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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

W.P.Nos.4656 and 4661 of 2021

and

WMP Nos.5279, 5281, 5284 and 5285 of 2021

Imayam Multi State Housing
Co-operative Society Ltd
Rep.by its President
S.Thihyagarajan
No.56/21, 2nd Floor, Fathima Towers
Nelson Manickam High Road'
Choolaimedu
Chennai 600 094.

... Petitioner in Both WPs

.Vs.

1.Union of India

Represented by
Central Registrar of Co-operative Societies
Department of Agriculture
Co-operation & Farmers Welfare
Ministry of Agriculture and Farmers Welfare
Room No.131, Krishi Bhavan
New Delhi 110 114.

2.Shri J.Sudhanthiravalli

Co-operative Sub-Registrar/Managing Director
Chennai Co-operative Employees Co-operative Society
No.170, Periyar, EVR High Road, Hilpauk
Chennai 600 009.

3.Bank of Baroda

Represented by its Chief Manager
Choolaimedy Branch
No.52, Nelson Manickam Road
Choolaimedu, Chennai 600 094.

... Respondents
in Both WPs

Prayer in W.P.No.4656 of 2021:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the 1st Respondent herein dated 18.01.2021, F.No.R-11017/35/2019 L & M, under the Section 86 of the Multi State Co-Operative Societies Act, 2002 appointing the 2nd Respondent as liquidator of the Petitioner herein and quash the same.



Prayer in W.P.No.4661 of 2021:- Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records of the 1st Respondent pertaining to the impugned order bearing F.No.R-11017/35/2019 L & M, dated 18.01.2021, ordering the winding up of the Petitioner Society and quash the same as illegal and arbitrary.

For Petitioner : Mr.Subramanian Vaidyanathan
(Both WPs)
For Respondents : Mr.S.Muthusamy
ACGSC
for R 1

No Appearance for R 2 & R 3

COMMON ORDER

The issue involved in both the writ petitions are interrelated and hence they are taken up together, heard and disposed of through this common order.

2.W.P.No.4656 of 2021, has been filed challenging the impugned order passed by the first respondent dated 18.01.2021, wherein the first respondent has proceeded to wind up the petitioner Society in accordance with the provisions of Section 86 of the Multi State Co-operative Societies Act, 2002 [hereinafter referred as "the Act"].

3.W.P.No.4661 of 2021, has been filed against the consequential order passed on the same day appointing a liquidator to take over the management of the Society and to finalise the liquidation proceedings, within a period of six months.

4.Heard Mr.Subramanian Vaidyanathan, learned counsel for the petitioner and Mr.S.Muthusamy, learned Central Government Standing Counsel for the first respondent. The second and third respondents have been served and their names have also been printed in the cause list, none entered appearance.

5.The case of the petitioner is that they are a registered Society in terms of Section 7 of the Act, and it was registered in the year 2015. This Society was initially formed by one Mr.Elumalai Sundaravadivelu, who was the Chairman and he was functioning as the Chairman of the Board. Mr.Elumalai Sundaravadivelu, was in the helm of affairs till 21.07.2017 and thereafter he resigned from the said post.

6.It is seen from the By-Laws of the Society that the Society was formed to promote the socio-economic betterment of the members through self-help and mutual aid in



accordance with the Co-operative principles. There was some dispute in running the Society and it is alleged that Mr.Elumalai Sundaravadivelu, was involving himself in illegal activities and acting against the interest of the members of the Society. That apart, it is also alleged that he had also misappropriated the funds of the Society. When Mr.Elumalai Sundaravadivelu, was confronted with all these allegations, there was a friction as between the Board members and Mr.Elumalai Sundaravadivelu. Ultimately, Mr.Elumalai Sundaravadivelu, chose to resign from the Board as well as from the Chairmanship of the petitioner Society effective from 21.07.2017.

7.It seems that Mr.Elumalai Sundaravadivelu, had given a complaint to the first respondent to the effect that the Society is collecting deposits from the general public and brokerage commission has also been paid to the agents for collecting the deposits. Thereby, the petitioner Society is running a Ponzi Scheme which is against the provisions of the Act as well as the By-Laws of the Society. Mr.Elumalai Sundaravadivelu, in his complaint further alleged that the Society has a large number of persons over and above the regular members and thereby the affairs of the Society is not being properly conducted.

8.Based on the compliant given by Mr.Elumalai Sundaravadivelu, the first respondent instituted proceedings and based on the materials placed before the first respondent a decision was taken to wind up the Society and to appoint a liquidator.

9.The learned counsel for the petitioner submitted that the Society was not taking any deposits from the general public. The learned counsel pointed out to Section 77 of the Act and submitted that a Multi State Co-operative Society can accept deposits from its members. The learned counsel also pointed out to Clause 5(q) and Clause 6(vii) of the By-Laws of the Society to substantiate his submissions that the Society can raise funds required for the business of the Society by way of receiving contributions from the members. It was therefore submitted that the Society was only taking deposits from the members. While describing the term "member" the learned counsel for the petitioner also brought to the notice of this Court that the By-laws recognise two category of members viz., members "with voting rights" and members "without voting rights". For this purpose, the learned counsel relied upon Clause 9 and Clause 21 of the By-Laws. The learned counsel submitted that the petitioner Society had filed various documents in order to substantiate this stand taken in the writ petitions and it was not considered by the first respondent.

10.The learned counsel for the petitioner further submitted that insofar as the allegation that the Society has



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a large number of members over and above 291 regular members, the learned counsel submitted that this allegation is also not true since, as already explained, the first respondent did not take into consideration the two types of members that is permitted under the Bye-laws.

11. Insofar as the allegation regarding the payment of brokerage commission of 30% to the agents, the learned counsel submitted that reliance was placed upon the books of accounts for the year ending March 2016, March 2017 and March 2018 and submitted that for the period up to 21.07.2017, Mr. Elumalai Sundaravadivelu, was in the helm of affairs and he had committed various illegalities and thereafter, he has turned around and blamed the Society by way of giving a complaint. The learned counsel submitted that immediately after the affairs of the Society was taken over from Mr. Elumalai Sundaravadivelu, all efforts were made to bring the situation under control and no commission brokerage was paid to any agents, since no deposits were received from the general public. The learned counsel further submitted that the amount shown against the entry which was been taken to be a commission paid to the agents by the first respondent, is a clear misconstruction of the reading of the books of accounts, since this head involves even the brokerage, incentives etc. The learned counsel therefore submitted that the first respondent did not take these vital aspects into consideration.

12. Per contra, the learned counsel appearing on behalf of the first respondent submitted that opportunity was given to the petitioner Society and explanation was received based on the complaint given by Mr. Elumalai Sundaravadivelu and orders were passed only based on the materials and after proper application of mind. The learned counsel further submitted that the books of accounts clearly revealed the fact that the Society was paying brokerage commission of nearly 30% and if the Society is not really receiving any deposits from the general public, there was no need for the Society to pay such a brokerage commission and therefore, the first respondent has rightly come to a conclusion that the Society is involved in collecting deposits from general public which is against the Act and the By-Laws of the Society. The learned counsel submitted that the first respondent has taken into consideration the interest of the members of the Society and had decided to windup the Society and to appoint a liquidator for this purpose. The learned counsel concluded his arguments by submitting that there are absolutely no merits in the present writ petitions and the same is liable to be dismissed by this Court.

13. This Court has carefully considered the submissions made on either side and the materials available on record.



14.The learned counsel for the petitioner placed overwhelming materials before this Court to substantiate the fact that the Society was not receiving any deposits from the general public and the same was received only from the members of the Society. It is also seen that there is a on going dispute between the Society and Mr.Elumalai Sundaravadivelu and Mr.Elumalai Sundaravadivelu obviously had an axe to grind against the Board which is functioning after his resignation. Mr.Elumalai Sundaravadivelu had resigned only with effect from 21.07.2017 and he was confronted by the members of the Board on the various illegalities that were committed by him and that is the reason why the Board wanted an explanation from Mr.Elumalai Sundaravadivelu and Mr.Elumalai Sundaravadivelu, had conveniently resigned and left the Society. Probably whatever Mr.Elumalai Sundaravadivelu did while he was in the helm of affairs is now sought to be taken advantage by way of giving a complaint against the Society.

15.It is seen from records that after the resignation of Mr.Elumalai Sundaravadivelu on 21.07.2017, the Board was reconstituted and one S.Thiayagarajan was appointed as the Chairman on 03.11.2017. It is also seen from records that the petitioner Society had already applied to the first respondent for change of its address of the registered office, since the registered office has been changed to the new address and this change of address was not given effect by the first respondent. For some reason, the first respondent was refusing to take note of the change of address of the petitioner Society. As a result of the same, notices seem to have been issued to the old address and the petitioner Society was not aware about the complaint that was given by Mr.Elumalai Sundaravadivelu. Ultimately, the petitioner Society came to know about the complaint given by Mr.Elumalai Sundaravadivelu, only after verifying the official site of the first respondent wherein the complaint and the notices were uploaded by the first respondent. Hence, the petitioner gave a detailed reply to the first respondent by enclosing all the documents on 13.12.2019. Even thereafter, the petitioner had given a detailed representation on 28.02.2020, enclosing various annexures. Ultimately, the first respondent has proceeded to pass the impugned order directing for winding up of the Society and appointing a liquidator.

16.In the considered view of this Court, the winding up of a Society has very serious consequences, since it directly involves the interest of the Society. Therefore, such an action must be taken as the last resort, after providing sufficient opportunity to the Society to correct themselves, even if some deficiencies are found against the Society. In the present case, the order has been passed by the first respondent only based on the complaint given by Mr.Elumalai Sundaravadivelu, who is the disgruntled erstwhile Chairman of the Society. The first respondent did not receive any complaints from the general public to the effect



that deposits are being collected and brokerage commission is being paid. Therefore, the first respondent should have been more careful, while passing the orders and should not have straight away ordered for the winding up of the Society and appointed a liquidator.

17.This Court is therefore inclined to interfere with the impugned order passed by the first respondent on 18.01.2021, ordering for the winding up of the Society and appointing a liquidator and accordingly, they are quashed. The matter is remanded back to the file of the first respondent and the first respondent is directed to issue a fresh notice to the petitioner Society by clearly pointing out the deficiencies on the side of the petitioner Society. The petitioner Society on receipt of the same shall give their explanation along with all the relevant documents. Thereafter, if the first respondent wants to proceed further, the petitioner Society shall be given an opportunity of personal hearing and they shall be heard and thereafter, a decision can be taken by the first respondent on its own merits and strictly in accordance with law. This process shall be completed by the first respondent within a period of three months from the date of receipt of copy of this order.

18.In the result, both the writ petitions are allowed with the above directions. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS v)

//True Copy//

Sub Assistant Registrar

KP
To

1.Central Registrar of Co-operative Societies
Union of India
Department of Agriculture
Co-operation & Farmers Welfare
Ministry of Agriculture and Farmers Welfare
Room No.131, Krishi Bhavan
New Delhi 110 114.

2.The Co-operative Sub-Registrar/Managing Director
Chennai Co-operative Employees Co-operative Society
No.170, Periyar, EVR High Road, Hilpauk
Chennai 600 009



3.The Chief Manager
Bank of Baroda
Choolaimedy Branch
No.52, Nelson Manickam Road
Choolaimedu, Chennai 600 094.

+2 ccs to Mr.S.Muthusamy, Advocate Sr.NO. 50056
W.P.Nos.4656 and 4661 of 2021
SRA (CO)
A.SK(13.10.2021)