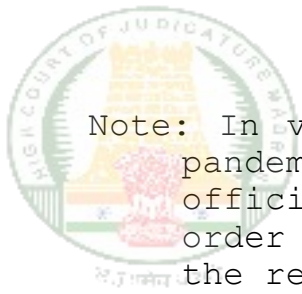
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Assistant Registrar

// True Copy //

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Sub Assistant Registrar (CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

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