



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserving the Order	Date of Pronouncing the Order
20.01.2020	23.01.2020

WEB COPY

CORAM:

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
and
THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

**W.P. (MD) No.19608 of 2019
and
W.M.P. (MD) Nos.16066 & 20579 of 2019**

V.P.Ammavasai

... Petitioner

-vs-

- 1.The Registrar cum Director
Milk Production and Dairy
Development Department
Madhavaram Milk Colony
Chennai-51
- 2.The Election Commissioner
Tamil Nadu Cooperative
Societies Election Commission
No.273, Kamathenu Super Market Building
Teynampet, Chennai-18
- 3.The Deputy Registrar
Milk Production and Dairy
Development Department
Pasumai Nagar, Aranmanai Pudhur
Theni-625 531
- 4.DD 483 Theni District Milk
Producers Cooperative Union
rep.by The General Manager
NRT Nagar, Theni
- 5.O.Raja
- 6.M.Chellamuthu
- 7.S.Ilayaraja



8.K.Saravanan

9.K.Samidoss

10.N.Preetha

11.E.Selvaraj

12.Rajasekaran

13.Ravi

14.Solairaj

15.Rajalakshmi

16.Muthulakshmi

17.Rajamani

18.V.Jeyalakshmi

19.M.Suseela

20.N.Vasanth

21.S.Anitha

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order in R.C.No.1468/E4/2019(2) dated 26.08.2019, passed by the third respondent herein and quash the same and forbearing the respondents 1 to 4 from any way permitting the respondents 5 to 21 from functioning as Executive Committee Members / Interim Board of the fourth respondent Union. (amended vide order dated 13.01.2020 in W.M.P.(MD) No.674 of 2020)

For Petitioner : Mr.Veera Kathiravan, Senior Counsel
assisted by Mr.J.Anandhan

For Respondents : Mr.S.T.S.Murthy,
Additional Advocate General
assisted by Mr.Aairam K.Selvakumar
Additional Government Pleader for R1, R3 & R4

Mr.G.Rajendiran for R2

Mr.Naveen Kumar Murthy
for Mr.C.Arulvadivel @ Sekar for R5 to R21



O R D E R

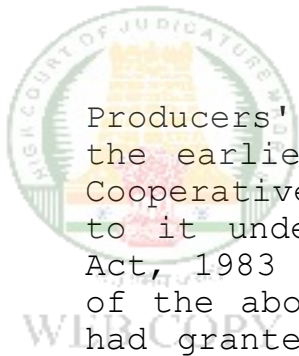
The petitioner has filed the writ petition to issue a writ of certiorarified mandamus to call for the records pertaining to the impugned order in R.C.No.1468/E4/2019(2), dated 26.08.2019, passed by the third respondent herein, to quash the same and to forbear the respondents 1 to 4 from anyway permitting the respondents 5 to 21 from functioning as Executive Committee Members / Interim Board of the fourth respondent Union.

2. This Court, after hearing the arguments of the learned counsel for the petitioner as well as the learned counsel for the respondents, was pleased to admit the writ petition on 12.09.2019 and further also restrained the respondents 5 to 21 from performing any duties or exercising any rights as members of the Interim Board, pursuant to the order dated 26.08.2019 passed by the third respondent and further directed that the affairs of the Theni District Milk Producers' Cooperative Union be managed by the third respondent with appropriate guidance from the first respondent and accordingly, further directed the respondents to file counter affidavit and accordingly, passed the interim order.

3. The respondents 1, 3 and 4 have filed W.M.P.(MD) No.20579 of 2019 to vacate the abovesaid interim order granted by this Court in W.M.P.(MD) No.16066 of 2019, dated 12.09.2019, by raising grounds for vacating the interim order passed by this Court in the counter affidavit preferred in support of the miscellaneous petition. It is to be noted that the counter affidavit has been filed by the third respondent for herself and on behalf of the first respondent also. It is also to be noted that the counter affidavit has been filed by fifth respondent for himself and on behalf of the respondents 6 to 21.

4. At the time of hearing W.M.P.(MD) No.20579 of 2019 filed by the respondents 1, 3 and 4 to vacate the interim order, elaborate submissions were made by the learned counsel for the petitioner as well as the learned counsel for the respondents touching upon the merits of the main writ petition, accordingly, we deem it fit and proper to dispose of the main writ petition itself.

5. From the pleadings putforth by the respective parties and the submissions made, it is found that following a policy decision of the State Government that a separate District Milk Producers' Cooperative Union should be formed in each District, it is noted that *inter alia*, the Government had passed the order vide G.O.(2D) No.22, Animal Husbandry, Dairying and Fisheries Department, dated 22.08.2019, for the formation of a separate Theni District Milk Producers' Cooperative Union with Theni as its headquarters by effecting division from the erstwhile Madurai District Milk

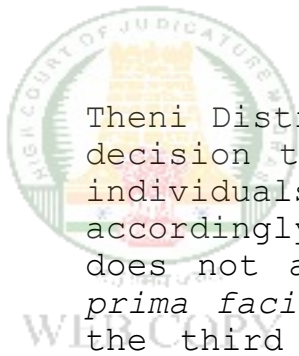


Producers' Cooperative Union and it is seen that for facilitating the earlier functioning of the new Theni District Milk Producers' Cooperative Union, the Government had invoked the powers delegated to it under Section 170 of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter, referred to as "the Act") and on a perusal of the abovesaid Government Order, it is found that the Government had granted exemption from the provision of Section 13(1) of the Act, particularly, with reference to the calling for any general body meeting of the erstwhile Madurai District Milk Producers' Cooperative Union *qua* the formation of Theni District Milk Producers' Cooperative Union and it is further noted that the powers of the Director of Milk Production and Dairy Development Department, namely, the first respondent, have been clearly circumscribed in the said Government Order with a further direction to him to convene the general body meeting. As regards the abovesaid facts, there is no dispute between the parties.

6. It is found that based on the abovesaid Government Order and the directions of the first respondent, the third respondent, namely, the Deputy Registrar, Milk Production and Dairy Development Department, Theni, had proceeded to register the new Theni District Milk Producers' Cooperative Union, under Section 9(1) of the Act, on 26.08.2019. The fact that Theni District Milk Producers' Cooperative Union had been registered by the third respondent on 26.08.2019 is not put in issue by the parties.

7. According to the respondents, out of 474 members of the newly formed Theni District Milk Producers' Cooperative Union, 226 members affiliated to the said Union had convened a meeting on 24.08.2019 and selected the Executive Committee Members for the management of the Union as an interim measure till the regular elected Board assumes charge. Further, according to the respondents, on receipt of the aforesaid resolution passed by the majority members of the Theni District Milk Producers' Cooperative Union, the third respondent, on 26.08.2019, had passed the impugned order appointing the Interim Board of Directors for a period of six months from 26.08.2019 or till the formation of the new Board of Directors through election, whichever is earlier and appointed the fifth respondent as the President and it is found that the abovesaid impugned order has been passed by the third respondent under Section 33(1) of the Act. The abovesaid impugned order is put to challenge in the writ petition by the petitioner.

8. This Court, while granting the interim order in favour of the petitioner on 12.09.2019, opined that the proviso to Explanation-II in Section 33 of the Act would not stand attracted to the case at hand, as the Theni District Milk Producers' Cooperative Union cannot be taken to be a Society registered after the commencement of the Act by the persons presenting an application to register the Society and on the other hand, as the formation of the



Theni District Milk Producers' Cooperative Union was pursuant to the decision taken by the Government and as no individual or group of individuals had submitted any application to register the Society, accordingly, holding that the question of forming the Interim Board does not arise in the facts of the present case and accordingly, *prima facie*, holding that the constitution of the Interim Board by the third respondent being without jurisdiction and also further holding that the constitution of the Interim Board is in direct infraction of the directions issued in G.O.(2D) No.22, Animal Husbandry, Dairying and Fisheries Department, dated 22.08.2019, proceeded to grant the interim order restraining the respondents 5 to 21 from performing any duties or exercising any rights as members of the Interim Board pursuant to the order passed by the third respondent.

9. During the course of arguments, the learned Additional Advocate General, contended that inasmuch as the formation of Theni District Milk Producers' Cooperative Union, by dividing the erstwhile Madurai District Milk Producers' Cooperative Union, is not in dispute, according to him, the impugned order passed by the third respondent should be deemed to have been passed under Section 13(1) (d)(ii) of the Act and further, according to him, as Section 13 of the Act deals with division and amalgamation of societies and accordingly, the members of the newly formed Union deriving the power to pass resolution even before the registration of the new Society for the constitution of the Interim Board consisting of the members specified in the resolution to conduct the affairs of the newly formed Union for a particular period of time and accordingly, the impugned order having been passed by the third respondent, though the third respondent had proceeded to pass the impugned order invoking Section 33(1) of the Act, according to him, the failure of the third respondent to refer to the correct provision of law with reference to the source of power, for constituting the Interim Board or mentioning of a wrong provision, will not by itself render the order of the third respondent invalid or illegal, particularly, when the source of power is provided under Section 13(1)(d)(ii) of the Act and submitted the proposition of law laid down by the Apex Court in the case of ***State of Jharkhand vs. Pakur Jagran Manch***, reported in **(2011) 2 SCC 591** and accordingly, urged the Court that the interim order passed by this Court should be vacated by invoking the source of power provided to the third respondent under Section 13(1) (d)(ii) of the Act and by further holding that Section 33(1) of the Act would not be applicable to the case at hand and accordingly, prayed for the vacation of the interim order.

10. As regards the position of law that the omission to refer to the correct provision of law, which is the source of power or mentioning of wrong provision, by itself, would not render the Government Order invalid or illegal, if the Government had the power under an appropriate provision of law, the principles of law



pertaining to the same had been outlined by the Apex Court in the decision cited supra in the following manner:

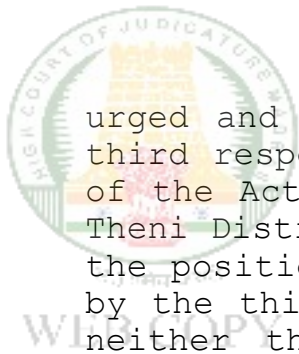
"C. Statute Law - Nomenclature / Form - Omission to refer to correct provision of law with its source of power, or mentioning of a wrong provision - Effect - Held, will not by itself render an order of Government invalid or illegal, if Government had power under an appropriate provision of law - Practice and Procedure - Nomenclature / Form / Form of proceedings - Administrative Law - Administrative Action - Administrative or executive function - Compliance with Constitution and statutory provisions - Nomenclature / Form.

K.K.Parmar v. High Court of Gujarat, (2006) 5 SCC 789 : 2006 SCC (L&S) 1201; *Kedar Shashikant Deshpande v. Bhor Municipal Council*, (2011) 2 SCC 654, relied on."

"22. The notification no doubt does not refer to Regulations 24 and 25(3). But it is now well settled that the omission to refer to the provision of law which is the source of power, or the mentioning of a wrong provision, will not by itself render an order of the Government invalid or illegal, if the Government had the power under an appropriate provision of law (vide *K.K.Parmar v. High Court of Gujarat* (2006) 5 SCC 789 : 2006 SCC (L&S) 1201 and *Kedar Shashikant Deshpande v. Bhor Municipal Council* (2011) 2 SCC 654."

11. The respondents 5 to 21 also sailed with the submissions made by the learned Additional Advocate General and contended that the third respondent had the power to constitute the Interim Board by following the resolution of the members of the newly formed Theni District Milk Producers' Cooperative Union as provided under Section 13(1)(d)(ii) of the Act and accordingly, prayed for the raising of the interim order passed by this Court.

12. Per contra, the learned Senior Counsel appearing for the petitioner contended that inasmuch as the learned Additional Advocate General, had admitted that the provision of Section 33(1) of the Act would not be applicable to the case at hand, according to him, the submissions made by the learned Additional Advocate General, cannot be sustained as, according to him, the respondents in their counter affidavits had not whispered anything about the passing of the impugned order by the third respondent by quoting the wrong provision of law and the said impugned order should have been passed by referring to the source of power provided under Section 13(1)(d)(ii) of the Act and on the other hand, according to him, even in the counter affidavits filed by the respondents, they had only



urged and stressed that the impugned order had been passed by the third respondent by invoking the power provided under Section 33(1) of the Act, while nominating the Interim Board to the newly formed Theni District Milk Producers' Cooperative Union and when such being the position, according to him, *ex facie*, the impugned order passed by the third respondent cannot be sustained in the eyes of law and neither the learned Additional Advocate General nor the learned counsel for the respondents 5 to 21 would be permitted to make submissions contrary to the pleadings set out in the counter affidavits and therefore, according to him, when the third respondent is not vested with any power to constitute the Interim Board by invoking the power under Section 33(1) of the Act, it is his argument that the interim order passed by this Court does not require any interference and accordingly, prayed for the confirmation of the same.

13. After considering the rival submissions putforth by the respective parties and the provisions of law pertaining to the issues involved in the matter, considering the position that the Theni District Milk Producers' Cooperative Union has been formed by dividing the erstwhile Madurai District Milk Producers' Cooperative Union, only pursuant to the policy decision of the State Government and the consequent issuance of the Government Order in G.O.(2D) No.22, Animal Husbandry, Dairying and Fisheries Department, dated 22.08.2019, it is found that the proviso to Explanation-II in Section 33 of the Act would not stand attracted to the case at hand and the Theni District Milk Producers' Cooperative Union having been formed by dividing the Madurai Union and following the same, when according to the respondents, the majority of the members of the newly formed Theni Union had passed the resolution to constitute an Interim Board to conduct the affairs of the newly formed Union for a requisite period and accordingly, put forth the case that even before the registration of the new Union, the majority members of the Union would be empowered to pass such a resolution as provided under Section 13(1)(c) and (d) of the Act for the constitution of the Interim Board, consisting of the members specified in the resolution to conduct the affairs of the newly formed Union for a particular period of time, as provided under Section 13(1)(d)(ii) of the Act, in such view of the matter, when according to the respondents, the source of power for constituting the Interim Board is available to the third respondent, in such view of the matter, the respondents 1 and 3 should have verified the existence of the source of power to constitute the Interim Board under Section 13(1)(d)(ii) of the Act and on being so satisfied, should have proceeded to pass appropriate orders in accordance with the power provided under Section 13(1)(d)(ii) of the Act and not under Section 33(1) of the Act. In view of the above, we are of the considered view that the impugned order passed by the third respondent, dated 26.08.2019, is liable to be set aside.



14. However, considering the contentions of the respondents that the Government had the power to constitute the Interim Board as provided under Section 13(1)(d)(ii) of the Act and the wrong provision of law cited by the third respondent, while constituting the Interim Board, by itself, would not render the impugned order invalid or illegal, as such, as outlined by the Apex Court in the above-referred decision, however, inasmuch as the respondents, in their counter affidavits, had proceeded to uphold the impugned order passed by the third respondent only by reiterating and relying upon Section 33(1) of the Act and in such view of the matter, to set the things right, we are of the considered view that the first respondent and the third respondent, through the first respondent, if they deem fit, should be allowed to pass necessary and appropriate orders *qua* the formation of the Interim Board as well as the formation of the Regular Board in accordance with the provisions of the Tamil Nadu Co-operative Societies Act, 1983 as well as the Rules and Bylaws thereof.

15. In the light of the abovesaid reasonings, the impugned order dated 26.08.2019, passed by the third respondent, is set aside and the matter is remitted back to the respondents 1 and 3 to pass necessary and appropriate orders, as they deem fit, *qua* the formation of the Interim Board as well as for the formation of the Regular Board in accordance with the provisions of the Tamil Nadu Co-operative Societies Act, 1983 as well as the Rules and Bylaws thereof.

16. Accordingly, the writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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Sub Assistant Registrar(CS)

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To:

1.The Registrar-cum-Director
Milk Production and Dairy
Development Department,
Madhavaram Milk Colony,
Chennai-51.



2.The Election Commissioner
Tamil Nadu Cooperative
Societies Election Commission
No.273, Kamathenu Super Market Building
Teynampet, Chennai-18

3.The Deputy Registrar,
Milk Production and Dairy
Development Department,
Pasumai Nagar,
Aranmanai Pudhur,
Theni-625 531.

4.The General Manager,
DD 483 Theni District Milk
Producers Cooperative Union,
NRT Nagar, Theni.

+2 CC to M/s.AAYIRAM K SELVAKUMAR, Advocate (SR-2559 & 3256

+2 CC to M/s.J.ANANDAN, Advocate (SR-2537[F] dated 23/01/2020)

+1 CC to M/s.C.ARUL VADIVEL SEKAR, Advocate (SR-2650[F] dated
23/01/2020)

+1 CC to M/s.G.RAJENDRAN, Advocate (SR-2783[F] dated 24/01/2020)

ORDER
IN
W.P. (MD) No.19608 of 2019
and
W.M.P. (MD) Nos.16066 & 20579 of 2019
23.01.2020

JMN(04.02.2020) 9P : 11C