



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.09.2020

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P. (MD)No.7710 of 2020 and

WMP(MD) Nos.7199 & 7200 of 2020

WEB COPY

S.Murugesan

Petitioner

Vs.

1.The Registrar of Co-operative Societies,
NV Natarajan Maligai,
E.V.R.Periyar Salai,
Kilpauk, Chennai - 600 010.

2.The Joint Registrar of Co-Operative Societies,
Kanyakumari Region at Nagercoil,
Kanyakumari District.

3.The Deputy Registrar of Co-operative Societies,
Nagercoil Circle, Nagercoil,
Kanyakumari District.

4.S.Krishnakumar,
President,
Aralvaimozhi Primary Agriculture
Co-Operative Credit Society, Aralvaimozhi - 629 702
Kanyakumari District.

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to impugned order of the 3rd respondent Deputy Registrar in Na.Ka.2659/19,thae.vae.sa dated 21.02.2020, quash the same and further direct the respondents 1 to 3 herein to disqualify the 4th respondent herein from the basic membership of the petitioner's society namely, Aralvaimozhi Primary Agriculture Co-operative Credit Society, Aralvaimozhi, Kanyakumari District as per Section 23(2) (e) and Rule 35 of the TamilNadu Co-operative Societies Act, 1983 and the Tamilnadu Co-operative Societies rules, 1988 respectively.

For Petitioner : M/s.T.Cibi Chakraborty

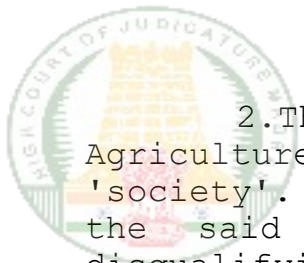
For R1 to R3 : Mr.S.Angappan

Government Advocate

For R4 : Mr.Shanmugaraja Sethupathi

O R D E R

Heard the learned counsel for the writ petitioner and the learned Government Advocate for the respondents 1 to 3 and the learned counsel for the 4th respondent.



2.The writ petitioner is a member of Aralvaimozhi Primary Agriculture Co-Operative Credit Society (hereinafter referred to as 'society'. The fourth respondent S.Krishnakumar is the President of the said Society. The petitioner submitted a petition for disqualifying the fourth respondent from the primary membership of the Society. Since the said petition was not being disposed of, the petitioner filed W.P.(MD) No.17084 of 2019 and this Court by order dated 24.01.2020, directed the concerned authority to consider the petitioner's representation and dispose it of. Pursuant to the aforesaid direction, the third respondent conducted an enquiry and by the impugned order dated 21.02.2020, rejected the petitioner's representation. Challenging the same, this Writ Petition came to be filed.

3.The core allegation of the writ petitioner is that the fourth respondent is engaging indirectly in a business, that is similar to that of the Society, of which he is the President. The learned counsel reiterated all the contentions set out in the affidavit filed in support of the Writ Petition.

4. Per contra, the learned Government Advocate submitted that the order impugned in the Writ Petition does not warrant any interference.

5.The learned counsel appearing for the fourth respondent argued at length and wanted this Court to sustain the rejection order. The primary contention of the fourth respondent is that the disqualification charge made against him is not at all attracted. It is because, the fourth respondent had not undertaken either directly or indirectly any business that is similar to that of the Society of which he is the president since 2013. During his tenure, the Society witnessed very good development and that is why he had been re-elected also. There is absolutely nothing on record to even remotely indicate that the fourth respondent by his conduct acted in a manner that was prejudicial to the interest of the Society.

5.1.The learned counsel further submitted that the fourth respondent's wife Mrs.T.Bindhu is running Pawn Broking business independently on her own and not even a single pie had been lent to any member of the Society. The learned counsel would also argue that merely because he had been shown as the nominee, that would not by itself lead to the conclusion that the fourth respondent is engaged in the said business. The purpose of nominating a person is to ensure that following the demise of the license holder, succession takes place in a smooth manner and it has no other legal consequence. The learned counsel also placed reliance on the decision of the Honourable Supreme Court reported in AIR 1966 SC 1339 (*Gulam Yasin Khan Vs.Sahebrao Yeshwantrao Walaskar and another*), for the proposition that it would be unreasonable to arrive at an adverse inference to from mere blood relationship of a person with another.



5.2. The learned counsel for the fourth respondent also drew my attention to the order dated 29.10.2018 made in W.P.(MD) No.39084 of 2005. The said case dealt with the disciplinary action initiated against the employee of Chennai Metropolitan Water Supply and Sewerage Board. The charge against that employee was that he indirectly engaged himself in a business with the Board by operating water lorries in the name of his wife. The charges were held proved and the punishment was imposed on the said employee. But this Court held that merely because the contractor was the wife of the employee, it cannot be straightaway inferred that the employee was running the business. According to the learned counsel for the fourth respondent, this case squarely applied to the case on hand. The learned counsel also contended that the word 'indirectly' has a larger meaning. Only if a person is functioning as sleeping partner in a business concern, it can be contended that he is indirectly engaged in the business. He also contended that the area of operation of the Society is different and it has nothing to do with the place, where the fourth respondent's wife carrying on her business. The learned counsel also contended that the fourth respondent is an indifferent member who does not attend the meetings of the Society. The learned counsel would further contend that the writ petition has been filed on the basis of surmises and there is absolutely nothing on record to show that because of the Pawn Broking business conducted by the fourth respondent's wife, the business of Society has been remotely affected.

5.3. The learned counsel also placed reliance on the decision rendered by the Committee on Co-operative Societies Election Cases, South Zone, Madurai in support of his contention. He also reiterated the reasons set out in the impugned order and called for dismissal of the Writ Petition.

6. I carefully considered the rival contentions and went through the materials on record.

7. It is not in dispute that the writ petitioner is a member of the Society concerned. Therefore, he has *locus standi* to challenge the impugned order and entitled to maintain this Writ Petition. In any event it is his representation that had been rejected by the third respondent.

8. The case of the Writ petitioner is that the fourth respondent herein had suffered disqualification in terms of Section 23(2) (e) of Tamil Nadu Co-Operative Societies Act, 1983. The said provision reads as follows:-

23. Disqualification of membership of society:-

(2) A member of a registered society shall cease to be a member of the society, if he
(e) undertakes directly or indirectly any
business or industry or activity similar to that



of the registered society or inconsistent with, or prejudicial to, the work of the registered society;

9. Now the question that arises for consideration is whether the fourth respondent had indirectly engaged himself in any business or activity similar to that of the registered Society. A careful reading of the aforesaid provision would indicate that it is not necessary that the activity to attract disqualification should have been prejudicial to the interests of the registered Society. The Society concerned is a credit Society. In other words, it is engaged in the business of lending. Pawn Broking business is also similar to the business undertaken by a Co-operative Credit Society. The provision does not say that the similar business should be conducted or undertaken in the very same area, in which the Society is located. The Society may be situated in Aralvaimozhi and the Pawn Broking business may be conducted in Nagercoil. But it is an irrelevant consideration. The only question that needs answering is whether the fourth respondent had indirectly involved himself in the Pawn Broking business. It is not in dispute that the wife of the fourth respondent is carrying on the business as Pawn Broker. The petitioner had enclosed the licence at page 93 of typed set of papers. The said licence was issued in favour of Tmt.T.Bindu, who is none other than the wife of the fourth respondent. This itself may not be decisive or determinative of the issue. If that alone had been made as the basis of the complaint by the petitioner, then as rightly pointed out by the learned counsel for the fourth respondent, applying AIR 1996 SCC 1339, I would have dismissed the writ petition. But it is not the only material on which, the petitioner had anchored his case. The fourth respondent has been designated as nominee for the business by his wife. For the pawn broker business in question, the fourth respondent is the nominee. The business is carried on in the name and style of 'Balaji Finance'. The said business is being carried on in the premises located in 1st floor, Kamaraj Building, Nagercoil. The said shop premises was allotted to the fourth respondent S.Krishnakumar. Of course, it is projected by way of defence that a lease agreement had been entered into with the fourth respondent in this regard. But the fact remains that Balaji Finance is being run in the premises, which had been allotted originally to the fourth respondent by the local Municipality. More than that, the first anniversary of the business was celebrated by the fourth respondent. The petitioner had enclosed in the typed set of papers the facebook posts of the fourth respondent. He has claimed that Balaji Finance is his business. The social media posts are not denied by the fourth respondent. His stand is that the projection by itself cannot lead to any conclusion. I am unable to agree. Individually taken, any of these circumstances may not be decisive or determinative. But, when considered cumulatively, the inference undoubtedly goes against the fourth respondent. The petitioner became the president of the Society in the year 2013. I can understand that if the fourth



respondent's wife was an independent entrepreneur carrying on her own business even before that. It is not so. The Pawn Broker business licence was obtained for the very first time only in the year 2017. Of course, the learned counsel for the fourth respondent claimed that earlier the fourth respondent's wife was carrying on chit business along with her father. This explanation appears to be feeble. The fact remains that during the Presidentship of the fourth respondent, his wife came to acquire Pawn Broker licence. The fourth respondent was designated as nominee in the licence. The business is being run in the premises, allotted to the fourth respondent. That apart, the first anniversary function of the Pawn Broker business was celebrated in a big way by the fourth respondent. He clearly projected himself as the proprietor of Balaji Finance.

10. Therefore, taking note of all these aspects, I have to necessarily hold that the fourth respondent had indirectly undertaken a business similar to that of the Society, of which he is the President. Of course, there is absolutely no material to establish that by doing so, the interest of the Society had been prejudiced. But that is an irrelevant consideration. The disqualification provision envisages several circumstances. Even if one of them is satisfied, consequences have to follow. The disqualification is straightaway attracted. The third respondent has not considered the cumulative weight of the circumstances projected by the Writ petitioner.

11. For all the foregoing reasons, the impugned order is set aside and the Writ petition is allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar ()

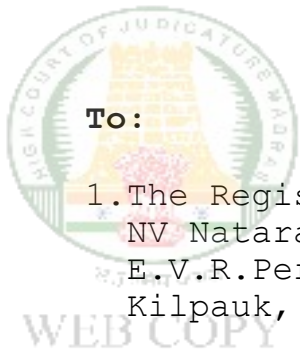
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Sub Assistant Registrar(CS)

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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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E.V.R.Periyar Salai,
Kilpauk, Chennai - 600 010.

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3.The Deputy Registrar of Co-operative Societies,
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Kanyakumari District.

+1 CC to M/s.GP (SR-15952[F] dated 04/09/2020)

+1 CC to M/s.D. SHANMUGARAJA SETHUPATHI, Advocate (SR-16030[F]
dated 07/09/2020)

+1 CC to M/s.T. CIBI CHAKRABORTHY, Advocate (SR-16019[F] dated
04/09/2020)

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