



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.08.2020**

CORAM

THE HON'BLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

W.A(MD)No.114 of 2014

and

M.P(MD)No.1 of 2014

The Special Officer,
Ramanathapuram District Central Cooperative Bank,
Ramanathapuram.

... Appellant / Third respondent

-Vs-

- 1.Uthayanan
- 2.P.Vadivel
- 3.V.Sasivarnam
- 4.R.Murugesan
- 5.C.Gandhi
- 6.S.Shanmugavel Thevar
- 7.R.Panjavarnam
- 8.S.Thirukkammal
- 9.S.Kamithakani
- 10.N.Aathilingam
- 11.Pitchai Kani
- 12.K.Sathaiah
- 13.N.Soorappan
- 14.Vellaiammal
- 15.P.Kanthasamy
- 16.C.Muthuramalingam
- 17.K.Pitchaikani
- 18.K.Markkandan
- 19.M.Valivittan
- 20.Khaderpathu
- 21.Chinnasamy
- 22.C.Mahendran
- 23.P.Murugaiah
- 24.M.Rengan
- 25.Umal Khader
- 26.M.Mari
- 27.K.Kathirvel
- 28.N.Tharmalingam
- 29.K.Raj
- 30.Raman
- 31.V.Nalluchamy
- 32.S.Sulthan
- 33.V.Seenivasan



34.The State of Tamilnadu,
Rep. by its Secretary to Government,
Department of Cooperation,
St. George Fort, Chennai.

35.The Joint Registrar of Cooperative Societies,
Ramanathapuram Region,
Ramanathapuram.

36.The Special Officer,
136, Aanaiyur Primary Agricultural Cooperative Society,
Aanaiyur, Maruthanganallur,
Ramanathapuram District.

... Respondents

Prayer: Writ Appeal - filed under Clause 15 of the Letters Patent Act, to set aside the order passed in W.P(MD)No.5185 of 2010 dated 04.01.20213.

Prayer in WP(MD). 5185/ 2010 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court may be pleased to issue a WRIT OF MANDAMUS or any other appropriate writ or order or direction in the nature of writ directing the respondents 1 & 3 to consider the representation dated 25.08.2009 preferred by the petitioners seeking payment of insurance amount under the Crop Insurance Scheme within the period that may be stipulated by this Honourable Court.

For Appellant	: Mr.D.Shanmugaraja Sethupathi
For R1 to R33	: Mr.C.Venkatesh Kumar, for M/s.Ajmal Associates
For R34 & R35	: Mr.Aayiram K.Selvakumar, Additional Government Pleader
For R36	: Mr.K.Mu.Muthu

JUDGMENT

[Judgment of the Court was delivered by **M. SATHYANARAYANAN, J.,**]

The third respondent in the writ petition is the appellant and aggrieved by the disposal of W.P(MD)No.5185 of 2010 filed by the private respondents, with certain directions vide the impugned order dated 04.01.2013, the appellant has filed this writ appeal.

2. The facts leading to the filing of this case have been narrated in detail and in extension in the impugned order, which is a subject of challenge in this writ appeal. Therefore, it is unnecessary to reiterate the said facts once again.

3. The Government of India has formulated a Scheme namely 'National Agricultural Insurance Scheme', to provide insurance

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



coverage and financial support to the farmers in the event of failure of crops as a result of natural calamities, drought of water resources, pests and diseases and in order to safeguard their interest, the Government of India introduced a crop insurance, whereby the agriculturists are required to pay premium for the said insurance and in case of failure in the crop cultivation due to shortfall in rain or owing to some other reasons, the Government of India after perusal and making spot inspection by the Revenue Authorities and District Collector would make good the loss sustained due to failure of the crops and in order to implement the said Scheme, the Government have also incorporated a Company namely 'Agricultural Insurance Company of India Limited' in Short 'AIC' and all the farmers growing notified crops in the notified area are entitled to avail the said Scheme.

4. The terms of the said Scheme contemplates that the farmers are required to pay the premium along with necessary documents and declaration to the concerned Primary Agricultural Cooperative banks within cut-off date fixed by the 'AIC' and after collecting the premium from the farmers, the concerned Primary Agricultural Cooperative Banks, have to send the proposal to the District Central Cooperative Bank in the prescribed Form and the said District Central Cooperative Bank would collect and organize the proposal sent by various Primary Agricultural Cooperative Banks and forward the same to the 'AIC' and the appellant herein is designated as a 'Nodal Agency' and it is their stand that except the limited role of forwarding the proposal to the 'AIC', they have no role to play.

5. The third respondent being the Nodal Agency has also issued a circular dated 25.09.2007 framing certain guidelines to be followed by all Primary Agricultural Cooperative Banks and it appears that the concerned Field Manager of Aanaiyur Primary Agricultural Cooperative Bank namely the fourth respondent in the writ petition / 36th respondent herein, had failed to forward the proposals in time to the Branch Manager and there was some delay in sending the premium amount along with the proposal Forms to 'AIC' and subsequently, the Regional Manager of 'AIC' vide communication dated 19.11.2008 had rejected the claim for PADDY II - 2007 and returned the Declaration Form and Demand Draft on the ground of delay in sending the premium and it appears that disciplinary action has been taken against the Field Manager one Mr.Ramraj.

6. The learned single Judge having taken note of the facts and circumstances and after thorough consideration and appreciation of the rival submissions, had disposed of the writ petition in the following terms. It is relevant to extract paragraph No.14 ('operative portion) of the said order.

"14.In view of all of the above, the writ petition is

disposed of in the following terms:



"(i)The District Collector, Ramanathapuram, shall hold a detailed enquiry in respect of the loss sustained by the petitioners during relevant period, due to loss of crops and quantify the compensation to be paid on account of the actual loss sustained by each petitioner and submit a report to the respondents 3 and 4.

(ii)The said exercise shall be completed by the District Collector within a period of three months from the date of receipt of a copy of this order.

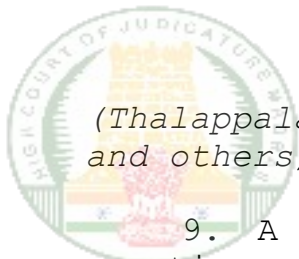
(iii)On receipt of the said report from the District Collector, the respondents 3 and 4 shall jointly and severally pay the amount of compensation quantified by the District Collector to each petitioner in this writ petition.

(iv)The said payment shall be made to the writ petitioners within a period of six months from the date of receipt of the report of the District Collector."

There is no order as to costs."

7. The learned counsel appearing for the appellant / third respondent in the writ petition would submit that absolutely there is no breach of contract between the private respondents and the appellant and due to some reasons beyond their control, the fourth respondent ie., the concerned Field Manager of the 36th respondent herein had failed to forward the proposals in time to the Branch Manager and which resulted in forwarding the premium amount along with proposal Form to 'AIC' and when it was forwarded, the 'AIC' vide communication dated 19.11.2008, had rejected the same and also returned the Declaration Form and Demand Draft and the learned counsel has drawn the attention of this Court to the communication of the Ministry of Agriculture, Department of Agriculture & Cooperation, dated 27.05.2019 addressed to the Chairman-cum-Managing Director of 'AIC', New Delhi, wherein it has been stated among other things that 'In case of District Central Bank, which is not in a position to pay the claims, the State Government may pay the claims' and in the light of the same, the appellant bank cannot be mulcted with such liability and responsibility and this Court may issue appropriate directions to the concerned Department of State Government to compensate the private respondents / farmers.

8. It is also the submission of the learned counsel appearing for the appellant that the appellant / third respondent did not perform any public function and therefore, the writ petition is not maintainable and also placed reliance on the judgment rendered by the Honourable Supreme Court of India reported in 2013 (6) CTC 98



(Thalappalam Ser. Co-op. Bank Ltd., and others vs. State of Kerala and others).

9. A perusal of the said judgment would disclose that the question arose for consideration in the said decision is whether a Cooperative Society registered under the Kerala Cooperative Societies Act, 1969, will fall within the definition of "Public Authority" under Section 2(h) of the Right to Information Act, 2005 and be bound by the obligations to provide information sought for by a citizen under the said Act and in the context of the Act, factual aspect and the situation, the Honourable Supreme Court of India held that the Cooperative Societies registered under the Kerala Cooperative Societies Act, will not fall within the definition of "Public Authority" as defined under Section 2(h) of the Right to Information Act.

10. In (2014) 9 SCC 294 (*Akalakunnam Village Service Cooperative Bank Limited and another vs. Binu N. And Others*), challenge to the selection process was made by filing a writ petition and it was allowed quashing the notification inviting applications for appointment to the Posts of Attender/Peon and the appointments made pursuant thereto.

11. The concerned Cooperative Bank as well as the concerned private respondents, aggrieved by the same, have filed Special Leave Petition and it was entertained and converted as Civil Appeal No.7839 of 2010. The submission was made before the Honourable Supreme Court of India as to the availability of alternative remedy under Section 69 of the Kerala Cooperative Societies Act and having taken note of that, the Honourable Supreme Court of India repelled the said contention and ultimately dismissed the civil appeal filed by Akalakunnam Village Service Cooperative Bank Limited and another.

12. In the considered opinion of this Court, the said judgment has no application in the facts and circumstances of the present case for the reason that this Court has called upon the appellant to explain whether the appellant / third respondent has properly performed its duties vested on it and especially, by taking into consideration the fact that if they failed to perform their duties properly or effectively, ultimately, the poor farmers are going to be affected.

13. In 2015 (3) Scale 841 (*Vipulbhai M.Chaudhary vs. Gujarat Cooperative Milk Marketing Federation Limited and Others*), the Honourable Supreme Court of India has taken note of the Constitutional amendment in Articles 19, 43B, 243ZH and 243ZT and considered the issue relating to removal of Chairperson/elected office bearer of a Cooperative Society by a motion of no confidence in the absence of any specific provision on removal by no confidence in the Act, Rules or Bye-laws. It is relevant to extract the



following paragraphs:

'20.A cooperative society is registered on cooperative principles of democracy, equity, equality and solidarity. Democratic accountability, mutual trust, fairness, impartiality, unity or agreement of feeling among the delegates, cooperativeness, etc., are some of the cardinal dimensions of the cooperative principles. A body built on such principles cannot be led by a captain in whom the co-sailors have no confidence.

28. Where the Constitution has conceived a particular structure on certain institutions, the legislative bodies are bound to mould the statutes accordingly. Despite the constitutional mandate, if the legislative body concerned does not carry out the required structural changes in the statutes, then, it is the duty of the court to provide the statute with the meaning as per the Constitution. ... "The job of the Supreme Court is not to expound the meaning of the constitution but to provide it with meaning"[6]. The reference obviously is to United States Supreme Court. As a general rule of interpretation, no doubt, nothing is to be added to or taken from a statute. However, when there are adequate grounds to justify an inference, it is the bounden duty of the court to do so. ... "It is a corollary to the general rule of literal construction that nothing is to be added to or taken from a statute unless there are adequate grounds to justify the inference that the legislature intended something which it omitted to express"[7]. According to Lord Mersey in *Thompson (Pauper) v. Goold and Co.* [8]... "It is a strong thing to read into an Act or Parliament words, which are not there, and in the absence of clear necessity, it is wrong to do". In the case of cooperative societies, after the Ninety Seventh Amendment, it has become a clear or strong necessity to do the strong thing of reading into the legislation, the constitutional mandate of the cooperative societies to be governed as democratic institutions. ... "The constitutional provisions have to be construed broadly and liberally having regard to the changed circumstances and the needs of time and polity"

38. A conjoint reading of all the provisions under the Act and the Bye-laws of the Society would clearly show that the functional authority of the first respondent-Federation vests in the Board of Directors.



The entire administration, management and control of the Federation is with the Board. Thus, the Board of Directors is bound to do all such acts and things as may be necessary for the proper management of the Federation. The Chairperson of the first respondent is elected by the Board for a term of three years and after the 97th Amendment to the Constitution, the term is five years. When the post of Chairperson falls vacant, the Board is bound to elect a new Chairperson for the remaining term. The post of Chairperson may fall vacant on account of variety of reasons like resignation, death or cessation of membership in the Board, operation of Section 76B of the Act, i.e., removal by the Registrar on account of persistent default or misconduct.

48. In the background of the constitutional mandate, the question is not what the statute does say but what the statute must say. If the Act or the Rules or the Bye-laws do not say what they should say in terms of the Constitution, it is the duty of the court to read the constitutional spirit and concept into the Acts. ... "In so far as in its Act Parliament does not convey its intention clearly, expressly and completely, it is taken to require the enforcement agencies who are charged with the duty of applying legislation to spell out the detail of its legal meaning. This may be done either- (a) by finding and declaring implications in the words used by the legislator, or (b) by regarding the breadth or other obscurity of the express language as conferring a delegated legislative power to elaborate its meaning in accordance with public policy (including legal policy) and the purpose of the legislation"

51. In the celebrated case of *Seaford Court Estates v. Asher*[18], Lord Denning has succinctly summarized the principle on the role of the court. To quote:

"Whenever a statute comes up for consideration it must be remembered that it is not within human powers to foresee the manifold sets of facts which may arise, and, even if it were, it is not possible to provide for them in terms free from all ambiguity... A judge cannot simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of the Parliament, and he must do this not only from the language of the statute, but also from a consideration of the social conditions



which gave rise to it and of the mischief which it was passed to remedy, and then he must supplement the written word so as to give "force and life" to the intention of the legislature. ... Put into homely metaphor it is this: A judge should ask himself the question how, if the makers of the Act had themselves come across this ruck in the texture of it, they would have straightened it out? He must then do as they would have done. A judge must not alter the material of which the Act is woven, but he can and should iron out the creases."

14. Ultimately, the Honourable Supreme Court of India upheld the view taken by the High Court of Gujarat and further held that the contra views expressed by the High Courts of Andhra Pradesh, Bombay, Kerala and Punjab and Haryana are no more good law in view of the Ninety Seventh Amendment to the Constitution of India.

15. In AIR 2015 Kerala 137 Full Bench (Association of Milma Officers, Thiruvananthapuram and another v. State of Kerala and others), maintainability of writ petition against the cooperative society came up for consideration and after taking into consideration various decisions, the reference is answered as follows:

'19. Coming to Part IXB of the Constitution which has been inserted by the 97th amendment, it contains several constitutional provisions which regulate incorporation, number and term of members, election of the members of the Board and superannuation. Obviously, any action of any Co-operative Society if it is in breach of any of the constitutional provisions, that can be made subject matter of the writ petition. Present is not a case where there is any issue pertaining to any violation of Part IXB. In view of the foregoing discussion, our answer to the above questions are as follows:-

i) The writ petitions against Co-operative Societies are maintainable in certain circumstances. When the action complained in the writ petition is of any statutory violation on the part of the Co-operative Society, a writ petition will lie. The action of the Cooperative Society, if falls in a public domain or breach of the public duty is complained of, writ may also lie. However, in the absence of breach of any statutory duty or public duty, a writ petition cannot be entertained against a Co-operative Society.



ii)The judgment of the Full Bench in Bhaskaran, (AIR 1988 Ker 75) (supra) confines to only consideration of a Co-operative Society under Article 12. In regard to Cooperative Society which does not fall under Article 12, writ cannot be maintainable against the Co-operative Society on that basis. However, as we have already observed by considering issue No.(i), writ petition may be maintainable against Co-operative Society in the circumstances mentioned therein. Thus the ratio of the judgment in Bhaskaran (supra) is approved only to the above extent.

iii)The Full Bench judgment in John(supra) lays down the correct law and we approve the said judgment.

iv)The present writ petition is not maintainable under Article 226 of the Constitution of India.

The reference is answered accordingly and the writ petition is dismissed.'

16. A Division Bench of this Court in the matter of *N.Ramasamy vs. Registrar of Housing Societies (Housing) and three others* vide order dated 05.12.2018 in *W.A(MD)No.1581 of 2018* also held that the writ petition is maintainable.

17. Admittedly in the case on hand, the appellant / third respondent is entrusted with the responsibility of forwarding the proposals to 'AIC' along with premium and though it is their stand in Paragraph No.8 of the counter-affidavit filed in the writ petition that the concerned Field Manager, after receipt of the proposal, has failed to forward the same in time, and on account of the belated forwarding, the 'AIC' has rejected the same vide letter dated 19.11.2008, the fact remains that the appellant / third respondent did not put in place proper and effective supervisory mechanism and they should have done so, for the reason that they are entrusted with the work of looking after the welfare and interest of the poor farmers. Thus, the appellant failed to perform the solemn public duty entrusted to it.

18. It is also to be noted at this juncture that the belated forwarding of proposal has been rejected by the Regional Manager vide communication dated 19.11.2008 and it has also not been put to challenge in the manner known to law by the appellant / third respondent. The third respondent is the Nodal Agency being entrusted with the work of looking after the welfare and interest of the agriculturists, in the considered opinion of this Court, they failed to perform the public duties entrusted to them reasonably and responsibly.

19. The learned Judge in Paragraph No.11 of the order, had



given a categorical finding that it is because of the negligence on the part of the respondents 3 and 4 in the writ petition, the poor farmers have been left in lurch and accordingly, disposed of the writ petition with certain directions in Paragraph No.14.

20. In the considered opinion of this Court, in the light of the fact that the appellant / third respondent having failed to perform their public duty, effectively and properly and also failed to make challenge to the communication of the Regional Manager of 'AIC' dated 19.11.2008, cannot expect to say that it is for the State Government to compensate the farmers.

21. Though heavy reliance has been placed on the communication of the Department of Agriculture & Cooperation, Ministry of Agriculture, Government of India, New Delhi, dated 27.05.2009, a perusal of the said communication would appear to be did not quote any instructions or Rules, but merely a suggestion that the State Government may pay the claims. Therefore, the said communication also would not come to the aid of the appellant / third respondent.

22. This Court on an independent application of mind to the entire materials placed, is of the view that there is no error apparent or infirmity in the reasons assigned by the learned Judge for disposing of the writ petition with certain directions and this Court finds no merits in this writ appeal.

23. In the result, this writ appeal is dismissed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

pm

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:

01.The Secretary to Government,
State of Tamilnadu,
Department of Cooperation,
St. George Fort, Chennai.

02.The Joint Registrar of Cooperative Societies,
Ramanathapuram Region,
Ramanathapuram.

+1 CC to Mr.D. SHANMUGARAJA SETHUPATHI, Advocate (SR-14073[F] dated 14/08/2020)

+1 CC to SGP (SR-14111[F] dated 14/08/2020)

Judgment in
W.A(MD)No.114 of 2014
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 KM (27.08.2020) 11P 5C