



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.07.2020

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THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

W.P.(MD)No.12865 of 2017

and

WMP (MD) Nos.9958 & 9959 of 2017 and 9926 of 2019

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Vendalicode Primary Agricultural
Co-operative Credit Society,
Rep by its President,
Vendalicode, Kalkulam Taluk,
Kanyakumari District.

:Petitioner

Vs.

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

2. The Field Officer,
Thiruvattar,
Office of the Deputy Registrar of
Co-operative Societies,
Thuckalai,
Kanyakumari District.

:Respondents

PRAYER: 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 order of the 1st respondent in Na.Ka.No.1052/2017/PACS dated 30.03.2017 and Na.Ka.No.1052/2017/PACS dated 13.05.2017 and quash the same.

For Petitioner	: Mr.Veerakathiravan, Senior Counsel for M/s.Veera Associates
For Respondents	: Mr.S.Angappan Government Advocate

O R D E R

Heard the learned Senior Counsel appearing for the Writ Petitioner and the learned Government Advocate appearing for the respondents.

2. The Writ Petitioner is a Co-operative Credit Society registered under the Tamil Nadu Societies Registration Act 1975. It is aggrieved by the impugned order passed by the first respondent directing the inspection under Section 82 of Tamil Nadu Co-operative Societies Act 1975.

3. The core argument of the learned Senior Counsel is that the conditions set out under Section 82 of the Act had to be



fulfilled and only thereafter inspection can be ordered. His pointed contention is that those conditions are completely absent in this case. Section 82 of Tamil Nadu Co-operative Societies Act 1975 reads as follows:-

82. Inspection and investigation

(1) the Registrar may, of his own motion, or on the application of a creditor of a registered society inspect or investigate or direct any person authorized by him in this behalf by general or special order in writing to inspect the affairs of the registered society in general or to investigate into any alleged misappropriation, fraudulent retention of any money or property, breach of trust, corrupt practice of mismanagement in relation to that society or into any particular aspect of the working of that society and the Registrar or the person so authorized shall have all the powers of the Registrar when holding an inquiry under Section 81:

Provided that no such inspection or investigation shall be made or directed on the application of a creditor unless the creditor-

(a) satisfies the Registrar that the debt is a sum then due and that he has demanded payment thereof and has not received satisfaction within a reasonable time; and

(b) deposits with the Registrar such sum as security for the costs of the proposed inspection or investigation as the Registrar may require.

(2) Where an inspection or investigation is made under sub-section (1), the Registrar shall within such time as may be prescribed communicate the results of such inspection or investigation to the society and where the inspection or investigation is made on the application of a creditor, also to the creditor, and to the financing bank, if any, to which the society is affiliated.

(3) It shall be competent for the Registrar to withdraw any inspection or investigation from the person to whom it is entrusted and to conduct the inspection or investigation himself or entrust it to any other person as he deems fit.

(4) The inspection or investigation shall be completed within a period of three months from the date of ordering the inspection or investigation or such further period or periods not exceeding three months at a time as the next higher authority may permit provided that such extended periods shall not exceed six months in the aggregate.



(5) The Registrar may, by order in writing, direct the registered society or any officer of the society to take such action as may be specified in the order to remedy within such time as may be specified therein the defects, if any, disclosed, as a result of the inspection or investigation.

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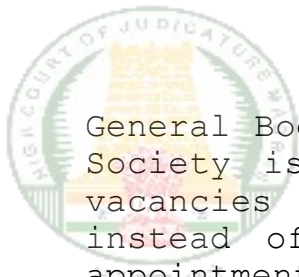
4. I was taken through the order dated 13.05.2015 passed by the first respondent. The said order states that the inspection has been ordered in view of the report submitted by the field officer, Thiruvattar/the second respondent herein. I went through the contents of the field officer's report. The second respondent had stated in his report dated 08.03.2017 that the petitioner's society had illegally appointed one Mrs. Nisha on 21.12.2015 on daily wages basis. The fault pointed out by the second respondent is that the permission of the higher authority has not been obtained by the Society concerned for such appointment. This is the sole reason for ordering the inspection under Section 82 of the Act.

5. Of course, the learned Government Advocate would draw my attention to the lengthy counter affidavit filed by the first respondent, in which various other justifications have also been offered. But the impugned order is only based on the field officer's report dated 08.03.2017. The said report speaks about the appointment of the said Nisha as daily wages employee. It is not open to the first respondent to improve his case before this Court. As observed by the Supreme Court of the United States in **Department of Homeland Security Vs. Regents of University of California (June 2020)**, considering only contemporaneous explanations for agency action also instills confidence that the reasons given are not simply 'convenient litigating positions'. Permitting agencies to invoke belated justifications, on the other hand, can upset the orderly functioning of the process of review forcing both litigants and courts to chase a moving target.

6. At this juncture, I have to see if the first respondent is justified in directing the impugned inspection. My attention has been drawn to the Bye laws of the petitioner's society. Bye law No.2 (b) defines the employee as 'any person who is a paid officer or servant of the Society but does not include a person employed on contract basis or on daily wages or outsourcing'. In counter affidavit, it is stated that the appointment of the said Nisha on daily wages basis is contrary to Rule 149(2) & 150(4) of the Tamil Nadu Co-operative Societies Rules 1988 and also against Government order G.O.(Ms)No.362, Co-operation, Food and Consumer Protection Department dated 24.04.1990.

7. The specific stand of the petitioner's society is that the said Nisha has not been appointed to any post. That apart the

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General Body of the Society also approved the said appointment. The Society is also running three fair price shops. To fill up the vacancies in those shops and to save the funds of the Society, instead of going for regular recruitment, the Society has made appointments on daily wages basis.

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8. The impugned order is only based on the Report of the field officer. The field officer has also been appointed as inspecting officer under Section 82 of the Act. In other words, the person who has lodged a complaint is asked to conduct inspection.

9. For all the foregoing reasons, the impugned order cannot be sustained and it is hereby quashed. The Writ Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2020

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

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

2. The Field Officer,
Thiruvattar,
Office of the Deputy Registrar of
Co-operative Societies,
Thuckalai,
Kanyakumari District.

+1 CC to Spl.GP (SR-13480[F] dated 31/07/2020)

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-13431[F] dated 31/07/2020)

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