



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2020

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P. (MD)Nos.5998 of 2017 & 7004 of 2019

WMP (MD) Nos.4730 of 2017 and 5584 of 2019

WEB COPY

W.P. (MD)No.5998 of 2017:

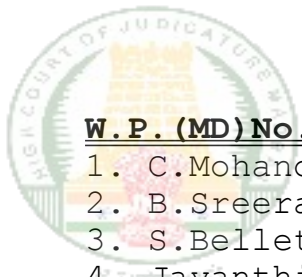
The Kunnathur Primary Agricultural
Co-operative Credit Society Ltd,
No.Y-55,
Co-operative Bank Road,
Puthukkadai - 629 171,
Kanyakumari District.

...Petitioner

Vs.

1. The Joint Registrar of Co-Operative Societies,
Tuckalay,
Kanyakumari District.
2. The Co-operative Sub Registrar / Field Officer,
Munchirai,
Kanyakumari District.
3. S.Chelladurai,
Secretary (Under Dismissal),
The Kunnathur Primary Agricultural
Co-Operative Credit Society Ltd,
No.Y-55,
Varavilai Veedu,
Parthibapuram,
Pudukkadai Post,
Kanyakumari District.
4. T.Vijaya,
Assistant Secretary (Under Suspension),
The Kunnathur Primary Agricultural
Co-Operative Credit Society Ltd,
No.Y-55,
Co-Operative Bank Road,
Puthukkadai - 629 171,
Kanyakumari District.
5. Vijayarani,
The Co-Operative Sub Registrar/Field officer,
Munchirai,
Kanyakumari District.

...Respondents



W.P. (MD)No.7004 of 2019:

1. C.Mohandhas
2. B.Sreerajan
3. S.Bellet Mabel
4. Jayanthi
5. P.Thanagarani
6. P.Malaiappan
7. A.Suresh
8. M.Mohan Dhas
9. R.Rathakrishnan
10. Saseinthira Raj
11. G.Kaildhas

...Petitioner

Vs.

1. The Joint Registrar of Co-Operative Societies,
Kanyakumari Region,
Collectorate New Building,
2nd Floor, Nagercoil,
Kanyakumari District - 629 001.
2. The Deputy Registrar of Co-operative Societies,
Thuckalay Circle, Palace Road,
Thuckalay,
Kanyakumari District - 629 175.
3. The Kunnathoor Primary Agricultural
Co-operative Credit Society Ltd, No.Y-55,
Co-Operative Bank Road,
Puthukkadai - 629 171,
Vilavancode Taluk,
Kanyakumari District.
Rep by its Secretary.
4. Vijayarani,
Co-operative Sub Registrar/Field officer,
Munchirai,
Kanyakumari District.

...Respondents

PRAYER in W.P.(MD)No.5998 of 2017: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings of the 1st respondent in Na.Ka.2712/2016 ThoVeSa dated 21.02.2017 and quash the same as illegal.

PRAYER in W.P.(MD)No.7004 of 2019: Writ petition is filed under Article 226 of the 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.1058/2018/Sa Pa dated 08.05.2018 and quash the same as illegal.



For Petitioners
(in both WPs)
For Respondents
(in W.P. (MD) No. 5998/2017)

: Ms.M.E.Ilango
: For R1 & R2 - Mr.M.Rajarajan
Government Advocate
For R5-Mr.J.Gunaseelan Muthiah

Respondents
(in W.P. (MD) No. 7004/2019)

: For R1 to R3 - Mr.M.Rajarajan
Government Advocate
For R4-Mr.J.Gunaseelan Muthiah

C O M M O N O R D E R

Heard the learned counsel on either side.

2. The petitioners are office bearers of Kunnathur Primary Agricultural Cooperative Credit Society Limited, Kanyakumari District. The said Society is one of the very few Societies running profitably in the District. It is their case that the Secretary and Assistant Secretary namely S.Chelladurai and T.Vijaya jointly defrauded the Society to the tune of Rs.1.50 Crores. Their further allegation is that since they took disciplinary action and dismissed those two employees, at their instance, enquiry under section 81 of the Tamil Nadu Co-operative Societies Act was initiated and based on the report obtained therein, the impugned show cause notice for disqualification under Section 36 of the Act has been issued.

3. The prayer made in the Writ Petition is opposed by the learned counsel for the respondents. The first respondent who issued the impugned notice has also filed a detailed counter affidavit. The learned counsel for the respondents reiterated the contentions set out therein. The learned counsel for the respondent would state that what is being challenged is after all a show cause notice and that therefore this Court can as well permit the petitioners to submit a reply so that they can come to this Court if any adverse final order is passed against them. The pointed contention of the learned counsel for the respondent is that this Court would not normally interfere at the show cause notice stage.

4. I heard the rival contentions and went through the entire materials on record. It is true that normally this Court would not interfere with a show cause notice. But then if the allegation of malafide or pertaining to the jurisdiction have been raised, this Court would not nonsuit the petitioners only on the ground that what is under challenge is merely a show cause notice. There appears to be some force in the contentions of the learned counsel for the petitioners that the impugned proceedings have been triggered at the instance of two dismissed employees following their dismissal. The dismissed employees had moved the Joint Registrar of the Co-operative Society under Section 153 of the Act. It appears that the interim stay was also granted by the Joint Registrar. It appears that the person who granted interim stay was also the authority who



had issued the impugned notice.

5. Subsequently, the appeal filed by the dismissed employees before the appellate authority came to be allowed and the punishment was modified and substituted. Aggrieved by the same, the society filed writ petitions before this Court. While granting stay of the order passed by the appellate authority, the management of the society was put on terms. The management was aggrieved by the imposition of terms, while the dismissed employees were aggrieved by the grant of interim stay. Thus at the interim stage, two writ appeals were filed before the Hon'ble Division Bench. By order dated 11.12.2015, the Hon'ble Division Bench allowed W.A.(MD)No.1318 of 2015 filed by the management and dismissed the appeal filed by the employees.

6. It appears that some strong observations were also made by the Hon'ble Division Bench. The writ petition filed by the management is still pending. While so, in the counter affidavit filed in W.P.(MD)No.7004 of 2019, the Joint Registrar had asserted that the then Secretary and the Assistant Secretary never misappropriated any money of the society. When the writ petition filed by the management is still pending, I am surprised that the appellate authority should take a strong stand in favour of the dismissed employees.

7. In these circumstances, I find considerable force in the submission of the petitioners' counsel that the impugned proceedings have been triggered only at the instance of the said two dismissed employees. But then, that by itself may not be sufficient to set aside the impugned order.

8. Section 36 of the Tamil Nadu Cooperative Societies Act provides for disqualification of the members of the Society. Section 36 of the Act reads as follows:-

" 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 misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or of any corrupt practice as defined in section 162 or of gross or persistent negligence in connection with the conduct and management of, or of gross mismanagement 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."

It can be seen from the above that is the member of the board has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society or of any corrupt practice as defined in Section 162 or of gross or persistent negligence in connection with the conduct and management of, or of gross mismanagement of the affairs of the society, there will be justification in initiating action under Section 36 of the Act.

9. In the case on hand, the respondents had mentioned as many as five circumstances for taking action. A mere look at them would show that the impugned notice has been issued without having any regard to the terms of Section 36 of the Act.

10. The first respondent had alleged that the Society has spent a sum of Rs.3,04,500/- without getting any administrative sanction. A three and a half page table also been enclosed to set out the relevant particulars. It is seen that number of Writ Petitions were filed against the Society. Interim orders were also obtained. Therefore, in order to defend the interest of the Society, the Society had engaged Advocates. It is seen therefrom that as many as eight Advocates have been paid fees for a number of cases. It is not the case of the Authority that these litigations were not filed against the Society. As rightly contended by the learned counsel for the petitioners that these litigations had been filed by the paid servants of the Society and the Society had defended the same. Engaging Advocates for defending the Society and spending amounts towards legal expenses cannot be termed as misappropriation.

11. Another allegation made against the petitioners is that one retired Balakrishna Pillai was also engaged without getting administrative sanction. The learned counsel for the petitioners has enclosed the proceedings of the Joint Registrar in Na.Ka.No.1115 of 2015 dated 19.03.2015, in which, administrative sanction was accorded for the said appointment for a period of six months. Therefore, the very basis of this allegation is also incorrect.

12. The other head pertains to the payment of salary to a Computer operator and a salesman of fair price shop. The said computer operator is no longer in service. She was engaged for a period of few weeks on daily wages basis in order to carry out certain emergent tasks of the Society and she was paid only a sum of Rs.11250/-. It is alleged that a sum of Rs.5,450/- was paid to the



Computer operator in excess. It is stated that the remuneration paid to the said computer operator was only as per Tamil Nadu Minimum Wages Act. Therefore, it cannot be termed as misconduct or misappropriation of funds.

13. The society is running as many as six fair price shops. Therefore, there should be six salesmen. The management had been requesting the authorities for according permission to appoint them on regular basis. Since such permission was not forthcoming, two salesmen were appointed on daily wages basis. I fail to understand as to how this can be construed as mismanagement.

14. The fifth allegation of unauthorised expenditure to the tune of Rs.7,050/- pertains to the dismissed employees. It is not the case of the respondents that the petitioners are responsible for the same.

15. Even *prima facie* material is not available in view of the action under Section 36 of the Act. When the elementary ingredients are absent, the very issuance of the show cause notice can be said to lack jurisdiction. Therefore, even at the show cause notice stage, this Court is justified in interfering. It is accordingly quashed. W.P(MD)No.7004 of 2019 stands allowed.

16. Since W.P.(MD)No.7004 of 2019 has been allowed, W.P.(MD) No.5998 of 2017 stands closed as infructuous. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

vrn/pmu

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

1. The Joint Registrar of Co-Operative Societies,
Tuckalay,
Kanyakumari District.

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



2. The Co-operative Sub Registrar / Field Officer,
Munchirai,
Kanyakumari District.
3. The Joint Registrar of Co-Operative Societies,
Kanyakumamr Region,
Collectorate New Building,
2nd Floor, Nagercoil,
Kanyakumari District - 629 001.
4. The Deputy Registrar of Co-operative Societies,
Thuckalay Circle, Palace Road,
Thuckalay,
Kanyakumari District - 629 175.
5. The Secretary,
The Kunnathoor Primary Agricultural
Co-operative Credit Society Ltd, No.Y-55,
Co-Operative Bank Road,
Puthukkadai - 629 171,
Vilavancode Taluk,
Kanyakumari District.

Common order made in
W.P. (MD)Nos.5998 of 2017 & 7004 of 2019
WMP (MD) Nos.4730 of 2017 and 5584 of 2019
03.08.2020

AP(24/08/2020) 7P 6C